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Clerk of the Superior Court
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FILED
San Diego Superior Court

DEC 08 2023

Clerk of the Superior Court
By: K. Mulligan, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN DIEGO**

15 **GUILLERMO NUNEZ and ERIBERTO**
16 **AQUINO, on behalf of the State of California,**
17 **as private attorneys general, and as individuals**
18 **on behalf of themselves and on behalf of**
19 **others similarly situated,**

20 **Plaintiff,**

21 **vs.**

22 **INTERSTATE MANAGEMENT**
23 **COMPANY, L.L.C., a Limited Liability**
24 **Company; INTERSTATE HOTELS AND**
25 **RESORTS, INC.; and DOES 1 through 50,**
26 **inclusive,**

27 **Defendants.**

CASE NO.: 37-2021-00023535-CU-OE-CTL

~~PROPOSED~~ FINAL APPROVAL
ORDER AND JUDGMENT

Hearing Date: December 8, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Keri Katz
Dept.: 74

Action Filed: May 27, 2021
Trial Date: None Set

28 **FINAL APPROVAL ORDER AND JUDGMENT**

1 The motion of Plaintiffs Guillermo Nunez and Eriberto Aquino ("Plaintiffs") for an order
2 finally approving the Class Action and PAGA Settlement Agreement ("Agreement") with
3 Defendants Interstate Management Company, LLC and Interstate Hotels and Resorts, Inc.
4 ("Defendants") and for an award of attorneys' fees and costs, service payment, and the fees of the
5 Administrator duly came on for hearing on December 8, 2023 before the Honorable Keri Katz.

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7 **I.**

8 **FINDINGS**

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

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Two Million Nine Hundred
17 Twenty Thousand Dollars (\$2,920,000) and the terms set forth in the Agreement are fair,
18 reasonable, and adequate.
- 19 4. The Court further finds that the Settlement was the result of arm's length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court's conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On August 9, 2023, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
4 by first class mail to members of the Class at their last known addresses on or about September 25,
5 2023. Mailing of the Class Notice to their last known addresses was the best notice option under
6 the circumstances and was reasonably calculated to communicate actual notice of the litigation
7 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
8 accurately informed the Class Members of all material elements of the proposed Settlement and of
9 their opportunity to object to or comment thereon or to seek exclusion from the Settlement;
10 constituted valid, due, and sufficient notice to all Class Members; and complied fully with the
11 laws of the State of California, the United States Constitution, due process and other applicable
12 law. The Class Notice fairly and adequately described the Settlement and provided Class
13 Members adequate instructions and a variety of means to obtain additional information.

14 7. The deadline for opting out of the Class or submitting written objections to the
15 Settlement was November 9, 2023. There was an adequate interval between mailing of the Class
16 Notice and the response deadline to permit Class Members to choose what to do and act on their
17 decision. A full opportunity has been afforded to the Participating Class Members to participate in
18 this hearing, and all Participating Class Members and other persons wishing to be heard have been
19 heard. Class Members also have had a full and fair opportunity to exclude themselves from the
20 proposed Settlement and Class. Accordingly, the Court determines that all Class Members who
21 did not timely and properly submit a request for exclusion are bound by the Settlement and this
22 Final Approval Order and Judgment.

23 **Fairness Of Settlement**

24 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
25 48 Cal.App.4th 1794, 1801 (1996).

26 a. The settlement was reached through arm's-length bargaining between the
27 parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
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1 wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiffs' investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. Two (2) requests for exclusion were received.

9 e. The participation rate was high. 6,336 Participating Class Members will be
10 mailed a settlement payment, representing 99.96% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$973,333.33 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$37,019.79 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for Class Representative Service Payments of not more
26 than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that Class
27 Representative Service Payments in the amount of \$10,000 to each Plaintiff is reasonable in light
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1 of the risks and burdens undertaken by the Plaintiffs in the litigation, for their time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for their execution of a general
3 release.

4 **Administration Expenses Payment**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
8 Penalties, issue any required tax reporting forms, calculate withholdings and perform the other
9 remaining duties set forth in the Agreement. The Administrator has documented \$44,750 in fees
10 and expenses, and this amount is reasonable in light of the work performed by the Administrator.

11 **PAGA Penalties**

12 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount
13 of \$60,000, which shall be allocated with 75% (\$45,000) allocated to the LWDA PAGA Payment
14 and 25% (\$15,000) allocated to the Individual PAGA Payments to be distributed to the Aggrieved
15 Employees. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
16 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,000) by the total
17 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
18 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
19 The Aggrieved Employees are all hourly, non-exempt employees who were employed by
20 Defendants Interstate Management Company, LLC; and Interstate Hotels and Resorts, Inc. in
21 California during the PAGA Period, which is January 1, 2020 through January 31, 2023. The
22 Court finds the PAGA Penalties to be reasonable. All Aggrieved Employees will be sent their
23 share of the PAGA Penalties and will be subject to the release of the Released PAGA Claims as
24 set forth below, whether or not they opt out of the Settlement.

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1 II.

2 ORDERS

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

4 1. The certification of the Class for the purposes of settlement is confirmed. The
5 Class is defined as follows:

6 All individuals who are or previously were employed by Defendants Interstate
7 Management Company, LLC; and Interstate Hotels and Resorts, Inc. in California
8 who were classified as hourly, non-exempt employees during the Class Period
(January 1, 2020 through January 31, 2023).

9 2. All persons who meet the foregoing definition are members of the Class, except for
10 those individuals who filed a valid request for exclusion ("opt out") from the Class. There were
11 two individuals who requested exclusion: Jeremy L. Smythe and Manuel R. Guevara.

12 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
13 best interest of the Class.

14 4. Class Counsel are awarded attorneys' fees in the amount of \$973,333.33 and costs
15 in the amount of \$37,019.79. Class Counsel shall not seek or obtain any other compensation or
16 reimbursement from Defendants, Plaintiffs, or members of the Class.

17 5. The payment of the Class Representative Service Payments in the amount of
18 \$10,000 to each Plaintiff is approved.

19 6. The payment of \$44,750 to the Administrator for their fees and expenses is
20 approved.

21 7. The PAGA Penalties in the amount of \$60,000 are and shall be allocated in
22 accordance with the Agreement.

23 8. The Agreement and this Settlement are not an admission by Defendants, nor is this
24 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
25 wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for
26 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
27 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
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FINAL APPROVAL ORDER AND JUDGMENT

1 as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability
2 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
3 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
4 admission or concession with regard to the denials or defenses by Defendants. Notwithstanding
5 these restrictions, Defendants may file in the Action or in any other proceeding this Final
6 Approval Order and Judgment, the Agreement, or any other papers and records on file in the
7 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
8 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
9 Claims and/or the Released PAGA Claims.

10 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
11 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
12 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
13 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
14 to individual Class Members.

15 10. If the Agreement does not become final and effective in accordance with the terms
16 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
17 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
18 revert to their respective positions as of before entering into the Agreement, and expressly reserve
19 their respective rights regarding the prosecution and defense of this Action, including all available
20 defenses and affirmative defenses, and arguments that any claim in the Action could not be
21 certified as a class action and/or managed as a representative action.

22
23 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

24 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
25 Plaintiff, and all members of the Class, shall take nothing in the Action.

26 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
27 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
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1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 3. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 5. As of the Effective Date and upon full funding of the Gross Settlement Amount by
9 Defendants, Defendants and the Released Parties shall receive a release from the Participating
10 Class Members of and from all of the "Released Class Claims", which are all claims that were
11 alleged, or reasonably could have been alleged, based on the facts, circumstances, and primary
12 rights asserted in the Operative Complaint which occurred during the Class Period, and expressly
13 excluding all other claims, including claims for vested benefits, Plaintiffs' individual claims for
14 retaliation, wrongful termination, violation of the Fair Employment and Housing Act,
15 unemployment insurance, disability, social security, workers' compensation, and California class
16 claims outside of the Class Period.

17 6. As of the Effective Date and upon full funding of the Gross Settlement Amount by
18 Defendants, Defendants and the Released Parties shall receive a release from the LWDA and the
19 Aggrieved Employees of the "Released PAGA Claims", which are all claims for PAGA penalties
20 that were alleged, or reasonably could have been alleged, based on the facts, circumstances, and
21 primary rights asserted in the Operative Complaint and PAGA Notice, which occurred during the
22 PAGA Period. The Released PAGA Claims do not include other PAGA claims, underlying wage
23 and hour claims, claims for wrongful termination, discrimination, unemployment insurance,
24 disability and worker's compensation, and claims outside of the PAGA Period. The release of the
25 Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an
26 Aggrieved Employee submitted a request for an exclusion from the Class.

1 7. As of the Effective Date, Plaintiff generally releases and discharges the Defendants
2 and the Released Parties from all claims ("Plaintiffs' Released Claims") as set forth fully in the
3 Agreement.

4 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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6 Dated: DEC 08 2023

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8 HON. KERI KATZ
9 JUDGE, SUPERIOR COURT OF CALIFORNIA
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