

FILED
KERN COUNTY

JUN - 7 2024

BY _____ DEPUTY
ENDORSED

Kane Moon, Esq. (SBN 249834)
 Allen Feghali, Esq. (SBN 301080)
 Lannie Pham, Esq. (SBN 342139)
MOON LAW GROUP, PC
 1055 W. Seventh Street, Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125
 E-mail: kmoon@moonlawgroup.com
 E-mail: afeghali@moonlawgroup.com
 E-mail: lpham@moonlawgroup.com

Attorneys for Plaintiff, Gabriel Aguilar

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF KERN**

GABRIEL AGUILAR, individually, and on
 behalf of all others similarly situated,

Plaintiff,

vs.

THARALDSON HOSPITALITY
 MANAGEMENT, LLC, a limited liability
 company; THARALDSON HOSPITALITY
 STAFFING, LLC and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: BCV-22-101680

CLASS AND REPRESENTATIVE ACTION

[Honorable Thomas S. Clark,
 Department 17]

**[PROPOSED] ORDER GRANTING
 FINAL APPROVAL OF CLASS AND
 PAGA ACTION SETTLEMENT**

*[Filed with Plaintiff's Notice of Motion and
 Memorandum of Points and Authorities,
 Declarations of Kane Moon, and Plaintiff and
 [Proposed] Judgment]*

FINAL APPROVAL HEARING:

Date: June 7, 2024

Time: 8:30 a.m.

Dept.: 17

Complaint Filed: July 7, 2022

Trial Date: Not Set

1 **[PROPOSED] FINAL APPROVAL ORDER**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 On February 13, 2024, the Court entered an Order which granted Plaintiff's Motion for
4 Preliminary Approval of Class and PAGA Action Settlement, granted conditional class certification,
5 approved the format of the Class Notice, and set a Final Approval Hearing (the "Preliminary
6 Approval Order"), thereby preliminarily approving a settlement of the above-entitled action (the
7 "Action") that was reached between Plaintiff Gabriel Aguilar ("Plaintiff") and Defendants
8 Tharaldson Hospitality Management, LLC and Tharaldson Hospitality Staffing, LLC
9 ("Defendants") (together with Plaintiff, the "Parties"), in accordance with the Parties' Joint
10 Stipulation of Class and PAGA Action Settlement (the "Settlement"). The Settlement was attached
11 as **Exhibit 1** to the Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary
12 Approval of Class and PAGA Action Settlement that was filed on January 4, 2024.

13 The Court now has before it Plaintiff's Motion for Final Approval of Class and PAGA Action
14 Settlement, including a motion for payment of Class Counsel Fees Payment, Class Counsel
15 Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses
16 Payment, and PAGA Settlement Payment, and whether the Settlement should be finally approved as
17 fair, reasonable, and adequate as to Class Members (collectively "Motion for Final Approval"), as
18 well as a [Proposed] Final Approval Order.

19 Due and adequate notice having been given to Class Members, and the Court having reviewed
20 the Settlement and duly considered Plaintiff's Motion for Final Approval, the supporting declarations
21 and exhibits thereto, all other papers filed and proceedings had hereto, the record in this Action, and
22 any oral argument, and good cause appearing,

23 **THE COURT HEREBY ORDERS AND DECREES AS FOLLOWS:**

24 1. The Court, for purposes of this Final Approval Order, refers to all terms and
25 definitions as set forth in the Settlement.

26 2. Plaintiff's Motion for Final Approval came before Department 17 of this Court, the
27 Honorable Thomas S. Clark presiding, on June 7, 2024.

28 3. The Court finds that the Settlement was made and entered into in good faith, the terms

1 of which are fair, reasonable, and adequate; was reached following meaningful discovery and
2 investigation conducted by Plaintiff and his counsel of record ("Class Counsel"); is the result of
3 serious, informed, adversarial, and arms-length negotiations between the Parties; and therefore,
4 meets the requirements for final approval. In so finding, the Court has considered all the evidence
5 presented, including evidence regarding the strength of Plaintiff's claims; the risk, expense, and
6 complexity of the claims presented; the likely duration of further litigation; the settlement amount
7 offered; the extent of investigation and discovery completed; and the experience and views of Class
8 Counsel. The Court has further considered the absence of any objections or Requests for Exclusion
9 from the Settlement. Accordingly, the Court hereby **GRANTS** Plaintiff's Motion for Final
10 Approval and **ORDERS** Judgment to be entered in accordance with the terms herein.

11 4. The Court certifies, for settlement purposes only, the following Class (the "Settlement
12 Class"): All non-exempt employees of Defendants who have no signed arbitration agreements and
13 who worked in California during the period from October 1, 2020, through August 31, 2023 ("Class
14 Period"). Excluded from the Settlement Class are all Class Members who submit a valid and timely
15 Request for Exclusion from the Settlement.

16 5. Notwithstanding the submission of a timely Request for Exclusion, Class Members
17 are still bound by the settlement and release of the Released PAGA Claims or remedies under the
18 Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969, as requests to be excluded
19 from the Settlement do not apply to the Released PAGA Claims.

20 6. The deadline for Class Members to submit a Request for Exclusion or to submit
21 written objections to the Settlement was May 20, 2024.

22 7. No Request for Exclusions were received. Accordingly, no individuals are excluded
23 from the Settlement Class and 1,139 Class Members remain in the Settlement Class.

24 8. All Class Members had an opportunity to object to the Settlement. No written
25 objections were received.

26 9. The Court Approved Notice of Class and PAGA Action Settlement (the "Class
27 Notice"), which was attached to the Settlement as **Exhibit A** and provided to the Class pursuant to
28 the plan for distribution described under the Settlement, conformed with the requirements of rules

1 3.766 and 3.769 of the California Rules of Court, and constituted the best notice practicable under
2 the circumstances, by providing individual and adequate notice of the proceedings and of the matters
3 set forth therein to Class Members. The Class Notice fully satisfied the requirements of due process
4 and provided the Class Members with adequate instructions and a variety of means to obtain
5 additional information.

6 10. A full opportunity has been afforded to Class Members to participate in the Final
7 Approval Hearing, and all Class Members and other persons wishing to be heard have been heard
8 and/or had an opportunity to be heard. Class Members have had a full and fair opportunity to exclude
9 themselves from, or object to, the Settlement. Accordingly, the Court determines that all Class
10 Members who did not submit a timely Request for Exclusion ("Settlement Class Members") are
11 bound by this Final Approval Order and the concurrently filed Judgment.

12 11. Releases of Claims. Effective on the date when Defendants fully fund the entire Gross
13 Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class
14 Payments, Plaintiff, Class Members and Class Counsel will release claims against all Released
15 Parties as follows: (Settlement, ¶ 5.)

16 a. Released Parties. "Released Parties" means: Defendants and all of their past,
17 present, and future respective subsidiaries, dba's, affiliates, parents, predecessors,
18 successors, investors, and their current and former employees, managing agents,
19 servants, consultants, agents, directors, officers, members, independent
20 contractors, representatives, insurers, reinsurers, attorneys; and any staffing
21 agency, professional employer organization, or temporary employment agency
22 utilized by Defendants during the Class Period. (Settlement, ¶ 2.37.).

23 b. Plaintiff's Release. In addition to the Released Class Claims and Released PAGA
24 Claims described below, Plaintiff and his respective former and present spouses,
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns
26 generally, release and discharge Released Parties from all claims, demands, rights,
27 liabilities and causes of action of every nature and description whatsoever, whether
28 known or unknown, asserted or that might have been asserted, whether in tort,

1 contract, or for violation of any state or federal statute, rule, law or regulation
2 arising out of, relating to, or in connection with any act or omission of the Released
3 Parties through the date of full execution of this Settlement Agreement in
4 connection with his employment or the termination thereof ("Plaintiff's Release").
5 Plaintiff's Release does not extend to any claims or actions to enforce this
6 Agreement, or to those rights that as a matter of law cannot be waived, including,
7 but not limited to any claims for vested benefits, unemployment benefits, disability
8 benefits, social security benefits, or workers' compensation benefits that arose at
9 any time. Plaintiff acknowledges that he may discover facts or law different from,
10 or in addition to, the facts or law that Plaintiff now knows or believes to be true but
11 agree, nonetheless, that Plaintiff's Release shall be and remain effective in all
12 respects, notwithstanding such different or additional facts or Plaintiff's discovery
13 of them. (Settlement, ¶ 5.1.)

14 1) Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

15 For purposes of Plaintiff's Release, Plaintiff expressly waives and
16 relinquishes the provisions, rights, and benefits, if any, of section 1542 of
17 the California Civil Code, which reads: A general release does not extend
18 to claims that the creditor or releasing party does not know or suspect to
19 exist in his or her favor at the time of executing the release, and that if
20 known by him or her would have materially affected his or her settlement
21 with the debtor or Released Party. (Settlement, ¶ 5.1.1.)

- 22 c. Released Class Claims by Settlement Class Members: All Settlement Class
23 Members, on behalf of themselves and their respective former and present
24 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
25 release Released Parties from all claims that were alleged, or reasonably could have
26 been alleged, in the Operative Complaint, and ascertained in the course of the
27 Action, that arose during the Class Period including with respect to the following
28 claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum

1 wages owed; (c) failure to provide meal periods, or premium pay for non-compliant
2 meal periods; (d) failure to authorize and permit rest periods, or premium pay for
3 non-compliant rest periods; (e) failure to issue accurate, itemized wage statements
4 and maintain payroll records; (f) failure to pay all wages due upon separation of
5 employment; (g) failure to reimburse for necessary business expenses; (h) all claims
6 under California Business & Professions Code § 17200 for unfair business practices
7 that could have been premised on the facts, claims, causes of action or legal theories
8 described above; (i) violation of or claims under the following sections of the
9 California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226(c),
10 226.3, 226.7, 227.3, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1,
11 1198, 1198.5, 2802; and (j) violation of the California Industrial Wage Orders that
12 could have been premised on the facts, claims, causes of action or legal theories
13 described above, as well as any potential penalties, interest or attorneys' fees
14 associated with all of such causes of action under California law ("Released Class
15 Claims"). Except as set forth in Section 5.3 of this Agreement, Settlement Class
16 Members do not release any other claims, including claims for vested benefits,
17 wrongful termination, violation of the Fair Employment and Housing Act,
18 unemployment insurance, disability, social security, workers' compensation, or
19 claims based on facts occurring outside the Class Period. (Settlement, ¶ 5.2.)

20 d. Released PAGA Claims by Aggrieved Employees: All Class Members who are
21 Aggrieved Employees, regardless of whether they are Settlement Class Members
22 or Non-Participating Class Members, are deemed to release, on behalf of
23 themselves and their respective former and present representatives, agents,
24 attorneys, heirs, administrators, successors, and assigns, the Released Parties from
25 all claims demands, rights, liabilities and causes of action under the California
26 Labor Code Private Attorneys General Act that were alleged, or reasonably could
27 have been alleged, based on the claims asserted in the Operative Complaint or
28 Plaintiff's Notice of Labor Code Violations and PAGA Penalties and ascertained in

1 the course of the Action arising during or with respect to the PAGA Period,
2 including, but not limited to, civil penalties pursuant to Labor Code sections 210,
3 226.3, 558, 1197.1, and 2699 in connection with violations of Labor Code sections
4 201, 202, 203, 204, 226, 226.7, 227.3, 246, 432, 510, 512, 558.1, 1174, 1194,
5 1194.2, 1197, 1197.1, 1198.5, 2802, and 2810.5 ("Released PAGA Claims"). The
6 Released PAGA Claims excludes all claims outside of the PAGA Period.
7 (Settlement, ¶ 5.3.)

8 12. The Parties shall bear their own respective attorneys' fees and costs, except as
9 otherwise provided for in the Settlement and approved by the Court.

10 13. The Court finds that the Gross Settlement Amount ("GSA"), the Net Settlement
11 Amount, and the methodology used to calculate Individual Class Payments and Individual PAGA
12 Payments to Settlement Class Members and Aggrieved Employees, respectively, are fair and
13 reasonable. Thus, Court authorizes the Settlement Administrator to calculate and pay individual
14 settlement shares in accordance with the terms of the Settlement.

15 14. Defendants are ordered to fully fund the GSA (\$352,500.00) and the amounts
16 necessary to fully pay their share of payroll taxes, by transmitting the funds to the Administrator no
17 later than twenty-one (21) business days after the Effective Date.

18 15. Within fourteen (14) business days after Defendants fund the GSA, the Administrator
19 shall disburse, in the amounts approved by the Court as provided below, the following payments: (1)
20 Individual Class Payments; (2) Individual PAGA Payments; (3) LWDA PAGA Payment; (4)
21 Administration Expenses Payment; (5) Class Counsel Fees Payment; (6) Class Counsel Litigation
22 Expenses Payment, and (7) Class Representative Service Payment.

23 16. A total amount of \$30,000.00 shall be allocated as the "PAGA Settlement Payment,"
24 payable from the GSA, for resolution of the Released PAGA Claims and distributed as follows: 75%
25 (\$22,500.00) to the California Labor and Workforce Development Agency (the "LWDA") and 25%
26 (\$7,500.00) to Aggrieved Employees. The LWDA and Aggrieved Employees' claims for the
27 Released PAGA Claims are hereby extinguished.

28 17. The Court confirms the appointment of Plaintiff as the Class Representative, for

1 settlement purposes only. In addition to any recovery that Plaintiff is eligible to receive as a
2 Settlement Class Member and Aggrieved Employee, the Court approves and orders a service
3 payment to Plaintiff in the amount of **\$10,000.00** (the "Service Payment"), payable from the GSA,
4 for his role and service as the Class Representative, for the risks and work attendant to that role, and
5 for his general release of claims and waiver of section 1542 rights.

6 18. The Court confirms the appointment of Moon Law Group, PC, as Class Counsel, for
7 settlement purposes only, as they are experienced in wage and hour class action litigation, have no
8 apparent conflicts of interest with Plaintiff, other Class Members, or the Administrator, and have
9 adequately represented Class interests. The Court approves and orders the payments to Class
10 Counsel, payable from the GSA, of **\$117,500.00** for reasonable attorneys' fees ("Class Counsel Fees
11 Payment"), and of **\$14,405.19**, for reimbursement of out-of-pocket costs ("Class Counsel Litigation
12 Expenses Payment"). The Court finds that these amounts are reasonable considering the benefits
13 provided to the Class.

14 19. The Court confirms the appointment of ILYM Group, Inc. as the Administrator, who
15 has fulfilled its initial notice and reporting duties. The Court approves and orders the payment to the
16 Administrator of **\$11,550.00** ("Administration Expenses Payment"), payable from the GSA, for
17 settlement administration.

18 20. Pursuant to California Code of Civil Procedure section 384, following the expiration
19 of the 180-day check-cashing deadline, should there be any uncashed checks, the Administrator shall
20 transmit those amounts to the California State Controller's Office for Unclaimed Property in the
21 name of each Settlement Class Member and/or Aggrieved Employee who failed to cash their
22 settlement check prior to the void date.

23 21. In accordance with California Rule of Court 3.771(b), notice of the concurrently
24 filed Judgment will be given to the Settlement Class by the Administrator, who will post an
25 electronic copy on its website for no less than ninety (90) calendar days following entry thereof.

26 22. This Final Approval Order and the concurrently filed Judgment are intended to be a
27 final disposition of the Action in its entirety and are intended to be immediately appealable.

28 23. The obligations set forth in the Settlement are deemed part of this Final Approval

1 Order and the concurrently filed Judgment, and the Parties and Settlement Administrator are ordered
2 to carry out the Settlement according to its terms and provisions.

3 24. Following entry of the concurrently filed Judgment, and without affecting the finality
4 thereof, pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
5 continuing jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
6 enforcing this Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
7 addressing such post-Judgment matters as are permitted by law.

8 25. The Settlement is finally approved but is not an admission by Defendants of the
9 validity of any claims in this Action, or of any wrongdoing by Defendants or of any violation of
10 law. Neither the Settlement nor any related document shall be offered or received in evidence in
11 any civil, criminal, or administrative action or proceeding other than such proceedings as may be
12 necessary to consummate or enforce the Settlement.

13 26. The Court sets a (Non-Appearence) Compliance Hearing re: Distribution on
14 6-10-25 at 8 : 30 a.m./p.m. in Department 17. Class Counsel are ordered to file
15 a final report and declaration by the Administrator regarding settlement distribution no later than
16 five (5) court days prior to the Compliance Hearing. No appearance will be required at the
17 Compliance Hearing if the Settlement Administrator's declaration reports that all the distributions
18 under the Agreement are complete.

19 **IT IS SO ORDERED.**

20 DATE: 6-7-24



THE HON. THOMAS S. CLARK
Judge of the Superior Court, Kern County