DEPARTMENT 1 LAW AND MOTION RULINGS

Case Number: 24STCV34288 **Hearing Date:** August 7, 2026 **Dept:** 1

Preliminary Approval of Class Action Settlement
Department SSC-1
Hon. Theresa M. Traber

Cherokee McClinton v. Cal. Ned. Inc., et al.
Case Number: 24STCV34288
Hearing Date: August 7, 2026

TENTATIVE RULING

The Court's tentative ruling is to GRANT preliminary approval contingent on the parties addressing the following:

1. The Settlement Agreement must be signed by each party's counsel.
2. The escalator clause at Settlement Agreement ¶18 gives Defendant the option to shorten the Class/PAGA Period in lieu of increasing the Gross Settlement Amount. Based on current records, the parties and/or administrator should review and verify the workweek total and confirm the end date of the Class/PAGA Period *before* preliminary approval is granted. Revise the agreement and notice if necessary.
3. At Notice pg. 6, section V, there is a typo in the address stated for Spring Street Courthouse ("Los Angeles, California 0012on"). Please revise before issuance.

The Court orders the parties to submit a supplemental declaration regarding the escalator clause, a fully signed Settlement Agreement, and a corrected Class Notice to address the Court's concerns. All supplemental papers are due to be filed by ______________________________. The Court sets a non-appearance case review for ______________________________ to review the supplemental papers.

-

BACKGROUND

This is a wage and hour class action. Plaintiff Cherokee McClinton sues Defendants Cal. Ned. Inc. and Ned Pan, Inc. (together, "Defendants"). Defendants operate the Pantages Theater in Los Angeles. Plaintiff seeks to represent a class of Defendants' current and former non-exempt employees who worked at any time during the Class Period in the positions of Usher and/or Stage Door Attendant.

On December 23, 2024, Plaintiff provided written notice to the LWDA by online submission and to Defendants by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendants. On January 2, 2025, Plaintiff provided an amended written notice to the LWDA.

On December 26, 2024, Plaintiff filed a Class Action Complaint against Defendants.

On February 27, 2025, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq., Case No. 25STCV05616 ("PAGA Action"), thereby commencing a representative action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 et seq. ("PAGA") against Defendants.

On October 13, 2025, the Parties participated in a formal mediation conducted by Chris Barnes, Esq., which resulted in settlement. Terms were finalized in the long-form *Class Action and PAGA Settlement Agreement* ("Settlement Agreement"), attached as Exhibit 4 to the Declaration of Alexandra Rose ("Rose Decl.").

On April 16, 2026, Plaintiff filed a First Amended Class and Representative Action Complaint ("Operative Complaint") in the Action adding the PAGA claims alleged in the PAGA Action. The Operative Complaint alleges causes of action for violations of the California Labor Code for: failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premium payments in lieu thereof, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, et seq. based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations.

Now before the Court is the Motion for Preliminary Approval of the Settlement.

SETTLEMENT CLASS DEFINITION

"Class" or "Class Member(s)" means all current and former California nonexempt hourly employees of Ned Pan, Inc. or Cal Ned, Inc. (as the payroll agent for Ned Pan, Inc.) who worked at any time during the Class Period in the positions of Usher and/or Stage Door Attendant. (¶11.d)

"Class Period" means the period from December 26, 2020, through December 15, 2025. (¶11.h)

"Aggrieved Employee(s)" means all current and former California non-exempt hourly employees of Ned Pan, Inc. or Cal Ned, Inc. (as the payroll agent for Ned Pan, Inc.) who worked at any time during the PAGA Period in the positions of Usher and/or Stage Door Attendant. (¶11.a)

"PAGA Period" means the period from December 23, 2023, through December 15, 2025. (¶11.aa)

"Settlement Class" or "Settlement Class Member(s)" means all Class Members who do not submit a timely and valid Request for Exclusion. (¶11.mm)

TERMS OF SETTLEMENT AGREEMENT

-

The essential terms are as follows:

The Gross Settlement Amount ("GSA") is **$700,000**, non-reversionary. (¶11.s)

- Escalator Clause: Defendants have represented that the Class Members worked a total of 14,180 workweeks during the period December 26, 2020, through October 15, 2025. If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period actually exceeds 14,180 by more than 10% (i.e., if the Workweeks exceed 15,598), **then at Defendants' option, either** (1) the Gross Settlement Amount will be increased on a pro rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% (for example, if the number of Workweeks increases by 11% to 15,740 Workweeks, then the Gross Settlement Amount will increase by 1%); **or (2) end the Class Period and PAGA Period on the date that the total number of Workweeks equals 14,180**. (¶18)

The Net Settlement Amount ("Net") (**$383,000**) is the GSA minus the following:

- Up to **$245,000** (35%) for attorney fees (¶14);

- Up to **$25,000** for litigation costs (*Ibid.*);
- Up to **$5,000** for an Enhancement Payment to the Named Plaintiff (¶15);
- Up to **$7,000** for settlement administration costs (¶17); and
- Payment of **$35,000** PAGA penalty (65% or $22,750 to the LWDA). (¶16)

Defendant shall pay the Employer Taxes in addition to the Gross Settlement Amount. (¶11.n)

There is no claim form requirement. (Notice p. 1)

Individual Settlement Payment Calculation: After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the Final Workweek Value and multiply each Settlement Class Member s individual Workweeks by the Final Workweek Value to yield each Settlement Class Member's final Individual Settlement Share. (¶19.b)

- PAGA Payments: The Settlement Administrator will divide the Aggrieved Employee Amount, i.e., 35% of the PAGA Amount, by the Pay Periods of all Aggrieved Employees to yield the "Pay Period Value," and multiply each Aggrieved Employee's individual Pay Periods by the Pay Period Value to yield each Aggrieved Employee's Individual PAGA Payment. (¶20)
- Tax Allocation**:** Class Members' Individual Settlement Shares will be allocated as follows: 20% as wages, 80% as interest, penalties and non-wage damages. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties. (¶21)

Response Deadline: "Response Deadline" means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the United States Postal service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendants Counsel. In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (¶11.jj)

- If more than ten percent (10%) of the Class Members submit timely and valid Requests for Exclusion, Defendants may elect to rescind the Settlement Agreement. (¶34)

Funding of Settlement**:** No later than ten (10) business days after the Effective Date, Defendants will deposit the Gross Settlement Amount and Employer Taxes into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, et seq., to be established by the Settlement Administrator. Defendants shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than ten (10) business days after the Effective Date. (¶37)

Disbursement: Within five (5) business days of the funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to Aggrieved Employees, LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys' Fees and Costs to Class Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and timely forward these to the appropriate government authorities. (¶38)

Uncashed Settlement Checks: Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds associated with such canceled checks shall be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or Aggrieved Employee. (¶39)

The settlement administrator will be Apex Class Action LLC. (¶11.kk)

The proposed Settlement Agreement was submitted to the LWDA on June 10, 2026. (Rose Decl., Exhibit 5.)

The named Plaintiff and class members will release certain claims against Defendant. (See further discussion below).

ANALYSIS OF SETTLEMENT AGREEMENT

-

- **Does a presumption of fairness exist?**

1. Was the settlement reached through arm's-length bargaining? On October 13, 2025, the Parties participated in a formal mediation conducted by Chris Barnes, Esq., which resulted in settlement. (Rose Decl., ¶14.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Class Counsel represents that prior to mediation, Defendants produced the entire data set of putative class members' time and pay records as well as Defendants' relevant wage and hour policies, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (*Id.* at ¶25.)

3. Is counsel experienced in similar litigation? Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at Exhibit 1.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ("Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.")

CONCLUSION: The settlement is entitled to a presumption of fairness.

- **Is the settlement fair, adequate, and reasonable?**

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

Counsel provided the following exposure analysis:

Violation	**Maximum Exposure**
Meal Period Violations	$119,510
Rest Period Violations	$805,738
Unpaid Wages (Off-the-Clock)	$236,393
Unpaid Overtime	$239
Unreimbursed Business Expenses	$117,030
Waiting Time Penalties	$350,072
Wage Statement Penalties	$544,000
PAGA Penalties	$608,900
Total	**$2,781,882**

(Rose Decl., ¶¶28-41.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Counsel negotiated a settlement of $700,000 that is approximately 25.2% of the potential exposure, which is in the ballpark of reasonableness.

The settlement amount, after reduction by the maximum requested deductions, leaves $383,000 to be divided among approximately 250 class members. Thus, the resulting payments will average $1,532.

5. Extent of discovery completed and stage of the proceedings. As indicated above, by the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object and or opt-out. This factor becomes relevant during the fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

Scope of the release

Class Settlement Release. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. (¶40)

- "Released Class Claims" means any and all claims which were alleged or which could have been reasonably alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, which shall specifically include claims for Defendants alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Order, and California Business and Professions Code sections 17200, et seq. (¶11.ff)

PAGA Settlement Release. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. (¶41)

- "Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letters and the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 et seq., which shall specifically include claims for Defendants alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order. (¶11.gg)

- All Aggrieved Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (¶31)

"Released Parties" means Defendants and their respective and former parents, subsidiaries, and affiliated corporations and their officers, directors, shareholders, employees, agents, and attorneys. (¶11.hh)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶42)

- **May conditional class certification be granted?**

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn. 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba* at 240.)

Analysis

a. Numerosity. There are approximately 250 class members. (Rose Decl., ¶17.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are identifiable through Defendants' records. (Rose Decl., ¶17.)

c. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

As to commonality, Plaintiff alleges that Defendants denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendants' policies and practices were uniform as to all Class Members. (Memo ISO Prelim at 15:20-16:4.)

As to typicality, Plaintiff alleges that her claims are similar to that of the other Class Members and that Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. (*Id.* at 16:5-15.)

As to adequacy, Plaintiff represents that he is aware of the duties and risks of serving as class representative and has participated in the litigation. (Declaration of Cherokee McClinton, ¶¶3-10.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class may be conditionally certified since the prerequisites of class certification have been satisfied.

- **Is the notice proper?**

a. Content of class notice. The proposed notice is attached to the Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing**.** Notice will be issued in English. (¶29.a)

b. Method of class notice.

Within fourteen (14) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. (¶28) Within ten (10) business days after receiving the Class List from Defendants, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English (in the form attached as Exhibit A to the Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (¶29.a)

Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days. (¶29.b) Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶43)

c. Cost of class notice. As indicated above, settlement administration costs are estimated to equal approximately **$7,000.** Prior to the time of the final fairness hearing, the administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

- **Attorney fees and costs**

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc*. (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the Court may utilize the percentage method, cross-checked by the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **$245,000** (35%) **i**n attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs (capped at **$25,000**) sought by detailing how they were incurred.

- **Incentive Award to Class Representative**

Class Counsel will seek a Service Payment of **$5,000** to the named Plaintiff. In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .'" (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement award at the time of final approval.