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Attorneys for Plaintiff, Sydney Houser

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SYDNEY HOUSER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

THE FISH HOUSE VERA CRUZ, INC., a
California Corporation; and DOES 1 to 100,

Defendants.

Case No.: 37-2023-00045659-CU-OE-NC
Honorable Cynthia A. Freeland, Dept. N-27

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
JANELLE CARNEY IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 22, 2024

Time: 1:30 p.m.

Dept.: N-27

Action filed: October 20, 2023

Reservation No.: See order dated August 21,
2024

1 1. I am an attorney duly licensed to practice law before all courts in the State of
2 California. I am the managing partner at Janelle Carney – Attorney at Law, APC (JCAL). I am
3 counsel of record herein and I have personal knowledge of the facts herein. If called as a
4 witness, I could and would competently testify herein. I have participated in all aspects of the
5 present litigation, including reviewing and drafting various pleadings, discovery, and preparing
6 for mediation.

7 2. JCAL and Frontier Law Center (“FLC”), represent Plaintiff Sydney Houser and
8 the class. JCAL and FLC conducted an investigation prior to the filing of the Complaint and
9 JCAL and FLC continued their investigation throughout the litigation. The initial legal work on
10 this matter commenced in or about September 2023.

11 3. On or about August 21, 2024, the Honorable Cynthia A. Freeland entered an
12 Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA
13 Settlement. The Preliminary Order conditionally certified the Class for settlement purposes only,
14 approved the Notice of Class Action Settlement, appointed the class representative, designated
15 class counsel, appointed ILYM Group, Inc. (“ILYM”) as the Settlement Administrator, and set
16 timelines for the claims and settlement procedure.

17 4. This motion seeks final approval of the \$172,000.00 settlement on a gross non-
18 reversionary basis. The lawsuit proceeded on behalf of the following class: All current and
19 former non-exempt hourly individuals employed by Defendant at any time from October 20,
20 2019 through May 31, 2024. There are 257 Class Members/Aggrieved Employees who have not
21 opted out from the class as of the date of this declaration.

22 5. Class Counsel is experienced and qualified to evaluate the class claims and
23 viability of the defenses, as demonstrated in my Declaration filed in support of Preliminary
24 Approval on July 1, 2024. This settlement is fair, adequate and reasonable and in the best
25 interests of the Class. Notice was sent to 258 Class Members, and there has been one opt-out
26 from the class. According to ILYM, the average settlement share for the entire class is
27 approximately \$326.45. The largest settlement share will be approximately \$1,573.33. The
28 Declaration of Nathalie Beltran of ILYM Regarding Notice and Settlement Administration will
be filed in advanced of the hearing upon the expiration of the opt out deadline. I believe that the

collective attorney fee of \$62,500.00 or 35% of the total settlement of this case for Plaintiff's Counsel is fair and reasonable.

6. Pursuant to the Stipulation of Settlement ("Settlement Agreement"), the Parties have agreed, subject to and contingent upon approval of this Court, that the case be settled and compromised for the non-reversionary sum of \$172,000.00. The proposed Settlement includes, subject to Court approval (a) attorneys' fees of \$62,500.00 (35% of the common fund), (b) litigation costs of up to \$10,000.00 (c) Class Representative enhancement payment of \$5,000.00 for Plaintiff, and (d) claims administration expenses of up to \$6,950.00. The total cost for ILYM for the administration of this Settlement, including fees incurred for completion of the administration are \$6,950.00.

7. Payment in the sum of \$7,500.00, will be made to the California Labor and Workforce Development Agency ("LWDA") and \$1,875.00 as the individual PAGA portion of the Settlement, pursuant to the Settlement Agreement. The LWDA was served with Plaintiff's Preliminary Approval papers on July 2, 2024, and this Court's Preliminary Approval Order on or about September 4, 2024. True and correct copies of the confirmation of submission to LWDA are collectively attached hereto as **Exhibit 1**.

8. The settlement reached is fair and reasonable. The work of Plaintiff and Class Counsel has achieved a Settlement Agreement that delivers a Total Settlement Amount of \$172,000.00 to a class of 257 current and former non-exempt hourly individuals employed by Defendant, The Fish House Vera Cruz, Inc. ("Defendant") between October 20, 2019 through May 31, 2024. The entirety of the Gross Settlement Fund, \$172,000.00 will be paid out. There is no reversion to Defendant. As of the date of filing this declaration, there have been no objectors and only one opt-out request received. I believe that attorney fees of 35% of the total settlement of this case, for Plaintiff's Counsel is fair and reasonable. I also believe that the enhancement request of \$5,000.00 for Sydney Houser, the class representative Plaintiff, is fair and reasonable in light of her work and dedication to this case, as detailed in her declaration filed in support of preliminary approval on July 1, 2024.

9. I am very familiar with the contingent fee market throughout California, particularly as it pertains to complex employment, wage and hour, and class action litigation. On behalf of the Law Office of Joseph Antonelli (LOJA) and now my firm, I have negotiated

1 numerous contingency fee agreements with Plaintiffs both as an individual and as a
2 representative in class action suits. Many of those agreements provide that counsel will receive a
3 fee that is between 33-45% of any recovery that is obtained, and, in addition, that counsel be
4 reimbursed for the costs they incurred out of a recovery amount. The individual Plaintiff in this
5 action signed a contingency fee agreement with Plaintiff's counsel's firms, which stated that
6 counsel would be able to earn a fee of up to 35% of any recovery. In addition, the Court
7 preliminarily approved our reasonable hourly rate of \$850.00 per hour for Janelle Carney of
8 JCAL, \$650.00 per hour for Manny Starr and \$800.00 per hour for Adam Rose of Frontier Law
9 Center. These are typical and standard rates in employment related contingency agreements in
10 the Los Angeles, Riverside, San Bernardino, Orange County, San Diego, and throughout
11 California. In my opinion, the Plaintiff in this complex wage and hour case could not have
12 retained competent counsel in California, particularly with the considerable skill and expertise of
13 these firms for any amount significantly less than the contingency fee percentage provided in
14 these retainer agreements. As the Court is well aware, Plaintiff's Counsel have never been paid
15 any money for attorneys' fee on this case and has advanced all costs before there is any payout.
16 The work on this matter began approximately one year ago.

17 10. I am a very experienced lawyer (over 25 years of experience) and specialized in
18 class action in the area of wage and hour issues for nearly 24 years. LOJA represented primarily
19 employees in employment litigation for ten (10) years before specializing almost exclusively in
20 wage and hour class action for the past 23 years. I graduated from Whittier College School of
21 Law School and earned my Jurisprudence Doctorate in May 1998. I am admitted to practice law
22 in the State of California and the federal courts in California. I have remained in good standing
23 as a member of the California Bar since admission through the present time. I have litigated over
24 300 successful wage and hour class actions and PAGA representative actions in California. Since
25 my admission to the bar, I solely worked at LOJA until January 2021, when I started my own
26 firm, JCAL. On July 1, 2007, I became a partner at LOJA. LOJA has focused on wage and
27 hour class actions since that time. JCAL also focuses on wage and hour class actions.

28 11. During my tenure there, LOJA in conjunction with the Law Offices of Kevin T.
Barnes completed a court trial in the case of *Mutuc v. Huntington Memorial Hospital*, Case No.

1 BC288727. LOJA was successful in obtaining favorable published opinions for employees in
2 the state of California on six (6) major issues in each of the following cases:

- 3 a. *Huntington Memorial Hospital v. Superior Court* (“Mutuc”) (2005) 131 Cal.App.
4 4th 893, 906;
- 5 b. *Tien v. Sup. Ct.* (Tenet Healthcare) (2006) 139 Cal. App. 4th 528;
- 6 c. *Jaimez v. Daiohs USA, Inc.*, (2010) 181 Cal.App.4th 1286;
- 7 d. *Hoover v. American Income Life Insurance* (2012) 206 Cal. App. 4th 1193;
- 8 e. *Cochran v. Schwan’s*, (2014) 228 Cal.App.4th 1137;
- 9 f. *Falk v. Children’s Hospital Los Angeles*, (2015) 237 Cal. App. 4th 1454;
- 10 g. *Laffitte v. Robert Half International, Inc.*, et al. (2016), 1 Cal.5th 480;
- 11 h. *Vasserman v. Henry Mayo Newhall* (2017) 8 Cal. App 5th 236.

12 These cases were landmark decisions in the manner in which the regular rate must be
13 calculated and what is considered a “subterfuge” to avoid the correct payment of regular rate and
14 overtime rate (*Huntington Hospital*); the criteria required to certify pay stub claim, waiting time
15 penalty claim, and meal and rest break claim among other matters (*Jaimez*); protecting the
16 interests of putative class members in a wage and hour case who want their identity protected
17 (*Tien*); the standard to prove that an employer has waived its right to arbitrate an employment
18 claim against an employee who filed a class action (*Hoover*); the standard of when an employer
19 is required to reimburse employees for cell phone usage and other business expenses in order to
20 perform the employees’ duties, even if there was no direct costs to the employees (*Cochran*); the
21 application of the tolling doctrine as applied to subsequent class actions being filed when the
22 previous class action was disposed of without a ruling on certification (*Falk*); the *Laffitte*
23 decision laid out the requirements for approval of a class action settlement including an in depth
24 analysis on the attorneys’ fees request on a common fund. In *Laffitte*, the California Supreme
25 Court affirmed the trial court and appellate court ruling and holds that the attorney fee award
26 made on a common fund basis (percentage of the settlement) is the law in California; and that
27 employees whose employment is governed by a collective bargaining agreement have not
28 waived their right to bring statutory claims in court unless there is a clear and unmistakable
waiver of their rights (*Vasserman*). The additional class action experience was included in my
Declaration filed on or about July 1, 2024.

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13. The work of Plaintiff and Class Counsel has achieved a Settlement Agreement that delivers a Total Settlement Amount of \$172,000.00 to a class of up to 258 individuals. 100% of the Gross Settlement Fund will be paid. As of the date of this declaration, there have been zero objections to the settlement and one opt-out request.

14. On or about August 21 2024, the Honorable Cynthia Freeland entered an Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement. A true and correct copy of the Order is attached hereto as **Exhibit 2**. Mailing to the class occurred on or about September 20, 2024.

5

1 represent checks written by declarant’s office to prosecute this matter. That is, before any
2 reimbursement from any person, JCAL had incurred \$4,700.69 in costs. All “hard” costs on the
3 attached bill represents costs that JCAL incurred and paid. JCAL does not include any interest,
4 markup or any premium amount on the costs actually incurred and paid.

5 Further, it is anticipated that through the remainder of this case, declarant will incur an
6 additional \$500.00 through the final distribution including the filing of the motion, and other
7 necessary expenses including post filing documents. The estimate is based on the length that the
8 case will remain open and ensuring filings and correspondence with class members and the Court
as necessary.

9 The costs incurred and requested for each firm representing the Plaintiff are as follows:

FIRM	COSTS
Janelle Carney – Attorney at Law, APC	\$4,700.69 (plus \$500.00) = \$5,200.69
Frontier Law Center	\$3,160.45
Total	\$8,361.14

14 The Plaintiff and Defendants have agreed to reimburse Class Counsel the amount of not
15 more than \$10,000.00 in costs to Plaintiff. Furthermore, the class has incurred administration
16 costs from ILYM. The costs for ILYM to administer the settlement are \$6,950.00. The
17 Settlement Agreement provides up to \$6,950.00 for class administration fees.

18 **INVESTIGATION & EXPERT RETENTION**

19 16. Preparation of this case necessitated the gathering of information from the class
20 representative, Sydney Houser, in addition to extensive research before and during the litigation,
21 participated in propounding and responding to written discovery. Further, Plaintiff hired an
22 expert to evaluate the time and payroll records that were produced in discovery and for
mediation purposes.

23 On May 8, 2024, Plaintiff and Defendant (the “Parties”) participated in an all-day
24 mediation presided over by Jeff Fuchsman, Esq., which led to the Class Action and PAGA
25 Settlement Agreement. The Parties agreed to a settlement in principle at the mediation and
26 executed a Memorandum of Understanding. This settlement was reached through arm’s length
27 negotiations after extensive informal and formal discovery. The Parties began negotiating the
28 specific terms of the long form settlement after the mediation and were able to agree on all terms

1 in the Stipulation of Settlement (a true and correct copy of which is attached to the Declaration
2 of Janelle Carney filed in support of Preliminary Approval on or about July 1, 2024, as Exhibit
3 1).

4 **INCENTIVE AMOUNT FOR PLAINTIFFS**

5 17. In the present case, no other individuals were willing to be named as a class
6 representative in the matter. It is my experience that it is difficult for persons to actually sue
7 their current or former employer as they fear retaliation and/or economic repercussions. I
8 believe that the Class Representative Enhancement Award of \$5,000.00 to Sydney Houser is fair
9 and reasonable. Ms. Houser submitted a declaration in support of his incentive request with the
10 motion for preliminary approval on July 1, 2024. I, along with JCAL staff, and FLC and their
11 staff, spent numerous hours in consultation with the Plaintiff from the initial investigation
12 through discovery and the pleading stages. In the Preliminary Approval Declaration, Plaintiff
13 testified as to her detailed efforts. Plaintiff testified about the numerous hours involved in
14 litigating the matter. Further, Plaintiff was instrumental in providing facts, information, and
15 details to allow the drafting of the Complaint. Plaintiff also reviewed hundreds of pages of
16 documents which were provided to her, and Defendant in response to written informal discovery
17 responses. Plaintiff was instrumental in getting the case to a settlement stage and assisted in the
18 preparation for the mediation session. I believe she took her role as champion of the class very
19 seriously.

20 Furthermore, there are employment screening companies that will investigate all
21 employment applicants to see if they were ever part of a lawsuit, including acting as a class
22 representative against a current or former employer.

- 23 • “In today’s litigious culture, employers simply cannot afford to hire employees who will
24 put their company at risk.” Back Track Screening, [http://www.btscreening.com/wp-](http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf)
25 [content/uploads/2012/09/Screening-101.pdf](http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf);
- 26 • “In today’s litigious culture, you simply cannot afford to hire employees who will put
27 your company at risk.” Credit Technologies, Inc.
28 http://www.credittechnologies.com/Employment_Screening.asp.

The fact that Plaintiff had agreed to be a class representative against her former employer
will follow her the rest of her employment career. As an experienced class action wage and hour

1 employment lawyer, it has been my experience that a majority of people are apprehensive about
2 suing their employer as a class representative. In fact, in this case, it was only the named
3 Plaintiff who agreed to take on this role.

4 All in all, Plaintiff has been diligent and acted above and beyond that of which is
5 expected from Class Representatives through all stages of litigation. There are few individuals
6 that are willing to act as a Class Representative and provide hard work, diligence, and the
7 willingness to assume a large financial risk should Defendants prevail in a class action case. No
8 Class Member has expressed any objection to the requested Class Representatives Enhancement
9 or any term of the settlement. Additionally, I believe Plaintiff, in her general release, gave up
10 valid and legitimate claims. Further, the class members are receiving favorable settlement
11 amounts as a result of Plaintiff's tireless effort over the past two years.

12 18. Class Counsel has settled hundreds of other class action matters wherein
13 monetary enhancements have been granted (a partial listing of various class action cases is set
14 forth at paragraph 5 above). Class Counsel have received approval of settlements in over 300
15 wage hour class action and PAGA representative matters.

16 19. Plaintiff is entitled to the requested enhancement for her extensive work
17 performed and the risks she assumed. Plaintiff was not willing to settle the class action until she
18 felt it was in the best interests of the Class. The Plaintiff has always put the interests of the Class
19 before her own interests. Declarant fully believes that Plaintiff performed extraordinary duties
20 for the class.

21 **REQUESTED ATTORNEYS' FEE IS FAIR & REASONABLE**

22 20. Class Counsels' application for an award of attorneys' fees and costs in an amount
23 of 35% of the settlement value created on behalf of the Class is reasonable and fair. The 35% of
24 the gross settlement of \$172,000.00 results in a total fee request of \$60,200.00. The requested
25 fee falls on the lower end of the Ninth Circuit's historical benchmark for attorneys' fees of 20%
26 to 50% of a common fund and is fair compensation for undertaking complex, risky, expensive,
27 and time-consuming litigation on a contingent basis. Further, the Class Representative signed a
28 contingent fee agreement allowing for a fee up to 35% of the total fund and reimbursement of
actual litigation costs. This is evidence that a 35% attorney fee percentage is reasonable.

1 21. Plaintiff has been represented by two law firms in this matter who have borne the
2 entire risk and costs of litigation on a pure contingency basis. Both firms brought special and
3 unique talents to the prosecution of this matter to a successful termination.

4 22. Plaintiff requests the Court find that counsels' request of \$850.00 an hour for
5 Janelle Carney of Janelle Carney – Attorney at Law, APC; \$800.00 an hour for Adam Rose,
6 and \$650.00 an hour for Manny Starr, of Frontier Law Center, are fair and reasonable. Plaintiff's
7 counsel is only paid if they win, which in this case will result in payment over two years after the
8 case was originally filed.

9 23. One difficulty in determining the hourly rate of attorneys of similar skill and
10 experience in the relevant community is the scarcity of hourly fee-paying clients in class action
11 litigation. As a practical matter, few if any consumers pay attorneys' fees on an hourly basis for
12 such extensive litigation, and thus retainer agreements in such cases are based on a contingency
13 fee relationship. Therefore, there is no customary billing rate, but the nature of class action work
14 should be strongly considered by the Court.

15 24. Courts have upheld rates as high as \$450.00 per hour (in 1993) in employment
16 matters. (*Bihun v. AT&T Information Systems, Inc.* 13 Cal. App. 4th 976 (1993), overruled on
17 other grounds in *Lakin v. Watkins Assoc. Indus.* 6 Cal. 4th 644, 664 (1993). The \$450.00
18 approved in the *Bihun* decision published in 1993 is equivalent to \$977.85 in 2024 dollars
19 according to the “inflation calculator” provided by the US Government, Bureau of Labor
20 Statistics located at <http://data.bls.gov/cgi-bin/cpicalc.pl>. A true and correct copy of a print-out
21 of the “inflation calculator” is attached hereto as **Exhibit 4**. Declarant used this same website
22 and calculator to obtain a value of the class representative awards referenced in the
23 Memorandum of Points and Authorities filed concurrently herewith.

24 25. On a pure lodestar, matter the Plaintiff's lawyers have incurred 166.20 hours for
25 total billing of \$135,620.00 the date of this declaration without paralegal time.¹ The blended
26 average hourly rate for counsel is reasonable at \$816.00. Based on the result from a monetary
27 and non-monetary basis, the attorneys' fees award should be granted. In the past, Class Counsel
28 have been approved at these billing rates with a multiplier of 2.75 to 4. At this time, there is no

¹ Declarant's total hours are 66.20 and Frontier Law Center estimates 100 hours and will file a supplemental declaration accordingly.

request for a multiplier since the requested fee application is for \$60,200.00. I personally have reviewed each time entry from JCAL for accuracy and believe to the best of my ability that each entry accurately reflects the description of work performed, the date the work was done and the attorney billing for said work. It is anticipated that Plaintiff's counsel will spend another fifteen (15) hours through the remainder of the notice period and thereafter to ensure Plaintiff and the class receive their settlement checks after final approval, including post approval filings. A true and correct copy of JCAL's detailed time entries is attached hereto as **Exhibit 5**.

26. The lawyers and Plaintiff agreed to work cooperatively and to share fees in an equitable fashion based on the work performed and value brought in the various cases. The fee split which was agreed to in writing signed by Plaintiffs and her attorneys of records is as follows:

Janelle Carney – Attorney at Law, APC (50%)	\$30,100.00
Frontier Law Center (50%)	\$30,100.00
Total Fee Request	\$60,200.00

27. All of counsel's skill and experience justify the requested rate. JCAL practices litigation with a focus on representing employees in employment matters on class action cases. The prospect of losing and incurring substantial costs has previously become reality, in both trial courts and the Court of Appeal in other wage and hour class litigation. When you lose a case at certification or at trial, there is no recovery. Unfortunately, JCAL has had losses in cases that have resulted in a loss of time, finances, and energy. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all class members.

28. This settlement is the product of tremendous effort, and a great deal of expense by the parties and their counsel. As set forth in the record before this Court, a lot of work and effort was required in order to get this excellent result. Further, Defendant will continue to operate and provide employment for current class members and future employees.

29. The attorneys' fee request is much less than the 35% sought when taking into consideration current and future benefit to employees who are now being paid properly as a result of this litigation.

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1 **ENHANCEMENT AMOUNT JUSTIFICATION CASE AUTHORITY**

2 30. In *Ingram v. The Coca Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (quoting *In*
3 *Re Southern Ohio Correctional Facility* (S.D. OH 1997) 175 F.R.D. 270, 272), the court
4 approved enhanced awards of \$300,000.00 to each named Plaintiff in recognition of the services
5 they provided to the class by responding to discovery, participating in the mediation process, and
6 taking the risk of stepping forward on behalf of the class. In a wage and hour class action case in
7 Alameda County, entitled *Beauchamp and Bethancourt v. Kaiser* consolidated with *Horne v.*
8 *Kaiser*, Case No. RG07307245, where one of the named Plaintiffs lost his job, and the other
9 named Plaintiff ran the risk of future adverse employment consequences, the court awarded
\$35,000.00 to the Plaintiff who did not lose his job, and \$75,000.00 to the employee who did.

10 31. Clearly, if courts are awarding corporate representative individual awards, then
11 there is a greater incentive to award individual plaintiffs who forego individual recovery to
12 benefit others similarly situated an award for coming forward to seek redress for all those
13 similarly affected. Plaintiff herein is seeking only \$5,000.00, which includes a general release
14 and settlement.

15 32. The Class Representative risked a potential judgment against herself if this matter
16 was unsuccessful. Under California Code of Civil Procedure §1032, a losing party is liable for
17 the prevailing party's costs. Therefore, the Class Representative could have been liable for
18 hundreds of thousands of dollars.

19 33. Because a named Plaintiff is an essential ingredient of any class action, an
20 incentive award is appropriate if it is necessary to induce an individual to participate in the suit.
21 In deciding whether such an award is warranted, relevant factors include the actions the Plaintiff
22 has taken to protect the interests of the class, the degree to which the class has benefitted from
23 those actions and the amount of time and effort the Plaintiff expended in pursuing the litigation.
24 Here, these factors are readily satisfied. There were no other class members who came forward
25 to vindicate the rights of others. If Plaintiff had not filed his present action, then no other class
26 member would have received any funds. Furthermore, in *Lo Re v. Chase Manhattan Corp.*, 1979
27 U.S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366 (SDNY 1979), the court approved payment
28 of \$229,000 out of a \$1,579,000 settlement fund (14.5% of the total settlement) to the named
plaintiffs for their individual claims. One of the factors considered by the *Lo Re* court in

determining that such payments were fair was the fact that none of the absent class members objected to the enhancements. The court held that this fact showed that the class members were not offended by these enhancements. In the present case, there have likewise been no objections to the enhancement request to date, by any of the 257 class members, and one can, therefore, infer that none of the Class Members have any disagreement with such individual enhancements. Furthermore, the requested incentive amount is 2.9% of the total gross settlement.

A potential employer is not likely to look favorably upon an applicant for a job who was a lead Plaintiff in a class action lawsuit against her employer for overtime wages and other Labor Code violations. The Class Representative's willingness to undertake this risk should be compensated. Few individuals are willing to take this risk, and Ms. Houser was a champion on behalf of others' cause with potential monetary risks which were very significant.

34. Based on the data received and assuming the opt out rate remains low, and all terms of the settlement are approved as is, the total number of class members is 257. Here, this litigation has resulted in a monetary benefit to the 257 Class Members because of the named Plaintiff; the enhancement should be awarded for this commitment and dedication to the litigation. The Plaintiff is entitled to the requested enhancement for the extensive work performed over approximately one year, and the risks she undertook and was unwilling to settle the class action until she felt it was in the best interest of the Class. The Plaintiff has always put the interest of the Class before her own interests.

35. In prosecuting this action, Plaintiff and class counsel vindicated an important public policy. The wage provisions of the Labor Code, as well as the other Labor Code sections alleged to have been violated, constitute an important public policy in this State. Moreover, the State relies on the private enforcement of these rights in order to vindicate this public policy.

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36. The Settlement is the product of Class Counsel's efforts to obtain the best possible result for the Class Members. 100% of the money will be paid out as there is no reversion to Defendant and 100% of the class members are being paid, as one class member has opted out. Further, there are no objections made to the settlement as of the date of this filing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of October 2024, at Chino Hills, California.


Janelle Carney

Exhibit 1

Jerin Wilkinson

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, July 2, 2024 4:16 PM
To: Jerin Wilkinson
Subject: Thank you for your Proposed Settlement Submission

07/02/2024 02:15:01 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Jerin Wilkinson

From: DIR PAGA Unit <no-reply@formassembly.com>
Sent: Wednesday, September 4, 2024 4:19 PM
To: Jerin Wilkinson
Subject: Thank you for your Court Order or Judgment Submission

09/04/2024 02:18:56 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 2

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9 Manny Starr (State Bar No. 319778)
10 manny@frontierlawcenter.com
11 FRONTIER LAW CENTER
12 23901 Calabasas Road, Suite 1084
13 Calabasas, CA 91302
14 Telephone: (818) 914-3433 / Facsimile (818) 914-3433

15 Attorneys for Plaintiff, Sydney Houser

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
8/21/2024 5:13:24 PM

Clerk of the Superior Court
By V. Navarro ,Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SYDNEY HOUSER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

THE FISH HOUSE VERA CRUZ, INC., a
California Corporation; and DOES 1 to 100,

Defendants.

Case No.: 37-2023-00045659-CU-OE-NC

CLASS ACTION

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

Date: August 16, 2024

Time: 1:30 pm

Dept.: N-27

Action filed: October 20, 2023

Reservation No.:

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA SETTLEMENT

1 WHEREAS, this Action is pending before this Court as a putative class action lawsuit
2 brought by Sydney Houser, the Named Plaintiff ("Plaintiff" or "Named Plaintiff") against
3 Defendant The Fish House Vera Cruz, Inc. ("Defendant"); and

4 WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the
5 settlement of the Action in accordance with the Class Action and PAGA Settlement Agreement
6 ("Settlement Agreement"), which, together with the exhibits annexed, sets forth the terms and
7 conditions for a proposed Settlement and final resolution of the Action upon the terms and
8 conditions set forth; and the Court having read and considered the Settlement Agreement and the
9 exhibits annexed;

10 NOW, THEREFORE, IT IS ORDERED:

11 1. This Order incorporates by reference the definitions in the Settlement Agreement,
12 and all terms defined shall have the same meaning in this Order as set forth in the Settlement
13 Agreement. Per the Parties' Settlement Agreement, the Court conditionally certifies the
14 following Settlement Class: All current and former non-exempt hourly individuals employed by
15 Defendant at any time from October 20, 2019, through May 31, 2024.

16 2. Effective on the date when Defendant fully funds the entire Gross Settlement
17 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
18 Payments, Plaintiff, Participating Class Members, and Class Counsel will release claims against
19 all Released Parties as follows:

- 20 • Each Class Member who does not opt out of the settlement shall be deemed to release
21 the Released Parties from any and all claims, known or unknown, that: were asserted
22 in any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the
23 LWDA (including any subsequently amended complaints or letters); and/or any and
24 all claims, that could have been asserted based on the factual allegations in all of the
25 complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any
26 amended complaints or letters). This includes but is not limited to claims for or
27 related to: pay for all hours worked/compensation due for services; calculation of the
28 regular rate of pay; meal periods; rest periods; meal and/or rest period premiums pay,

1 including the calculation of premium pay; wage statements; failure to reimburse for
2 work related out-of-pocket expenses, payment of wages at termination; maintain
3 accurate and complete records; unfair competition related to any or all of the
4 foregoing; any unpaid wages or compensation related to any or all of the foregoing;
5 restitution related to any or all of the foregoing; and any penalties, including statutory
6 or civil penalties, related to any or all of the foregoing. This release includes, but is
7 not limited to, any and all claims pursuant to: California Labor Code §§ 200, 201,
8 202, 203, 204, 218, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and
9 2802, and 2698, et seq.; Business & Professions Code § 17200; and Industrial
10 Welfare Commission Wage Order 5-01. The release shall run through May 31, 2024.

11
12 3. Named Plaintiff is appointed and designated, for all purposes, as the
13 representative of the Class and Representative Action, and the following attorneys are appointed
14 and designated as counsel for the Named Plaintiff, the Class Representatives and the Class:
15 Janelle Carney of Janelle Carney – Attorney at Law, APC and Manny Starr and Adam Rose of
16 Frontier Law Center (“Class Counsel”). Class Counsel are authorized to act on behalf of
17 Participating Class Members with respect to all acts or consents required by, or which may be
18 given pursuant to, the Settlement, and such other acts reasonably necessary to consummate the
19 Settlement. Any Objecting Class Member may enter an appearance through counsel of such
20 Class Member’s own choosing and at such Class Member’s own expense.

21 4. The Court finds on a preliminary basis that the Settlement appears to be fair,
22 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The
23 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
24 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all
25 Class Members when balanced against the potential outcomes of further litigation relating to
26 liability and damages issues. The Court further finds that the Settlement has been reached as the
27 result of serious and non-collusive, arms-length negotiations by Defendant and Plaintiff (the
28 “Settling Parties”).

1 5. A hearing (the “Settlement Hearing”) shall be held before this Court, located at
2 325 S. Melrose Drive, Vista, California, 92801, on November 22, 2024 at 1:30 p.m., in
3 Department N-27, to determine all necessary matters concerning the Settlement, including:
4 whether the proposed settlement of the Action should be finally approved by the Court; whether
5 a Judgment, as provided in the Settlement Agreement, should be entered; whether the plan of
6 allocation contained in the Settlement Agreement should be approved as fair, adequate and
7 reasonable to the Class Members; and to finally approve Class Counsel’s Fees Award and Cost
8 Award, the Class Representative’s Enhancement award, payment to the Labor and Workforce
9 Development Agency and the Settlement Administration Costs.

10 6. The Court approves, as to form and content, the Notice, attached as **Exhibit 1**.
11 The Court finds that distribution of the Notice, substantially in the manner and form set forth in
12 the Settlement Agreement and this Order, meets the requirements of due process, is the best
13 notice practicable under the circumstances, and will constitute due and sufficient notice to all
14 persons entitled to notice.

15 7. The Court appoints ILYM Group, Inc. as Settlement Administrator and directs the
16 Settlement Administrator to simultaneously mail or cause to be mailed to Class Members the
17 Notice (**Exhibit 1**) by first class mail at their last known address within fourteen (14) days of
18 receiving Class Information from Defendant.

19 8. Any Class Member (as defined by the Settlement Agreement) may choose to opt-
20 out of the Settlement or object to the Settlement as provided in the Notice by following the
21 instructions for requesting exclusion from the Settlement Class or objecting to the settlement.
22 Class Members will have forty-five (45) days from the date of mailing of the Notice in which to
23 postmark objections or a notice of opting out. All Class Members who do not timely and
24 properly notify the Settlement Administrator of their desire to opt-out of the Settlement, shall
25 become bound by all determinations of the Court, the Settlement Agreement and Judgment.

26 9. Any Class Member who did not opt-out may appear at the Settlement Hearing and
27 may object or express his/her views regarding the Settlement and may present evidence and file
28 briefs or other papers that may be proper and relevant to the issues to be heard and determined by

1 the Court as provided in the Notice. However, if a Class Member requests exclusion, the Class
2 Member shall not be heard or entitled to object, and no papers or briefs submitted by any such
3 person shall be received or considered by the Court.

4 10. As of the date this Order is signed, all dates and deadlines associated with the
5 Action shall be stayed, other than those pertaining to the administration of the Settlement of the
6 Action.

7 11. The Court reserves the right to adjourn or continue the date of the Final
8 Settlement Hearing and all dates provided for in the Settlement Agreement without further notice
9 to Class Members and retains jurisdiction to consider all further applications arising out of or
10 connected with the proposed Settlement.

11 IT IS SO ORDERED.

12 (CAF)

13 Dated: August 21, 2024

14 Cynthia A. Freeland
JUDGE OF THE SUPERIOR COURT

15
16 APPROVED AS TO FORM AND CONTENT:

17
18 Date: August 15, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

19
20 By: S/ Janelle Carney
21 Janelle Carney,
22 Attorney for Plaintiff Sydney Houser

23 Dated: August 15, 2024

BERGER & WILLIAMS

24
25 By: S/ Harvey Berger
26 Harvey Berger
27 Attorney for Defendant, The Fish House Vera Cruz, Inc.
28

Exhibit 1

1 Janelle Carney (201570)
2 Janelle@JanelleCarneyLaw.com
3 JANELLE CARNEY – ATTORNEY AT LAW, APC
4 14758 Pipeline Ave., Suite E
5 Chino Hills, CA 91709
6 Telephone: (909) 521-9609/ Fax: (909) 393-0471

7 Adam Rose (210880)
8 adam@frontierlawcenter.com
9 Manny Starr (319778)
10 manny@frontierlawcenter.com
11 **FRONTIER LAW CENTER**
12 23901 Calabasas Rd., #1084
13 Calabasas, CA 91302
14 Tel.: (818) 914-3433 / Fax (818) 914-3433

15 Attorneys for Plaintiff, Sydney Houser

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

13 SYDNEY HOUSER, on behalf of herself and all
14 others similarly situated,

15 Plaintiff,

16 v.

17 THE FISH HOUSE VERA CRUZ, INC., a
18 California Corporation; and DOES 1 to 100,

19 Defendants.

) CASE NO. 37-2023-00045659-CU-OE-NC

) CLASS ACTION

) Judge: Cynthia A. Freeland

) **NOTICE OF CLASS ACTION**
) **SETTLEMENT AND HEARING DATE**
) **FOR FINAL COURT APPROVAL**

) Action filed: October 20, 2023

1 **NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND**
2 **HEARING DATE FOR FINAL COURT APPROVAL**

3 *Houser v. The Fish House Vera Cruz, Inc.*
4 Case No.: 37-2023-00045659-CU-OE-NC
5 San Diego Superior Court

6 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
7 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

8 **You may be eligible to receive money** from an employee class action lawsuit ("Action")
9 against Defendant, The Fish House Vera Cruz, Inc. (collectively referred to as "Defendant" or
10 "Fish House") for alleged wage and hour violations, including 1. Violation of Unfair Competition
11 Law; 2. Failure to Provide Meal Breaks; 3. Failure to Provide Rest Breaks; 4. Work Expense
12 Reimbursement Violations; 5. Waiting Time Penalty; 6. Wage Statement Penalty. The Action was
13 filed by Sydney Houser, a former employee of Defendant. Defendant denies all alleged violations
14 and denies that it owes class members any damages, penalties, or other remedies. The Court has not
15 made a ruling on the merits of the case.

16 Plaintiff seeks payment for a class of all non-exempt hourly employees who worked for
17 Defendant in California at least one (1) day at any time from October 20, 2019, through May 31,
18 2024.

19 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to
20 fund Individual Class Payments (also called "Settlement Share" in this Notice), and (2) a PAGA
21 Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the
22 California Labor and Workforce Development Agency ("LWDA").

23 Based on Defendant's records, and the Parties' current assumptions, **(1) your estimated**
24 **Settlement Share is \$ _____, the total workweeks you worked during the class period**
25 **are _____, and (2) your Individual PAGA Payment is estimated to be \$ _____.** (Total Pay
26 periods you worked during the PAGA period are _____.) The actual amount you may receive likely
27 will be different and will depend on a number of factors. (If no amount is stated for your Individual
28 PAGA Payment, then according to Defendant's records you are not eligible for an Individual
PAGA Payment under the Settlement because you didn't work during the PAGA Period of October
19, 2022, through May 31, 2024.

1 If you believe that you worked more during the class period, you can submit a challenge by
2 the deadline date. See Section 4 of this Notice.

3 The Court has already preliminarily approved the proposed Settlement and approved this
4 Notice. The Court has not yet decided whether to grant final approval. Your legal rights are
5 affected whether you act or do not act. Read this Notice carefully. You will be deemed to have
6 carefully read and understood it. At the Final Approval Hearing, the Court will decide whether
7 to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and
8 Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment
9 that requires Defendant to make payments under the Settlement and requires Class Members and
10 Aggrieved Employees to give up their rights to assert certain claims against Defendant.
11 If you worked for Defendant during the Class Period and/or the PAGA Period, you have two
12 basic options under the Settlement:

13 (1) **Do Nothing.** You don't have to do anything to participate in the proposed
14 Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment.
15 As a Participating Class Member, though, you will give up your right to assert Class Period wage
16 and hour claims and PAGA Period penalty claims against Defendant.

17 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
18 Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the
19 Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class
20 Payment. You will, however, preserve your right to personally pursue Class Period wage claims
21 against Defendant. *You cannot opt-out of the PAGA portion of the proposed Settlement.*

22 **Defendant will not retaliate against you for any actions you take with respect to the
23 proposed Settlement.**

24 SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

25 **You Don't Have to Do
26 Anything to Participate in the
27 Settlement**

28 If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage and hour claims against Defendant that are covered by this Settlement (Released Claims).

You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____ (45 days)	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees, and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____ (45 days)	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class.
You can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Total Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment is based on the total workweeks you worked during the class period and your PAGA payment is based on the total pay periods, respectively. Your total workweeks and total PAGA pay periods are based on Defendant's records, as stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1 **1. WHAT IS THE ACTION ABOUT?**

2 Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating
3 California labor laws by failing to pay all wages due to failing to provide compliant, off-premises
4 meal periods and rest breaks and failure to provide accurate itemized wage statements, failing to
5 reimburse for work related expenses, and waiting time penalties. Based on the same claims,
6 Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General
7 Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action:
8 Janelle Carney of Janelle Carney – Attorney at Law, APC, Manny Starr and Adam Rose of Frontier
9 Law Center. ("Class Counsel.")

10 Defendant strongly denies violating any laws or failing to pay any wages and contend they
11 complied with all laws.

12 **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

13 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
14 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort
15 to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than
16 continuing the expensive and time-consuming process of litigation. The negotiations were
17 successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing
18 to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement,
19 Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final
20 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
21 agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

22 The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate,
23 authorized this Notice, and scheduled a hearing to determine Final Approval.

24 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

25 1. Defendant Will Pay \$172,000.00 as the Gross Settlement Amount (Gross
26 Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the
27 Administrator of the Settlement no earlier than March 1, 2025. The Administrator will use the
28 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's

1 expenses, and penalties to be paid to the California Labor and Workforce Development Agency
2 ("LWDA").

3 2. Funding of Gross Settlement Amount. Upon the Court entering an order granting
4 Final Approval of the settlement, Defendant shall fund the Gross Settlement Amount, and also fund
5 the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to
6 the Administrator, as follows:

- 7 (a) Within 60 days of the Court entering an order granting final approval or March 1,
8 2025, whichever occurs later, Defendant shall deposit \$172,000.00 with the
9 Administrator in an interest-bearing escrow account.

10 Within fourteen (14) days after Defendant fully funds the Gross Settlement Amount, the
11 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
12 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
13 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
14 Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
15 Payment and the Class Representative Service Payment shall not precede disbursement of
16 Individual Class Payments and Individual PAGA Payments.

17 The Judgment will be final on the date the Court enters Judgment, or a later date if
18 Participating Class Members object to the proposed Settlement or the Judgment is appealed.

19 2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing,
20 Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
21 from the Gross Settlement, the amounts of which will be decided by the Court at the
22 Final Approval Hearing:

- 23 A. Up to \$60,200 (35% of the Gross Settlement] to Class
24 Counsel for attorneys' fees and up to \$10,000.00 for their litigation
25 expenses. To date, Class Counsel have worked and incurred expenses on
26 the Action without payment.
27 B. Class Representative Award of up to \$5,000.00 to the Class
28 Representative for filing the Action, working with Class Counsel, and
representing the Class (in addition to any Individual Class Payment, and

any Individual PAGA Payment, the Class Representative is entitled to receive as a Participating Class Member).

C. Up to \$6,950.00 to the Administrator for services administering the Settlement.

D. Up to \$7,500.00 for PAGA Penalties, allocated 75% (\$5,625.00) to the LWDA PAGA Payment and 25% (\$1,875.00) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After deducting the amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement ("Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period total workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to [e.g., interest, and penalties] ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms.

Defendant will separately pay employer payroll taxes it owes on the Wage Portion outside the gross settlement fund. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms. It will be your responsibility to pay any tax owing on these amounts.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check

1 expires (the void date). If you don't cash it by the void date, your check will be automatically
2 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
3 Fund in your name. If the monies represented by your check are sent to the Controller's Unclaimed
4 Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

5 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as
6 a Participating Class Member, participating fully in the Class Settlement, unless you notify
7 the Administrator in writing, not later than _____, that you wish to opt-out. The easiest
8 way to notify the Administrator is to send a written and signed Request for Exclusion by the
9 _____ Response Deadline. The Request for Exclusion should be a letter from a Class
10 Member or his/her representative setting forth a Class Member's name, present address, telephone
11 number, and a simple statement electing to be excluded from the Settlement. Excluded Class
12 Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but
13 will preserve their rights to personally pursue wage and hour claims against Defendant.

14 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
15 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
16 Individual PAGA Payments and are required to give up their right to assert PAGA claims against
17 Defendant based on the PAGA Period facts alleged in the Action.

18 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
19 possible the Court will decline to grant Final Approval of the Settlement or decline to enter a
20 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
21 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay
22 any money and Class Members will not release any claims against Defendant.

23 8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the
24 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
25 Requests for Exclusion. The Administrator will also decide Class Member Challenges over total
26 workweeks, mail and remail settlement checks and tax forms, and perform other tasks necessary to
27 administer the Settlement. The Administrator's contact information is contained in Section 9 of this
28 Notice.

1 9. Participating Class Members' Release. After the Judgment is final and Defendant
2 has fully funded the Gross Settlement and separately paid all employer payroll taxes,
3 Participating Class Members will be legally barred from asserting any of the claims released under
4 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
5 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against The Fish House
6 Vera Cruz, Inc., or related entities for wages and penalties based on the Class Period facts and
7 PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
8 Settlement.

9 Participating Class Members will be bound by the following release which includes all the
10 released parties as stated in the settlement agreement on file with the court including but not limited
11 to Defendant, and their subsidiaries, facilities, parents and attorneys, and agents, and each of their
12 past, present and future officers, directors shareholders, managers, general partners, employees,
13 agents, principals, owners, founders, heirs, representatives, accountants, auditors, consultants,
14 attorneys, and insurers.:

15 Each Class Member who does not opt out of the settlement shall be deemed to
16 release the Released Parties from any and all claims, known or unknown, that: were
17 asserted in any and/or all of the complaints in the Action and/or any of Plaintiff's
18 letters to the LWDA (including any subsequently amended complaints or letters);
19 and/or any and all claims, that could have been asserted based on the factual
20 allegations in all of the complaints in the Action and/or any of Plaintiff's letters to
21 the LWDA (including any subsequently amended complaints or letters). This
22 includes but is not limited to claims for or related to: pay for all hours
23 worked/compensation due for services; calculation of the regular rate of pay; meal
24 periods; rest periods; meal and/or rest period premiums pay, including the
25 calculation of premium pay; wage statements; failure to reimburse for work related
26 out-of-pocket expenses, payment of wages at termination; maintain accurate and
27 complete records; unfair competition related to any or all of the foregoing; any
28 unpaid wages or compensation related to any or all of the foregoing; restitution
related to any or all of the foregoing; and any penalties, including statutory or civil
penalties, related to any or all of the foregoing. This release includes, but is not
limited to, any and all claims pursuant to: California Labor Code §§ 200, 201, 202,
203, 204, 218, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and
2802, and 2698, et seq.; Business & Professions Code § 17200; and Industrial
Welfare Commission Wage Order 5-01. The release shall run through May 31,
2024.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all

1 Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or
2 not they exclude themselves from the Settlement. This means that all Aggrieved Employees,
3 including those who are Participating Class Members and those who opt-out of the Class
4 Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against The Fish
5 House Vera Cruz, Inc., or their related entities based on the PAGA Period facts alleged in the
6 Action and resolved by this Settlement.

7 The Aggrieved Employees' Releases for Participating and Non-Participating Class
8 Members are as follows:

9 Each PAGA Representative Action Member, irrespective of whether he or she opts
10 out of the settlement as a Non-Participating Class Member, shall be deemed to
11 release the Released Parties from any and all claims, known or unknown, for civil
12 penalties under Labor Code section 2698 et seq. (PAGA) that: were asserted in any
13 and/or all of the complaints in the Action and/or any of Plaintiffs' letter to the
14 LWDA (including any subsequently amended complaints or letters); and/or any and
15 all claims, that could have been asserted based on any or all the factual allegations in
16 any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the
17 LWDA (including any subsequently amended complaints or letters). This release
18 includes, but is not limited to, claims for, or related to, PAGA civil penalties
19 premised on: Labor Code §§ 200, 201, 202, 203, 204, 218, 226, 226.7, 510, 512,
20 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, and 2802; failure to pay
21 overtime; failure to pay for all hours worked/compensation due for services;
22 calculation of the regular rate of pay, including failure to include all remuneration
23 into the regular rate for overtime, rest period premiums and meal period premiums;
24 failure to provide meal periods and rest periods; failure to pay meal period and rest
25 period premiums, including the calculation of the premium pay; failure to reimburse
26 for work related out-of-pocket expenses, failure to provide accurate itemized wage
27 statements; inaccurate wage statements; and failure to timely pay wages at
28 termination; The release shall run through May 31, 2024.

4. **HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

A. The estimated proportionate share of the Net Settlement Amount shall be
determined by the Settlement Administrator pursuant to the following formula:

1. To determine the Gross Individual Settlement Payment for each Participating
Settlement Class Members, the Settlement Administrator:

- a) Shall calculate the total aggregate number of weeks that all
Class Members were employed by, and worked for, Defendant as non-
exempt hourly individuals employed in California at any time during the

1 Class Period, excluding weeks when the Class Members did not work or were
2 on leave for the entire week ("Total Workweeks").

- 3 b) The value of each individual Qualifying Workweek shall then be
4 determined by dividing the Net Settlement Amount by the Total
5 Workweeks, resulting in the "Workweek Value." Each Individual
6 Settlement Share shall then be determined by multiplying the individual
7 Participating Class Member's number of Qualifying Workweeks by the
8 Workweek Value.
- 9 c) The Gross Individual Settlement Payments will be reduced by any required
10 legal deductions for each Participating Settlement Class Member. Standard
11 employer and employee payroll deductions will be made for state and federal
12 withholding taxes and any other applicable payroll deductions owed by the
13 Participating Class Members as a result of the Wage Component. The
14 Settlement Administrator will issue a check and W-2 Form to each
15 Participating Settlement Class Member for the Wage Component, as stated
16 above.

17 2. PAGA Representative Action Members estimated proportionate share of the
18 PAGA Settlement Amount shall be determined by the Settlement Administrator pursuant to the
19 following formula:

- 20 i. Individual PAGA Aggrieved Employees who worked as current and former
21 non-exempt hourly individuals employed by Defendant at any time from
22 October 20, 2022 until May 31, 2024;
- 23 ii. To calculate each Aggrieved Employee's proportionate share: The
24 Settlement Administrator shall calculate the total aggregate number of Pay
25 Periods that all PAGA Individuals were employed by, and worked for,
26 Defendant as non-exempt hourly individuals employed in California at any
27 time during the PAGA Period. The value of each individual Pay Period shall
28 then be determined by dividing the PAGA Payment Amount of \$1,875.00 by

1 the Total pay periods resulting in the "Pay Period Value." Each Individual
2 PAGA Share shall then be determined by multiplying the Individual PAGA
3 Member's number of Pay Periods by the Pay Period Value.

4 B. Total Workweek/Pay Period Challenges. The total workweeks you worked during
5 the Class Period and the number of PAGA Pay Periods you worked during the PAGA
6 Period, as recorded in Defendant's records, are stated in the first page of this Notice. You
7 have until _____ to challenge these figures. You can submit your challenge by signing
8 and sending a letter to the Administrator via mail. (See Section 9 of this Notice for the
9 Administrator's contact information.)

10 You need to support your challenge by sending copies of pay stubs or other records. The
11 Administrator will accept Defendant's calculation of your total workweeks and/or Pay Periods
12 based on Defendant's records as accurate unless you send copies of records containing contrary
13 information. You should send copies rather than originals because the documents will not be
14 returned to you. The Administrator will resolve challenges based on your submission and on input
15 from Class Counsel (who will advocate on behalf of Participating Class Members), and
16 Defendant's Counsel. The Administrator's decision is final. You cannot appeal or otherwise
17 challenge its final decision.

18 5. HOW WILL I GET PAID?

19 1. Participating Class Members. The Administrator will send, by U.S. mail, a single
20 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
21 including those who also qualify as Aggrieved Employees. The single check will combine the
22 Individual Class Payment and the Individual PAGA Payment. Please make sure the administrator
23 has your correct address. Payments will not be made until after March 1, 2025.

24 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
25 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the
26 Class Settlement (i.e., every Non-Participating Class Member). Your check will be sent to the same
27 address as this Notice. If you change your address, be sure to notify the Administrator as soon as
28 possible. Section 9 of this Notice has the Administrator's contact information.

1 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

2 Submit a written and signed letter with your name, present address, telephone number, and
3 a simple statement that you do not want to participate in the Settlement. The Administrator
4 will exclude you based on any writing communicating your request be excluded. Be sure to
5 personally sign your request, identify the Action as *Houser v. The Fish House Vera Cruz, Inc.*, and
6 include your identifying information (full name, address, telephone number, approximate dates of
7 employment, and social security number for verification purposes). You must make the request
8 yourself. If someone else makes the request for you, it will not be valid. **The Administrator must**
9 **be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the
10 Notice has the Administrator's contact information.

11 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

12 Only Participating Class Members have the right to object to the Settlement. Before
13 deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court
14 to approve. At least sixteen (16) court days before the _____ Final Approval Hearing,
15 Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes,
16 among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees,
17 Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for
18 attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class
19 Representative Service Award. Upon reasonable request, Class Counsel (whose contact
20 information is in Section 9 of this Notice) will send you copies of these documents at no cost to
21 you.

22 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion
23 for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
24 object, for example, that the proposed Settlement is unfair, or that the amounts requested
25 by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written**
26 **objections to the Administrator is _____.** Be sure to tell the Administrator what
27 you object to, why you object, and any facts that support your objection. Make sure you
28

1 identify the Action *Houser v. The Fish House Vera Cruz, Inc.*, and include your name, current
2 address, telephone number, and approximate dates of employment for Defendant and sign the
3 objection.

4 Section 9 of this Notice has the Administrator's contact information.

5 Alternatively, a Participating Class Member can object (or personally retain a lawyer to
6 object at your own cost) by attending the Final Approval Hearing. You (or your attorney)
7 should be ready to tell the Court what you object to, why you object, and any facts that support
8 your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final
9 Approval Hearing.

10 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

11 You can, but do not have to, attend the Final Approval Hearing on _____, 2024 at
12 _____ in Department N-27 of the San Diego Superior Court – North County, located at 325 S.
13 Melrose Dr., Vista, CA 92081-6695. At the Hearing, the judge will decide whether to grant Final
14 Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel,
15 Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and
16 Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either
17 personally, or virtually. Check the Court's website for the most current information.

18 It's possible the Court will reschedule the Final Approval Hearing. You should check the
19 Court's website at <https://roa.sdcourt.ca.gov/roa/> beforehand or contact Class Counsel to verify the
20 date and time of the Final Approval Hearing.

21 **9. HOW CAN I GET MORE INFORMATION?**

22 The Agreement sets forth everything Defendant and Plaintiff have promised to do under the
23 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement
24 documents is to go to the court's website at <https://roa.sdcourt.ca.gov/roa/>. You can also
25 telephone or send an email to Class Counsel or the Administrator using the contact information
26 listed below. You can also make an appointment to personally review court documents in the
27 Clerk's Office at the San Diego Superior Court courthouse by calling (619) 450-7064.

28 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

Class Counsel:

Janelle Carney, Esq.
JANELLE CARNEY – ATTORNEY AT LAW, APC
14758 Pipeline Ave., Suite E
Chino Hills, CA 91709
Tel. (909) 521-9609
Email: Janelle@JanelleCarneyLaw.com

Manny Starr, Esq.
Adam Rose, Esq.
FRONTIER LAW CENTER
23901 Calabasas Road, #1084
Calabasas, CA 91302
Telephone: (818) 914-3433
Email: Manny@frontierlawcenter.com; Adam@frontierlawcenter.com;

Settlement Administrator: ILYM Group, Inc.
Name of Company:
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund https://www.sco.ca.gov/upd_inss.html, for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Avenue, Suite E, Second Floor, Chino Hills, CA 91709-6025.

On August 15, 2024, I served the foregoing document described as:

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

on INTERESTED PARTIES in this action by placing a copy thereof enclosed in a sealed envelope addressed as stated below:

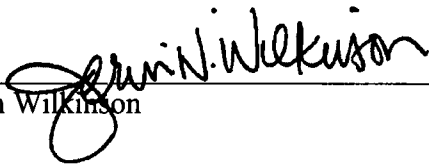
Harvey Berger, Esq.
Matthew Baker, Esq.
Berger & Williams, LLP
401 B Street, Suite 2000
San Diego, California 92101
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FRONTIER LAW CENTER
23901 Calabasas Road, Suite 1084
Calabasas, CA 91302
adam@frontierlawcenter.com
manny@frontierlawcenter.com
eservice@frontierlawcenter.com

XX BY E-MAIL: I electronically served the above-mentioned document to each of the above recipients at their respective e-mail addresses. My e-address is: Jerin@JanelleCarneyLaw.com

Executed on August 15, 2024 at Chino Hills, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jerin Wilkinson

Exhibit 3

Janelle Carney - Attorney at Law, APC

Houser v. Fish House Vera Cruz

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	SPLIT	AMOUNT	BALANCE
Ordinary Income/Expenses							
Expenses							
Court Costs							
10/23/2023	Expense		janney & janney	filing costs	citibank	1,491.44	1,491.44
12/20/2023	Expense		janney & janney	JANNEY AND JANNEY LEGA 213-6286338 CA	citibank	13.39	1,504.83
06/25/2024	Expense		janney & janney	JANNEY AND JANNEY LEGAL S	Capitol One Credit card	13.39	1,518.22
07/04/2024	Expense		janney & janney	filing costs	Capitol One Credit card	75.19	1,593.41
09/18/2024	Expense		janney & janney	filing costs	Capitol One Credit card	14.16	1,607.57
09/19/2024	Expense		janney & janney	filing costs	Capitol One Credit card	14.16	1,621.73
10/05/2024	Expense		janney & janney	filing costs	Capitol One Credit card	14.16	1,635.89
Total for Court Costs						\$1,635.89	
expert witness							
06/12/2024	Check	1342	JT Calcs	CHECK 1342	Checking (9585)	550.00	550.00
Total for expert witness						\$550.00	
Mediation							
04/11/2024	Check	1319	Jeff Fuchsman	CHECK 1319	Checking (9585)	2,500.00	2,500.00
Total for Mediation						\$2,500.00	
Reimbursable Expenses							
08/30/2024	Expense		San Diego Superior Court	SD SUPERIOR CRT ROA SAN DIEGO CA XXXX-XXXXXX-X2001	american express	3.00	3.00
09/05/2024	Expense		San Diego Superior Court	SD SUPERIOR CRT ROA	Capitol One Credit card	11.80	14.80
Total for Reimbursable Expenses						\$14.80	
Total for Expenses						\$4,700.69	
Net Income						\$ -4,700.69	

Exhibit 4

CPI Inflation Calculator

\$

in year1 month year1 year

has the same buying power as

in year2 month year2 year

Exhibit 5

Janelle Carney, Attorney at Law, APC
14758 Pipeline Avenue, Suite E, Chino Hills, CA 91709

Sydney Houser

Date: 10/29/2024

File Number: 62169/

Re: Houser v. Fish House Vera Cruz

<u>Date</u>	<u>Initials</u>	<u>Description of Service</u>	<u>Hours</u>	<u>Amount</u>
09/28/2023	JC	Houser review intake materials and prep JPA (1.5)	1.50	1,275.00
10/11/2023	JC	LWDA ltr (1.)	1.00	800.00
10/18/2023	JC	Draft of complaint (7.)	7.00	5,600.00
10/19/2023	JC	Revise Complaint and email FLC (.4)	0.40	320.00
10/20/2023	JC	Review redline changes to complaint, revise, final. Prep summons/civil case cover (.8)	0.80	640.00
12/07/2023	JC	Prepare FAC re PAGA (1.5)	1.50	1,200.00
01/16/2024	JC	Initial set of disc (1.5)	1.50	1,200.00
01/25/2024	JC	Various emails re mediation (.8)	0.80	640.00
04/30/2024	JC	Review docs served by defense for mediation and prep mediation brief and exhibits (7.)	7.00	5,950.00
05/01/2024	JC	Finalize brief w/ exhibits and email (1.)	1.00	850.00
05/02/2024	JC	Email corresp w/ admins (.8) review revised calcs and email jeff and harvey (.8); Draft MOU for Med (1.5)	3.10	2,635.00
05/07/2024	JC	Call w/ Fuchsman (1.) email JT re numbers (.4) email w/ Harvey re briefs (.4) review OPC brief (.4)	2.20	1,870.00
05/08/2024	JC	Review various emails re MOU and communications during Med (2.5)	2.50	2,125.00
05/18/2024	JC	Prepare SA (3.5)	3.50	2,975.00
05/30/2024	JC	Email Harvey w/ draft agreement (.4)	0.40	340.00
06/05/2024	JC	Review redline changes and make additional changes re WW v. Earnings (.8)	0.80	680.00
06/07/2024	JC	Email corresp w/ OPC (.4) review and finalize changes to SA and send for sig (.8)	1.20	1,020.00
06/12/2024	JC	Prepare notice of class action (1.5)	1.50	1,275.00
06/15/2024	JC	Prep Ntc of Mtx, MPA, Decl Houser, Proo and draft of JC decl in support of PA (8.5)	8.50	7,225.00
06/19/2024	JC	Ntc of settlement and Status Conference Statement (.8)	0.80	680.00
06/26/2024	JC	Review FLC decl/costs and prep email re JT; review redline changes to JC decl and finalize mpas; email opc re proposed order re PA (2.)	2.00	1,700.00
06/28/2024	JC	Email corresp w/ opc and finalize decl for filing/ email w/ AR (1.)	1.00	850.00
07/12/2024	JC	Attend CMC (5) prep amended Ntc of PA mtx (.4)	0.90	765.00
08/30/2024	JC	Check docket to see if order entered, download minute order and email opc re mailing to the class (.40)	0.40	340.00
09/04/2024	JC	Ntc of entry of order granting PA (.4)	0.40	340.00
09/05/2024	JC	Ltr to client re PA (.7)	0.70	595.00

10/29/2024

62169/

Sydney Houser

Page:2

09/20/2024	JC	Review calcs and provide approval (.8)	0.80	680.00
10/15/2024	JC	Email ILYM re status reports and request average settlement amount and largest (.4) Prep Ntc, MPA and Decl JC re FA (7.5); Supp decl of Houser (1.5); Review status of mailing of notice (.4)	9.80	8,330.00
10/29/2024	JC	Email ILYM for updated report (.4) prep judgment and proo (2.5) email opposing counsel draft (.3)	3.20	2,720.00
Total Fees			66.20	\$55,620.00

Time Summary

<u>Initials</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
JC	840.18	66.20	55,620.00

TOTAL NEW CHARGES**\$55,620.00**

PER: _____

Janelle Carney