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Attorneys for Plaintiff and the putative classes

**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

I, THOMAS A. RIST, declare as follows:

1. I am an attorney at law licensed to practice law before all of the courts of the State of California. I have personal knowledge of all the matters set forth herein, unless otherwise specifically stated, and if called as a witness I could and would competently testify to the following.

1 2. This Declaration is submitted in support of Plaintiff's Motion for Final Approval of
2 Class Acton Settlement. Defendant's counsel has reviewed the Motion and accompanying
3 documents and has indicated to me that Defendant does not oppose the motion.

4 3. For the last 14 years I have operated my own law practice and have handled cases
5 throughout the United States and California, including class action and other complex litigation
6 from pre-filing investigation through trial and appeal. I have successfully litigated cases involving
7 numerous alleged violations of various employment laws and practices, including improper wage
8 statement violations and failure to reimburse business expenses, similar to the primary claims made
9 in this case. I have collectively taken in excess of one hundred (100) cases to a final verdict in civil,
10 environmental and criminal cases in front of a judge or jury in both State and Federal Courts and
11 have recovered tens of millions of dollars for clients in civil cases.

12 4. Since 2006, Brad Nakase has operated his own law practice and has handled cases
13 throughout California, including class action and other complex litigation, from pre-filing
14 investigation through trial and appeal. He has successfully litigated cases involving numerous
15 alleged violations of various employment laws and practices, including failure to provide meal and
16 rest periods, timely pay final wages, and failure to provide accurate wage statements, similar to the
17 primary claims made in this case. He has collectively taken an estimated 30 civil cases to a final
18 verdict in jury trial, bench trial, and arbitration. He has recovered tens of millions of dollars for
19 clients in civil cases.

20 5. Our firms worked with the representative Plaintiff, Tanea Maldonado, to protect the
21 interests of the class and the Plaintiff. We are familiar with the law as it applies to the legal and
22 factual issues relevant to this matter. My firm has dedicated the necessary personnel and resources
23 to fully develop the case, and in doing so the firm was also fully enabled to evaluate the settlement
24 risks and benefits for the case.

25 6. The motion seeks final approval of a non-reversionary \$70,000 proposed wage and
26 hour class action settlement by Plaintiff Tanea Maldonado ("Plaintiff" or "Named Plaintiff") on
27 behalf of herself and seventy-one (71) hourly, non-exempt employees of Defendants First Mainsail,
28 Inc. ("Defendant") employed by Defendant from July 7, 2016 through March 16, 2020.

1 7. Defendant operated a restaurant located in Coronado, San Diego County, California
2 which was closed permanently on March 16, 2020.

3 8. Plaintiff worked for Defendant as a non-exempt employee.

4 9. The duties of Plaintiff and other members of the putative class included cooking,
5 dishwashing, serving, bartending, and/or other jobs within the restaurant.

6 10. Plaintiff alleged that Defendant shorted hours on paychecks, failed to provide
7 compliant meal and rest breaks, failed to pay timely wages on termination, failed to provide
8 accurate wage statements and also violated PAGA.

9 11. Defendant Jeannette Stavros was individually named in the complaint as the Chief
10 Executive Officer and Director of Defendant Primavera.

11 12. This case required 58 hours of attorney time from Plaintiffs' Counsel.

12 13. This litigation involved substantial investigation, numerous meetings and
13 conferences with Plaintiff, numerous conferences and meetings with Defense Counsel regarding
14 information needed to evaluate the case, the exchange and review of voluminous discovery, and
15 significant time spent negotiating a settlement.

16 14. Plaintiff's Counsel's fee request of \$23,331.00, which represents 1/3 of the Gross
17 Settlement Fund, is fully supported by the use of the percentage fee method and the lodestar
18 method.

19 15. This is a reduction from the typical fee of 40% and is additionally far less than
20 counsel's hourly rate that has been approved by other Courts in California.

21 16. Plaintiff moves for final approval of \$1,917.07 in litigation costs incurred in
22 litigating this matter.

23 17. Plaintiffs also move for final approval of a Class Representative Service Award in
24 the amount of \$5,000 to Plaintiff Tanea Maldonado, to compensate her for the time he invested into
25 pursuing this case.

26 18. Plaintiff played a vital role in representing the class members and spearheading the
27 lawsuit to seek monetary relief for them.

28 19. Additionally, Plaintiff moves for final approval of payment of \$5,000 to the
Settlement Administrator, ILYM Group, Inc. ("ILYM") for the costs and fees of administering the
settlement.

1 20. Finally, Plaintiff moves for final approval of payment of \$3,750 (75% of \$5,000) to
2 the LWDA for PAGA penalties.

3 21. The requested amount of attorneys' fees, litigation costs, settlement administration
4 costs, service payment, and LWDA payment were fully disclosed to the Class Members when the
5 Class Notice was mailed to them on February 11, 2022.

6 22. Plaintiff's Counsel has conducted a thorough investigation of the facts and has
7 diligently pursued an investigation of Class Members' claims against Defendant.

8 23. Informal discovery was conducted in this matter and substantial documents and
9 electronic data were exchanged by the Parties prior to mediation.

10 24. After the above comprehensive document exchange was completed and a damages
11 calculation was performed, the Parties participated in arms-length negotiations that took place over
12 a period of several months.

13 25. At the conclusion of the negotiations, the Parties agreed to resolve all of the
14 allegations raised in the complaint.

15 26. Plaintiff's Counsel drafted a settlement agreement and the parties continued to
16 negotiate the terms of the full Agreement.

17 27. On September 15, 2021, the Parties fully executed the Settlement Agreement, which
18 was attached to the Declaration of Thomas A. Rist in Support of Plaintiff's Unopposed Motion for
19 Preliminary Approval of Class Action Settlement and Provisional Class Certification, filed on
20 November 11, 2021.

21 28. Additionally, Plaintiff filed an unopposed motion for preliminary approval on this
22 same date.

23 29. On January 14, 2022, the Court granted preliminary approval of the settlement. An
24 Order Granting Preliminary Approval of Class Action Settlement was entered on February 3, 2022.

25 30. The Parties have agreed (subject to and contingent upon the Court's approval) that
26 this action be settled and compromised for the non-reversionary total Gross Settlement Fund
27 ("GSF") of \$70,000, which includes, subject to Court approval: (a) PAGA payment of \$5,000 (with
28 75% or \$3,750 payable to the LWDA and 25% or \$1,250 payable to the Settlement Class); (b)
Class Representative Service Award to the named Plaintiff, Tanea Maldonado, in a sum not to

1 exceed \$5,000, in consideration for initiating and prosecuting this Class Action, serving as a Class
2 Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs
3 in the event she had been unsuccessful in the matter; (c) attorneys' fees of \$23,331, or 1/3 of the
4 gross settlement, to compensate Plaintiff's Counsel for work already performed and all work
5 remaining to be performed in documenting the settlement; (d) litigation costs of \$1,917.07; and (e)
6 settlement administration expenses to ILYM Group of \$5,000.

7 31. After all Court-approved deductions from the GSF, it is estimated that \$31,001.93
8 ("Net Settlement Fund" or "NSF"), will be distributed to Class Members.

9 32. Under no circumstances will any portion of the settlement revert to Defendants and
10 100% of the NSF is available for the Settlement Class Members to claim.

11 33. Subject to the terms and conditions of the Settlement, the Settlement Administrator
12 will calculate and issue Individual Settlement Awards from the NSF based on the following
13 formula: the class allocation shall be divided among all Class Members, based on the Class
14 Member's Applicable number of Workweeks worked during the Class Period. This results into the
15 Workweek Value and is then multiplied by the number of Class Workweeks worked by each Class
Member.

16 34. On February 3, 2022, the Court granted preliminary approval, conditionally certified
17 the 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.

20 35. Pursuant to the Revised Settlement Agreement, any Class Member whose Class
21 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.

22 36. Settlement Class Members whose Notice Packets were undeliverable will still be
23 able to claim their respective portions of the Settlement from the California Department of
24 Industrial Relations Unclaimed Wages Fund.

25 37. The settlement of the claim for all applicable penalties under PAGA for \$3,750
26 (75% of \$5,000) is reasonable under the circumstances.

27 38. The Parties negotiated a good faith amount to the California Labor and Workforce
28 Development Agency ("LWDA").

1 39. The sum to be paid to the LWDA was not the result of self-interest at the expense of
2 other Class Members.

3 40. A copy of this motion for final approval is being served on the LWDA the same day
4 it is being filed with the Court, in compliance with SB 836.

5 41. Plaintiff's Counsel seeks approval of a Service Award to named Plaintiff Tanea
6 Maldonado, in the sum of \$5,000.

7 42. The requested Service Award is reasonable in light of the benefits Plaintiff has
8 conferred upon the entire Settlement Class, resulting in substantial payments to Settlement Class
9 Members.

10 43. Plaintiff's Counsel applies for an award of attorneys' fees in the sum of \$23,331.00,
11 or 1/3 of the gross settlement, and litigation costs of \$1,917.07.

12 44. The request for fees in the amount of 1/3 of the gross settlement is a reduction from
13 the 40% typical fee and brings the fee request in line with similar settlements in the State of
14 California.

15 45. Plaintiff's Counsel has worked 58 hours on this case, and has calculated the base
16 lodestar at \$37,700 (58 x \$650 per hour) at rates reflecting those currently earned in the market
place by class action counsel.

17 46. With the base lodestar being higher than the reduced 1/3 fee award being requested,
18 this results in a negative lodestar.

19 47. The negative lodestar is clear evidence that the requested fee is reasonable in this
20 case.

21 48. Plaintiff's Counsel seeks reimbursement of the litigation costs and expenses of
22 \$1,917.07.

23 49. These costs were all reasonable and necessary to the prosecution of this case and the
24 results achieved and are fair, reasonable, and unopposed by Defendants.

25 50. Additionally, this amount is far less than typical costs spent in prosecution of a class
or even individual case.

26 I declare under penalty of perjury under the laws of the United States of America and of the
27 State of California that the foregoing is true and correct.

1 This declaration is executed on June 6, 2022, at San Diego, California.
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Thomas A. Rist
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