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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

TANEA MALDONADO, on behalf of
herself and all others similarly situated,
Plaintiffs,

vs.

FIRST MAINSAIL, INC. dba
PRIMAVERA RISTORANTE, a
California Corporation; JEANNETTE
STAVROS; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 37-2020-00023369-CU-OE-CTL

CLASS ACTION

**NOTICE OF MOTION AND PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

[Assigned for All Purposes to the Hon. Ronald
Frazier]

Date: July 1, 2022
Time: 8:30 a.m.
Dept: C-65
Judge: Ronald Frazier
Action Filed: July 7, 2020

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1 **I. INTRODUCTION AND BACKGROUND**

2 This motion seeks final approval of a non-reversionary \$70,000 proposed wage and hour
3 class action settlement by Plaintiff Tanea Maldonado (“Plaintiff” or “Named Plaintiff”) on behalf
4 of herself and seventy-one (71) hourly, non-exempt employees of Defendants First Mainsail, Inc.
5 (“Defendant”) employed by Defendant from July 7, 2016 through March 16, 2020. (Rist Dec. ¶ 6).
6 Defendant operated a restaurant located in Coronado, San Diego County, California which was
7 closed permanently on March 16, 2020. (Rist Dec. ¶ 7). Plaintiff worked for Defendant as a non-
8 exempt employee. (Rist Dec. ¶ 8). The duties of Plaintiff and other members of the putative class
9 included cooking, dishwashing, serving, bartending, and/or other jobs within the restaurant. (Rist
10 Dec. ¶ 8).

11 The settlement represents a significant recovery for all the Settlement Class Members.
12 Plaintiff alleged that Defendant shorted hours on paychecks, failed to provide compliant meal and
13 rest breaks, failed to pay timely wages on termination, failed to provide accurate wage statements
14 and also violated PAGA. (Rist Dec. ¶ 10). Defendant Jeannette Stavros was individually named in
15 the complaint as the Chief Executive Officer and Director of Defendant Primavera. (Rist Dec. ¶
16 11).

17 As the case progressed and informal discovery was exchanged, it became clear that the
18 Defendant had closed their business due to the COVID pandemic and that bankruptcy was a real
19 possibility. With that in mind, Class Members are receiving a substantial monetary recovery. The
20 average recovery after fees and costs, is approximately \$419.04 with the highest gross payment
21 being \$1,279.72 (Bench Dec. ¶ 14). This case required 58 hours of attorney time from Plaintiffs’
22 Counsel. (Rist Dec. ¶ 12). As set forth in the Declaration of Thomas A. Rist, this litigation involved
23 substantial investigation, numerous meetings and conferences with Plaintiff, numerous conferences
24 and meetings with Defense Counsel regarding information needed to evaluate the case, the
25 exchange and review of voluminous discovery, and significant time spent negotiating a settlement.
26 (Rist Dec. ¶ 13). As will be demonstrated herein, Plaintiff’s Counsel’s fee request of \$23,331.00,
27 which represents 1/3 of the Gross Settlement Fund, is fully supported by the use of the percentage
28 fee method and the lodestar method. (Rist Dec. ¶ 14). Importantly, this is a reduction from the

1 typical fee of 40% and is additionally far less than counsel's hourly rate that has been approved by
2 other Courts in California. (Rist Dec. ¶ 15). Plaintiff further moves for final approval of \$1,917.07
3 in litigation costs incurred in litigating this matter. (Rist Dec. ¶ 16).

4 Plaintiffs also move for final approval of a Class Representative Service Award in the
5 amount of \$5,000 to Plaintiff Tanea Maldonado, to compensate her for the time he invested into
6 pursuing this case. (Rist Dec. ¶ 17). Plaintiff played a vital role in representing the class members
7 and spearheading the lawsuit to seek monetary relief for them. (Rist Dec. ¶ 18). Additionally,
8 Plaintiff moves for final approval of payment of \$5,000 to the Settlement Administrator, ILYM
9 Group, Inc. ("ILYM") for the costs and fees of administering the settlement. (Rist Dec. ¶ 19).
10 Finally, Plaintiff moves for final approval of payment of \$3,750 (75% of \$5,000) to the LWDA for
PAGA penalties. (Rist Dec. ¶ 20).

11 The requested amount of attorneys' fees, litigation costs, settlement administration costs,
12 service payment, and LWDA payment were fully disclosed to the Class Members when the Class
13 Notice was mailed to them on February 11, 2022. (Rist Dec. ¶ 21). Most importantly, the
14 Settlement and all of its terms received overwhelming support from Class Members, as **no**
15 **objections or opt-outs were received.** (Bench Dec. ¶¶ 11-12). The Court is, therefore, respectfully
16 requested to honor the Class Members' endorsement of the Settlement and grant final approval of
17 the Settlement, PAGA payment, class representative Service Award, attorneys' fees, litigation
18 costs, and costs of settlement administration, as preliminarily approved by this Court on February
19 3, 2022.

20 **II. INVESTIGATION, DISCOVERY, AND MEDIATION**

21 The procedural history of this litigation is more fully set forth in the Motion for Preliminary
22 Approval and all supporting documents. Throughout this case, Plaintiff's Counsel has conducted a
23 thorough investigation of the facts and has diligently pursued an investigation of Class Members'
24 claims against Defendant. (Rist Dec. ¶ 22). Informal discovery was conducted in this matter and
25 substantial documents and electronic data were exchanged by the Parties prior to mediation. (Rist
26 Dec. ¶ 23).

27 After the above comprehensive document exchange was completed and a damages
28 calculation was performed, the Parties participated in arms-length negotiations that took place over

1 a period of several months. (Rist Dec. ¶ 24). At the conclusion of the negotiations, the Parties
2 agreed to resolve all of the allegations raised in the complaint. (Rist Dec. ¶ 25). Plaintiff's Counsel
3 drafted a settlement agreement and the parties continued to negotiate the terms of the full
4 Agreement. (Rist Dec. ¶ 26). On September 15, 2021, the Parties fully executed the Settlement
5 Agreement, which was attached to the Declaration of Thomas A. Rist in Support of Plaintiff's
6 Unopposed Motion for Preliminary Approval of Class Action Settlement and Provisional Class
7 Certification, filed on November 11, 2021. (Rist Dec. ¶ 27). Additionally, Plaintiff filed an
8 unopposed motion for preliminary approval on this same date. (Rist Dec. ¶ 28).

9 On January 14, 2022, the Court granted preliminary approval of the settlement. An Order
10 Granting Preliminary Approval of Class Action Settlement was entered on February 3, 2022. (Rist
11 Dec. ¶ 29).

12 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

13 **A. The Proposed Settlement**

14 The Parties have agreed (subject to and contingent upon the Court's approval) that this
15 action be settled and compromised for the non-reversionary total Gross Settlement Fund ("GSF")
16 of \$70,000, which includes, subject to Court approval: (a) PAGA payment of \$5,000 (with 75% or
17 \$3,750 payable to the LWDA and 25% or \$1,250 payable to the Settlement Class); (b) Class
18 Representative Service Award to the named Plaintiff, Tanea Maldonado, in a sum not to exceed
19 \$5,000, in consideration for initiating and prosecuting this Class Action, serving as a Class
20 Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs
21 in the event she had been unsuccessful in the matter; (c) attorneys' fees of \$23,331, or 1/3 of the
22 gross settlement, to compensate Plaintiff's Counsel for work already performed and all work
23 remaining to be performed in documenting the settlement; (d) litigation costs of \$1,917.07; and (e)
24 settlement administration expenses to ILYM Group of \$5,000. (Rist Dec. ¶ 30).

25 After all Court-approved deductions from the GSF, it is estimated that \$31,001.93 ("Net
26 Settlement Fund" or "NSF"), will be distributed to Class Members. (Rist Dec. ¶ 31). Under no
27 circumstances will any portion of the settlement revert to Defendants and 100% of the NSF is
28 available for the Settlement Class Members to claim. (Rist Dec. ¶ 32). Subject to the terms and

1 conditions of the Settlement, the Settlement Administrator will calculate and issue Individual
2 Settlement Awards from the NSF based on the following formula:

3 the class allocation shall be divided among all Class Members, based on the Class
4 Member's Applicable number of Workweeks worked during the Class Period. This
5 results into the Workweek Value and is then multiplied by the number of Class
6 Workweeks worked by each Class Member. (Rist Dec. ¶33).

7
8 **B. Released Claims**

9 In exchange for a Settlement Award, Settlement Class Members are informed that, by
10 accepting the payment, they release the Released Parties, as defined by the Settlement Agreement,
11 from all Released Claims. The Released Claims and Released Parties are more fully set forth in the
12 Settlement Agreement, attached to the November 11, 2021, Declaration of Thomas A. Rist in
13 Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and
14 Provisional Class Certification.

15 **C. Preliminary Approval and the Notice to the Class**

16 On February 3, 2022, the Court granted preliminary approval, conditionally certified the
17 Class for settlement purposes, and among other things, appointed ILYM Group to act as the
18 Settlement Administrator, approved the Class Notice Packet, and directed that the Class Notice be
19 mailed to the Class by First Class U.S. Mail. (Rist Dec. ¶34).

20 Following a National Change of Address search of the U.S. Postal Service database, on
21 February 11, 2022, the Settlement Administrator mailed the Notice Packet to 71 Class Members.
22 (Bench Dec. ¶¶6-7). The Notice advised the Class of the terms of the Settlement and of their rights
23 to 1) participate in the Settlement and to receive their share of the Settlement; 2) object to the
24 Settlement and to appear at the Final Approval Hearing (which date, time and place was provided);
25 3) request to be excluded from the Settlement; and 4) the timing for doing any of these acts.
26 (Bench Dec. ¶¶6-7). Class Members had until April 12, 2022, to elect to be excluded from the
27 Settlement or to object. Pursuant to the Revised Settlement Agreement, any Class Member whose
28 Class Notice was re-mailed had an additional fourteen (14) days from the date of re-mailing to
object to or seek exclusion from the Settlement. (Rist Dec. ¶35). As of the date of the filing of this

1 Motion, not a single class member has requested to be excluded from the settlement or has filed an
2 objection. (Bench Dec. ¶11-12). The Notice Packet also informed Class Members to notify the
3 Settlement Administrator of any change to their current mailing address in order to ensure receipt
4 of their Settlement Award check once final approval was granted. The Notice Packet included
5 individualized information pertinent to each Class Member upon which his or her Settlement
6 Award would be calculated, i.e., the number of workweeks worked during the Class Period and the
7 estimated Settlement Award, and provided instructions in the event a Class Member wished to
8 dispute perceived inaccurate information. (Bench Dec., Ex. A).

9 As of June 1, 2022, following the initial mailing of the Notice Packet, and the re-mailing of
10 undelivered Notice Packets followed by skip traces conducted by the Settlement Administrator,
11 there were thirteen (13) undelivered Notice Packets. (Bench Dec. ¶10). However, these Settlement
12 Class Members will still be able to claim their respective portions of the Settlement from the
13 California Department of Industrial Relations Unclaimed Wages Fund. (Rist Dec. ¶36).

14 **D. The Class Members’ Overwhelming Support of the Settlement**

15 As of the date of the filing of this motion, no class members have requested exclusion from
16 the Settlement. (Bench Dec. ¶11). With an estimated NSF of \$31,001.93, Settlement Class
17 members will receive an average payment of \$419.04 after fees and costs. (Bench Dec. ¶14). Most
18 importantly, not a single objection has been filed or asserted by any member of the Settlement
19 Classes. (Bench Dec. ¶12).

20 **IV. ARGUMENT**

21 **A. The Settlement is Fair, Reasonable and Adequate and Satisfies the Standard** 22 **for Final Approval.**

23 Rule 3.769, California Rules of Court, requires court approval for class action settlements.
24 Cal. R. Ct. 3.769(g). California courts favor settlement. *See Stambaugh v. Superior Court*, 62 Cal.
25 App. 3d 231, 236 (1976). Accordingly, the Court must give “[due] regard to what is otherwise a
26 private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.*, 91 Cal.
27 App. 4th 224, 245 (2001).

28 In deciding whether to approve a class settlement, a court evaluates whether the proposed

1 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
2 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d
3 615, 625 (9th Cir. 1982); *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742
4 43 (2009). A court enjoys broad discretion to make its fairness determination. *Dunk, supra*, 48
5 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is
6 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
7 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
8 percentage of objectors is small.” *Id.* at 1802. In addition, a court should consider additional
9 relevant factors, including the strength of the plaintiffs’ case compared to the settlement amount;
10 the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of
11 class members in relation to each other. *Id.*

12 At the time of preliminary approval, the Court was provided with sufficient information to
13 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
14 until after the Class had an opportunity to respond to the Settlement after receiving the Class
15 Notice. Subject only to the Class’ reaction to the Settlement, the Court preliminarily found the
16 Settlement was fair, adequate and reasonable. *See* Order Granting Preliminary Approval filed
17 February 3, 2022. Following dissemination of the Notice Packet, not a single objection has been
18 asserted or filed by any Settlement Class Member. (Bench Dec. ¶12). Thus, the proposed
19 Settlement is entitled to the presumption that it is fair, and one which should be finally approved.

20 **B. Settlement Penalties Under the Private Attorney General Act of 2004 are**
21 **Reasonable**

22 The settlement of the claim for all applicable penalties under PAGA for \$3,750 (75% of
23 \$5,000) is reasonable under the circumstances. (Rist Dec. ¶37). The Parties negotiated a good faith
24 amount to the California Labor and Workforce Development Agency (“LWDA”). (Rist Dec. ¶38).
25 The sum to be paid to the LWDA was not the result of self-interest at the expense of other Class
26 Members. (Rist Dec. ¶39). A copy of this motion for final approval is being served on the LWDA
27 the same day it is being filed with the Court, in compliance with SB 836. (Rist Dec. ¶40).

28 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no

1 indication that this amount was the result of self-interest at the expense of other Class Members,”
2 such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844
3 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). The amount that would go to the LWDA
4 comports with PAGA settlement amounts approved by the courts. *See, e.g., Hopson v.*
5 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2008 WL 3385452, at *1 (N.D. Cal. Aug. 8, 2008)
6 (approving a PAGA settlement of 0.3% or \$1,500); *see also Garcia v. Gordon Trucking, Inc.*, No.
7 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving a PAGA
8 settlement of 0.27%); *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562 (2010), review denied
9 (Feb. 16, 2011) (PAGA claims may be settled without any money allocated to those claims).

10 **C. The Class Representative Service Award is Reasonable**

11 Plaintiff’s Counsel seeks approval of a Service Award to named Plaintiff Tanea
12 Maldonado, in the sum of \$5,000. (Rist Dec. ¶41). The requested Service Award is reasonable in
13 light of the benefits Plaintiff has conferred upon the entire Settlement Class, resulting in substantial
14 payments to Settlement Class Members. (Rist Dec. ¶42).

15 Ms. Maldonado spent significant time assisting counsel with the investigation and
16 prosecution of these claims, including multiple telephone conferences with counsel, responding to
17 numerous emails from counsel, providing documents, assisting with preparation for negotiations,
18 giving a general release of all claims greater than that given by the Settlement Class, and
19 consenting to the proposed Settlement. (Maldonado Dec. ¶¶ 8-12). Furthermore, in pursuing this
20 action on behalf of the Class, Plaintiff risked a judgment entered against her for attorneys’ fees and
21 costs in the event this matter had been lost. The Class was informed that Plaintiff would apply for
22 this Service Award, not one Settlement Class Member objected, and Defendant does not oppose the
23 request. (Bench Dec. ¶12).

24 Courts routinely approve service payments, or incentive awards, to compensate named
25 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
26 *Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers*
27 *Ins. Exch.*, 115 Cal. App. 4th 715, 725-26 (2004) (upholding service payments to class
28 representatives); *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th

399, 412 (2010) (upholding incentive awards to plaintiffs that, when added to their individual recoveries, amounted to more than twice as much as the average payment to class members); *Complex Litigation Manual* § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the \$5,000 Service Award to Ms. Maldonado is fair, appropriate and justified as part of the overall Settlement. (Rist Dec. ¶42 and generally Maldonado declaration).

D. The Requested Fee Award is Fair and Reasonable Calculated as a Percentage of a Common Fund

Plaintiff's Counsel applies for an award of attorneys' fees in the sum of \$23,331.00, or 1/3 of the gross settlement, and litigation costs of \$1,917.07. (Rist Dec. ¶43). The request for fees in the amount of 1/3 of the gross settlement is a reduction from the 40% typical fee and brings the fee request in line with similar settlements in the State of California. (Rist Dec. ¶44). California courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Settlement Class Members by the Settlement, also known as the "common fund" method. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480 (2016); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)(Serrano III); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.

The California Supreme Court recently affirmed the common fund method as an appropriate method for calculating an award of attorney's fees in *Laffitte v. Robert Half Int'l Inc.*, a wage and hour class action wherein class counsel obtained a \$19 million non-reversionary settlement on behalf of the class, approved the use of the percentage of fund or common fund method to award 33.33% of the settlement amount or \$6,333,333.33 to class counsel for attorneys' fees. The Court stated:

"[w]hatever doubts may have been created by Serrano III, *supra*, 20 Cal.3d 25, or

1 the Court of Appeal cases that followed, we clarify today that use of the percentage
2 method to calculate a fee in a common fund case, where the award serves to spread
3 the attorney fee among all the beneficiaries of the fund, does not in itself constitute
4 an abuse of discretion. We join the overwhelming majority of federal and state
5 courts in holding that when class action litigation established a monetary fund for
6 the benefit of the class members, and the trial court in its equitable powers awards
7 class counsel a fee out of that fund, the court may determine the amount of a
8 reasonable fee by choosing an appropriate percentage of the fund created. The
9 recognized advantages of the percentage method - including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
13 litigation convince us the percentage method is a valuable tool that should not be
14 denied our trial courts.” *Id.* at 503.

15 For Plaintiff’s Counsel, the fees here were wholly contingent in nature and there was
16 significant risk that the case would face protracted litigation, including motions for summary
17 judgment and opposition to class certification that could have derailed the case altogether.

18 Plaintiff’s Counsel risked not only a great deal of time, but also moderate expense to ensure
19 the successful litigation of this action on behalf of all Class Members. Based upon the foregoing,
20 Plaintiff’s Counsel respectfully requests that the Court award attorneys’ fees in the amount of
21 \$23,331.00 and litigations costs in the amount of \$1,917.07.

22 **1. The Requested Attorneys' Fee and Cost Award Is Within the**
23 **Range of Fees Approved in Comparable Common Fund Cases.**

24 Assessing an appropriate fee based on a percentage of the fund involves taking into account
25 “all of the circumstances of the case.” There is sparse case law addressing the evaluation of
26 reasonable attorneys’ fees in employee class actions as appellate cases addressing fees arise almost
27 exclusively where awards were challenged by defendants or objectors – the only parties with
28 standing to appeal. *See Wershba, supra*, 91 Cal.App.4th at 236.

Several studies of class action fee awards have found that the median common fund fee
award is approximately one-third of the total settlement fund. *See, e.g., Chavez v. Netflix, Inc.*, 162
Cal. App. 4th 43, 66, n.11 (2008) (numerous studies have shown that “fee awards in class actions
average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, Common
Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525,
546 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four
Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (finding

1 that attorneys' fees in class litigation "were generally in the traditional range of approximately one-
2 third of the total settlement").

3 Numerous state and federal courts in California routinely approve fee requests equal to or
4 greater than 1/3 of the common fund. (Rist Dec. ¶29). Indeed, some courts have found that an
5 award of 1/3 of the common fund represents the "benchmark" in California. *See Smith v. CRST*
6 *Van Expedited, Inc.*, 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013)
7 ("These percentages compare favorably with both California (33%) and federal (25%)
8 benchmarks."); *Dennis v. Kellogg Co.*, 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal.
9 Nov. 14, 2013)("This percentage compares favorably with both California (33%) and federal
10 (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well."). In
11 short, Plaintiff's Counsel's fee request is in line with awards in similar cases in California and
12 nationwide and demonstrates that Plaintiff's Counsel's fee request is consistent with market rates
13 and is reasonable.

14 **2. A Lodestar Cross-Check Confirms the Reasonableness of the** 15 **Requested Fee.**

16 While the California Supreme Court in *Laffitte* confirmed that it is not an abuse of
17 discretion to strictly rely on the percentage of common fund method to award attorney's fees,
18 Plaintiff's Counsel's fee request is reasonable when calculated using the lodestar method as well.
19 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
20 spent on the case and the reasonable hourly compensation of the attorney. *See Serrano v. Priest*, 20
21 Cal. 3d 25, 48 (1977). The court then enhances this lodestar figure by a "multiplier" to account for
22 a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the
23 degree of success achieved. *Id.*, at 49; see also *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36
24 (2001); *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1096 (2000); *Thayer v. Wells Fargo Bank*,
25 92 Cal.App.4th 819, 834, (2001) ("[t]here is no...rule limiting the factors that may justify an
26 exercise of judicial discretion to [adjust the] lodestar").

27 Plaintiff's Counsel has worked 58 hours on this case, and has calculated the base lodestar at
28 \$37,700 at rates reflecting those currently earned in the market place. (Rist Dec. ¶45). With the

1 base lodestar being higher than the reduced 1/3 fee award being requested, this results in a negative
2 lodestar. (Rist Dec. ¶46). The negative lodestar is clear evidence that the requested fee is
3 reasonable in this case. (Rist Dec. ¶47).

4 **E. Costs of Litigation**

5 Plaintiff's Counsel seeks reimbursement of the litigation costs and expenses of \$1,917.07.
6 (Rist Dec. ¶48). These costs were all reasonable and necessary to the prosecution of this case and
7 the results achieved and are fair, reasonable, and unopposed by Defendants. (Rist Dec. ¶49).
8 Additionally, this amount is far less than typical costs spent in prosecution of a class or even
9 individual case. (Rist Dec. ¶50.)

10 **F. Administration Costs are Reasonable**

11 The Parties agreed to hire ILYM Group as the Settlement Administrator and the Court
12 approved this choice. The Settlement Administrator was responsible for formatting, printing and
13 mailing the Notice. It was also responsible for updating addresses and re-mailing returned as
14 undeliverable Notice Packets, responding to Class Member inquiries, providing weekly status
15 reports, answering questions from Counsel for the Parties, and providing a declaration to document
16 its duties and responsibilities under the Settlement. (See *Bench* declaration). Following the granting
17 of final approval, the Settlement Administrator's duties will continue in order to calculate and mail
18 the Settlement Award checks to Settlement Class Members, perform tax reporting obligations,
19 disburse other payments as ordered by the Court, and perform such other duties as set forth in the
20 Settlement Agreement. As set forth in the Motion for Preliminary Approval, ILYM Group's fee of
21 \$5,000 for services rendered and to be rendered is fair and reasonable and should be granted.
22 (Bench Dec. ¶15).

23 **V. CONCLUSION**

24 The Settlement is fair, adequate and reasonable. It will result in substantial payments to
25 members of the Settlement Class and was achieved through extensive, and arms-length
26 negotiations by Plaintiff's Counsel who are experienced in wage and hour class action litigation.
27 For the foregoing reasons, Plaintiff's Counsel and Plaintiffs request that the Court grant final
28 approval of the Settlement and sign the proposed Order and Judgment filed concurrently.

1 DATED: June 6, 2022

RIST LAW OFFICE, LC
NAKASE LAW FIRM



By: _____

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