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and ARMANDO LEMUS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

KAILEE WHITTAKER, on behalf of herself,
the State of California, and others similarly
situated and aggrieved,

Plaintiff,

vs.

YHB LONG BEACH, LLC, a California limited
liability company; L.A. KOREANA, INC., a
California corporation; and DOES 1-100,
Inclusive,

Defendants.

CASE NO. 22STCV34593

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl
Dept. SSC-12

DECLARATION OF BRANDON
BROUILLETTE IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR ATTORNEY'S FEES
AND COSTS

[Filed Concurrently with Notice of Motion
and Motion; Declarations of Brandon
Brouillette and Jarrod Salinas; [Proposed]
Order]

Date: September 4, 2024
Time: 10:30 a.m.
Dept.: SSC-12

1 I, BRANDON BROUILLETTE, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I
3 a partner with Crosner Legal, P.C., counsel of record for Plaintiffs Kailee Whittaker and
4 Armando Lemus in the above-captioned matter. If called to testify as to the facts within, I would
5 and could competently do so.

6 **BACKGROUND/LITIGATION HISTORY**

7 2. YHB owns and operates several hotels in Southern California, including the
8 Holiday Inn and Stay Bridge Suites Long Beach Airport hotels. Plaintiff Whittaker worked at
9 these two hotels from approximately September 2020 through January 2021 as a front desk agent.
10 Plaintiff Lemus worked for Defendants from about March 28, 2022 to May 30, 2022, as a night
11 auditor/front desk associate.

12 3. On October 28, 2022, Plaintiff Whittaker filed a class action and PAGA complaint
13 against Defendant, alleging claims for failure to pay wages, including overtime wages, meal and
14 rest break violations, inaccurate wage statements, waiting time penalties, failure to reimburse
15 expenses, and unfair competition. Plaintiff Whittaker later filed an amended complaint adding
16 Plaintiff Lemus as a party-plaintiff and alleging additional claims against Defendants for violation
17 of the Long Beach Municipal Code.

18 4. Once the matter was at issue, the Parties initiated discovery and later, after
19 engaging in meet and confer discussions regarding discovery, potential law and motion, and the
20 merits of the case, ultimately agreed to attempt mediation. The Parties also agreed to an informal
21 exchange of information prior to the mediation, and Defendants provided Plaintiffs with extensive
22 informal discovery, including Plaintiffs' personnel, time, and payroll records, time records and
23 payroll records for a randomly selected sampling of Class Members, wage statement exemplars,
24 Defendants' employee handbooks, including Defendants' policies and procedures regarding the
25 payment of wages, the provision of meal and rest breaks, timekeeping policies (including
26 recording hours), sample arbitration agreements, issuance of wage statements, and termination
27 wages, as well as information regarding the number of putative Class Members who are current
28 and former employees, the number of PAGA Members, the number of workweeks throughout the

1 Class Period, and the number of pay periods throughout the PAGA Period. From this information,
2 Plaintiffs were able to analyze Defendants' liability for the claims asserted in this case and, with
3 the assistance of Plaintiffs' experts at Berger Consulting Group, the potential exposure and
4 damages.

5 5. In April 2023, the Parties participated in mediation with Steve Pearl, Esq., a
6 respected wage and hour class action mediator and, after a full day of mediation, reached the
7 proposed settlement.

8 **TERMS OF THE PROPOSED SETTLEMENT**

9 6. Under the settlement Defendants, and after applying the escalator clause, will pay
10 \$623,214.79, into a common fund, the Gross Settlement Amount (GSA"). Attorney's fees of up
11 to \$207,735.49 (33.33% of the escalated GSA), litigation costs of up to \$20,000 (only
12 \$15,077.19 is requested), service payments to Plaintiffs in the amount of \$7,500 each (\$15,000
13 total), settlement administration costs of \$9,500, and \$50,000.00 for PAGA civil penalties (of
14 which \$37,500 will go to the California Labor & Workforce Development Agency ("LWDA") for
15 the State's share of civil penalties and \$12,500 will go to eligible Aggrieved Employees), all will
16 be paid from the GSA. The remainder of around \$325,902.11 will be allocated pro rata to the
17 Class Members based on their weeks worked during the Class Period. No portion of the GSA will
18 revert to YHB.

19 7. As noted, the settlement now obligates Defendants to pay \$623,214.79 to resolve
20 the Settlement Class's claims, inclusive of attorney's fees and costs. At least \$325,902.11 from
21 the GSA will be distributed to the Participating Class Members. This is a cash settlement that
22 does not require Participating Class Members to submit a claim form to receive their settlement
23 share. Participating Class Members will receive their settlement checks automatically via First
24 Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the
25 remaining eighty percent will be allocated to non-wage premiums, penalties, and interest, which
26 allocation is consistent with YHB's potential liability as discussed below. YHB will pay any and
27 all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
28 Court's approval, any amounts not claimed (because a class member does not cash their

1 settlement check) will be forwarded to the California State Controller's Unclaimed Property
2 Fund.

3 8. Each Participating Class Member will receive a share of the Net Settlement
4 Amount based on his or her total weeks worked in California as a non-exempt employee during
5 the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated
6 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid
7 premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory
8 penalties under applicable law. These methods are intended to ensure each Class Member receives
9 a settlement award corresponding to the relative value of their potential claims. The proposed
10 allocation provides a reasonable way to compensate Class Members based on the amount of time
11 they worked for YHB and the amount unpaid wages, etc.

12 9. All Participating Class Members will release Defendants from all claims alleged in
13 the operative complaint, or that could have been brought based on the factual allegations in the
14 operative complaint during the Class Period, including all PAGA claims. The release is limited to
15 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
16 operative complaint.

17 10. As noted, the Parties allocated \$50,000 from the GSA to resolution of Plaintiffs'
18 claims under PAGA, and respectfully request that the Court approve that amount as fair,
19 reasonable and adequate, and consistent with PAGA's underlying purposes. Under PAGA,
20 \$37,500 of this amount will be paid to the LWDA as the state's share of the civil penalties,
21 and the remainder of \$12,500 will be distributed to the 211 Aggrieved Employees eligible to
22 receive a PAGA payment. As required by Labor Code section 2699(l)(2), my office notified the
23 LWDA of the settlement and the final approval hearing via its online portal. A true and correct
24 copy of the LWDA's acknowledgment of receipt is attached hereto as Exhibit 1.

25 **DUNK/KULLAR FACTORS**

26 11. Prior to settlement, the parties engaged in formal and informal discovery to
27 facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding
28 ELA's payroll practices, a random sampling of pay stubs and time records from class members,

1 applicable compensation plans, meal and rest break policies, etc., and information from
2 Defendants regarding class size and breakdown, work weeks/pay periods, rates of pay, and other
3 information used to formulate a damages model. Plaintiffs then had that information analyzed by
4 a consulting expert to assist in determining potential violation rates and other data used to
5 formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information
6 to understand the law and facts of this case and make an informed decision regarding the
7 proposed settlement and whether it is fair and reasonable.

8 12. Using that data, Plaintiffs ran various calculations and estimated Defendants'
9 theoretical maximum exposure on the class claims at about \$2.806 million. More specifically, the
10 theoretical maximum includes approximately \$13,410 in unpaid wages due to alleged time
11 rounding, around \$378,400 on the meal and \$276,300 rest break claims (both assuming a 100%
12 violation rate), about \$128,400 on the expense reimbursement claims, \$1,250,000 for alleged
13 violations of the Long Beach Municipal Code, approximately \$181,250, on the wage statement
14 claims, and waiting time penalties of about \$578,100

15 13. First, Plaintiffs contend Defendants failed to pay all wages due by rounding
16 employee time punches off to the nearest quarter hour. Coupled with Defendants' strict
17 attendance policies that required employees to be on the clock before the scheduled start of a shift
18 and after the scheduled end of a shift, the rounding policy resulted in a systematic loss of hours
19 worked and corresponding pay by the class. Plaintiffs further argued that Defendants likewise
20 rounded employee time punches for meal breaks. In response, Defendants contend they
21 accurately tracked employee time and paid class members all wages due as required under
22 applicable law. Defendants further argued its rounding policy is "fair and neutral on its face and
23 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
24 the employees properly for all the time they have actually worked,'" and accordingly is
25 permissible under applicable law.

26 14. Plaintiffs next contend Defendants failed to provide legally compliant meal and
27 rest breaks. Specifically, as to meal breaks, in addition to providing short lunches and rounding
28 off the time as alleged above, Plaintiffs further contend Defendants had a policy of understaffing

1 their hotels such that it was difficult, and sometimes impossible, to take all breaks on a fully
2 compliant basis. In fact, Plaintiffs' analysis of Defendants' time records suggests class members
3 failed to take a compliant meal period during 48.7% of all shifts worked. Plaintiffs also contend
4 Defendants failed to provide duty-free rest periods to Class Members again due to inadequate
5 staffing. Lastly, Plaintiffs allege Defendants frequently failed to pay the required premium wages
6 even when there were documented violations, although the records produced indicate Defendants
7 did start paying some premiums starting in 2020.

8 15. Defendants deny Plaintiffs' contentions, claiming they made meal and rest breaks
9 available to Class Members in compliance with California law. YHB contends its meal and rest
10 break policies are lawful and that Class Members were frequently reminded they were required to
11 take all meal and rest breaks. Defendants also contend that time records demonstrate that Class
12 Members took duty-free, timely meal and rest breaks. Defendants further contend the meal and
13 rest break policies and practices comported with the flexibility the *Brinker* court held was integral
14 to California's meal and rest period requirements. Finally, Defendants argued that Plaintiffs' meal
15 and rest break claims are not susceptible to common proof, as the claims would require
16 individualized inquiries, including whether there was an unlawful companywide policy, whether
17 employees had the opportunity to take meal and rest periods, whether they voluntarily chose to
18 forego their meal and rest periods, and whether Defendants ever prevented them from taking meal
19 and rest periods. Accordingly, YHB contends these claims are vulnerable to a ruling that class
20 treatment is not appropriate.

21 16. In the expense reimbursement claim, Plaintiffs claim they and other class members
22 regularly were required to use personal phones to text guest food orders to the kitchen and to receive
23 work-related calls/messages from supervisors to, for example, obtain authorization to work overtime.
24 Class members also had to download an app to their phones to use for clocking in/out for breaks.
25 Plaintiffs claim Defendants paid no reimbursement for this, in violation of California law. In
26 response, Defendants argued they provided employees with access to all telephones and other
27 electronics need to perform their job duties. Thus, per YHB, if employees used their personal
28 phones it was purely for their own convenience rather than business necessity and therefore

1 would not be reimbursable.

2 17. Plaintiffs also allege YHB violated various provisions of Chapter 5.49 of the Long
3 Beach, California Municipal Code regarding working conditions and pay in the hotel industry.
4 Among other things, Chapter 5.49 addresses the amount of hotel room square feet an employee
5 can be required to clean in an eight hour shift, requires written employee consent to work more
6 than 10 hours per shift, and further requires the employer to maintain records for each
7 housekeeper detailing their name, pay rates received, and the rooms each employee cleaned on
8 each shift. Chapter 5.49 provides for recovery of both actual damages and statutory penalties of
9 \$50 for each day a violation occurred. In response, Defendants countered that they fully complied
10 with all applicable local ordinances and that their housekeeping employees worked within the
11 parameters mandated by the Long Beach Municipal Code.

12 18. As a result of the above alleged violations, Plaintiffs allege Defendants failed to
13 provide accurate wage statements and failed to timely pay all wages that were due and owing
14 upon separation of employment. In response to these derivative claims, Defendants emphasized
15 that, should the primary claims fail, Plaintiffs' claim for wage statement violations and waiting
16 time penalties would also fail. Defendants further argued they would not be liable for waiting
17 time penalties because a "good faith dispute" exists over the payment of past wages. Further,
18 Defendants contend Plaintiffs would have to prove Defendants "willfully" failed to pay Class
19 Members appropriate wages due upon separation of employment.

20 19. As far as potential PAGA liability, the theoretical civil penalties likely are around
21 \$1.08 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor
22 Code sections at issue. As with the class claims, Plaintiffs discounted the potential PAGA
23 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
24 wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the
25 Parties allocated \$50,000 to PAGA penalties. Plaintiffs submit this amount is reasonable under
26 the circumstances and in line with comparable settlements in other wage and hour class actions in
27 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
28 settlement, and will be able to weigh in as necessary.

1 20. If the case had not settled, the risk and expense associated with litigation would
2 have been extremely time consuming and expensive. Merits discovery and trial preparation
3 would have been extensive. For example, our attorneys have been involved in smaller sized
4 class/representative cases where, after class certification, the parties undertook merits discovery
5 and still took over 40 depositions and interviewed dozens of additional witnesses before
6 settlement. It is also common now in wage and hour class/representative actions for both sides to
7 retain experts to assess various issues in a case. For instance, it is possible this matter would have
8 required one or more experts, or perhaps a special master, to review and analyze the defendant's
9 time and payroll records in order to calculate the to calculate the exact amount of pay lost to
10 Defendant's time keeping policies, or to undertake an analysis of these issues via a survey and
11 statistical analysis. Indeed, my office found this necessary just for purposes of preparing for
12 mediation. The cost of such experts easily can run into the tens of thousands of dollars.

13 21. The settlement obviates the significant risk that this Court may find any kind of
14 class or representative resolution unachievable or deny certification of all or some of Plaintiffs'
15 claims. Furthermore, even if Plaintiffs obtained certification of all or some of the claims,
16 continued litigation would be lengthy and expensive as the parties pursued merits discovery, a
17 probable motion to decertify, as well as trial and possible appeals, and would substantially delay
18 any recovery by the class with no assurance of recovering significantly more than the proposed
19 settlement. We also recognize proving the amount of wages and penalties due each Class Member
20 would be an expensive, time-consuming, and uncertain proposition. Finally, should the litigation
21 continue and Plaintiffs not prevail at trial, the class members will receive nothing. As with any
22 case, a settlement discount was warranted to account for the fact that continued litigation would
23 have resulted in increased costs and attorney's fees, and would have resulted in significant delay
24 while the parties fought over class certification, merits discovery, trial, and potential appeals, all
25 of which would not necessarily confer significant additional benefit to the class members. While I
26 remain confident in and committed to the merits of Plaintiffs' case, we also are realistic about the
27 risks posed by each stage of the case going forward.

28 22. Thus, Plaintiffs and I discounted the value of the class claims consistent with the

1 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
2 greater benefit if the litigation continued. We concluded – in light of these very real and
3 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
4 was in the best interests of the class. The overall \$550,000 recovery represents a significant
5 percentage of Defendants’ potential exposure and, given Defendants’ multi-layered defenses and
6 all other potential risks of continued litigation, a total recovery for the class of \$550,000, which
7 will result in average award of some \$____ per class member, plus additional sums under PAGA,
8 is a significant result well within the range of reasonableness considering all potential outcomes,
9 and it will provide direct monetary awards to all Class Members without further delay.

10 **SETTLEMENT ADMINISTRATION COSTS**

11 23. The settlement provides for a payment to Phoenix from the GSA for its services as
12 the Settlement Administrator. As set forth in the Declaration of Jarrod Salinas, Phoenix has
13 performed and will continue to perform its required duties through final distribution of the
14 settlement funds, and incurred \$9,500.00 in fees and expenses. Accordingly, Plaintiffs
15 respectfully requests the Court approve payment of \$9,500 to Phoenix from the GSA.

16 **PLAINTIFFS’ ENHANCEMENT AWARDS**

17 24. Pursuant to the terms of the settlement, Plaintiffs seek modest incentive awards of
18 \$7,500 each for their service in bringing these claims on behalf of the Class. These requests are
19 reasonable given the risks they undertook on behalf of the Class Members. By contacting and
20 retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the
21 absent Class Members, while shouldering the risk of being liable for Defendants’ litigation costs.
22 Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit
23 (discoverable even through a simple google search) for the benefit of other employees, placing
24 themselves at risk of discrimination by future prospective employers. As set forth in more detail
25 in their respective declarations filed at preliminary approval, among taking many other actions
26 assisting in the successful litigation of this case, Plaintiffs provided substantial factual
27 information and documents to my office, attended numerous meetings/phone conferences with
28 myself and my colleagues to discuss the case, and kept abreast of all significant developments.

ATTORNEY'S FEES AND COSTS

25. Per the terms of the settlement, up to 33.33% of the gross amount is allocated to payment of reasonable attorney's fees, or \$207,735.49. Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case for the reasons addressed herein.

26. Over the two plus years Crosner Legal has represented Plaintiffs with respect to this matter, our efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other YHB employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) drafting a first amended complaint; (6) propounding initial written discovery, (7) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (9) drafting a mediation brief and accompanying damages model after review and analysis of Defendants' informal discovery production; (10) attending an all-day mediation; (11) negotiating and drafting the settlement agreement and related documents; (12) drafting an amended complaint to effectuate the settlement; (13) drafting the motion for preliminary approval, and attending the hearing; (14) opposing a class member's motion to intervene; (15) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (16) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (17) extensive communications with the Plaintiffs regarding case status, case investigation and document review, mediation, and settlement terms. A true and correct summary of Crosner Legal's work performed and time expended on this matter is attached hereto as

1 Exhibit 2. Additionally, we will incur additional time following final approval to, inter alia,
2 respond to class member inquiries, work with the Settlement Administrator on the distribution of
3 settlement funds, and on the compliance hearing.

4 27. I am a graduate of Loyola Law School, Los Angeles, from which I received a *juris*
5 *doctorate* degree in 2009. Prior to attending law school, I attended the University of Southern
6 California, from which I received a *bachelors of science* in Business Administration in 2006.

7 28. I have been a Partner at Crosner Legal since February 1, 2023. Prior to joining
8 Crosner Legal, I was a Senior Associate and Team Director of a Wage and Hour Litigation Team
9 at Capstone Law APC, which I originally joined as an associate attorney in May 2016.

10 29. Since being admitted to the California State Bar in 2010, my entire legal career has
11 been dedicated to protecting employee and consumer rights through the prosecution of class
12 action and representative actions filed on behalf of plaintiffs in class actions and statewide
13 representative actions. Throughout my career I have managed or co-managed more than 100
14 class action and PAGA representative cases, from initial filing of the complaint through final
15 resolution.

16 30. In particular, I have served as class counsel in several certified class action cases,
17 including:

18 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of
19 non-exempt hourly employees who worked for Defendants in California)

20 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.
21 BC501521 (class counsel for certified class of last-mile delivery drivers who were
22 alleged to be misclassified as independent contractors)

23 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County
24 Superior Court, Case No. RG21099519 (class counsel for certified classes of non-
25 exempt hourly employees who worked for Defendants in California)

26 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for
27 certified issue classes consisting of hourly employees who worked at Staples Center
28 and Nokia Theater)

1 31. The following is a representative sample of settlements in wage and hour class
2 action and PAGA representative cases in which I was listed as an attorney of record and either
3 managed, or co-managed with attorneys at my firm and other co-counsel:

- 4 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15
5 million global PAGA settlement on behalf of hourly employees statewide for alleged
6 Labor Code violations.)
- 7 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C
8 15-02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees
9 for Labor Code violations.)
- 10 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone
11 (\$4.75 million class and PAGA settlement on behalf of class of non-hourly employees
12 for Labor Code violations.)
- 13 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
14 employees who worked at concert venues in California for alleged Labor Code
15 violations)
- 16 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337
17 (\$1.75M class settlement on behalf of group of hourly employees who worked at
18 Oakland Coliseum for alleged Labor Code violations)
- 19 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No.
20 30-2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of
21 hourly employees who worked at Honda center in Anaheim California for alleged
22 Labor Code violations)
- 23 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No.
24 CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees
25 statewide for alleged Labor Code violations)
- 26 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-
27 CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees
28 statewide for alleged Labor Code violations)

- 1 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement
2 on behalf of hourly employees statewide for alleged Labor Code violations)
- 3 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
4 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of
5 independent contractor last-mile delivery drivers alleged to be misclassified)
- 6 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M
7 class and PAGA settlement on behalf of statewide group of hourly employees for
8 alleged Labor Code violations)
- 9 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983
10 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees
11 who worked at retail stores in California for alleged Labor Code violations)
- 12 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-
13 2021-00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of
14 hourly employees who worked at Defendant's McDonald's franchises in California for
15 alleged Labor Code violations).
- 16 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No.
17 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of
18 hourly employees who worked at Defendant's McDonald's franchises in California for
19 alleged Labor Code violations).
- 20 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No.
21 19STCV18977 (\$1.75M class and PAGA settlement on behalf of statewide group of
22 hourly employees who worked at Defendant's restaurants in California for alleged
23 Labor Code violations)
- 24 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
25 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly
26 employees for alleged Labor Code violations).

27 32. In addition, below are settlements in consumer class action cases in which I was
28 listed as an attorney of record and either managed, or co-managed with attorneys at my firm:

1 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M
2 Class settlement on half of thousands of borrowers in California, Florida, and Texas
3 for UCL violations premised on improper late fee collections)

4 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in
5 landmark case that established the ‘McGill rule’ precluding the waiver of public
6 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
7 settlement on behalf of consumer who sued for damages and class injunctive relief
8 stemming from marketing of credit protector plan)

9 33. Finally, I have been selected by my peers as a Super Lawyers ‘Rising Star’ every
10 year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active
11 lawyers practicing within the State of California

12 34. Zachary Crosner is a 2010 graduate of University of San Diego School of Law. He
13 has some thirteen years of experience as a practicing attorney, all of which have focused on
14 litigation of employment, labor law, consumer, and class action claims. Following graduation, he
15 immediately began working for a nationally recognized plaintiff-side complex litigation firm,
16 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer
17 attorneys and recipients of trial attorneys of the year awards. He also worked for former CAALA
18 and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole associate
19 attorney. During his tenure at these firms, he focused on advocating for the rights of consumers
20 and employees in class action litigation, civil rights and employment litigation, catastrophic
21 injuries, insurance bad faith, and appellate litigation.

22 35. In 2013, he founded the law firm of Crosner Legal, P.C., which since its inception
23 has focused almost exclusively on wage and hour class actions and other labor and employment
24 law cases representing plaintiffs. Currently, over ninety percent (90%) of the firm’s practice is
25 dedicated exclusively to the prosecution of wage and hour class actions, and the law firm is
26 currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage
27 and hour class actions and/or PAGA representative actions in both federal and state courts
28 throughout California.

1 36. Mr. Crosner currently is an executive board member of the Wage and Hour
2 Committee and the Legislative Committee for the California Employment Lawyers Association; a
3 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
4 Wage and Hour Committee member and Class Action Committee member for the National Trial
5 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
6 Justice Institute. He also was selected by Super Lawyers as a “Southern California Rising Star”
7 for employment and labor law for 2018-2020.

8 37. Jamie Serb graduated from the University of California, San Diego in 2004 and
9 graduated from California Western School of Law in 2013, and has been a member of the
10 California Bar since 2013. She gained extensive experience in wage and hour litigation,
11 beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley &
12 Mara Law Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021
13 as an associate attorney. She has handled wage and hour class actions and PAGA lawsuits for
14 over six (6) years and has assisted in obtaining millions of dollars for employees during her years
15 of practice.

16 38. Kiara Bramasco received her undergraduate degree, magna cum laude, from
17 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
18 School in 2018. She then spent several years with well-known plaintiff’s firm Moss Bollinger,
19 first as a law clerk and then as an associate, where her practice focused on employment law,
20 particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021.

21 39. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and
22 her law degree from George Washington University in 2007. She has been affiliated with my
23 firm since 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses
24 almost exclusively on wage and hour class and representative actions. She has spent her entire
25 career representing plaintiffs in employment litigation, including several years as an associate at
26 well-known plaintiff’s firm Carlin & Buchsbaum.

27 40. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
28 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to

1 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
2 Ross Dixon & Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where his
3 practice focused on complex business, employment, and insurance coverage disputes. In 2003, he
4 became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage
5 and hour class action firms in California. In 2008, he founded the Law Offices of J. Kirk
6 Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C. Since
7 2003, his practice has focused on representing plaintiffs in wage and hour and consumer law
8 matters, including both class actions and individual matters. He has served as class/lead counsel
9 in over 50 wage and hour class and PAGA actions.

10 41. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
11 action settlements while serving as lead class counsel in recent years, including but not limited to
12 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
13 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
14 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
15 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
16 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
17 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
18 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
19 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
20 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
21 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a
22 \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*,
23 Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action
24 settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753
25 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021
26 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
27 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
28 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1

1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
2 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
3 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
4 Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*
5 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million
6 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
7 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action
8 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
9 Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v.*
10 *Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a
11 \$1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No.
12 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3 million wage and hour class action
13 settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super.
14 Court); a \$1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case
15 No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a \$1.19 million dollar wage and hour class
16 action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367
17 (Los Angeles Cty. Super. Ct.).

18 42. Based upon the qualifications and experience set forth above, the following hourly
19 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M.
20 Crosner \$800/hour, Jamie K. Serb and Brandon Brouillette, \$750/hour, Kiara Bramasco
21 \$650/hour, Kirk Donnelly, \$900/hour, and Branden Hamilton \$600/hour.

22 43. Plaintiffs request the Court apply the above hourly billing rates in this case, as
23 these rates are reasonable in the California legal market for attorneys handling wage and hour
24 class actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side
25 wage and hour class action firms in the Bay Area, Los Angeles and San Diego markets, for
26 partner-level attorneys with experience comparable to mine and to that of my colleagues. These
27 rates have range from \$650 to \$850 per hour for calendar years 2017-2021. Some examples
28 include attorney Matthew Matern of Matern Law Group in Los Angeles, with approximately 26

1 years of experience \$850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC with
2 approximately 25 years of experience \$850/hour (2021), Michael Malk of Malk APC in Los
3 Angeles, with approximately 16 years of experience \$650/hour (2018), Michael Singer and Isam
4 Khoury of Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience
5 respectively, both \$825/hour (2018), Jason Ehrlich of McCormack & Ehrlich LLP in San
6 Francisco, with approximately 17 years of experience \$750/hour (2017), and James Kawahito of
7 Kawahito Law Group in Los Angeles, with approximately 16 years of experience \$750/hour
8 (2020).

9 44. The requested rates also comport with the adjusted Laffey Matrix, which provides
10 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself and Mr
11 Crosner, is over \$800. The adjusted Laffey Matrix may be found at
12 <http://www.laffeymatrix.com/see.html>. Similarly, the December 8, 2008 article, “Billable Hours
13 Aren’t the Only Game in Town Anymore,” NATIONAL LAW JOURNAL, which set forth the
14 following hourly billing rates as reported by Sheppard, Mullin, Richter & Hampton, a leading
15 firm in the defense of wage-and-hour class actions that I have opposed when litigating wage-and-
16 hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year -
17 \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455.36

18 45. After the analysis above, Crosner Legal’s lodestar is \$161,495.00, based on 215.2
19 attorney hours spent litigating this case through the filing of this motion. On a lodestar basis, the
20 fee request represents the base lodestar with a very reasonable 1.29 enhancement, which is
21 entirely in line with California law.

22 46. As noted, Crosner Legal has represented Plaintiffs for over two years with respect
23 to this matter and has expended a significant amount of time and resources in that representation.
24 The firm agreed to litigate this case on a purely contingent basis and in so doing assumed
25 considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with
26 these cases in general. Under all relevant factors (as outlined herein and in the accompanying
27 memorandum), Plaintiffs respectfully requests the Court award her counsel the requested fees of
28 \$207,735.49 based on the common fund theory with a corresponding lodestar cross-check and

1 modest 1.29 enhancement.

2 47. This case posed considerable contingent risk, for the reasons addressed above; if
3 there had been recovery then Crosner Legal would not have received any fees for the time
4 invested litigating the case. Throughout the pendency of this case, the firm has received no
5 compensation or reimbursement for its efforts representing Plaintiffs and the Class.

6 48. Crosner Legal assumes a great deal of contingent risk in every wage and hour class
7 action it undertakes. Attorneys at my firm have been involved in a number of cases where
8 plaintiffs and their counsel invested hundreds of hours to time and tens of thousands in costs with
9 no return. For example, in a matter alleging misclassification on behalf of a putative class of
10 assistant managers at major restaurant chain, after three years of exceptionally adversarial
11 litigation and the investment of over 1,000 hours of attorney time and over \$100,000 in costs, the
12 trial court denied plaintiffs' motion for class certification. In another misclassification case on
13 behalf of assistant managers at large restaurant chain, the parties reached a settlement after three
14 years of litigation, secured preliminary approval and completed the notice process to the
15 settlement class, only to have the defendant file for bankruptcy a few days before the final
16 approval hearing. Lastly, in a matter against a large regional bank seeking expense
17 reimbursement of behalf of outside salespersons, after more than a year of combative litigation
18 and shortly before plaintiff's class certification motion was due, the defendant was taken over by
19 federal regulators. In each of these instances the plaintiff's firm received nothing despite the
20 investment of hundreds of hours of attorney time and thousands of dollars in out-of-pocket costs.

21 49. Class Counsel's litigation costs and expenses are capped at \$20,000 under the
22 terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred
23 by my firm is set forth below:

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$2,756.62
Mediation Fees	\$7,500.00
Case Anywhere	\$681.30
Expert Witness Fees	\$3,975.00
Postage/Overnight/Fax	\$89.27

PAGA Filing Fee	\$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$15,077.19

50. I therefore respectfully request the Court approve payment of \$15,077.19 in litigation costs and expenses to my firm.

51. For all the foregoing reasons, I respectfully request that the Court approve the settlement in all particulars.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of August 2024, at Los Angeles, California.


 Declarant

EXHIBIT

1

EXHIBIT

2

**Kailee Whittaker, et al. v. YHB Long Beach, LLC, et al.
(Los Angeles Superior Court Case No. 22STCV34593)**

Crosner Legal Time Report

Tasks	Zachary Crosner	Brandon Brouillette	Kiara Bramasco	Jamie Serb	Branden Hamilton	Kirk Donnelly
Pre-filing Case Investigation	12.2	0.0	3.9	0.0	0.0	0.0
Pleadings and Law and Motion	3.7	17.4	1.5	0.0	22.4	11.7
Discovery and Post-Filing Investigation	5.2	0.0	0.0	0.0	0.0	0.0
Court Appearances	0.0	2.6	0.0	0.0	0.0	0.0
Case Management; Litigation Strategy & Analysis	13.1	6.2	0.0	56.8	0.0	1.0
Mediation and Settlement	7.6	42.4	0.0	7.5	0.0	0.0
Total Hours	41.8	68.6	5.4	64.3	22.4	12.7
Hourly Rate	\$800	\$750	\$650	\$750	\$600	\$900
Lodestar	\$33,440.00	\$51,450.00	\$3,510.00	\$48,225.00	\$13,440.00	\$11,430.00

Total Hours: 215.2
Total Lodestar: \$161,495.00