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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
Hon. Cynthia A. Freeland
Dept. N-27

CLASS ACTION

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

Date: December 20, 2024

Time: 1:30 p.m.

Dept.: N-27

Reservation No.: 3148847

Action filed: October 20, 2023

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1 This Memorandum is submitted in support of Plaintiff Sydney Houser’s (“Plaintiff”)
2 Motion for Preliminary Approval of Class Action and PAGA Settlement. The proposed non-
3 reversionary settlement in the gross sum of \$172,000.00 is on behalf of approximately 256 class
4 members except as to any Class Members who elect to exclude themselves (“opt-out”) from the
5 Settlement Class.

6 **INTRODUCTION**

7 Plaintiff Houser filed her original complaint in San Diego County Superior Court on
8 October 20, 2023. Thereafter, Plaintiff filed a First Amended Complaint (“FAC”) on December
9 15, 2023. The parties have engaged in initial pre-certification discovery, including a sampling of
10 time and pay records and applicable employment policies of Defendant The Fish House Vera
11 Cruz, Inc. (“Defendant”).

12 Plaintiff alleges that Defendant failed to provide current and former employees with
13 accurate wage statements pursuant to Section 226 and the PAGA, failed to pay wages for all
14 hours worked, failed to pay accurate overtime wages, violated minimum wage laws, failed to
15 provide meal and rest periods, failed to timely pay all wages owed upon ending employment, and
16 engaged in unfair competition under California’s Business and Professions Code.

17 On May 8, 2024, the Parties participated in an all-day mediation presided over by Jeff
18 Fuchsman, Esq., which led to the Class Action and PAGA Settlement Agreement; a true and
19 correct copy of which is attached to the Declaration of Janelle Carney as **Exhibit 1**.

20 Class Counsel have concluded, after taking into account sharply disputed factual and
21 legal issues involved in this litigation, the risks attending further prosecution, that the substantial
22 settlement to be received pursuant to the compromise and settlement of the litigation is in the
23 best interest of the Class Members. Plaintiff recognizes the expense and length of continued
24 proceedings necessary to continue the litigation against Defendant through trial and through any
25 possible appeals. Plaintiff has also taken into account the uncertainty and risk of denial of a
26 motion for class certification, the challenges of seeking PAGA relief for all PAGA
27 Representative Action Members, the uncertain outcomes resulting from further litigation, and the
28

difficulties and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing damages for the Plaintiff and Class Members.

I. THE CLASS REPRESENTED

The Settlement Class consists of the following:

All current and former non-exempt hourly individuals employed by Defendant at any time from October 20, 2019, through May 31, 2024.

II. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. The Manual for Complex Litigation Second states at §30.44 (1985):

A two-step process is followed when considering class settlements ... if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of reasonableness for acceptable settlements. As Professor Newberg commented, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may 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." Newberg on Class Actions, 3rd Ed., 11.26.

The procedures for submission of a proposed settlement for preliminary approval are discussed at Newberg on Class Actions, 3rd Ed., §11.24 – 11.26. Newberg observes at §11.24:

1 When the Parties to an action reach a monetary settlement, they will usually
2 prepare and execute a joint stipulation of settlement, which is submitted to the
3 court for preliminary approval. The stipulation should set forth the central terms
4 of the agreement, including but not limited to, the amount of the settlement, form
5 of payment, manner of determining the effective date of settlement, and any
6 recapture clause.

7 While the details of the recovery for each Class Member are set forth in the proposed
8 Settlement Agreement filed concurrently herewith and attached to the Declaration of Janelle
9 Carney in support of Preliminary Approval, the settlement for each participating Class Member
10 and PAGA Representative Action Member is fair, reasonable, and adequate, given the inherent
11 risk of litigation, the risk relative to class certification, and the costs of litigation. (**Carney Decl.,**
12 ¶7) As explained below, the average settlement share for each Class Member is \$671.88
(\$172,000.00 / 256 employees).

13 To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a
14 class action requires court approval. The court must determine whether the settlement is fair,
15 adequate, and reasonable. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794.)

16 The Court must look to the admissible evidence regarding the following factors specified
17 in Dunk v. Ford Motor Co., supra at 1800-1801:

- 18 A. Strength of Plaintiff's case;
- 19 B. The risk, expense, complexity and likely duration of further litigation;
- 20 C. The risk of maintaining class action status through trial;
- 21 D. With respect to the amount of the settlement, the number of "cents on the
22 dollar" or percentage of total damages the settlement represents; and
- 23 E. Presence (or lack thereof) of a governmental participant.

24 Further, the Court must take into consideration the additional Kullar factor which is "the
25 most important factor is the strength of the case for the plaintiffs on the merits, balanced against
26 the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118)
27 (**Carney Decl., ¶8**). Plaintiff contends the settlement represents approximately 72.3% of the
28 reasonable value of all claims. (**Carney Decl., ¶8**). The settlement is for a maximum amount of

1 \$172,000.00 for approximately 256 class member employees. (**Carney Decl., ¶8**). Plaintiff
2 asserts that this is an excellent settlement for each class member and PAGA Representative
3 Action Member, given the fact that Defendant is a small family-owned business and settlement
4 was achieved swiftly without extensive litigation.

5 The distribution of payment to the Participating Class Members and PAGA
6 Representative Action Members will occur as set forth in ¶4.3 of the Settlement Agreement.

7 **1. Procedure for Payment of Individual Settlement Payments:**

8 Upon the Court entering an order granting Final Approval of the settlement, Defendant
9 shall fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay
10 Defendant's share of payroll taxes by transmitting the funds to the Administrator, as follows:

- 11 (a) Within 60 days of the Court entering an order granting final approval or March 1,
12 2025, whichever occurs later, Defendant shall deposit \$172,000.00 with the
13 Administrator in an interest-bearing escrow account.

14 **Payments from the Gross Settlement Amount.**

15 Within fourteen (14) days after Defendant funds the total Gross Settlement Amount,
16 including applicable payroll taxes, the Administrator will mail checks for all Individual Class
17 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
18 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
19 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
20 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
21 Service Payment shall not precede disbursement of Individual Class Payments and Individual
22 PAGA Payments.

23 The Administrator will issue checks for the Individual Class Payments and/or Individual
24 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
25 prepaid. The face of each check shall prominently state the date (not less than 180 days after the
26 date of mailing) when the check will be voided. The Administrator will cancel all checks not
27 cashed by the void date. The Administrator will send checks for Individual Settlement Payments
28

1 to all Participating Class Members (including those for whom Class Notice was returned
2 undelivered). The Administrator will send checks for Individual PAGA Payments to all
3 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
4 Employees (including those for whom Class Notice was returned undelivered). The
5 Administrator may send Participating Class Members a single check combining the Individual
6 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement
7 Administrator must update the recipients' mailing addresses using the National Change of
8 Address Database.

9 The settlement amount balanced against the merits of the Plaintiff's case is strong as all
10 factors listed supra are discussed in detail consistent with the Declaration of Janelle Carney, filed
11 concurrently herewith.

12 **III. THE PRESUMPTION OF FAIRNESS**

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
14 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
15 conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957,
16 962 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v.
17 Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do
18 not substitute their judgment for that of the proponents, particularly where, as here, settlement
19 has been reached with the participation of experienced counsel familiar with the litigation.
20 Hammon v. Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471
21 (S.D.N.Y. 1979); In re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979),
22 aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal
23 Savings & Loan Association, 79 F.R.D. 571 (E.D. Pa. 1978).

24 While the recommendations of counsel proposing the settlement are not conclusive, the
25 Court can properly take them into account, particularly where, they have been involved in
26 litigation for some period of time, appear to be competent, have experience with this type of
27 litigation, and have obtained substantial evidence from the opposing party. See Newberg,

§11.47. Here, the two Plaintiff firms involved in this action have a great deal of experience in wage and hour class action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC has been approved as Class Counsel in over 300 wage and hour class actions. Adam Rose and Manny Starr of Frontier Law Center have been approved as Class Counsel in several matters over the years. A sampling of such cases is listed in the concurrently filed declarations of Janelle Carney of Janelle Carney – Attorney at Law, APC and Adam Rose of Frontier Law Center. Class Counsel and the Plaintiff have been actively engaged in resolving this matter, hiring a damage expert at considerable cost to assist with the analysis of the financial records produced by Defendant for mediation, and to prepare for filing class certification.

The settlement amount is fair and reasonable based on a review of all objective evidence. The Parties’ assessment of the matter is based on extensive research before and during the litigation, and written exchange of information and documents.

IV. PROPOSED SHARE PER CLASS MEMBER

A. Class Member Compensation

1. Each Participating Class Member who does not request exclusion will receive payments based on the following formula:

To Each Participating Class Member: Estimated proportionate share of the Net Settlement Amount shall be determined by the Settlement Administrator pursuant to the following formula: To determine the Gross Individual Settlement Payment for each Participating Settlement Class Member, the Settlement Administrator will do the following:

- a) 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 Class Period, excluding weeks when the Class Members did not work or were on leave for the entire week (“Total Workweeks”).
- b) The value of each individual Qualifying Workweek shall then be determined by dividing the Net Settlement Amount by the Total

Workweeks, resulting in the “Workweek Value.” Each Individual Settlement Share shall then be determined by multiplying the individual Participating Class Member’s number of Qualifying Workweeks by the Workweek Value.

- c) The Gross Individual Settlement Payments will be reduced by any required legal deductions for each Participating Settlement Class Member. Standard employer and employee payroll deductions will be made for state and federal withholding taxes and any other applicable payroll deductions owed by the Participating Class Members as a result of the Wage Component. The Settlement Administrator will issue a check and W-2 Form to each Participating Settlement Class Member for the Wage Component, as stated above.

Tax Allocation of Individual Class Payments.

For tax purposes, settlement payments to Class Members shall be allocated (a) 80 percent as penalties and interest and (b) 20 percent as wages. Class Members shall be issued an IRS Form W-2 for amounts paid under this settlement deemed wages, and an IRS Form 1099 for the amounts allocated to penalties and interest. Settlement payments to PAGA Representative Action Members shall be allocated 100 percent as penalties, and PAGA Representative Action Members shall be issued an IRS Form 1099 and be responsible for payment of any and all taxes that are due as a result of their PAGA penalty settlement payments. Any representative service award approved by the Court will result in the issuance of an IRS Form 1099 to Plaintiff, who shall assume full responsibility and liability for the payment of taxes due on such award.

Effect of Non-Participating Class Members on Calculation of Individual Class Payments (i.e., those that have requested exclusion).

Those Class Members who request exclusion will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

1 **To calculate each PAGA Individual's proportionate share:**

2 PAGA Representative Action Members estimated proportionate share of the PAGA
3 Settlement Amount shall be determined by the Settlement Administrator pursuant to the
4 following formula:

5 (a) Individual PAGA Aggrieved Employees who worked as current and former
6 non-exempt hourly individuals employed by Defendant at any time from
7 October 20, 2022 until May 31, 2024;

8 (b) To calculate each Aggrieved Employee's proportionate share: The Settlement
9 Administrator shall calculate the total aggregate number of Pay Periods that
10 all PAGA Individuals were employed by, and worked for, Defendant as non-
11 exempt hourly individuals employed in California at any time during the
12 PAGA Period. The value of each individual Pay Period shall then be
13 determined by dividing the PAGA Payment Amount of \$1,875.00 by the Total
14 pay periods resulting in the "Pay Period Value." Each Individual PAGA Share
15 shall then be determined by multiplying the Individual PAGA Member's
16 number of Pay Periods by the Pay Period Value.

17 Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any
18 advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such
19 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
20 amended) or otherwise. (**Carney Decl., Exh. 1: Settlement Agreement ¶12.7**). Each Class
21 Member will receive a notice that details their estimated claim amount based on the total
22 earnings and number of pay periods during the applicable time period. In this case, Class
23 Members who do not opt out will receive an Individual Settlement Share.

24 In addition to the settlement sums paid to Participating Class Members, the named
25 Plaintiff, Sydney Houser will request a Class Representative Service Award of Five Thousand
26 Dollars (\$5,000.00), for her role as a class representative during the tenure of this litigation. The
27 Class Representative Service Award also includes Plaintiff's execution of a general release of all
28

claims, known or unknown, pursuant to Civil Code ¶ 1542 (**Carney Decl., Exh. 1: Settlement Agreement ¶6.1**). The enhancement takes into consideration the risks, time, effort, and expenses incurred by the named Plaintiff in coming forward to litigate this matter on behalf of all Class Members. It is also intended to compensate Plaintiff for her efforts in protecting the class members' rights. (See **Declaration of Sydney Houser** filed concurrently herewith.) The settlement achieved is broken down further:

- 1) Maximum Settlement Amount: \$172,000.00
- 2) Attorneys' Fees and Costs: Attorneys' Fees: \$60,200.00
(35% of the total settlement);
Costs not in excess of \$10,000.00, as
verified by Class Counsel and approved
by the Court;
- 3) Class Representative Enhancement: \$5,000.00 for Sydney Houser;
- 4) Settlement Administration Costs: Not to exceed \$6,950.00 (maximum
amount);
- 5) PAGA Payment: \$5,625.00 (75%) to the LWDA and
\$1,875.00 (25%) to the aggrieved
employees) of \$7,500.00 allocated as
PAGA penalties per LC § 2649, et seq.
(\$1,875.00 / 131 Aggrieved
Employees); and
- 6) Net Settlement Amount: \$82,350.00 to be distributed to the
settlement class members.

Each PAGA Representative Action Member, regardless of whether he or she timely requests to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims), will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment

1 (\$1,875.00) by the total number of PAGA Representative Class Members (131).

2 At the very least, the Net Settlement Amount (NSA) will be approximately \$82,350.00.
3 The NSA is based on the court approving all the requested amounts listed above. To the extent
4 any request is not approved, the Net Settlement Amount will increase accordingly.

5 Based on a review of its records as of May 31, 2024, Defendant estimate there are 256
6 Class Members, whose Individual Settlement Payments will be distributed on a pro-rata basis,
7 based on a percentage of the Net Class Settlement Fund that is equivalent to his or her Gross
8 Individual Wages Percentage. Defendant estimates there are 131 Aggrieved Employees who
9 worked a total of 2,285 PAGA Pay Periods. Fairness of the settlement is further demonstrated
10 by risks of non-certification, trial or appeal. It is extremely unlikely that the majority of the
11 current employees in the Class could or would maintain individual actions against Defendant.

12 **V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT**

13 Non-settling parties or third parties sometimes attempt to object to settlements, but the
14 right of non-settling parties to object even at the final settlement approval hearing, let alone the
15 preliminary approval hearing, is quite limited. Generally, only Class Members have standing to
16 object to a proposed settlement. “Beginning from the unassailable premise that settlements are to
17 be encouraged, it follows that to routinely allow non-Class Members to inject their concerns via
18 objection at the settlement stage would tend to frustrate this goal.” Gould v. Alleco, Inc., 883
19 F.2d 281, 284 (4th Cir. 1989).

20 As Newberg observed, even non-settling defendants in a multiple-defendant litigation
21 context have no standing to object to the fairness or adequacy of the settlement by other defendants;
22 they are limited to objecting to any terms that would preclude them from seeking indemnification
23 from the settling defendants. Newberg at §11.55.

24 **VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

25 The Parties have finalized a formal Settlement Agreement. The Parties are filing all
26 settlement and notice documents with this Motion for Preliminary Approval of Class Action and
27 PAGA Settlement: (1) Class Action and PAGA Settlement Agreement (“Settlement Agreement”)
28

1 (Exhibit 1 to the Carney Decl.); because this is a non-reversionary settlement, upon the
2 expiration of the Response Deadline, Participating Class Members will receive one (1) check for
3 their settlement amount based on the formulas listed supra. Each PAGA Representative Action
4 Member, regardless of whether he or she timely requests to opt-out of the class action portion of
5 the Settlement (i.e., the Released Class Claims), will receive a portion of the PAGA Settlement
6 Share allocated on a per capita basis. The Participating Class Members do not have to submit a
7 claim form in order to receive their share of the Settlement. The Parties respectfully request that
8 this Court approve the Notice (attached to the Settlement Agreement as Exhibit 1) to be
9 disseminated to the Class Members consistent with the manner and timing as set forth in this
10 Memorandum and in the Settlement Agreement.

11 The Parties have agreed to retain ILYM Group, Inc. ("ILYM"), as the Settlement
12 Administrator to perform the notice and other claims administration functions set forth within the
13 Settlement Agreement. (ILYM's qualifications and estimate are attached as Exhibits 2-3 to the
14 Carney Decl.) The current estimate of ILYM is the amount of \$6,950.00. Any amount less than
15 the estimated amount to administer will be returned to the Net Settlement Amount for
16 distribution to Participating Class Members.

17 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
18 **OBJECTIVE EVIDENCE**

19 The settlement that has been reached, subject to this Court's approval, is the product of
20 tremendous effort, time, and expense by the Parties and their counsel. The settlement was
21 reached after factual and legal research, informal data exchange, including an analysis of
22 Plaintiff's and a sampling of Class Members' payroll records by Plaintiff's expert, wage
23 statements, time records, review of hundreds of pages of documents, including Defendant's
24 policies, and one full-day mediation. (Carney Decl. ¶10). The settlement amount is, of course, a
25 compromise figure. It also considered the possibility that if a settlement were reached after many
26 months or even years of litigation, the great expenses and attorneys' fees of litigation would
27 cause Defendant to decrease what it was willing to offer. Furthermore, Plaintiff also took into
28

consideration the time delay and financial repercussions in the event of liability trials, numerous damages trials, and appeal by Defendant. Further, the business is a small family-owned business that is still in the process of recovery from the loss of sales as a result of the COVID pandemic.

VIII. CONDITIONAL CERTIFICATION OF THE CLASS

A. Class Certification is Appropriate in this Case

The proposed settlement seeks conditional certification of a settlement class pursuant to Rule of Court 3.769(d). The certification of the class is essential to the settlement. California public policy favors the use of the class action device. Richmond v. Dart Industries (1981) 29 C3d 462, 469. CCP §382 authorizes class suits in California when "the questions is one of the common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the courts, one or more may sue or defend for the benefit of all." To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among class members. Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th 429, 435. The "community of interest" requirement depends on three factors: (1) whether common issues of law or fact predominate; (2) whether the class representatives have claims that are typical of the class; and (3) whether the class representatives will adequately represent the class. Richmond, 29 Cal.3d at 470. Because the policy of favoring use of class actions is so strong, any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. Richmond, 29 Cal.3d at 473-75. Except in extraordinary circumstances, the trial court does not weigh the merits of the claims in ruling on a motion for class certification. Linder, supra, 23 Cal.4th at 443. The seminal California Supreme Court decision of Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 has reemphasized the procedural nature of the certification motion.

Here, class treatment is warranted for the class for purposes of this Settlement only (**Carney Decl. ¶8**). Plaintiff contends that evidence of Defendant's policies and procedures with the class member information establish that these claims should be conditionally certified at this time for Settlement only. Plaintiff contends that the evidence consists of payroll records, time

1 records, and pay stubs given to all hourly non-exempt employees.

2 **B. The Proposed Class is Ascertainable and Numerous**

3 For a class to exist, the class description must be sufficiently definite so that it is
4 administratively feasible for the court to determine whether a particular individual is a member
5 of the proposed class by reference to objective criteria. Plaintiff contends that for this settlement,
6 the class definition is sufficiently specific to enable potential class members, and the court, to
7 readily determine the parameters of the class. (See, Clothesrigger, Inc. v. GTE Corp., (1987) 191
8 Cal.App.3d 605, 617.) At approximately 256 class members as of May 31, 2024, this is
9 sufficient to satisfy numerosity requirements.

10 **C. Common Issues of Law or Fact Predominate**

11 Plaintiff contends that for purposes of settlement only, that common questions of law and
12 fact predominate. As employers, Defendants are required to pay wages to all their employees in
13 accordance with the Labor Code and IWC Wage Order 5-2001. (See, LC §§1173, 1178.5, 1182;
14 Tidewater Marine Western, Inc. v. Bradshaw (1966) 14 Cal.4th 557, 561-562). As indicated
15 supra, Plaintiff contends that the predominant legal and factual issues in this case are whether the
16 meal break claims through Plaintiff's prism of the case warrants certification for the purposes of
17 settlement. Plaintiff contends that, in assessing whether common issues predominate over
18 individual issues for the purposes of settlement, it is not necessary that the class members' claims
19 or their circumstances be identical. L.A. Fire & Police Protective League, supra, 23 Cal.App.3d
20 at 74 (in an overtime action, the fact that there were 19 different subgroups of employees did not
21 preclude finding that common issues predominated.) Plaintiff contends that for the purposes of
22 settlement, California law authorizes class actions when a defendant's corporate policies result in
23 injury to a group of plaintiffs. In Stephens v. Montgomery Ward & Co., Inc. (1987) 193
24 Cal.App.3d 411, 421 See Sav-On, supra.

25 **D. Plaintiff's Claims Are Typical of the Class Claims**

26 Plaintiff contends that typicality simply means that the representative's claims are similar
27 to those of class members, and that the interests of the class representative need not be identical
28

to those of other class members; the class representative must simply be similarly situated. B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. According to the Plaintiff, she worked pursuant to Defendant's corporate policies and procedures, which they claim were applicable to all hourly non-exempt employees. (**Houser Decl., ¶8**).

E. Adequacy of Representation

Adequacy of representation depends on whether the named class Plaintiff and the Plaintiff's attorneys qualify to conduct the proposed litigation and whether the named Plaintiff's interests are antagonistic to those of the classes. In this case, Plaintiff contends that the representative Plaintiff has no claims that are antagonistic to the class. Plaintiff's counsel is experienced and qualified. (**Carney Decl. ¶6**).

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings, presuming the Court enters its order granting approval on the date of the hearing:

- | | |
|---|---|
| 1. Deadline for Defendant to provide Class List to Settlement Administrator and Plaintiff's Counsel: | within fifteen (15) calendar days of service of Preliminary Approval Order); |
| 2. First Mailing of Notice, etc., to the Class: | within fourteen (14) days after Settlement Administrator receives Class List; |
| 3. Follow-up mailing to Class (when mail returned): | Within three (3) business days after receipt of returned mail; |
| 4. Objection/Exclusion Deadline Date: | 45 calendar days from the date Notice mailed |
| 5. Filing date for Supplemental Briefs, Attorney's Fees Request and Request for Reimbursement of Costs: | 16 court days prior to Fairness Hearing |

6. Filing date for Final Approval Papers & file any (16 court days prior to the heading
response to any objectors and Settlement for Final Approval/ Fairness
Administrator Report/declaration to be filed no later Hearing)
than:
7. Date for Final Fairness Hearing: Plaintiff requests a hearing
November 22, 2024, or after said
date.

**X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY
APPROVAL**

The Parties request this Court, as part of the preliminary approval process, to do the
following:

1. Review and approve the proposed Class Action and PAGA Settlement Agreement.
2. Conditionally certify for settlement purposes only, a Class consisting of: All current and former non-exempt hourly individuals employed by Defendant at any time from October 20, 2019, through May 31, 2024.
3. Confirm Janelle of Janelle Carney – Attorney at Law, APC and Emanuel Starr and Adam Rose of Frontier Law Center as Class Counsel; and Sydney Houser as Class Representative.
4. Conditionally approve the Class Action and PAGA settlement amount of \$172,000.00, subject to obtaining Final Approval of the class action settlement.
5. Approve an order preliminarily approving the proposed settlement on a class basis, direct notice to be given to the Class, and setting a hearing for final review of the proposed settlement on or about 70 calendar days after the hearing on the motion for preliminary approval; and
6. Approve ILYM Group, Inc. as Settlement Administrator to handle the notice procedures as set forth in its proposal. (A true and correct copy of which is

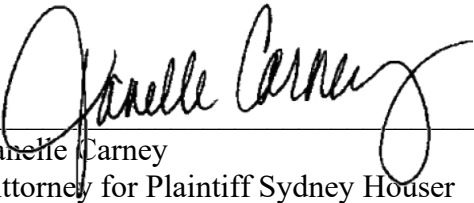
1 attached as **Exhibit 2** to **Decl. Carney**).

2 **CONCLUSION**

3 Accordingly, Plaintiff respectfully requests that the settlement be given preliminary
4 approval and notice be approved for mailing to the class. The proposed Notice is included with
5 the settlement documents attached to the Declaration of Janelle Carney filed concurrently
6 herewith.

7
8 Date: July 1, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

10
11 
12 Janelle Carney
13 Attorney for Plaintiff Sydney Houser