

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff ERIK FOSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

ERIK FOSS, individually and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ANDERSON HOSPITALITY, INC., a
California corporation and DOES 1 through
50, Inclusive,

Defendants.

Case No. 195317

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: July 18, 2022

Time: 8:30 a.m.

Judge: Stephen H. Baker

Dept.: 3

1 This matter came on for hearing on July 18, 2022 at 8:30 a.m., in front of the Hon. Stephen
2 H. Baker, presiding, Plaintiff's unopposed Motion for Order Granting Final Approval of Class
3 Action Settlement and Entering Judgment pursuant to California Rule of Court 3.769, with Jean-
4 Claude Lapuyade, Esq. of the JCL Law Firm and Shani O. Zakay, Esq. of Zakay Law Group,
5 APC appearing as counsel for plaintiff ERIK FOSS, and Jason C. Ross, Esq. of Wood, Smith,
6 Henning & Berman, LLP, appearing as counsel for defendant ANDERSON HOSPITALITY,
7 INC. (hereinafter "Defendant").

8 The Court, having received and carefully considering the Settlement and Release of Class
9 Action and PAGA Claims ("Settlement Agreement"), the supporting papers filed by the Parties,
10 the evidence and argument received by the Court in conjunction with the unopposed Motion for
11 Preliminary Approval of Class Action Settlement heard on March 7, 2022, the instant Motion for
12 Order Granting Final Approval of Class Action Settlement, the Court grants final approval of the
13 Settlement and HEREBY ORDERS THE FOLLOWING:

14 1. All capitalized terms used herein shall have the same meaning as defined in the
15 Settlement Agreement which was attached to the Declaration of Jean-Claude Lapyude, Esq. as
16 Exhibit "A".

17 2. Pursuant to the Order Granting Preliminary Approval the Notice of Pendency of
18 Class Action Settlement and Hearing Date for Court Approval was sent to each Settlement Class
19 Member by first-class mail. These papers informed the Settlement Class Members of the terms of
20 the Settlement, and of (a) their right to receive an Individual Settlement Shares, (b) their right to
21 comment on or object to the Settlement, (c) their right to request exclusion from the Settlement
22 and pursue their own remedies, and (d) their right to appear in person or by counsel at the final
23 approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time
24 were provided by each of these procedures.

25 3. Following the conclusion of the Notice Period, the Settlement Administrator
26 reports that it received *zero written objections* to the Settlement and *zero written Requests for*
27 *Exclusion* from the Settlement.

28 4. The Court finds and determines that this notice procedure afforded adequate

1 protections to the Settlement Class Members and provides the basis for the Court to make an
2 informed decision regarding approval of the Settlement based on the responses of the Settlement
3 Class. The Court finds and determines that the notice provided in this case was the best notice
4 practicable, which satisfied the requirements of law and due process.

5 5. With respect to the Settlement Class Members and for purposes of approving this
6 Settlement only, this Court finds and concludes that: (a) the members of the Settlement Class are
7 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
8 questions of law or fact common to the Settlement Class Members, and there is a well-defined
9 community of interest among the Settlement Class Members with respect to the subject matter of
10 the Action; (c) the claims of Class Representative ERIK FOSS are typical of the claims of the
11 Settlement Class Members; (d) the Class Representative has fairly and adequately protected the
12 interests of the Settlement Class Members; (e) a class action is superior to other available
13 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the
14 Class Representative, i.e., Jean-Claude Lapuyade, Esq. of the JCL LAW FIRM, APC and Shani
15 O. Zakay, Esq. of ZAKAY LAW GROUP, APC (hereinafter “Class Counsel”), are qualified to
16 serve as counsel for the Class Representative and the Settlement Class Members in their
17 individual and representative capacity for the Settlement Class Members.

18 6. The Court has certified one class, as defined in and by the terms of the Settlement
19 Agreement as follows:

20 (a) The “Non-Exempt Class” is “All non-exempt employees who are
21 or previously were employed by Defendant in California during
22 the Class Period.”;

23 (b) The Class Period is defined as the period between July 2, 2016 to
24 October 31, 2021.

25 7. The Court deems the definition of the class sufficient for purposes of California
26 Rule of Court 3.765(a).

27 8. The Court hereby confirms Jean-Claude Lapuyade, Esq., of the JCL LAW FIRM,
28 APC (“JCL”) and Shani O. Zakay, Esq. of ZAKAY LAW GROUP, APC (“ZLG”)

1 9. The Court hereby confirms plaintiff Erik Foss as the Class Representative in this
2 Action.

3 10. The Court finds and determines that the terms set forth in the Settlement
4 Agreement and the Amendment are fair, reasonable, and adequate and directs the Parties to
5 effectuate the Settlement according to its terms having found that the Settlement was reached as a
6 result of informed and non-collusive arms' length negotiations facilitated by a neutral mediator.
7 The Court further finds that the Parties conducted extensive investigation, research, and discovery
8 and that their attorneys were able to reasonably evaluate their respective positions. The Court also
9 finds that Settlement will enable the Parties to avoid additional and potentially substantial
10 litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The
11 Court has reviewed the monetary recovery provided as part of the Settlement and recognizes the
12 significant value accorded to the Settlement Class.

13 11. The Court further finds and determines that the terms of the Settlement are fair,
14 reasonable and adequate to the Settlement Class and to each Settlement Class Member and that
15 the Settlement is ordered finally approved, and that all terms and provisions of the Settlement
16 should be and hereby are ordered to be consummated.

17 12. The Court further finds and determines that Class Counsel satisfied California
18 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims
19 arising under the Private Attorney General Act ("PAGA") on January 21, 2022 and again on June
20 22, 2022.

21 13. The Court orders Class Counsel to comply with California Labor Code § 2699(l)(3)
22 by providing the LWDA a copy of this order within ten (10) calendar days of the Court's entry of
23 this Order.

24 14. The Court finds and determines that the Individual Settlement Shares to be paid to
25 participating Class Members as provided for by the Settlement are fair and reasonable. The Court
26 hereby gives final approval to and orders the payment of those amounts be made to the
27 participating Settlement Class Members in accordance with the Settlement Agreement.

28 15. The Court finds and determines that payment to the California Labor and

1 Workforce Development Agency, the PAGA Payment, of \$5,000.00, as its share of the settlement
2 of civil penalties in this case is fair, reasonable, and appropriate. The Court hereby gives final
3 approval to and orders that the payment of that amount be paid in accordance with the Settlement
4 Agreement.

5 16. The Court finds and determines that the fees and expenses in administering the
6 Settlement incurred by ILYM, Inc., in the amount of \$6,000.00, are fair and reasonable. The
7 Court hereby gives final approval to and orders that the payment of that amount in accordance
8 with the Settlement.

9 17. The Court finds and determines the Enhancement Award in the sum of \$7,500.00 to
10 the Class Representative is fair and reasonable. The Court hereby orders the Administrator to
11 make this payment to the Class Representative in accordance with the terms of the Settlement
12 Agreement.

13 18. Pursuant to the terms of the Settlement, and the authorities, evidence and
14 arguments submitted by Class Counsel, the Court hereby awards Class Counsel Attorneys' Fees
15 and Costs in the total sum of **\$39,833.33**. The Attorneys' Fees and Costs are comprised of two
16 components. First, \$33,333.33 in attorneys' fees which represents thirty-three and one-third
17 percent (33.3%) one-third of the Gross Settlement Fund. Second, an amount up to \$6,500.00 for
18 actually incurred litigation costs as evidenced by Class Counsels' billing records. The Court
19 finds such amounts to be fair and reasonable. The Court hereby orders the Settlement
20 Administrator to make these payments in accordance with the terms of the Settlement Agreement.

21 19. The Court further orders that the attorneys' fee portion of the awarded Attorneys'
22 Fees and Costs be allocated among Class Counsel in the following percentages:

- 23 a. 50% to JCL; and
24 b. 50% to ZLG.

25 20. The Court further orders that the costs portion of the awarded Attorneys' Fees and
26 Costs be allocated as stated and supported in their respective declarations filed in support this
27 motion.

28 21. Without affecting the finality of this order or the entry of judgment in any way, the

1 Court retains jurisdiction of all matters relating to the interpretation, administration,
2 implementation, effectuation, and enforcement of this order and the Settlement.

3 22. Neither Defendants nor any related persons or entities shall have any further
4 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
5 except as provided for by the Settlement Agreement.

6 23. Neither the making of the Settlement Agreement nor the entry into the Settlement
7 Agreement constitutes an admission by Defendant, nor is this Order a finding of the validity of
8 any claims in the Action or of any other wrongdoing. Further, the Settlement Agreement is not a
9 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any
10 entity or persons; nor may any action taken to carry out the terms of the Settlement Agreement be
11 construed as an admission or concession by or against Defendant or any related person or entity.

12 24. Nothing in this order shall preclude any action to enforce the Parties' obligations
13 under the Settlement or under this order, including the requirement that Defendants make
14 payments to the participating Settlement Class Members in accordance with the Settlement, and
15 including use of the Settlement, Judgment, or Order as a bar or affirmative defense, in whole or in
16 part, to any future or other claims.

17 25. Upon completion of administration of the Settlement, the Settlement Administrator
18 will provide written certification of such completion to the Court and counsel for the Parties
19 which shall be filed with the Court five (5) court days before the non-appearance compliance
20 hearing set for August. _____, 2022 at _____ a.m., in Dept. 3.

21 26. The Court hereby enters final judgment in accordance with the terms of the
22 Settlement Agreement, the Order Granting Preliminary Approval of Class Action Settlement
23 granted on March 14, 2022, and this order.

24 27. The Parties will bear their own costs and attorneys' fees except as otherwise
25 provided by this Court's Order awarding Class Counsels' Attorneys' Fees and Costs.

26
27
28 ///

1 28. Accordingly, the motions for Final Approval of Class Action Settlement and, Class
2 Counsels' Attorneys' Fees and Costs, and Enhancement Award are GRANTED and the
3 corresponding Judgment filed with the motion shall be ENTERED.

4
5 IT IS SO ORDERED.

6
7 Date: _____, 2022

8 JUDGE OF THE SUPERIOR COURT

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28