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and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA
(*UNLIMITED JURISDICTION*)

CRUZ DE LEON SERRANO and GRACIELA RODRIGUEZ, on behalf of themselves and all others similarly situated, and the general public, and as "Aggrieved Employees" on behalf of other "Aggrieved Employees" under the Private Attorneys General Act of 2004,

Plaintiffs,

vs.

KOHANA COFFEE, LLC; WESTROCK COFFEE COMPANY; WESTROCK COFFEE COMPANY, LLC; and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: C24-02642

DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL CLASS ACTION AND PAGA SETTLEMENT

Action filed:	10/01/2024
Hearing Date:	08/22/2025
Hearing Time:	9:00 a.m.
Hearing Dept:	39, Hon. Edward G. Weil

DECLARATION OF MARALLE MESSRELIAN

I, MARALLE MESSRELIAN, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiffs Cruz De Leon Serrano and Graciela Rodriguez ("Plaintiffs") in their lawsuit against Defendants Kohana Coffee, LLC, Westrock Coffee Company, and Westrock Beverage Solutions, LLC ("Defendants"). Plaintiffs and Defendants are collectively referred to as the "Parties".

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. The Class Action and PAGA Settlement Agreement (the "Settlement") is attached hereto as **Exhibit 1**.

Factual and Procedural Background

4. Kohana Coffee began to employ Plaintiff Serrano in or around September of 1998 to work at its facility located 514 W Ohio St, Richmond, California 94801. During his employment tenure, Serrano worked in production and quality control. Kohana Coffee continuously employed Serrano until on or about March 15, 2024 when his employment ended. Kohana Coffee began to employ Plaintiff Rodriguez in or around September of 2019 to work at its facility located 514 W Ohio St, Richmond, California 94801. During her employment tenure, Rodriguez worked as a janitor and also worked in production. Kohana Coffee continuously employed Rodriguez until on or about April 8, 2024 when her employment ended.

5. By letters dated June 25, 2024, July 24, 2024, and September 4, 2024, Plaintiffs Serrano and Rodriguez notified Defendants Kohana Coffee, LLC, Westrock Coffee Company, Westrock Beverage Solutions, LLC, and Westrock Company, LLC and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. ("PAGA"), of alleged Labor Code violations committed by Defendants. True and correct copies of the letters to the LWDA dated June 25, 2024, July 24, 2024, and September 4, 2024, are attached hereto as **Exhibit 2**.

6. On October 1, 2024, Plaintiffs filed a Class Action Complaint in the Contra Costa Superior Court, Case No, C24-02642 against Defendants Kohana Coffee, LLC, Westrock Coffee Company, and Westrock Coffee Company, LLC, on behalf of themselves and others similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Pay All

Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code§§ 221, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); (6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203); (7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204); (8) Civil Penalties (Lab. Code §§ 2698, et seq.); and (9) Unfair Competition (Bus. & Prof. Code, § 17200 esq.). A true and correct copy of the Complaint is attached hereto as **Exhibit 3**. On October 18, 2024, Plaintiffs dismissed Westrock Coffee Company, LLC without prejudice based on Defendants' representations that the entity never employed Plaintiffs and amended their Complaint to add Defendant Westrock Beverage Solutions, LLC. On November 27, 2024, Defendants filed their Answer to Plaintiffs' Complaint. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 4**.

7. The Parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiffs' allegations informally, rather than through litigation, and scheduled private mediation.

8. On May 14, 2025, the parties attended and participated in good faith, arms' length settlement discussions at a mediation session with Natasha Roit, Esq., an experienced professional mediator. At the conclusion of the mediation, the parties agreed to the material terms of the Settlement.

9. In advance of the mediation, and before agreeing to the terms of the Settlement, the parties engaged in informal discovery. Through informal discovery, Defendants produced the employee handbooks in place during the Class Period, copies of relevant company written policies, time-keeping records, and time and payroll data for a random sample of putative class members. Now that the Parties have finalized the long-form Settlement, Plaintiffs submit it to this Court for preliminary approval.

10. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the lawsuit. It is the desire of the Parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in Plaintiffs' lawsuit.

Ascertainable and Numerous Class

11. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiffs maintain that the above-

defined Class is ascertainable because its members may be identified by reference to Kohana Coffee's records and Kohana Coffee has agreed to share the relevant information from its records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

12. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are approximately 128 Class Members. Plaintiffs maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class's membership is sufficiently numerous.

Predominant Common Questions

13. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiffs assert all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Kohana Coffee's alleged uniform policy of failing to properly account for all time worked and failing to, among other things, properly pay minimum and overtime wages, provide off-duty meal and rest periods, indemnify Class Members for business expenses, timely pay wages upon termination, and provide compliant wage statements, all of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not limited to: (1) Whether Kohana Coffee failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Kohana Coffee failed to provide the Class with all meal and rest periods in compliance with California law; (3) Whether Kohana Coffee failed to pay the Class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Kohana Coffee failed to indemnify the Class for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, personal mobile phones and supplies; (5) Whether Kohana Coffee knowingly and intentionally failed to provide the Class with accurate and complete itemized wage statements; (6) Whether Kohana Coffee willfully failed to provide the Class with timely final wages; and (7) Whether Kohana Coffee engaged in unfair competition within the meaning of Business and Professions Code section 17200, et seq.,

with respect to the class. Therefore, common questions predominate.

Typicality

14. Plaintiffs contend that their claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they, like absent Class Members were subject to the same relevant policies and procedures governing their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they were subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Kohana Coffee's prima facie liability to all Class Members. Moreover, Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class.

Adequacy

15. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

16. To the best of my knowledge, neither Plaintiffs nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiffs contend that they are adequate class representatives. Plaintiffs and the Class Members have strong and co-extensive interests in this litigation because they all worked for Kohana Coffee during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover, Plaintiffs have demonstrated their commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, and exposing themselves to the risk of attorneys' fees and costs awards against them if this lawsuit had been unsuccessful. Thus, Plaintiffs are adequate to serve as Class Representatives.

Background of Class Counsel

17. In 2003, I earned a Bachelor of the Science degree with a major in Accounting from Cal State University, Northridge. In 2017, I earned a Juris Doctor degree from Southwestern University School of Law.

18. In December of 2017, the Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State.

19. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 2017. My experience has been almost exclusively in the area of employment law representing employees with claims of wrongful termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical leave violations. I am a member of the California Employment Lawyers Association (CELA).

20. In my representation of employees, I have prosecuted several lawsuits on behalf of employees with claims of rest and meal period and overtime violations or other wage claims.

21. I have been involved in the prosecution of numerous wage and hour class and representative actions at various stages of litigation. A small sampling of the wage and hour class and representative action cases in which I have been counsel of record is as follows:

a) *Joshua Silva v. Payo Laboratories, Inc*., *et al*., San Luis Obispo County Superior Court, Case No. 19CV-0689 (appointed Class Counsel and granted final approval of class action settlement by the court).

b) *Mervin Perkins v. CC Venice, LLC, et al.,* Los Angeles Superior Court, Case

No. BC703660 (appointed Class Counsel and granted final approval of class action settlement by the court).

c) *Jashar Bryant v. Pinnacle Cabling & Construction, Inc., et al*., Orange County Superior Court, Case No. 30-2020-01123094-CU-OE-CXC (appointed Class Counsel and granted final approval of class action settlement by the court).

d) *Collins v. Spa Products Import & Distribution Co., LLC*, et al., Los Angeles County Superior Court, Case No. 19STCV10586 (granted final approval of class action settlement by the court)

e) *Sabrina Slater v. Avalon Care Center – Sonora, L.L.C., et al*., Tuolumne County Superior Court, Case No. CV62006 (granted final approval of class action settlement by the court)

f) *Violet Avalos v. Smithcare Incorporated, et al*., Tulare County Superior Court, Case No. VCU272975 (granted final approval of class action settlement by the court)

g) *David Contreras v. HTX Services LLC, et al*., Los Angeles County Superior Court, Case No. 19STCV43405 (granted final approval of class action settlement by the court)

h) *Devin Cherry v. LA Corral Three, Inc., et al.,* Kern County Superior Court, Case No., BCV-18-101817-DRL (granted final approval of class action settlement by the court)

i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.,* Los Angeles County Superior Court, Case No. 18STCV09302 (granted final approval of class action settlement by the court)

j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.,* San Mateo County Superior Court, Case No. 19CIV02344 (granted final approval of class action settlement by the court)

k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by the court)

l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P*., Kern County Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement by the court)

m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al*., Fresno County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA settlement by the court)

n) *Kevin Littleton v. Lincoln Military Property Management LP*., San Diego County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment approving PAGA settlement by the court)

o) *Krystal Thomas v. Choice Physicians Network, Inc., et al*., San Bernardino County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA settlement by the court)

p) *Otina Sengvong v. Probuild Company, LLC, et al*., United States District Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final approval of class action settlement by the court)

q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al*., San Mateo County Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by the court)

r) *David Xiqui Vasquez v. The Province LLC, et al*., Santa Clara County Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by the court)

s) *Manuel Melendrez v. Clean Auto Inc., et al*., San Mateo County Superior Court, Case No. 22CIV01967 (order and judgment approving PAGA settlement by the court)

t) *Arturo Vera Lopez v. Green Valley Landscape, et al*., Monterey County Superior Court, Case No, 22CV003751 (order and judgment approving PAGA settlement by the court)

u) *Erasmo Gomez v. A-1 Jay's Machining, Inc., et al*., Santa Clara County Superior Court, Case No. 22CV394795 (order and judgment approving PAGA settlement by the court)

v) *Iris Rodriguez v. Facility Masters, Inc*., Santa Clara County Superior Court, Case No. 23CV423999 (order and judgment approving PAGA settlement by the court)

w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al*., San Diego Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving PAGA settlement by the court).

x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al*., Santa Clara Superior Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).

y) *Irma Tapia v. Posada Associates, et al*., Santa Cruz Superior Court, Case No. 23CV00355 (order and judgment approving PAGA settlement by the court).

z) *Andres Ibarra v. Stadco*, et al. Los Angeles Superior Court, Case No. 23STCV26591 (order and judgment approving PAGA settlement by the court).

aa) *Alfredo Betancourt v. L3 Technologies, Inc*., San Mateo County Superior Court, Case no. 23-CIV-05704 (appointed Class Counsel and granted final approval of class action settlement by the court).

Class Action Treatment Is Superior

22. A class action is also superior to other means adjudicating the issues in this

action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

The Settlement is Presumptively Fair

23. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendant Kohana Coffee's estimated exposure. Both defense counsel and I are particularly experienced in employment law and wage and hour class actions. We are experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and hour class settlements, including many involving the same issues presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

24. The Parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator. The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. I considered various sources of information in the lead-up to and during the mediation of May 14, 2025 that enabled Plaintiffs to achieve the Settlement at issue.

- Defendants produced and I reviewed Plaintiffs' payroll records.

- My office requested that Defendants produce any and all policies on "off the clock" work, meal and rest periods, and reimbursement of expenses in effect during the relevant time period. Defendants produced policies as part of its employee handbook.

- My office requested that Defendants provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendants provided the answers to each of these questions.

- My office requested sample time and payroll records for the relevant time period. Defendants produced time and pay records for 24 employees that were randomly selected using a research randomizer tool.

- My office then retained a professional data analyst, James Toney, to examine the records and determine if there was any pay discrepancy in timesheet hours versus paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

- I analyzed the state of caselaw on meal and rest break claims, claims for off-the-clock work, and claims for unreimbursed expenses.

25. Defendants disclosed that there were approximately 7,411 workweeks during the Class Period. Based on this information and with the aid of the data analyst, "damages" estimates were prepared to determine Defendant Kohana Coffee's maximum exposure in connection with the settlement negotiations. The sampling did not reveal any rounding as hours were paid to the second decimal point. As it relates to any overtime issues, the data showed that when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Plaintiffs calculated the maximum potential damages for meal period violations, rest period violations, and unreimbursed expenses to be approximately $1,091,987.67 (inclusive of interest); maximum damages for derivative claims of $73,850 for wage statement penalties and $579,052.80 for waiting time penalties, and $448,750 in potential civil penalties under the PAGA. The estimates are in essence "home run" projections that do not factor in any of the risks involved in litigating this Action and are not in line with reality, especially when considering Kohana Coffee's policies and its position on the issues. A detailed explanation of Plaintiffs' valuation is set forth below.

A. <u>Meal and Rest Break Violations</u>

Plaintiffs allege that Kohana Coffee failed to provide Plaintiffs and the Class Members lawful meal and rest breaks. The shift count extrapolated for the class period was approximately 32,940. Based on the sample data analysis, the average straight time pay rate was $22.34 ("ST Pay"). The sample data analysis showed a 12.5% meal violation rate for shifts greater than 5 hours. For rest breaks, Plaintiff assumed a 100% violation rate. Accordingly, Plaintiff calculates the maximum potential damages for meal and rest break violations as follows:

Meal Break Claim	
Class Shift Count	32,940
% of Shifts > 5.0 Hrs	97.0%
Total Shift	31,944
Unique Violation Rate	12.5%
Violation Count	3,984
ST Rate	$22.34
Sub-Total	$89,002.56
Interest	$6,021.14
Total	$95,023.70

Rest Break Claim	
Class Shift Count	32,940
% of Shifts > 3.5 Hrs	99.0%
Total Shift	32,615
Unique Violation Rate	100.0%
Violation Count	32,615
ST Rate	$22.34
Sub-Total	$728,619.10
Interest	$157,659.16
Total	$886,278.26

There are risks to Plaintiffs' meal period claims. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id*. at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. Id. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Kohana Coffee's time records the exact reasons why a meal period appears to be short or late would be difficult and pinpointing those days in which Plaintiffs and the Class Members worked during their meal periods will be a challenge. Additionally, Kohana Coffee's Employee Handbook contains legally compliant meal period and rest break policies. Furthermore, Defendants provided evidence at mediation of signed meal period waivers.

There are risks to Plaintiffs' rest period claim. Employers are not required to record rest periods and such periods are paid. Thus, unlike unpaid meal periods where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

B. Failure to Reimburse Business Expenses

Plaintiffs allege that Kohana Coffee required them and the others to use their personal cell phones in the course of performing their duties. Plaintiffs estimated a $50 monthly phone bill and calculate the maximum potential damages for unreimbursed expenses as follows:

Expense Reimbursement	
Month Count	1,691
Monthly Expenses	$50.00
Sub-Total	$84,550.00
Interest	$26,135.71
Total	$110,685.71

Failure to Timely Pay Wages Upon Termination

Plaintiffs allege that discharged and quitting employees were not paid in full as required by the Labor Code. Plaintiffs calculate the maximum value of this claim as follows:

Waiting Time Penalty	
Termination Count	108
ST Rate	$22.34
Hours (8.0 * 30)	240
Average Per Term	$5,361.60
Total Penalty	$579,052.80

C. Failure to Furnish Accurate Itemized Wage Statements

Plaintiffs allege that Class Members' hours worked and wages earned were not accurately listed on the wage statements. Plaintiffs calculates the maximum value of this claim as follows:

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Paystub Penalty	
Employee Count	75
Pay Period Count	851
Sub-Total	$81,350.00
Amounts > $4,000	($7,500.00)
Total Penalty	$73,850.00

D. Civil Penalties Under PAGA

Under Labor Code § 2699, Kohana Coffee is subject to a civil penalty in the amount of $100 for each aggrieved employee per pay period for the initial violation, and $200 for each subsequent violation for each aggrieved employee for each pay period. Defendants represented that there were approximately 1,101 total pay periods for all of the Aggrieved Employees during the PAGA Period. Applying the same violation rates to the total pay periods, Plaintiffs calculates the maximum value of the PAGA claim as follows:

	Meal Breaks LC §512/226.7	Rest Breaks LC §512/226.7	LC §2802	LC §226(a)	LC §203	Total
Period Count	44	1,101	508	1,101	82	
Penalty	$100.00	$100.00	$100.00	$250.00	$100.00	
Total	4,400.00	110,100.00	50,800.00	275,250.00	8,200.00	448,750.00

As mentioned above, this estimate does not reflect the realities of this case and did not take into account any of the risks discussed above and assumed a violation for every single pay period. As such, the Parties discounted potential civil penalties for multiple reasons. For one, Plaintiffs' PAGA claims are predicated on the wage underpayment, meal, rest, business expense reimbursement, and wage statement violations described above, and thus subject to the same disputes and defenses. Plaintiffs' counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. I am not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v.*

Bayshore Transit Management, Inc. (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award).

26. The Settlement obviates the significant risk that this Court may deny certification of some or all of Plaintiffs' claims. Even if Plaintiffs obtained certification of some or all of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. While Plaintiffs are confident in the merits of their case, a legitimate controversy exists as to each cause of action. To illustrate this consideration, below is a brief summary of some of Defendants' arguments, all of which Plaintiffs dispute, but nevertheless acknowledges as potential threats to the Settlement Class's claims.

- Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id*. at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. Id. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendants contend that individualized proof will be needed to establish liability on Plaintiffs' meal period claims. Defendants argue that Settlement Class Members will testify that they were plainly advised by their supervisors, and fully understood, that they were authorized to take meal periods within each five-hour period worked and, in fact, took such breaks. Moreover, Defendant Kohana Coffee's timekeeping data shows daily meal period start and end times.
- Defendants contend that Plaintiffs cannot recover waiting time or wage statement penalties based upon the failure to pay Labor Code section 226.7 premium wages for meal and rest period violations. *See Naranjo v. Spectrum Sec. Servs., Inc*. (2019) 40 Cal. App. 5th 444 (review granted Jan. 20, 2020) (actions for violations of Labor

Code's meal break provisions do not entitle employees to pursue derivative waiting time and itemized wage statement penalties).

- There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and unfit for class wide resolution.
- On June 28, 2024, Kohana Coffee issued a WARN notice to its employees informing them of the closing of the Kohana Coffee plant in Richmond, California and the expected layoff effective August 30, 2024. As of September 1, 2024, Kohana Coffee no longer employed any individuals in California. Further, on October 1, 2024, Kohana Coffee changed its status with the California Secretary of State from Active to Forfeited – FTB, meaning it no longer has standing and rights to do business in the State of California. As a defunct corporation, at the time of mediation, Kohana Coffee had little to no financial resources remaining. As such, there is a great risk of no recovery if the case continued or in the event of an adverse verdict.

27. As noted above, Defendants contest liability, as well as the propriety of certification, and are prepared to vigorously oppose certification and to defend against Plaintiffs' claims if the Action is not settled. Given the potential damages, as well as the substantial risks to recovery discussed herein, including the uncertainties in achieving class certification, Plaintiffs' counsel had to dramatically discount the value of the claims during settlement negotiations. Plaintiffs' counsel estimates a 50 percent likelihood of obtaining and maintaining certification of all of Plaintiffs' claims, which reduces the value of these claims from approximately $2,193,640.47 to approximately $1,096,820.24. Defendants, however, assert that there are significantly lower prospects of certification. Plaintiffs' counsel further estimates that there is a 50 percent chance that Plaintiffs will prevail at trial on their claims, further reducing the value of the claims to approximately $548,410.12. Defendants contend that Plaintiffs' prospects of success at trial are much lower. If this case advanced to trial and Class Counsel succeeded on all of Plaintiffs' claims, attorney's fees and costs may have significantly reduced the recovery awarded to the Class. Furthermore, there is always a risk that a trial of this magnitude can become unmanageable. A settlement of $130,000

(approximately 5.9% of the maximum exposure and 23.7% of the potential recovery) is a good result and a proportion sanctioned by existing case law. See *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery based on the estimated liability exposure).

28. While Plaintiffs believe the evidence gathered through Plaintiffs' discovery supports the merits of the claims asserted in this lawsuit, Plaintiffs recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. Among those risks were that Kohana Coffee had ceased operations nearly a year prior to mediation and had little to no financial resources remaining. In view of the risks, the Settlement reflects Class Counsel's estimate of the total amount of damages, monetary penalties or other relief that the class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

Allocation of the PAGA Payment

29. The settlement of PAGA penalties in the sum of $20,000, of which 65% ($13,000) will be paid to the LWDA and 35% ($7,000) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. MM, ¶ 29. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The

amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).

Attorneys' Fees and Costs

30. I intend to request a Class Counsel Fees Payment of $43,333.33 (one-third of the GSA) and Class Counsel's Litigation Expenses Payment for litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately $5,708.95 and will be no more than $6,500.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions.

31. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also met and conferred with Defendants' counsel on numerous occasions, prepared and propounded discovery, reviewed and analyzed hundreds of pages of data and documents provided by Defendants, researched applicable law, prepared estimates of "damages" for purposes of settlement discussions, and engaged in a full day of mediation, among other tasks.

32. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class.

Considering the amount of the attorney's fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Enhancement Payment

33. The Settlement provides that Plaintiffs may seek a Class Representative Enhancement Payment of $7,500 each. This amount is entirely reasonable given Plaintiffs' efforts in this Action and the risks they undertook on behalf of Class Members. Here, Plaintiffs have devoted many hours advancing the interests of the Settlement Class. Plaintiffs have done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiffs have been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiffs undertook on behalf of the Settlement Class shows that the proposed Enhancement Payments are fair, adequate, and reasonable, and thus warrants preliminary approval. *See generally* Declarations of Cruz De Leon Serrano and Graciela Rodriguez.

Individual Settlement Payments

34. The Individual Class Payment and Individual PAGA Payments will be paid to each Class Member based on the number of Workweeks a Class Member worked during the Class Period and the number of PAGA Pay Periods an Aggrieved Employee worked during the PAGA Period, respectively. Settlement ¶ 3.2.4. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

35. The Settlement requires distribution of the Notice by First Class U.S. mail only, which is fair, adequate and reasonable given that Kohana Coffee does not have any current employees that it could provide email addresses for receipt of the notice via email at work Settlement, ¶ 4.4.1, 7.4.2. The Class Notice (attached as Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among

other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Workweeks a Class Member had during the Class Period and the number of PAGA Periods a PAGA Member had during the PAGA Period. Accordingly, the Class Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Class Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

36. The duties of the Settlement Administrator are spelled out in paragraph 7.8 of the Settlement and in the bid provided by Phoenix Settlement Administrators a true and correct copy of which is attached hereto as **Exhibit 7**.

Settlement Administration Costs

37. With regard to the settlement administration costs provision (Settlement ¶ 3.2.3), it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed bids from other reputable third-party administrators:

A. ILYM Group, Inc. = $6,750;
B. Simpluris, Inc. = $8,547;
C. Phoenix Settlement Administrators = $6,500.

A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 5**. A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 6**. A true and correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 7**. The bid provided by Phoenix Settlement Administrators was the lowest. Thus, settlement administration costs provision should be given preliminary approval.

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Uncashed Checks

38. Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Individual Settlement Payment checks. The Participating Class Members shall mean all Class Members who do not submit timely and valid Requests for Exclusion. After the expiration of the 180-day period, the Settlement Administrator will transfer any proceeds represented by Individual Settlement Payment checks remaining un-cashed to the California State Controller Unclaimed Property Fund in the name of the Class Member. Settlement, ¶ 4.4.5.

Notice of Settlement to the LWDA

39. Pursuant to Labor Code § 2699(l)(2), Plaintiffs submitted a copy of the Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiffs' Motion is being filed with the Court. A true and correct copy of Plaintiffs' submission with the LWDA and a confirmation email is attached hereto as **Exhibit 8**.

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

Executed on Monday July 21, 2025 at Glendale, California.

Maralle Messrelian

MARALLE MESSRELIAN,
Declarant