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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

JASMIN JIMENEZ, on behalf of herself and all
similarly aggrieved employees,

Plaintiff,

vs.

SEA HOUSE SALINAS, LLC; OMAR
CAMPOS; SHAN BAO GUO; BAG O'CRAB,
INC.; SEA HOUSE SL LLC; BAG O CRAB MC
LLC; and DOES 3 through 50, inclusive,

Defendants.

Case No. 23CV000504

[Assigned to Hon. Thomas W. Wills, Dept. 15]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of B. James Fitzpatrick; Declaration of Alison L.
Baker; Declaration of Jasmin Jimenez;
[Proposed] Order]*

Date: January 31, 2025
Time: 8:30 a.m.
Department: 15

Complaint Filed: February 16, 2023
FAC Filed: June 5, 2023
SAC Filed: November 8, 2024

1 **TO THE COURT, DEFENDANTS, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 31, 2025, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 15 of the above-entitled court located at 1200 Aguajito Road,
4 Monterey, California 93940, Plaintiff, Jasmin Jimenez, will and hereby does move for an Order:

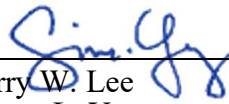
- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
6 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current and
8 former non-exempt employees of Sea House Salinas, LLC, Sea House SL LLC, and Bag O
9 Crab MC LLC in the State of California from February 16, 2019, through December 4, 2024
10 (the “Class Period”);
- 11 3. appointing Plaintiff as the Class Representative, and appointing (i) B. James Fitzpatrick and
12 Alison L. Baker of Fitzpatrick & Swanston and (ii) Larry W. Lee and Simon L. Yang of
13 Diversity Law Group, P.C. as Class Counsel;
- 14 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
15 Settlement Amount in the amount of \$350,000.00, the amounts requested for the
16 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
17 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
18 the range of reasonableness for a settlement that could ultimately be given final approval;
- 19 5. appointing Phoenix Settlement Administrators as the Administrator;
- 20 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
21 the Agreement; and
- 22 7. scheduling a Final Approval Hearing.

23 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
24 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
25 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the
26 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt
27 out of, or object to the settlement.

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
3 Yang, B. James Fitzpatrick, Alison L. Baker, and Jasmin Jimenez, all pleadings and papers on file
4 herein, and any further oral and documentary evidence as may be presented before or at the hearing of
5 this matter.

6 DATED: January 8, 2025

DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Jasmin Jimenez, sues Defendants Sea House Salinas, LLC, Sea House SL LLC, Bag O Crab MC LLC, Bag O’Crab, Inc., and Shan Bao Guo for alleged (1) unpaid minimum wages and overtime; (2) failure to provide meal and rest periods; (3) failure to timely pay wages; (4) failure to provide accurate itemized wage statements; and (5) failure to reimburse business expenses.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendants to pay at least \$350,000.00 for the classwide settlement of claims through December 4, 2024. Plaintiff and her counsel believe the settlement is an exceptional result for the Class; **it is estimated that Defendants will have to pay \$1,851.85, on average, per Class Member.** Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendants.

Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendants, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On February 16, 2023, Plaintiff initiated this class action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the initiation of the Action, Plaintiff and Defendants met and conferred about the alleged claims for failures to provide meal periods, to provide rest periods, pay hourly and overtime wages, furnish accurate itemized wage statements, timely pay all wages due, and reimburse business expenses. *Id.* Defendants also provided Plaintiff with information about various defenses. *Id.* On numerous dates thereafter, Plaintiff and Defendants exchanged information and documents that Plaintiff

1 contended supported the claims and that Defendants contended supported their defenses. *Id.* The Parties
2 also propounded and responded to formal discovery requests. *Id.*

3 Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
4 by Defendants. Yang Decl. ¶ 3. After extensive formal discovery, the Parties agreed to schedule a
5 mediation to potentially resolve the claims. *Id.* To enable a potential resolution, Defendants provided the
6 relevant numbers of individuals, workweeks, and shifts worked, for example, among other things. *Id.*
7 Defendants’ willingness to provide informal discovery on a classwide basis enabled Plaintiff to evaluate
8 the full scope of Defendants’ potential liability. *Id.*

9 On October 24, 2024, the Parties attended mediation with the Hon. Peter Kirwan (Ret.), an
10 experienced mediator knowledgeable of both the wage and hour laws and class and representative action
11 claims at issue. Yang Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the
12 Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA
13 Settlement. *Id.* Ex. 1 (the “Agreement”). As part of the agreement to resolve the disputes between the
14 Parties, on November 8, 2024, Plaintiff filed an operative Second Amended Complaint. *Id.*

15 SUMMARY OF PROPOSED SETTLEMENT

16 I. Class Definition

17 The proposed settlement class of “Class Members” includes all current and former non-exempt
18 employees of Sea House Salinas, LLC, Sea House SL LLC, and Bag O Crab MC LLC in the State of
19 California from February 16, 2019, through December 4, 2024. Agreement § 1.5. There are
20 approximately 189 Class Members. *Id.*¹

21 II. Settlement Payments

22 The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of
23 \$350,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
24 Court approve payment of a PAGA Penalty Fund and LWDA Payment, Administration Costs, an
25 Attorneys’ Fees and Costs Award, and a Class Representative Award. *Id.* §§ 5.1.1-5.1.4. Except for
26

27 ¹ The settlement also defines a group of PAGA Employees, which includes all Class Members who
28 worked in the State of California from January 10, 2022, through December 4, 2024. Agreement §§
1.17, 1.18. There are approximately 149 PAGA Employees. *Id.* § 1.17.

1 these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount
2 will be allocated to Class Members. *Id.* § 5.2. *After* all requested payments from the Gross Settlement
3 Amount, it is expected that, on average, each Class Member would be allocated \$906.53 in class action
4 settlement payments (and that, on average, each PAGA Employee would be allocated an additional
5 \$50.34 in settlement payments). Yang Decl. ¶ 7.

6 **III. Released Claims**

7 Only Plaintiff is subject to a general release. Agreement § 6.2. Settlement Class Members release
8 only claims arising during the Class Period that were pled in the operative complaint in the Action or
9 that could have been pleaded based on the facts asserted in the Action. *Id.* § 6.1. The LWDA is subject
10 to a limited release of PAGA claims for civil penalties arising during the PAGA Period for Labor Code
11 violations that were alleged in the Action. *Id.* § 6.2; *see also id.* § 1.18.

12 **LEGAL STANDARD**

13 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
14 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
15 has been distributed to class members for their comment or objections. As the Manual for Complex
16 Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the
17 court makes a preliminary fairness evaluation”:

18 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
19 fairness or other obvious deficiencies, such as unduly preferential treatment of class
20 representatives or of segments of the class, or excessive compensation for attorneys, and appears
21 to fall within the range of possible approval, the court should direct that notice ... be given to the
22 class members of a formal fairness hearing, at which arguments and evidence may be presented
23 in support of and in opposition to the settlement.

24 Manual for Complex Litigation (Third) § 30.41.

25 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
26 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
27 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
28 find that the settlement proposal contains some merit, is within the range of reasonableness required for
a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final
hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

1 The parties also may, at the preliminary approval stage, request that the court provisionally
2 approve certification of the class—conditioned upon final approval of the settlement. As further
3 explained by Professor Newberg:

4 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
5 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
6 to the various items submitted to the court. Three basic rulings are often conditionally entered at
this preliminary hearing. These conditional rulings may approve a temporary settlement class,
the proposed settlement, and the class counsel’s application for fees and expenses.

7 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
8 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
9 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
10 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
11 and reasonable”).

12 DISCUSSION

13 I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

14 A. The Settlement Is Entitled to a Presumption of Fairness.

15 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
16 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
17 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
18 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
19 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
20 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
21 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
22 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
23 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
24 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

25 While the recommendations of counsel proposing the settlement are not conclusive, the Court
26 can properly take them into account, particularly where counsel have conducted thorough investigation,
27 are experienced with this type of litigation, and agreed to a resolution through arm’s length negotiation.
28 See Newberg on Class Actions, *supra*, § 11.47; *National Rural Telecomms. Coop. v. DIRECTV, Inc.*,

221 F.R.D. 523, 528 (C.D. Cal. 2004) (“So long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”) (citations omitted). In such circumstances, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

Here, both Plaintiff’s counsel and Defendants’ counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶ 4; Declaration of Alison L. Baker (“Baker Decl.”) ¶¶ 3-7. Each side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other’s contentions and theories. Defendants provided the relevant numbers of individuals, workweeks, and shifts, for example, among other things—enabling Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations between the Parties and their counsel. *Id.* ¶ 9.

B. The Settlement Obtains an Excellent Result for Class Members.

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendants to pay \$350,000.00—or approximately \$1,851.85, on average, per Class Member. Yang Decl. ¶ 5. This amounts to approximately 11.13% of Defendants’ potential liability and is an excellent result for Class Members. *Id.*

Plaintiff contends that class claims under Labor Code section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up to a maximum of \$4,000.00 per Class Member.

1 Yang Decl. ¶ 5.² With respect to meal and rest break violations, Plaintiff contends that Defendants
2 would be liable for an additional hour of regular rate wages under Section 226.7. *Id.* Plaintiff also
3 contends that while Defendants would owe some underpaid minimum wages and overtime, Defendants
4 more significantly would be liable for Section 203 penalties of up to 30 days wages. *Id.* Plaintiff
5 additionally contends that Defendants would be liable for actual Class Member expenses under Section
6 2802. *Id.* Moreover, under PAGA, Plaintiff contends that Defendants also would be liable for an
7 additional \$450 per pay period for these violations under Sections 210, 558, and 2699(f). *Id.*

8 Defendants contest the merits and deny they are liable at all. Yang Decl. ¶ 6. Moreover, even if
9 Plaintiff prevails on the merits, Defendants contest the extent of liability. *Id.* For example, with respect
10 to liability for underpaid wages, overtime, and additional hours of regular rate wages, Defendants
11 contend that there is little evidence of widespread failure to pay wages or overtime and that the violation
12 rate for meal and rest breaks was extremely low. *Id.* Defendants further contend that they would not be
13 subject to Section 203 penalties, based on good-faith defenses. *Id.* Likewise, with respect to wage
14 statement liability, Defendants contend that liability under Section 226(e) would be subject to additional
15 defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.* Finally, with
16 respect to PAGA penalties, Defendants contend that the circumstances are such that PAGA penalties
17 would be subject to discretionary reductions. *Id.*

18 While the Parties disagree on the application of the law to the facts, each side recognized in
19 negotiations that, if taken to trial, the other side would at least have reasonable arguments, such that the
20 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
21 Ultimately, based on data at mediation, Plaintiff argued that a classwide judgment could result in a total
22 potential class and PAGA recovery of \$3,146,036.00, including:

- 23 • approximately \$285,600.00 in wage statement penalties, based on a \$50 penalty for the first
24 wage statement for each of 146 Class Members during the relevant limitations period and a
25 \$100 penalty for each of an additional 2,783 wage statement during the relevant limitations
26 period;

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² Except as otherwise noted, all “Section” references are to the Labor Code.

- approximately \$529,920.00 in waiting time penalties for 138 formerly employed Class Members during the relevant limitations period, based on wages for 30 8.0-hour days at \$16.00 hourly rates;
- approximately \$446,848.00 in additional hours of wages for meal break violations in each of 27,298 shifts at a \$16.00 hourly rate;
- approximately \$446,848.00 in additional hours of wages for rest break violations in each of 27,298 shifts at a \$16.00 hourly rate;
- approximately \$58,020.00 in unreimbursed expenses for \$7.50 per workweek during each of 7,736 workweeks; and
- approximately \$1,378,800.00 in PAGA penalties for \$450 per pay period in 3,064 pay periods during the relevant limitations period.

Yang Decl. ¶ 7. Plaintiff contends that the Gross Settlement Amount of \$350,000.00—or 11.13% of the total potential recovery—is an excellent result. *Id.*

Numerous courts have held that gross settlement amounts of less than 20%—and as little as 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendants, they recognize the inherent risks in litigation, including the

specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. *Id.*

Class Members would not need to do anything to receive their share of settlement funds. This eliminates any burden to Class Members who wish to participate in the class action settlement. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

2. The Settlement Releases Are Appropriate.

As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members are only subject to a release of claims arising from February 16, 2019, through December 4, 2024, under Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2699 et seq. and the related IWC Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11050, 11070, 11170) and derivative claims under Business & Professions Code §§ 17200, et seq., as well as claims that could have been pleaded based on the facts asserted in the Action. *Id.* § 6.1. The LWDA is only subject to a limited release of PAGA claims for civil penalties arising from January 10, 2022, through December 4, 2024, for Labor Code violations that were alleged in the Action. *Id.* § 6.2; *see also id.* § 1.18.

In sum, Plaintiff alleged targeted claims in the Action, and any settlement releases also are specifically tailored to the targeted allegations. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”).

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendants to provide to the Administrator each Class Member’s last known address, among other information (the “Class Data”), within 10 days of a Preliminary Approval Order. Agreement § 3.2. Within seven days of

1 receiving the Class Data, the Administrator would mail the Notice of Class Action Settlement (“Class
2 Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last
3 known address for each Class Member, based on the Class Data. *Id.* § 3.3. Any Class Notice returned to
4 the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding
5 address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would promptly
6 attempt to determine the correct address using a single skip-trace search and then promptly send a single
7 re-mailing. *Id.*

8 The Class Notice accurately informs Class Members of the settlement and their rights.
9 Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The
10 Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the
11 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*
12 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

13 **C. The Requested Payments and Allocations Are Reasonable.**

14 The Agreement provides for a Gross Settlement Amount of \$350,000.00. Agreement § 5.1. From
15 the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
16 Amount (or \$116,666.67) and actual litigation costs (that are not expected to exceed \$15,000.00). *Id.* §
17 5.1.1; *see also* Yang Decl. ¶ 7. The Class Representative Award will be no more than \$10,000.00. *Id.* §
18 5.1.2. Administration Costs will be no more than \$8,500.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be
19 \$30,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$22,500.00) would constitute
20 the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees based
21 on the number of workweeks for each PAGA Employee during the PAGA Period.³

22 **1. Each Class Member, on Average, Would Receive More than \$900.**

23 It is expected that, on average, each Class Member would be allocated approximately \$906.53 in
24 Settlement Payments (and on average, each PAGA Employee would be allocated an additional \$50.34 in
25 settlement payments)—*after* all requested payments from the Gross Settlement Amount. Yang Decl. ¶ 7.
26 The amount paid on average to each Class Member may increase, depending on how many Class
27

28 ³ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of workweeks during the Class Period. *Id.*

To wit, after deducting any approved payments for an Attorneys' Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis, based on the number of relevant workweeks they worked. Agreement § 5.3.2. 20.0% of these allocations shall be classified for tax reporting purposes as wages. *Id.*

None of the settlement funds will revert to Defendants. Agreement § 5.1. Instead, the principal for any uncashed checks (upon the expiration date) would be distributed pursuant to Code of Civil Procedure section 384 to Legal Aid at Work (or as otherwise directed by any order granting final approval of the settlement). *Id.* § 5.6.

2. The Requested Attorneys' Fees and Costs Award Is Reasonable.

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of settlement benefits to Class Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of the equitable doctrine is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone" so as to avoid unjust enrichment. *Vincent*, 557 F. 2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, a court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) ("When a fee is set by a court rather than by

1 contract, the object is to set it at a level that will approximate what the market will set The judge, in
2 other words, is trying to mimic the market in legal services.”).

3 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
4 services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
5 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
6 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the
7 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
8 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
9 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
10 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
11 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%
12 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
13 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

14 Here, Plaintiff will request an attorneys’ fees award of 33⅓% of the Gross Settlement Amount.
15 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel
16 have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation
17 fees, and payment of other litigation related costs.

18 **3. The Proposed Class Representative Award Is Reasonable.**

19 Proposed Class Representative Jasmin Jimenez requests a modest Class Representative Award of
20 \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of
21 Plaintiff but not of any other Class Member. Independently, the request is also appropriate in recognition
22 of Plaintiff’s efforts on behalf of the Class. Declaration of Jasmin Jimenez (“Jimenez Decl.”) ¶¶ 3-4.

23 As part of her duties as the Class Representative, Plaintiff provided all necessary information and
24 evidence that resulted in this settlement. Jimenez Decl. ¶¶ 3-4. Plaintiff met and conferred with Class
25 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. Plaintiff provided information and
26 documents to Class Counsel and made herself available to answer any questions during litigation. *Id.*
27 Ultimately, Plaintiff’s efforts secured an exceptional result for the Class.

1 In addition to the invaluable services that Plaintiff provided, Plaintiff also took a significant risk,
2 both professionally and monetarily. Jimenez Decl. ¶ 5. Because the alleged claims involve the payment
3 of costs to the prevailing party, Plaintiff could have possibly faced paying Defendants' costs had
4 Defendants prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other
5 potential employers that may be less willing to hire an individual who has filed suit against a prior
6 employer. Plaintiff took this risk upon herself and the whole class benefited. Class Members did not
7 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
8 have to face potential prejudice in future employment.

9 **4. The Administration Costs Are Reasonable.**

10 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
11 quoted Administration Costs not to exceed \$7,000.00 to send notices and administer the settlement.
12 Agreement §§ 3.1, 5.1.3. The Administration Costs are reasonable and should be approved.

13 **II. The Class Meets All Requirements for Certification.⁴**

14 For purposes of settlement approval, a detailed analysis of the elements required for class
15 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
16 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
17 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
18 App. 4th at 240 (explaining there is no “ironclad requirement” to conduct an evidentiary hearing to
19 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
20 considering whether to certify a settlement class, the court is not faced with the case management issues
21 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
22 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to
23 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
24 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

25 Even under the standard applicable to litigation classes, the allegations in this lawsuit present
26 paradigmatic class action claims that satisfy the elements of class certification.

27 ⁴ Defendants expressly reserve their objections and do not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

2 Class Members are identifiable from Defendants’ records. The class definition “is precise,
3 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
4 Indeed, there are approximately 189 Class Members. Agreement § 1.5. Numerosity thus is sufficiently
5 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
6 number is required as a matter of law for the maintenance of a class action” and citing examples in
7 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
8 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

9 **B. The Class Establishes a Community of Interest.**

10 “The community of interest requirement involves three factors: ‘(1) predominant common
11 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
12 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
13 435 (2000).

14 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

15 Plaintiff alleges that Defendants, as a matter of their corporate policy, practice, or procedure, (1)
16 failed to pay minimum wages and overtime; (2) failed to provide meal and rest periods; (3) failed to
17 timely pay wages; (4) failed to provide accurate itemized wage statements; and (5) failed to reimburse
18 business expenses. With respect to typicality, Plaintiff was a victim of the alleged Labor Code
19 violations. Jimenez Decl. ¶ 2. In sum, Plaintiff was employed under the same policies as others.

20 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

21 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
22 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
23 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
24 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
25 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
26 462, 473 (1981). Defendants’ conduct is central to the commonality inquiry. *See City of San Jose v.*
27 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
28 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide

1 impact of the Defendants' policies satisfies the commonality requirement. *See Stephens v. Montgomery*
2 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

3 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

4 With respect to adequate representation, Plaintiff does not have any interests adverse to the
5 Class, and no such issues have been raised or presented. Jimenez Decl. ¶ 4. Plaintiff has taken all
6 necessary steps to represent the interests of the Class, including by providing information and
7 documents to Class Counsel, making herself available to discuss the claims, providing wage statements
8 that she was issued, and answering questions about how she was paid or what her wage statements show
9 or meant. *Id.* Plaintiff understands that she is responsible to the Class with respect to trying the case,
10 appearing in court, and working with Class Counsel. *Id.* She is willing to act as a fiduciary for the Class
11 and remains willing to devote her time to this lawsuit for the benefit of the Class. *Id.* For such reasons,
12 Plaintiff has adequately represented the Class Members.

13 From the inception of the case, Class Counsel has zealously represented the interests of the
14 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
15 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
16 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
17 Yang Decl. ¶¶ 9-13; Fitzpatrick Decl. ¶ 4; Baker Decl. ¶¶ 3-7.

18 **CONCLUSION**

19 The proposed settlement would result in substantial monetary benefits to class members. It was
20 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
21 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
22 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
23 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
24 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
25 Approval Hearing.

1 DATED: January 8, 2025

DIVERSITY LAW GROUP, P.C.

2
3 By: _____

Larry W. Lee

Simon L. Yang

4 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On January 8, 2025, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
13 **SETTLEMENT**
- 14 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
15 **SETTLEMENT**
- 16 **4. DECLARATION OF ALISON L. BAKER SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
17 **SETTLEMENT**
- 18 **5. DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS
19 **ACTION SETTLEMENT**
- 20 **6. DECLARATION OF JASMIN JIMENEZ SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
21 **SETTLEMENT**
- 22 **7. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY**
23 **APPROVAL OF CLASS ACTION SETTLEMENT**

24 on the interested parties in this action as follows:
25
26
27
28

Marie Trimble Holvick Amber Eklof Shawn Fields GORDON REES SCULLY MANSUKHANI, LLP 315 Pacific Avenue San Francisco, CA 94111	<i>Attorneys for Defendants Sea House Salinas, LLC and Omar Campos</i> mholvick@grsm.com aecklof@grsm.com sfields@grsm.com
B. James Fitzpatrick Alison L. Baker FITZPATRICK & SWANSTON 555 S. Main Street Salinas, CA 93901	<i>Attorneys for Plaintiff</i> bjfitzpatrick@fandslegal.com abaker@fandslegal.com

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 8, 2025, at Los Angeles, California.



Erika Mejia