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and on behalf of all others similarly situated
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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 VIJAY SHETH, as an individual and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 ICON BURGER ACQUISITION LLC, a
Delaware limited liability company;
16 SMASHBURGER ACQUISITION-SO CAL
LLC, a Delaware limited liability company;
17 SMASHBURGER ACQUISITION – SAN
DIEGO LLC, a Delaware limited liability
18 company; SMASHBURGER
ACQUISITION – SACRAMENTO LLC, a
19 Delaware limited liability company; and
20 DOES 1-100, inclusive,

21 and DOES 1-100, inclusive,

22 Defendants.
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CASE NO.: 22STCV09093

Assigned for All Purposes to:
Hon. Elaine Lu
Dept SSC-9

**DECLARATION OF CHAD SAUNDERS IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY’S FEES AND COSTS**

DATE: April 15, 2025

TIME: 10:00 a.m.

DEPT.: SSC-9

I, CHAD SAUNDERS, declare as follows:

1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal, PC, counsel of record for Plaintiff in the above-captioned matter. If called to testify as to the facts within, I would and could competently do so.

BACKGROUND

2. Defendants own and operate Smashburger restaurants, including at least 12 restaurants in California. During the relevant time frame, Defendants employed Plaintiff as a non-exempt Cook and Front of House Manager at a restaurant in Redondo Beach, although Plaintiff occasionally worked at restaurants in Carson, Manhattan Beach, and San Diego as well.

3. Plaintiff timely exhausted his administrative remedies with the LWDA by submitting his PAGA notice on March 4, 2022. Plaintiff did not receive notice from the LWDA that it intended to investigate the alleged violations outlined in his PAGA letter. Consequently, Plaintiff filed his class action lawsuit on March 14, 2022, alleging causes of action for unpaid minimum wages, unpaid overtime wages, failure to provide meal and rest breaks, wage statement violations, business expense reimbursements, and unfair competition. Plaintiff filed a separate PAGA lawsuit on May 11, 2022, based on the same alleged Labor Code violations. Both matters were consolidated by stipulation on August 8, 2022, and are currently pending before this Court.

4. In October 2022, the Parties agreed to pursue an early mediation and to forego formal discovery pending mediation. The Parties then engaged in extensive informal discovery and Defendants provided Plaintiff with substantial documents and information, including Plaintiff's personnel, time, and payroll records, time records and payroll records for a randomly selected sampling of about 20% of the Class Members (Plaintiff's experts at Berger Consulting suggested this amount would be statistically reliable) wage statement exemplars, Defendants' employee handbooks, including Defendants' policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, sample arbitration agreements, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number

1 of pay periods throughout the PAGA Period. From this information, Plaintiff analyzed Defendants’
2 potential liability and, with the assistance of Plaintiff’s experts at Berger Consulting Group, the
3 potential exposure and damages

4 5. The Parties then scheduled a mediation with the Hon. Steven Denton (Ret.) in
5 August 2023, which mediation proved unsuccessful. Nevertheless, the Parties remained optimistic
6 regarding settlement and scheduled a second mediation with Todd Smith, Esq., another respected
7 wage and hour class action mediator. The Parties then scheduled a mediation with Todd Smith,
8 Esq., a respected wage and hour class action mediator. The Parties mediated with Mr. Smith in
9 January 2024 and, after a full day of arms-length negotiations, finally reached agreement on all
10 major issues.

11 **SUMMARY OF THE PROPOSED SETTLEMENT**

12 6. Under the settlement, Icon will pay \$989,940 into a common fund, the Gross
13 Settlement Amount (“GSA”). Attorney’s fees of up to \$329,947 (one-third of the GSA), litigation
14 costs of up to \$20,000 (only \$14,886.34 is requested), settlement administration costs of
15 \$19,610.00, and a service award to Plaintiff of no more than \$5,000, and \$25,000.00 for PAGA
16 civil penalties (of which \$18,750 will go to the California Labor & Workforce Development
17 Agency (“LWDA”) for the State’s share of civil penalties and \$6,250 will go to eligible Aggrieved
18 Employees), all will be paid from the GSA. The remainder of around \$595,496 will be allocated
19 pro rata to the Class Members based on their weeks worked during the Class Period. No portion
20 of the GSA will revert to Defendants.

21 7. As noted, the settlement obligates Defendants to pay \$989,940 to resolve the
22 Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$595,496 from the GSA
23 will be distributed to the Participating Class Members. This is a cash settlement that does not
24 require Participating Class Members to submit a claim form to receive their settlement share.
25 Participating Class Members will receive their settlement checks automatically via First Class
26 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
27 eighty percent will be allocated to non-wage premiums, penalties, and interest, which allocation is
28 consistent with Icon’s potential liability as discussed below. Defendants will pay any and all

1 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
2 Court's approval, any amounts not claimed (because a class member does not cash their
3 settlement check) will be forwarded to the California State Controller's Unclaimed Property fund.

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

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

18 **PAGA and Notice to the LWDA**

19 10. As noted, the Parties allocated \$25,000 from the GSA to resolution of Plaintiff's claims
20 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
21 adequate, and consistent with PAGA's underlying purposes. Per PAGA, \$18,750 of this
22 amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder
23 of \$6,250 will be distributed to the 1,175 Aggrieved Employees eligible to receive a PAGA
24 payment. Attached hereto as Exhibit 1 is a true and correct copy of the LWDA's
25 acknowledgment of receipt.

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The Proposed Settlement Merits Final Approval, as the Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks

11. Prior to settlement, the parties engaged in informal discovery to facilitate settlement discussions. Thus, Plaintiff reviewed documents and information regarding Defendants' payroll practices, a random sampling of pay stubs and time records from class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendants regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable.

12. Plaintiff first asserts Defendants' failed to pay for all hours worked, and particularly that Defendants frequently "edited" employee time punches to reduce hours worked in order to avoid paying overtime and/or meal break premiums. The practice of editing Class Members' actual hours worked systematically underpaid them for both regular and overtime hours. Plaintiff contends the evidence showing unpaid hours worked will be presumed accurate and Defendants' records showing edits made to their time will support that presumption, which Defendants will be unable to rebut. On the other hand, Defendants argued their time keeping policies fully complied with the law, that they accurately recorded and paid for all hours worked and, that to the extent any changes were made to employee time, it was rare and done for legitimate reasons such as correcting employee errors, correcting instances when employees forgot to clock out, etc. Without considering any of Defendants' defenses to certification or on the merits, and assuming one hour of "off the clock" work per week, Plaintiff's expert calculated Defendants' maximum exposure here at about \$936,900.

13. Plaintiff next contends Defendants failed to provide legally compliant meal and rest breaks. Specifically, although employees consistently worked shifts of at least five and a half hours

1 or more, they did not receive legally compliant meal periods for several reasons. For example, the
2 time records show that for 85.1% of shifts between 5-6 hours do not reflect a meal period and
3 Plaintiff contends that not all employees had a signed waiver in place. Plaintiff also contends class
4 members frequently had to work through part or all their meal periods due to understaffing, pressure
5 to complete their job duties before having a meal, and instructions from supervisors to take short
6 meal periods or to skip meal periods completely, and again that Defendants altered time records to
7 avoid paying meal period premiums.

8 14. Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks
9 available to Class Members in compliance with California law. Defendants contend their meal and
10 rest break policies are lawful and that Class Members were frequently reminded via training and
11 supervisors that they were required to take all meal and rest breaks. Defendants also contend that
12 time records demonstrate that Class Members took duty-free, timely meal and rest breaks. They
13 further emphasized all employees had a signed meal period waiver in place and also employees can
14 and did verbally waive meal periods, particularly when working less than a six hour shift.
15 Defendants contend their meal and rest break policies and practices comported with the flexibility
16 the *Brinker* court held was integral to California's meal and rest period requirements. Finally,
17 Defendants argue that Plaintiff's meal and rest break claims are not susceptible to common proof,
18 as the claims would require individualized inquiry, including whether there was an unlawful
19 companywide policy, whether employees had the opportunity to take meal and rest periods,
20 whether they voluntarily chose to waive meal and rest periods, and whether Defendants ever
21 prevented them from taking meal and rest periods. Accordingly, Defendants contend these claims
22 are vulnerable to a ruling that class treatment is not appropriate. Without taking into consideration
23 any of Defendants' defenses to certification or on the merits, Plaintiff calculated Defendants'
24 maximum exposure for the meal and rest break claims as approximately \$926,500.

25 15. Plaintiff also contends Defendants required Plaintiff and the Class Members to use
26 their personal cell phones for work related purposes including communicating with supervisors
27 before and after their shifts. However, Defendants failed to reimburse employees for the use of their
28 personal cell phones *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, it was

1 held that § 2802 requires employers to always reimburse employees who are required to use
2 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. On
3 the other hand, Defendants argued there was no reason for employees to use their own phones while
4 working, and any other use was purely for personal preference and therefore not reimbursable.
5 Without taking into consideration any of Defendants' defenses to certification or on the merits,
6 Plaintiff calculated Defendants' maximum exposure for expense reimbursement as about \$87,500.

7 16. Plaintiff's claims for inaccurate wage statements and waiting time penalties are
8 derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage
9 statements and waiting time penalties would also fail. Defendants also contend they would not be
10 liable for waiting time penalties because a "good faith dispute" exists over the payment of past
11 wages. Further, Defendants contend Plaintiff would have to prove that Defendants "willfully" failed
12 to pay Class Members appropriate wages due upon separation of employment. Defendants contend
13 that any failure to pay wages upon separation was not willful. Without taking into consideration
14 any of Defendants' defenses to certification or on the merits, Plaintiff calculated Defendants'
15 maximum exposure for wage statement penalties as \$966,700 and waiting time penalties as
16 \$2,391,600.

17 17. As far as potential PAGA liability, the theoretical civil penalties likely exceed \$5
18 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
19 sections at issue. As with the class claims, Plaintiff and I discounted the potential PAGA penalties
20 based on Defendants' various defenses on the merits and also accounted for the Court's wide
21 discretion to reduce such penalties, or to decline to award penalties at all. I submit this amount is
22 reasonable under the circumstances and in line with comparable settlements in other wage and hour
23 class actions in California. Additionally, the LWDA has been informed of the terms of the PAGA
24 portion of the settlement, and will be able to weigh in as necessary.

25 18. Thus, Plaintiff and I discounted the value of the class claims consistent with the
26 risks discussed above, as well as the potential applicability of arbitration agreements signed by
27 many class members. We carefully weighed the likelihood of the class receiving substantially
28 greater benefit if the litigation continued, and concluded – in light of these very real and substantial

1 risks – settlement on the proposed terms and without prolonged and costly litigation was in the best
2 interests of the class. The overall \$989,940 recovery represents a significant percentage of
3 Defendants’ potential exposure and, given Defendants’ multi-layered defenses and all other
4 potential risks of continued litigation, a total recovery for the class of \$989,940, which will result
5 in average award of some \$240 per class member, plus additional sums under PAGA, is a
6 significant result well within the range of reasonableness considering all potential outcomes, and it
7 will provide direct monetary awards to all Class Members without further delay.

8 **PLAINTIFF’S ENHANCEMENT AWARD**

9 19. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
10 \$5,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
11 given the risks he undertook on behalf of the Class Members. By contacting and retaining
12 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
13 Members, while shouldering the risk of being liable for Icon’s litigation costs. Plaintiff also
14 exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
15 through a simple google search) for the benefit of other employees, placing himself at risk of
16 discrimination by future prospective employers. As set forth in more detail in his declaration
17 submitted with the preliminary approval motion, among taking many other actions assisting in the
18 successful litigation of this case, Plaintiff provided substantial factual information and documents
19 to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
20 kept abreast of all significant developments. Accordingly, the requested enhancement payment to
21 Plaintiff is appropriate and justified as part of the settlement.

22 **SETTLEMENT ADMINISTRATION COSTS**

23 20. The settlement provides for a payment to Atticus of no more than \$19,610 for its
24 services as the Settlement Administrator. As set forth in the Declaration of Bryn Bridley, Atticus
25 has performed and will continue to perform its required duties through final distribution of the
26 settlement funds, and incurred \$19,610 in fees and expenses. Accordingly, I respectfully request
27 the Court approve payment of \$19,610 to Atticus from the GSA.

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1 **The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved**

2 21. Per the terms of the settlement, up to 1/3 of the gross amount is allocated to
3 payment of reasonable attorney's fees, or \$329,947. Here, the parties did not negotiate the
4 inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to
5 the Class was completed. The requested fee and cost award was a product of these arms-
6 length negotiations and fairly reflects the marketplace value of the services rendered by Class
7 Counsel in this case for the reasons addressed herein.

8 22. Over the course of this litigation, Crosner Legal's efforts included:
9 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
10 legal research, research into similar claims and claims against other employers in the same
11 industry, and attempts to locate and contact other Icon employees; (2) drafting a PAGA notice
12 letter; (3) drafting the initial complaint and related documents; (4) case management, including
13 communications with defense counsel, meeting and conferring/preparing case management
14 statements, etc.; (5) drafting a first amended complaint; (7) propounding initial written discovery,
15 (8) lengthy discussions with defense counsel regarding settlement/mediation and informal
16 discovery needed for meaningful settlement discussions; (9) engaging in substantial informal
17 discovery, including propounding informal discovery "requests" and reviewing documents and
18 other information produced; (10) drafting a mediation brief and accompanying damages model
19 after review and analysis of Defendants' informal discovery production; (11) attending an all-day
20 mediation; (12) negotiating and drafting the settlement agreement and related documents;
21 (13) drafting an amended complaint to effectuate the settlement; (14) drafting the motion for
22 preliminary approval, attending the hearing, and providing supplemental information and
23 briefing; (15) administration of the settlement, including communications with the Settlement
24 Administrator and settlement class members; (16) drafting the motion for final approval and
25 motion for attorney's fees, and attending the final approval hearing; and (17) extensive
26 communications with the Plaintiff regarding case status, case investigation and document review,
27 mediation, and settlement terms. Attached hereto as Exhibit 2 is a true and correct summary of
28 Crosner Legal's hours expended on this matter. Further, we will incur additional time attending

1 the final approval hearing, attending to the distribution of the settlement funds, and on the
2 compliance report.

3 23. I received a Bachelor of Arts in Philosophy from the University of Maryland
4 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in
5 2008. While a law student, I completed 600 hours of public interest law apprenticeship, at Legal
6 Services for Children, Disability Rights California, and as a Certified Legal Intern with the Bay
7 Area Legal Aid Housing Clinic. I have been a member of the California Bar since 2008. Since
8 2009, I have been a class action attorney, practicing mainly in the area of California wage and
9 hour law, with the firms of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and
10 Hunter Pyle Law. I joined Crosner Legal in May 2021 as a Senior Associate Attorney. In this role
11 I routinely draft complaints and discovery, brief motions, appear before California courts for law
12 and motion and settlement hearings, lead mediation negotiations, and draft settlement approval
13 documents. I also regularly communicate with class members, co-counsel, and opposing counsel.
14 I have represented thousands of employees in both state and federal courts, involving class actions
15 and PAGA claims, and I have assisted in obtaining millions of dollars for employees during my
16 years of practice.

17 24. I have been approved as Class Counsel by numerous courts throughout
18 California, including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles
19 Superior Court case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated*
20 *Transport II, LLC* (Alameda County Superior Court case no. RG15789114; settled for
21 \$762,500); *Kostyuk v. Golden State Overnight Delivery Service, Inc.* (Alameda County Superior
22 Court case no. RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport,*
23 *Inc.* (Alameda County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v.*
24 *URS Midwest, Inc.,* (San Bernardino Superior Court Case No. CIV DS1607489; settled for
25 approximately \$3 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court
26 case no. CGC-16-554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern
27 District of California, case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v.*
28 *ABM Industries, Inc., et al.* (Northern District of California, case number 17-cv-03026-YGR;

1 settled for \$5.4 million); *Benton v. Northern California InAlliance* (Sacramento County
2 Superior Court, case number 34-2021-00293036; settled for \$650,000); *French v. Lonza, Inc.*
3 (Los Angeles County Superior Court, case number 21STCV08097; settled for \$556,500);
4 *McKinnie v. Iron Mountain Secure Shredding, Inc., et al.* (Los Angeles Superior County
5 Superior Court, case number 21STCV05707; settled for \$1.5 million); and *Bland v. Marin*
6 *Airporter* (Marin County Superior Court, case number CIV 2003640; settled for \$450,000).

7 25. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
8 has approximately fourteen years of experience as a practicing attorney. For nearly his entire
9 career, his practice has focused on litigation of wage & hour, consumer, and privacy class
10 action and representative action claims. Following graduation he immediately began working
11 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
12 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
13 year awards. He also worked for other firms that included former CAALA and CLAY trial
14 attorney of the year recipients. While with these firms, he advocated for the rights of consumers
15 and employees in class action litigation, civil rights and employment litigation, catastrophic
16 injuries, insurance bad faith and appellate litigation.

17 26. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
18 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
19 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
20 exclusively to the prosecution of class actions and representative action lawsuits, and his law
21 firm is currently responsible as lead counsel or co-lead counsel for prosecuting over one
22 hundred (100) active wage and hour class actions and/or PAGA representative actions, as well
23 as a multitude of consumer and privacy class actions, in both federal and state courts throughout
24 California. He has been a direct participant in over one hundred (100) class action and/or
25 representative action settlements where he has been approved as adequate lead counsel.

26 27. Mr. Crosner has been selected by Super Lawyers as a "Southern California
27 Rising Star" for employment and labor law consecutively from 2018 through 2023. Super
28 Lawyers has also named me on their "Up-and-Coming 100" Southern California Rising Stars

1 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are
2 named a Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he
3 has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers,
4 invitation-only organization composed of the premier trial lawyers, from 2019 through 2023.
5 He is an active participant in advocacy groups, including as an executive board member of the
6 Wage and Hour Committee and the Legislative Committee for the California Employment
7 Lawyers Association; a member of the Grassroots Advocacy Team for the National
8 Employment Lawyers Association; Wage and Hour Committee member and Class Action
9 Committee member for the National Trial Lawyers; a member of the American Association for
10 Justice; and a member of the Pound Civil Justice Institute.

11 28. Kiara Bramasco received her undergraduate degree, magna cum laude, from
12 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
13 School in 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger,
14 first as a law clerk and then as an associate, where her practice focused on employment law,
15 particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021
16 and is head of the Firm's Pre-Litigation Department.

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

23 30. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
24 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
25 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
26 Ross Dixon & Bell, LLP (now Troutman Pepper Locke LLP), in Orange County, California,
27 where his practice focused on complex business, employment, and insurance coverage disputes.
28 In 2003, he became associated with Dostart Clapp & Coveney, LLP, then one of the premiere

1 plaintiffs' wage and hour class action firms in California. In 2008, he founded the Law Offices of
2 J. Kirk Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C.
3 Since 2003, his practice has focused on representing plaintiffs in wage and hour and consumer
4 law matters, including both class actions and individual matters. He has served as class/lead
5 counsel in over 50 wage and hour class and PAGA actions.

6 31. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
7 action settlements while serving as lead class counsel in recent years, including but not limited to
8 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
9 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
10 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
11 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
12 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
13 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
14 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
15 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
16 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
17 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a
18 \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*,
19 Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action
20 settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753
21 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021
22 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
23 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
24 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
25 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
26 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
27 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
28 Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*

1 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million
2 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
3 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action
4 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
5 Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v.*
6 *Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a
7 \$1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No.
8 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3 million wage and hour class action
9 settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super.
10 Court); a \$1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case
11 No. 21STCV31479 (Los Angeles Cty. Super. Ct); a \$1.19 million dollar wage and hour class
12 action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367
13 (Los Angeles Cty. Super. Ct.); a \$2.65 million wage and hour class action settlement in 2024 in
14 *Shilevinatz v. Airport Terminal Services*, Case No. CIVSB2229072 (San Bernardino Cty. Super
15 Ct.); and a \$1 million wage and hour class action settlement in 2025 in *Hernandez v YZER, LLC*,
16 Case No. 23CV025345 (Alameda Cty. Superior Ct).

17 32. Based upon the qualifications and experience set forth above, the following hourly
18 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M. Crosner
19 \$800/hour, Chad Saunders, \$750/hour, Branden Hamilton \$600/hour Kiara Bramasco \$650/hour,
20 J. Kirk Donnelly \$900/hour.

21 33. Plaintiff requests the Court apply the above hourly billing rates in this case, as
22 these rates are reasonable in the California legal market for attorneys handling wage and hour
23 class actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side
24 wage and hour class action firms in the Bay Area, Los Angeles and San Diego markets, for
25 partner-level attorneys with experience comparable to mine and to that of my colleagues. These
26 rates have range from \$650 to \$850 per hour for calendar years 2017-2021. Some examples
27 include attorney Matthew Matern of Matern Law Group in Los Angeles, with approximately 26
28 years of experience \$850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC with

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

8 34. The requested rates also comport with the adjusted Laffey Matrix, which provides
9 that reasonable hourly rates for attorneys with 20+ years of experience, such as Mr. Donnelly, is
10 over \$1000, and a reasonable rate for an attorney with 10+ years of experience, such as myself
11 and Mr. 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 35. After the analysis above, my firm’s lodestar is \$216,905.00, based on 283.9
19 attorney hours spent litigating this case through the filing of this motion. Further, we will almost
20 certainly spend additional time addressing settlement administration matters, responding to class
21 member questions, etc.

22 36. As noted, Crosner Legal has represented Plaintiff for some two plus years with
23 respect to this matter and has expended a significant amount of time and resources in that
24 representation. Crosner Legal agreed to litigate this case on a purely contingent basis and in so
25 doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as
26 is the case with these cases in general. Under all relevant factors (as outlined herein and in the
27 accompanying memorandum), Plaintiff respectfully requests the Court award his counsel the
28 requested fees of \$329,947 based on the common fund theory with a corresponding lodestar

1 cross-check and a modest 1.52 enhancement.

2 37. 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, Crosner Legal has received no
5 compensation or reimbursement for its efforts representing Plaintiff and the Class.

6 38. Crosner Legal assumes a great deal of contingent risk in every wage and hour class
7 action it undertakes. Attorneys at the 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 on 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 39. 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	\$1,277.40
Mediation Fees	\$9,375.00
Case Anywhere Charges	\$1,112.85
Expert Witness Fees	\$2,900.00
Postage/Overnight/Fax	\$146.09
PAGA Filing Fee	\$75.00
Photocopying	(waived)

Legal Research	(waived)
Total Costs and Expenses	\$14,886.34

40. I therefore respectfully request the Court approve payment of \$14,886.34 in litigation costs and expenses to my firm.

41. 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 11th day of March 2025 in Los Angeles, California.


Declarant

EXHIBIT

1

EXHIBIT

2

Sheth v. Icon Burger (Smashburger)
Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Brandon Brouillette	Chad Saunders	Branden Hamilton	Kiara Bramasco	Kirk Donnelly
Pre-filing Case Investigation	8.3	0.0	0.0	0.0	10.7	2.7	0.0
Pleadings and Law and Motion	9.5	0.0	0.0	14.2	11.6	0.0	11.9
Discovery and Post-Filing Investigation	11.7	22.6	0.0	27	0.0	0.0	0.0
Court Appearances	0.0	0.0	0.0	2.2	0.0	0.0	1.0
Case Management; Litigation Strategy & Analysis	17.4	46.3	8.4	29.7	0.0	0.0	0.0
Mediation and Settlement	8.8	2.9	4.5	32.5	0.0	0.0	0.0
Total Hours	55.7	71.8	12.9	105.6	22.3	2.7	12.9
Hourly Rate	\$850	\$750	\$750	\$750	\$600	\$650	\$900
Lodestar	\$47,345	\$53,850	\$9,675	\$79,200	\$13,380	\$1,755	\$11,610

Total Hours: 283.9 Total Lodestar: \$216,905.00