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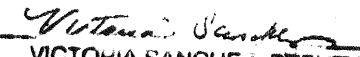
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

NOV 17 2023

Sylvia Guajardo

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 15 2023

BY 
VICTORIA SANCHEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER

LUZ PADILLA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SHIN NIHON KOSAN, INC., SHOGUN
RESTAURANT, INC. a California
corporation; SHOGUN LA VERNE,
LLC., a California limited liability
company; SHOGUN CORONA, LLC., a
California limited liability company;
SHOGUN MURRIETA, LLC., a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVSB2117165

[Assigned for all purposes to the Honorable
Jessica L. Morgan, Department S26]

**~~PROPOSED~~ ORDER AND JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT**

[PROPOSED] ORDER AND JUDGMENT

The Court has before it Plaintiff's unopposed Motion for Final Approval of Class Action Settlement.

On June 20, 2023, Plaintiff filed a motion for preliminary approval requesting that the Court preliminarily approve the Settlement Agreement entered into between Plaintiff Luz Padilla, on behalf of herself and the Class ("Plaintiff") and Shin Nihon Kosan, Inc., Shogun Restaurant, Inc., Shogun La Verne, LLC, Shogun Corona, LLC, and Shogun Murrieta, LLC ("Defendants") (collectively, "the Parties").

On July 17, 2023, the Court issued an order granting preliminary approval. The Court preliminarily approved that this litigation could be maintained as a class action for settlement purposes and, therefore, it conditionally certified the following Class (the "Class" or "Settlement Class") for settlement purposes:

All non-exempt employees who worked for Defendants in the State of California from June 15, 2017 through March 1, 2023.

The Court conditionally approved for settlement purposes the PAGA allocation of this settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA Members ("PAGA Member" or "PAGA Members"), for settlement purposes:

All non-exempt employees who worked for Defendants in the State of California from April 11, 2020 through March 1, 2023.

The Court appointed, for settlement purposes, the Law Office of Scott Ernest Wheeler as Class Counsel, Plaintiff as representative for the Class, and ILYM Group, Inc. as the Settlement Administrator.

The Court further directed the Parties to provide notice to the Class via U.S. Mail to each Class Members' last known mailing address. The Class Notice was mailed to Class Members in both English and Spanish, informed them of the material terms of the Settlement, including, *inter alia*, (a) the nature of the case and claims asserted, (b) each Class Member's estimated individual settlement payment; (c) the payments to Class Counsel for attorneys' fees and costs, payment to the Class Representatives as service awards, payment to the Settlement Administrator for settlement administration costs, and payment to the California Labor and Workforce Development Agency for

1 PAGA penalties; (d) the claims that Class Members release if they do not exclude themselves from
2 the Settlement, (e) the right of any Class Member to object to the proposed Settlement, and an
3 explanation of the procedures to exercise that right; (f) the right of any Class Member to exclude
4 themselves from the proposed Settlement, and an explanation of the procedures to exercise that
5 right; (g) the right of any Class Member to dispute compensable work weeks and attributable to
6 them; and (h) the date, time, and location of the Final Approval Hearing which is now before the
7 Court.

8 The Court, upon Notice having been given in conformance with the Preliminary Approval
9 Order, and having considered the proposed Settlement, as well as all papers filed, hereby **ORDERS,**
10 **ADJUDGES, AND DECREES AS FOLLOWS:**

11 1. This Court has jurisdiction over the subject matter of the action and over all Parties
12 to the action, including all members of the Settlement Class.

13 2. The Settlement Class, defined as “All non-exempt employees who were employed
14 by Defendants, in the State of California, at any time from June 15, 2017, through March 1, 2023”,
15 is certified as a Class for settlement purposes pursuant to California Code of Civil Procedure § 382
16 in that: (a) the Class is so numerous that joinder is impractical; (b) there are questions of law and
17 fact that are common, or of general interest, to the Class, which predominate over any individual
18 issues; (c) Plaintiff’s claims are typical of the claims of the Class; (d) Plaintiff and Plaintiff’s counsel
19 will fairly and adequately protect the interests of the Class; and (e) a class action is superior to other
20 available methods for the fair and efficient adjudication of the controversy.

21 3. There have been no objections and only one request for exclusion by Mr. Tony
22 Vuong.

23 4. No disputes have been submitted by any Class Members or PAGA Member.

24 5. The Class Notice provided to the Settlement Class conforms with the requirements
25 of California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the
26 California and United States Constitutions, and any other applicable law, and constitutes the best
27 notice practicable under the circumstances, by providing individual notice to all Class Members
28 who could be identified through reasonable effort, and by providing due and adequate notice of the

1 proceedings and of the matters set forth therein to the other Class Members. The Class Notice fully
2 satisfied the requirements of due process.

3 6. The Court finds the Settlement was entered into in good faith, that the Settlement is
4 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable
5 requirements for final approval of this class action settlement under California law, including
6 California Rules of Court, Rule 3.769.

7 7. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
8 and Amendment to the Settlement Agreement are admissions by Defendants, or any of the other
9 Released Parties, of liability on any of the allegations alleged in the action, nor is this Order a finding
10 of the validity of any claims in the action, or of any wrongdoing by the Defendants, or any of the
11 other Released Parties.

12 8. A class action settlement is presumed to be fair if: ““(1) it is reached through arm’s
13 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
14 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
15 is small.”” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 52 (quotation omitted). The Court finds that
16 the Settlement is presumptively fair based on the foregoing factors because it was negotiated based
17 on sufficient information through arm’s length negotiations, under the auspices of a well-respected
18 mediator, by counsel experienced in wage and hour class action litigation.

19 9. Beyond determining whether a settlement is entitled to a presumption of fairness, a
20 court must further consider factors such as: (1) the strength of plaintiffs’ case; (2) the risk and
21 expense of further litigation; (3) the risk of maintaining class status through trial; (4) the amount
22 offered in settlement; (5) the extent of discovery completed; (6) the experience and views of counsel;
23 (7) the presence of a government participant; and (8) and the reaction of the class members to the
24 proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re*
25 *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. The Court finds that each of these factors
26 weigh in support final approval.

27 10. First, the Court recognizes there are real risks to Plaintiff and the Class if they were
28 to proceed with the litigation.

1 11. Second, the risk and expense of further litigation supports the reasonableness of the
2 Settlement. For example, the Court recognizes that Plaintiff's ability to prove damages on a
3 classwide basis at trial would be an expensive, time-consuming, and uncertain proposition.

4 12. Third, there are real risks that a Class would not be certified absent this Settlement.

5 13. Fourth, the Settlement was reached based on extensive investigation and informal
6 discovery, including thorough expert analysis of pertinent time and payroll data and other records
7 for the Class.

8 14. Fifth, Class Counsel, who is experienced in wage and our class action litigation,
9 endorse the Settlement as fair and reasonable and in the best interest of the Class.

10 15. Sixth, notice was provided to the California Labor and Workforce Development
11 Agency ("LWDA") and it has not indicated that it objects to or opposes the Settlement.

12 16. Finally, the reaction of the Class to the Settlement is positive. There have been no
13 objections and one exclusion filed by Mr. Tony Vuong, who is excluded from the Settlement. There
14 are no work week disputes. Mr. Tony Vuong is excluded from this Settlement.

15 17. In sum, based on consideration of the foregoing factors, and the Court's familiarity
16 with the litigation, the Court finds that the Settlement is in all respects fair, reasonable, and adequate,
17 is in the best interest of the Class, and it is hereby finally approved.

18 18. Upon entry of this Order, compensation to the Settlement Class Members shall be
19 effected pursuant to the terms of the Settlement Agreement.

20 19. In addition to any recovery that Plaintiff may receive as a Settlement Class Member
21 under the Settlement, and in recognition of Plaintiff's efforts on behalf of the Settlement Class, the
22 Court hereby approves the payment of a Class Representative Service Award in the amount of
23 \$6,000 to Plaintiff Luz Padilla. The Court finds that this amount is appropriate based on the factors
24 articulated in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251. Among other
25 things, Plaintiff Luz Padilla took on risk, both financial and in terms of future employment
26 prospects, by agreeing to act as the Class Representative, devoted considerable time and energy time
27 to this action for the benefit of the Class, agreed to a section 1542 waiver, which does not apply to
28 the release of Class Members, and achieved an excellent result for the Class.

20. With respect to attorneys' fees, the Court approves the amount of \$333,000 based on a percentage of the recovery method. *See Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503 ("when class action litigation establishes a monetary fund for the benefit of class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The Gross Settlement Amount represents a true common fund, as Defendants are obligated to pay this entire amount, and no portion of the Gross Settlement Amount will revert to Defendants. In addition, the Court finds that \$333,000, which represents one-third of the Gross Settlement Amount, is reasonable and appropriate. *See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of the recovery).

21. Cross-checking the reasonableness of this amount against Class Counsel's lodestar further supports the reasonableness of the attorneys' fees award. *See Laffitte*, 1 Cal.5th at 506 (trial courts have "discretion to conduct a lodestar cross-check on a percentage fee."). Based on Class Counsel's lodestar to date of \$349,962.50, which the Court finds is reasonable, an award of \$333,000 represents an implied negative multiplier.

22. The Court also finds that the \$17,664.70 in litigation costs incurred and requested by Class Counsel were necessary and appropriate.

23. Accordingly, the Court approves the payment of attorneys' fees to Class Counsel in the amount of \$333,000 and reimbursement of reasonable litigation expenses in the amount of \$17,664.70.

24. The Court approves the payment of settlement administration costs in the amount of \$22,950 to ILYM Group, Inc. Settlement Administrators.

25. The Court approves and orders payment in the amount of \$100,000 allocated as PAGA penalties (75% or \$75,000 allocated to the LWDA and 25% or \$25,000 allocated to the PAGA Group Members) which represents a fair and equitable sum for resolution of claims raised

1 pursuant to California Labor Code section 2698 *et seq.*

2 26. The Gross Settlement Amount, the Net Settlement Amount, and the methodology
3 used to calculate and pay each Settlement Class Member's individual settlement payment are fair
4 and reasonable, and the Court authorizes the Settlement Administrator to issue individual settlement
5 payments to each Settlement Class Member pursuant to the terms of the Settlement Agreement.

6 27. Upon the Effective Date, Plaintiff and all members of the Settlement Class, shall
7 have, by operation of this Order and the accompanying Judgment, fully, finally, and forever
8 released, relinquished, and discharged Defendant and Released Parties from all Released Claims as
9 defined by the terms of the Amended Settlement Agreement.

10 28. A final accounting status conference regarding the status of settlement administration
11 shall take place on December 16, 2025, at 8:30 a.m., in Department S-26. The final report from
12 Phoenix Settlement Administrators Re: Status of Settlement Administration shall be filed at least
13 ten (10) calendar days prior to the hearing.

14 29. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted
15 and the Court directs that a judgment shall be entered in accordance with the terms stated herein.

16 30. Judgment in this matter is entered in accordance with the terms of the Settlement
17 Agreement against Defendants in favor of Plaintiff and the Settlement Class.

18 31. This document shall constitute a Judgment for purposes of California Rule of Court
19 3.769(h). This Judgment is intended to be a final disposition of the above captioned action in its
20 entirety, and is intended to be immediately appealable.

21 32. This Judgment shall be posted online on Phoenix Settlement Administrator's website
22 for one-hundred and eighty (180) days.

23 33. This Court shall retain jurisdiction with respect to all matters related to the
24 administration and consummation of the Settlement, to enforce the terms of the judgment, and any
25 and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including
26 but not limited to all matters related to the Settlement and the determination of all controversies
27 relating thereto, pursuant to Code of Civil Procedure, §664.6 and California Rules of Court, Rule

28 ///

1 3.769(h).

2 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

3
4 DATED: 12/15/2023

Jessica L. Morgan

HONORABLE JESSICA L. MORGAN
JUDGE OF THE SUPERIOR COURT