

9:00 a.m.

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO
ORDER DETERMINING DISPOSITION OF EX PARTE APPLICATION

Case Name: <i>Martinez vs. Catch Wave - By Blue Nami</i>		Case Number: <i>34-2015-00184485</i>
Type of Application: <i>To Amend Preliminary Approval of Class Action Order</i>	By: <i>TT</i>	Application Date: JUN 22 2022
Names of Appearing Party: <i>Erin Scharg</i>	Representing: <i>TT - Victor Martinez 916-438-1819</i>	

The Court, having considered the above entitled ex parte application without a hearing after hearing with appearance as noted above, rules as follows:

The application is granted.

See attached

The application is denied on the merits of the papers presented to the Court.

The application is denied without prejudice to its resubmission for the following reason(s):

The moving party may not proceed except by noticed motion.

Other

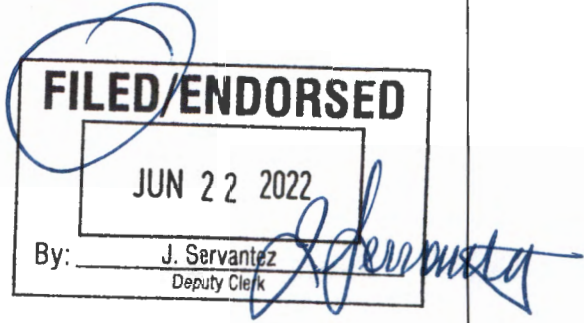
Counsel for the _____ is ordered to prepare formal order.

JUN 22 2022
DATE

JUDGE OF THE SUPERIOR COURT

SHAMA H. MESIWALA





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7 Individually and on behalf
8 of all others similiarly situated

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13 Catch a Wave by Blue Nami Inc.

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF SACRAMENTO

17 VICTOR MARTINEZ III, individually and on)
18 behalf of all others similiarly situated.)
19 Plaintiff,)
20 v.)
21 CATCH A WAVE BY BLUE NAMI, INC., a)
22 California Corporation; Does 1-20 inclusive.)
23 Defendants.)

Case No. 34-2015-00184485
CLASS ACTION
~~PROPOSED~~ **AMENDED**
PRELIMINARY APPROVAL ORDER
Date: October 12, 2021
Time: 1:30 p.m.
Dept: 53
Complaint Filed: September 18, 2015

25 WHEREAS, this action is pending before this Court as a putative class action (the “
26 Action”); and

27 WHEREAS, on October 12, 2021 this matter came before the Court on the Motion of
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1 Plaintiff Victor Martinez III for Preliminary Approval of the Class Action Settlement between
2 and among Plaintiff and the Putative Class, on the one hand, and Catch a Wave By Blue Nami,
3 Inc., (the “Defendant”) on the other hand, all of whom are referred to herein as the “Parties.”

4 WHEREAS, the Motion having come on for hearing before the above Court; the Court
5 having reviewed and considered all documents, evidence and arguments presented by counsel in
6 support of and opposition to said Motion; the Court being fully advised and good cause
7 appearing, the Court entered its order and, subject to final determination by the Court as to the
8 fairness, reasonableness and adequacy of the Settlement following Notice to the Class and a final
9 fairness hearing, and upon receipt of the parties Ex Parte Application now finds and orders as
10 follows:

11 The Stipulation and Settlement Agreement (the “Stipulation” or “Settlement”) filed as
12 Exhibit 1 to the Declaration of Matthew R. Eason filed in support of this Motion and
13 incorporated by reference herein, and the Settlement set forth therein, which, together with the
14 exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement, are
15 preliminarily approved as fair, reasonable, and adequate, subject to a final fairness hearing to be
16 held after Notice has been provided to the Class. NOW, THEREFORE, IT IS HEREBY
17 ORDERED:

18 1. This Order incorporated by reference the definitions in the Stipulation, and all
19 terms defined therein shall have the same meaning in this Order as set forth in the Stipulation.

20 2. It appears to the Court on a preliminary basis that the Settlement is fair, adequate
21 and reasonable. It appears to the Court that extensive and costly investigation and research has
22 been conducted such that counsel for the Parties, at this time, are able to reasonably evaluate
23 their respective positions. It further appears to the Court that Settlement, at this time, will avoid
24 substantial additional costs by all Parties, as well as avoid the delay and risks that would be
25 presented by further prosecution of the Action. It further appears that the Settlement has bene
26 reached as the result of intensive, serious and non-collusive, arms-length negotiations.

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

6 4. The Court hereby conditionally certifies the following Class for settlement
7 purposes only:

8 All persons employed by Defendant as a server in California during the Class Period
9 who do not properly exclude themselves from the terms of this Agreement. Class
10 Period is defined as the period from September 18, 2011 to February 9, 2020.

11 Putative Class Members shall have the opportunity to request exclusion from the
12 Settlement. Should for whatever reason the Settlement not become final, the fact that the Parties
13 were willing to stipulate to certification of the Class as part of the Settlement shall have no
14 bearing on, nor be admissible in connection with, the issue of whether a class should be certified
15 in a non-settlement context.

16 5. Named Plaintiff Victor Martinez III is hereby preliminarily appointed and
17 designated, for all purposes, as the representative for the Class and the law firm Eason &
18 Tamborini, ALC are hereby preliminarily appointed and designated as counsel for the Named
19 Plaintiff and Class ("Class Counsel").

20 6. Class Counsel is authorized to act on behalf of Class Members with respect to all
21 acts or consents required by, or which may be given pursuant to, the Settlement, and such other
22 acts reasonably necessary to consummate the Settlement. Any Class Member may enter an
23 appearance through counsel of such individual's own choosing and at such individual's own
24 expense. Any Class Member who does not enter an appearance or appear on his or her own will
25 be represented by Class Counsel.

26 7. The Court hereby preliminarily approves the definition and disposition of the
27 Settlement Amount and related matters provided for in the Settlement Agreement.

1 8. The Court hereby preliminarily approves the Attorney's Fees Award of up to
2 \$50,000, the Attorney's Costs of up to \$2,000, Enhancement Award to the Class Representative
3 of up to \$5,000 and Administration Costs of up to \$10,000.

4 9. A hearing (the "Settlement Hearing") shall be held before this Court on
5 September 14, 2022 at 1:30 p.m. at the Superior Court of the State of California, in and for the
6 County of Sacramento, located at 813 6th Street, Second Floor, Sacramento, California 95814,
7 Department 53 to determine all necessary matters concerning the Settlement, including: whether
8 the proposed settlement of the action on the terms and conditions provided for in the Stipulation
9 is fair, adequate and reasonable and should be finally approved by the Court; whether a judgment
10 should be entered herein; whether the plan of allocation contained in the Stipulation should be
11 approved as fair, adequate and reasonable to the Class Members; and to finally approve Class
12 Counsel's Attorney's Fees and Attorneys' Costs Awards, the Incentive Award and
13 Administration Costs.

14 10. The publication in the Sacramento Bee along with dissemination of the Class
15 Notice and Claim Form as directed by this Order and as described in the Stipulation, constitutes
16 the best notice practicable under the circumstances and sufficient notice to all Class Members.
17 The contents of the Class Notice and the manner of its dissemination satisfy the requirements of
18 Rule 3.769 of the California Rules of Court, other applicable California laws, and state and
19 federal due process.

20 11. Pursuant to the Court's October 12, 2021 ruling Class Counsel shall create a
21 website for this settlement in which all documents filed with the court shall be accessible to the
22 class members at the stated and listed address.

23 12. The Court hereby appoints ILYM Group Inc., as Claims Administrator and
24 hereby directs the Claims Administrator to mail or cause to be mailed to Class Members the
25 Notice and Claim Form by first class mail within 30 days after receipt from Defendant of the
26 class data, which data shall be delivered to ILYM Group Inc., by Defendant no later than 21 days
27 after the entry of this Preliminary Order using the procedures set forth in the Stipulation.

1 Defendant shall be required to provide the contact information for the Class Members that is
2 available to it. Since Defendant does not have the contact information for all Class Members, the
3 Court hereby directs the Claims Administrator, to create a single publication in the Sacramento
4 Bee. In addition, the Claims Administrator will create a sign to be hung on Defendant's door
5 alerting Class Members to the Settlement and providing instructions on how to participate. Class
6 members who wish to participate in the settlement as provided in the Stipulation must complete
7 and return the Claim Form pursuant to the instructions contained therein by first class mail or
8 equivalent within 45 days of the mailing of the Notice.

9 13. Any Class member may choose to be excluded from the Settlement as provided in
10 the Notice by following the instructions for requesting exclusion from the Settlement that are set
11 forth in the Notice. Any such person who chooses to be excluded from the Settlement will not
12 be entitled to any recovery under the Settlement and will not be bound by the Settlement or have
13 any right to object, appeal or comment thereon. Any written request for exclusion must be
14 signed by such person requesting exclusion. Class members who have not requested exclusion
15 shall be bound by all determinations of this Court, by the Stipulation and by final judgment. In
16 the event the number of individuals who opt to be excluded from the Settlement exceeds five
17 percent (5%) of the total Class members, Defendant shall have the right to terminate the
18 Settlement.

19 14. Any Class member may appear at the Final Approval Hearing and may object to
20 or express their views regarding the Settlement, and may present evidence and file briefs or other
21 papers, that may be proper and relevant to the issues to be heard and determined by the court as
22 provided in the Notice. However, no Class member or any other person shall be entitled to
23 object, and no papers or briefs submitted by any such person shall be received or considered by
24 the Court, unless on or before 45 days after the mailing of the Notice that person has served by
25 hand or by first class mail written objection and copies of any papers and briefs in support of
26 their position and verification of their membership in the Class upon: (1) Matthew Eason, Eason
27 & Tambornini, ALC 1234 H Street, Sacramento, CA 95814; (2) Robert Panman, Murchison &

1 Cumming LLP, 2175 N. California Blvd., Suite 900, Walnut Creek, CA 94596; and (3) the
2 Claims Administrator, ILYM Group Inc., re Catch a Wave by Blue Nami, Inc. Settlement, 15331
3 Barranca Parkway, Irvine, CA 92618, and filed the objections, papers and briefs with the clerk of
4 this Court. In order to be valid, the papers must be filed with the Clerk of this Court and served
5 on all of the above on or before 45 days after the mailing of the Notice. Objections must identify
6 the correct department, Department 53 as well as the date and time of the Final Approval
7 Hearing, September , 2022 at 1:30 p.m. Any Class member who does not make his or her
8 objection in the manner provided for in this Order shall be deemed to have waived such
9 objection and shall forever be foreclosed from making any objection to the Settlement.

10 15. Any Class Member who wishes to appear at the Final Approval Hearing may
11 appear remotely. Remote appearances must be made by Zoom which includes telephonic or
12 video options. For telephonic appearances the Zoom call-in number is ~~(888) 475-4499~~ and the
13 Zoom ID is ~~841-204-6267~~. For video appearances, the Zoom link is

14 <https://saccourt-ca-gov.zoomgov.com/my/sscdept53.54> .

15 16. All papers in support of the Settlement shall be filed with the court and served on
16 the Parties' Counsel no later than five (5) court days before the Final Approval Hearing.

17 17. To the extent permitted by law, pending final determination as to whether the
18 settlement contained in the Stipulation should be approved, the Class members, whether directly,
19 representatively, or in any other capacity, and whether or not such persons have appears in the
20 action, shall not institute or prosecute any claim released in the Stipulation against the Released
21 Parties.

22 18. If the Settlement is finally approved, the Court shall enter a final judgment
23 approving the Settlement, which shall be binding on the Parties, including the Participating Class
24 Members.

25 19. The Settlement is not a concession or admission, and shall not be used against
26 Catch a Wave by Blue Nami, Inc., or any Released Parties as an admission or indication with
27 respect to any claim or any fault or omission by Catch a Wave by Blue Nami, Inc., or any of the
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1 Released Parties.

2 20. As of the date this Order is signed, all dates and deadlines associated with the
3 action shall be stayed, other than those pertaining to the administration of the Settlement of the
4 action.

5 21. In the event the Settlement does not become effective in accordance with the
6 terms of the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or
7 fails to become effective for any reason, this Order shall be rendered null and void and shall be
8 vacated, and the Parties shall revert to their respective positions before entering into the
9 Stipulation.

10 22. The Court reserves the right to adjourn or continue the date of the Final Approval
11 Hearing and all dates provided for in the Stipulation without further notice to the Class members,
12 and retains jurisdiction to consider all further applications arising out of or connected with the
13 proposed Settlement.

14 Dated: 6/22/22


15 JUDGE OF THE SUPERIOR COURT

16 SHAMA H. MESIWALA

