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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

JEFFREY REYES, as an individual on behalf of himself and on behalf of all others similarly situated, Plaintiff, vs. THE YERBA MATE CO., LLC, a Delaware Limited Liability Company; GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC., a California Corporation; and DOES 1-100, inclusive, Defendants	Case No.: 34-2022-00331592 Assigned for All Purposes to: Hon. Jill Talley Dept. 23 **DECLARATION OF BRANDON K. 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; Memorandum of Points & Authorities; Declaration of Taylor Mitzner; [Proposed] Order] Date: August 23, 2024 Time: 9:00 a.m. Dept. 23

I, BRANDON BROUILLETTE, declare as follows:

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

2. Defendants The Yerba Mate Co. LLC and Guayaki Sustainable Rainforest Products, Inc. (together "Yerba Mate" or "Defendants') manufacture and distribute yerba mate drinks and related products. Plaintiff worked for Defendants as delivery route driver in 2018, and he reported to Defendants' locations in San Francisco and Sebastopol, and completed delivery routes to vendors across Northern California including to Sacramento, San Francisco, and San Jose.

3. Plaintiff alleges a number of wage and hour violations by Defendants. First, he claims the company pressured employees to complete routes at a breakneck pace in order to minimize labor hours, and any applicable overtime and double time pay. Per Plaintiff, this included pressure to continue driving through meal periods and to clock out but continue working if he was unable to finish his duties in the allotted timeframe. Plaintiff further alleges he and class members regularly missed rest breaks and routinely had meal breaks interrupted. Plaintiff's employment ended on January 5, 2022. He has retained separate counsel to pursue individual claims for alleged discrimination and wrongful termination, which action remains pending.

4. Based on these allegations, on December 19, 2022, Plaintiff filed a class action complaint in Sacramento Superior Court alleging claims for: (1) failure to pay all wages due, including minimum and overtime wages (2) failure to provide all required meal and rest breaks or compensation in lieu thereof; (3) failure to provide accurate, itemized wage statements; and (4) failure to pay all wages due upon termination of employment. Plaintiff also alleged claims for unfair competition premised on the same Labor Code violations. Plaintiff subsequently filed a First Amended Complaint adding a PAGA cause of action.

5. Yerba Mate has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, that it paid the class member wages due, and provided them with required meal and rest breaks or paid the

required compensation for any documented meal/rest violations. Additionally, Yerba Mate strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized issues would predominate. Defendants further emphasized they reached a class and PAGA settlement in *Troyer v. The Yerba Mate Co., LLC, et al.,* Alameda County Superior Court Case Nos. RG20074741 and RG200683071, that released many of the wage and hour claims alleged in this matter.

6. Once the matter was at issue, the Parties began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately the Parties agreed to attempt early mediation. The Parties also agreed on a protocol for an exchange of additional documents and information before the mediation to facilitate the settlement discussions. Consequently, Plaintiff's counsel reviewed payroll records, compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random of sampling of Class Member paystubs and time records. Plaintiff then had those records analyzed by consulting experts at Desmond, Marcello & Amster to look for, inter alia, violation rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc. Defendants also provided data regarding the total number of putative class members, the estimated total amount of workweeks and pay periods they worked, average pay rates, and information regarding other non-hourly compensation, among other relevant data.

7. The Parties then engaged the Hon. Carl J. West (Ret.), a respected professional neutral with substantial wage and hour and class action experience. In August 2023, the Parties participated in a full day mediation with Judge West. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers, and ultimately reached agreement on all major issues. The Parties then collaboratively drafted the Settlement Agreement setting forth the settlement terms now before the Court for approval.

8. Under the settlement, and after application of the escalator clause, Yerba Mate will pay $276,689.29 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $91,666.00 (1/3 of the GSA), litigation costs of up to $20,000 (only $18,066.46 is requested), settlement administration costs of $8,500, a service award to Plaintiff of no more than $5,000, and PAGA civil penalties of $20,000, all will be paid from the GSA. The balance of around $133,456 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Yerba Mate.

9. As noted, the settlement obligates Yerba Mate to pay $276,689.29 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $133,456 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty five percent of each settlement share will be allocated to wages and the remaining seventy five percent will be allocated to penalties and interest, which allocation is consistent with Yerba Mate's potential liability. Yerba Mate will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund.

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

11. All Participating Class Members will release Yerba Mate from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the complaint during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the complaint.

12. As noted, the Parties allocated $20,000 to resolution of Plaintiff's alleged claims under PAGA, and Plaintiff requests that the Court approve that amount as fair, reasonable, and adequate, and consistent with PAGA's underlying purposes. Consistent with PAGA, $15,000 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $5,000 will be distributed pro rata to 163 eligible PAGA Members. Prior to filing this motion, my office provided notice of the proposed settlement of the PAGA claims and the final approval hearing to the LWDA. A true and correct copy of the LWDA's acknowledgment of receipt is attached hereto as Exhibit 1.

13. Prior to mediation, the parties engaged in extensive formal informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Yerba Mate's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendants regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock, etc., and other issues relevant to liability and damages. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class.

14. Using that data, Plaintiff ran various calculations and estimated Yerba Mate's likely maximum exposure on the class claims at approximately $1,008,000, including about $95,500 on the off the clock/unpaid wage claims, approximately $72,900 on the meal period claims, about $274,700 on the rest period claims, around $182,350 on the wage statement claims, and $382,600 on the waiting time penalty claims.

15. The unpaid wage claims focus primarily on Yerba Mate's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours worked. First, Plaintiff alleged a policy whereby management pressured Plaintiff and other driver employees to complete their routes while off the off the clock, both during meal periods and, at times, after clocking out in order to reduce overtime and double time hours and ensure routes were completed within an allotted timeframe resulted in an average underpayment of 2.7 minutes per shift. Plaintiff also alleges Defendants failed to incorporate one time flat-sum bonus payments for sales contests into their regular rate of pay calculations when paying overtime.

16. In response, Yerba Mate argued its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. Defendants also argued that, if any class members failed to record and report time it was in violation of company policy and would have occurred on a haphazard and individual basis. Accordingly Defendants argued the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred and why it was or was not documented and paid for, and whether the employer was aware of any such off the clock work.

17. On the meal and rest break claims, Plaintiff contends Yerba Mate's written policies are not fully compliant, and Plaintiff and other drivers were pressured to complete their routes at a breakneck pace in order to minimize the hours worked, which policies naturally resulted in missed and non-compliant breaks. Plaintiff's review of the time and payroll records provided suggested these deficiencies in the policies affected employee breaks. For example, Plaintiff's analysis showed a 28% violation rate for meal period violations, and further showed Defendants did not start paying the required premium wage for documented violations until <u>after</u> Plaintiff filed his initial complaint.

18. In response, Yerba Mate argued its written policies are fully compliant, particularly after settling the prior wage and hour class action, and that it provided employees with the opportunity to receive all required breaks. Defendants further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus,

per Yerba Mate, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant.

19. The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses.

20. As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $1.9 million in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue. As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties allocated $20,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary.

21. If the case had not settled, the risk and expense associated with litigation would have been extremely time consuming and expensive. Merits discovery and trial preparation would have been extensive. For example, our attorneys have been involved in comparably sized class/representative cases where, after class certification, the parties undertook merits discovery and still took over 40 depositions and interviewed dozens of additional witnesses before settlement. It is also common now in wage and hour class/representative actions for both sides to retain experts to assess various issues in a case. For instance, it is possible this matter would have required one or more experts, or perhaps a special master, to review and analyze the defendant's time and payroll records in order to calculate the to calculate the exact amount of pay lost to Defendant's time keeping policies, or to undertake an analysis of these issues via a

survey and statistical analysis. Indeed, my office found this necessary just for purposes of preparing for mediation. The cost of such experts easily can run into the tens of thousands of dollars.

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

23. Plaintiff and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall $276,689.29 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $276,689.29, which will result in average award of some $517 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay.

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

25. The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Taylor Mitzner, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred $8,500.00 in fees and expenses. Accordingly, Plaintiff respectfully requests the Court approve payment of $8,500 to Phoenix from the GSA.

26. Per the terms of the settlement, up to 33.33% of the GSA is allocated to payment of reasonable attorney's fees, or $91,666.00. 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.

27. Over the approximately two year course of this litigation, Crosner Legal's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff 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 Yerba Mate

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 Yerba Mate's 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) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (15) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (16) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, we will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing. Attached hereto as Exhibit 2 is a true and correct summary of Crosner Legal's work performed and time expended on this matter to date.

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

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

30 Since being admitted to the California State Bar in 2010, my entire legal career

has been dedicated to protecting employee and consumer rights through the prosecution of class action and representative actions filed on behalf of plaintiffs in class actions and statewide representative actions. Throughout my career I have managed or co-managed more than 100 class action and PAGA representative cases, from initial filing of the complaint through final resolution.

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

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

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

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

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

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

e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 ($15 million global PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations.)

f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-02051 ($11 million global PAGA settlement on behalf of over 36,000 employees for Labor Code violations.)

g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone ($4.75

million class and PAGA settlement on behalf of class of non-hourly employees for Labor Code violations.)

h. *Campbell v. AEG* ($1.8M class and PAGA settlement on behalf of group of hourly employees who worked at concert venues in California for alleged Labor Code violations)

i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 ($1.75M class settlement on behalf of group of hourly employees who worked at Oakland Coliseum for alleged Labor Code violations)

j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-2017-00917542 ($2,212,500 class and PAGA settlement on behalf of group of hourly employees who worked at Honda center in Anaheim California for alleged Labor Code violations)

k. *Espindola v. Panda Express,* San Bernardino Superior Court Case No. CIVDS1931455 ($3.125M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)

l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-OE-NC ($2.25M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)

m. *Party City Wage and Hour Cases*, JCCP4781 ($6.5M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)

n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No. BC501521 ($10.5M class and PAGA settlement on behalf of a statewide group of independent contractor last-mile delivery drivers alleged to be misclassified)

o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 ($4M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations)

p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 ($2M class and PAGA settlement on behalf of statewide group of hourly employees who worked at retail stores in California for alleged Labor Code violations)

q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-00301530 ($1.8M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).

r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184 ($2.25 class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).

s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977 ($1.75M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's restaurants in California for alleged Labor Code violations)

t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624 ($1.38M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations).

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

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

v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in landmark case that established the 'McGill rule' precluding the waiver of public injunctive relief in pre0dsipute arbitration agreements, negotiated confidential settlement on behalf of consumer who sued for damages and class injunctive relief stemming from marketing of credit protector plan)

34. Finally, I have been selected by my peers as a Super Lawyers 'Rising Star' every year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active

lawyers practicing within the State of California

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

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

37. Mr. Crosner currently is an executive board member of the Wage and Hour Committee and the Legislative Committee for the California Employment Lawyers Association; a member of the Grassroots Advocacy Team for the National Employment Lawyers Association; Wage and Hour Committee member and Class Action Committee member for the National Trial Lawyers; a member of the American Association for Justice; and member of the Pound Civil Justice Institute. He was selected for 2018-20 by Super Lawyers as a "Southern California Rising Star" for employment and labor law.

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

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

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

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

Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a $1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a $1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a $2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a $2.5 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); $1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a $1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a $1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a $1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super. Court); a $1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a $1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

41. Based upon the qualifications and experience set forth above, the following hourly rates are reasonable for attorneys practicing in this area of the law in California: Zachary M. Crosner $800/hour, J. Kirk Donnelly $900/hour; Brandon Brouillette, $750/hour, and Kiara Bramasco $650/hour.

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

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

43. The requested rates also comport with the adjusted Laffey Matrix, which provides that reasonable hourly rates for attorneys with 20+ years of experience, such as Messrs. M. Crosner and Jones is nearly $1000, and a reasonable rate for an attorney with 10+ years of experience, such as myself and Ms. Serb, is some $800. The adjusted Laffey Matrix may be found at http://www.laffeymatrix.com/see.html. Similarly, the December 8, 2008 article, "Billable Hours Aren't the Only Game in Town Anymore," NATIONAL LAW JOURNAL, which set forth the following hourly billing rates as reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I have opposed when litigating wage-and-hour class actions: Partners: $475-$795; Associates: 1st Year - $275, 2nd Year - $310, 3rd Year - $335, 4th Year - $365, 5th Year - $390, 6th Year - $415, 7th Year - $435, 8th Year - $455.36

44. After the analysis above, Crosner Legal's lodestar is $80,135, based on 103.2 attorney hours spent litigating this case through the filing of this motion. Further, we will almost certainly spend additional time addressing distribution of the funds, the compliance hearing, responding to class member questions, etc.

45. As noted, Crosner Legal has represented Plaintiff for some two years with respect to this matter and has expended a significant amount of time and resources in that representation. The firm agreed to litigate this case on a purely contingent basis and in so doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with these cases in general. Under all relevant factors (as outlined herein and in the

accompanying memorandum), Plaintiff respectfully requests the Court award his counsel the requested fees of $91,666.00 based on the common fund theory with a corresponding lodestar cross-check with a modest 1.15 lodestar enhancement.

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

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

48. Class Counsel's litigation costs and expenses are capped at $20,000 under the terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred by Crosner Legal is set forth below:

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	$2,144.10

Mediation Fees	$8,475.00
Expert Witness Fees	$7,237.50
Postage/Overnight/Fax	$134.86
PAGA Filing Fee	$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	**$18,066.46**

49. I therefore respectfully request the Court approve payment of $18,066.46 in litigation costs and expenses to my firm.

50. 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 30th day of July 2024, at Los Angeles, California.

Declarant

EXHIBIT
1

EXHIBIT
2

Jeffrey Reyes v. The Yerba Mate Co., LLC
(Sacramento Superior court Case No. 34-2022-00331592-CU-OE-GDS)

Crosner Legal Time Report

Tasks	Zachary Crosner	Brandon Brouillette	Kiara Bramasco	Kirk Donnelly
Pre-filing Case Investigation	7.9	0.0	7.9	0.0
Pleadings and Law and Motion	6.5	0.0	0.0	10.2
Discovery and Post-Filing Investigation	5.8	5.5	0.0	0.0
Court Appearances	0.0	0.0	0.0	1.0
Case Management; Litigation Strategy & Analysis	13.6	6.2	0.0	0.0
Mediation and Settlement	3.1	35.5	0.0	0.0
Total Hours	36.9	47.2	7.9	11.2
Hourly Rate	$800	$750	$650	$900
Lodestar	**$29,520**	**$35,400**	**$5,135**	**$10,080**

Total Hours: **103.2**
Total Lodestar: **$80,135**