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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE**
12

13 FRANCISCO CERVANTES, as an
14 individual and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 ALPHA MATERIALS, INC., a California
19 corporation; and DOES 1-100, inclusive,

20 Defendants.
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Case No.: Case No.: CVRI2201967

Assigned for All Purposes to:
Hon. Harold Hopp
Dept. 1

DECLARATION OF NIKKI TRENNER 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; Declarations of Francisco
Cervantes and Jarrod Salinas; [Proposed]
Order]**

Date: July 25, 2024
Time: 8:30 a.m.
Dept.: 1

1 I, NIKKI TRENNER, declare as follows:

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

6 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

7 2. Defendant Alpha Materials is a construction material supplier based in Jurupa
8 Valley. Alpha sells concrete products such as shotcrete and ready-mix concrete. Plaintiff Cervantes
9 was employed by Defendant as a commercial driver for over ten years. During his employment,
10 Plaintiff typically worked shifts between ten and thirteen hours, five days per week.

11 3. Plaintiff alleges Alpha violated California wage and hour law in several respects.
12 First, he alleges a failure to pay all minimum and overtime wages by (1) failing to pay Plaintiff and
13 the Class Members for all hours worked by requiring them to don and doff their personal protective
14 equipment before clocking in and after clocking out for their shifts, and (2) failing to pay for rest
15 and recovery time. Next, Plaintiff alleges Alpha also failed to provide compliant meal periods as
16 meal periods were either interrupted or started late due to job demands. He also alleges Defendant
17 failed to provide legally compliant rest periods, rest breaks did not last a net 10 minutes and were
18 no completely free of employer control. He further claims Defendant did not reimburse business
19 expenses incurred by Class Members for the use of their personal cellular phones. Lastly, he alleges
20 Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed
21 upon the separation of employment.

22 4. Based on these allegations, on May 17, 2022, Plaintiff filed the underlying class
23 action complaint on behalf of himself and the Class Members, asserting claims for (1) failure to pay
24 minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to
25 provide rest periods; (5) failure to provide itemized wage statements; (6) failure to reimburse
26 business expenses, (7) failure to pay all wages due at termination; and (8) unfair competition. After
27 exhausting his administrative remedies, Plaintiff filed a First Amended Complaint adding claims
28 under PAGA based on the same alleged Labor Code violations. After his employment with Alpha

ended, Plaintiff filed a Second Amended Complaint adding claims for failure to timely pay wages on separation of employment.

5. Alpha has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, and that it provided the class members with required meal and rest breaks. Additionally, Alpha contends its timekeeping and payroll policies accurately track and pay for all hours worked by its employees and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind of class or representative 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 purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable.

6. Since Plaintiff filed the initial complaint, and after agreeing to participate in early mediation, the Parties engaged in formal and informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation.

7. The Parties then engaged Louis Marlin, Esq., a highly respected mediator with extensive wage and hour class action experience and, in August 2023, participated in a full day mediation with Mr. Marlin. 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. After a full day of negotiations, the Parties reached agreement on all major issues and thereafter prepared the Settlement Agreement now before the Court for approval.

THE PROPOSED SETTLEMENT TERMS

8. Under the settlement, Alpha will pay \$295,000.00 into a common fund, the Gross Settlement Amount. Reasonable attorney's fees of up to \$98,333.33 (1/3 of the GSA), litigation costs of up to \$20,000 (only \$10,846.56 is requested), an enhancement award to Plaintiff of up to \$5,000, settlement administration costs of no more than \$7,750, and \$15,000 for civil penalties under PAGA (of which 75%, or \$11,250, will go to the Labor & Workforce Development Agency, and 25%, or \$3,750 will go to the Aggrieved Employees) all will be paid from the Gross Settlement

1 Amount. The remainder of approximately \$158,070 will be allocated among the Participating Class
2 Members based on their total weeks worked during the Class Period. No portion of the Gross
3 Settlement Amount will revert to Alpha.

4 9. This is a cash settlement that does not require Participating Class Members to
5 submit a claim form to receive their settlement share. Participating Class Members will receive
6 their settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement
7 share will be allocated to wages and the remaining twenty percent will be allocated to expenses
8 reimbursement, penalties and interest. Alpha will pay any and all applicable employer-side payroll
9 taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval,
10 any amounts not claimed (because a class member does not cash his or her settlement check) will
11 be forwarded to the State Controller's Unclaimed Property Fund.

12 10. Each Participating Class Member will receive a share of the Net Settlement Amount
13 based on his or her total weeks worked for Alpha during the Class Period while employed in a non-
14 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
15 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
16 wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These
17 methods are intended to ensure each Class Member receives a portion of the available settlement
18 funds corresponding to the relative value of his or her potential claims. The proposed allocation
19 provides a reasonable way to compensate Class Members based on the amount of time they worked
20 for Alpha and the number of instances they missed a meal break and/or rest break, were not provided
21 compensation in lieu of such missed breaks, or lost pay due to the alleged rounding and regular rate
22 issues.

23 11. All Participating Class Members will release Alpha from all claims alleged in the
24 operative FAC, or that could have been brought based on the factual allegations in the FAC during
25 the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA
26 notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the claims that
27 were actually pleaded or could have been pleaded based on the alleged facts in the FAC, and PAGA
28 notice for the PAGA claims. Only Plaintiff will provide a full general release of all claims.

1 12. As noted, the Parties allocated \$15,000 to payment of alleged civil penalties under
2 PAGA, which amount Plaintiff submits is fair, reasonable, and adequate, and furthers PAGA's
3 underlying purposes. As required by Labor Code section 2699(I)(2), Plaintiff gave notice of the
4 settlement and the approval hearing to the LWDA via its online portal. Attached hereto as Exhibit
5 1 is a true and correct copy of the LWDA's acknowledgement of receipt.

6 13. Prior to mediation, the parties engaged in both formal and informal discovery to
7 facilitate settlement discussions. As a result, Plaintiff reviewed documents and information
8 regarding Alpha's payroll practices, a representative sampling of pay stubs and time records for
9 about 25% of the class members, applicable compensation plans, meal and rest break policies, etc.,
10 and information from Defendant regarding class size and breakdown, number of work weeks/pay
11 periods, average rates of pay, and other information used to formulate a damages model. Plaintiff
12 then had that information reviewed with the assistance of a consulting expert. Plaintiff's counsel are
13 confident they obtained sufficient information to understand the law and facts of this case and make
14 an informed decision regarding the proposed settlement and whether it is fair and reasonable.

15 14. Using the data obtained from Defendant, Plaintiff ran various calculations and
16 estimated Alpha's likely maximum exposure on the class claims at approximately **\$3.944** million,
17 including about \$ on the unpaid wage/rounding claim, \$3,631,460 on the meal and rest break claims,
18 \$148,300 on the unreimbursed expense claim, \$752,000 on the wage statement claims, and
19 \$612,500 on the waiting time penalty claims.

20 15. First, on their unpaid wage claims, Plaintiffs allege Alpha failed to pay for all hours
21 worked because it required employees to don and doff protective equipment and take care of other
22 pre- and post-shift work off the clock and without compensation. Plaintiff also contends that, for
23 employees paid by piece rate, Alpha failed to compensate for non-productive time and required rest
24 and recovery periods. As a result, per Plaintiff, he and the class members lost as much as 90+
25 minutes of compensable time each week due to this off the clock and uncompensated work.
26 Plaintiff's experts calculated this resulted in a loss of some 32,800 compensable hours worked,
27 resulting in some **\$735,000** in unpaid wages over the Class Period. In response, Defendant argued
28 its timekeeping and payroll policies accurately tracked and paid for all employee time and. It also

1 argued that its policies prohibited any “off the clock” work and, accordingly, if any off the clock
2 work occurred it was intermittent and infrequent, against company policy, and done without the
3 employer’s knowledge or consent. For these reasons, per Alpha, class certification of this issue
4 would be impossible because innumerable individual inquires would be required to determine
5 whether any compensable “off the clock” work occurred.

6 16. On the meal period claims, Plaintiff alleged several violations. First, he argued that
7 meal periods frequently were started late and/or interrupted and cut short by work circumstances,
8 even though employees were required to write down that they had received a timely, full 30-minute
9 meal period regardless. Further, Plaintiff contends he and the class members had to be available to
10 respond to work-related texts and phone calls while on their meal periods, and thus never really
11 were fully relieved of all duties. Assuming a 95% violation rate, Plaintiff calculated Defendant’s
12 meal period exposure at about **\$1,211,340** in meal period premiums.

13 17. In response, Defendant argued its break policies were fully compliant with California
14 law, and that it provided all required meal periods and thereby met its obligations under the Labor
15 Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a break
16 or took a non-compliant break, any such discrepancies were aberrational and against company
17 policy and a myriad of individual issues would be required to determine whether the potential
18 violation resulted from employee choice or some other reason. Consequently, per Defendant,
19 individualized inquiries would dominate on this issue and render class certification inappropriate.

20 18. For the rest break claim, Plaintiff similarly argued that Defendant frequently
21 provided non-compliant rest breaks, as the Class Members often had to skip rest breaks or received
22 shortened rest breaks due to the hectic nature of the work, had to be available to respond to
23 texts/phone calls, and further were not completely relieved of all employer control. As with meal
24 breaks, Defendant argued its rest break policies complied with California law and that it authorized
25 and permitted employees to take all required rest breaks. Defendant further contended that, in light
26 of the fact that it is not required to maintain a record of rest breaks, any evidence of failure to
27 authorize and permit rest breaks and/or discouragement from taking rest breaks would be purely
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1 anecdotal and individual issues would predominate. Assuming a 95% violation rate, Defendant's
2 exposure here was estimated at about **\$1,262,340**.

3 19. On the expense reimbursement claim, Plaintiff alleges that use of his personal cellular
4 phone was necessary and consequential to his employment duties for purposes of group messaging,
5 and receiving work-related calls and texts. Defendant did not reimburse employees for the cost
6 associated with the use of the personal cellular phones for Defendant's benefit. In response, Alpha
7 argued it provided employees with all tools and equipment necessary to perform their job duties
8 and, to the extent employees used their own phones, it was purely for personal convenience, was
9 not necessary to their employment, and therefore was not reimbursable. Without taking into
10 consideration any of Defendant's defenses to certification or on the merits, Plaintiffs' experts
11 calculated Defendant's maximum exposure for this claim at about **\$63,755**, based on \$5/work week
12 per class member in unreimbursed expenses.

13 20. Plaintiff next alleged Alpha's wage statements violated Labor Code § 226 on their
14 face by, inter alia, failing to include the employer name and address, and the employees' social
15 security number/employee ID number. He also alleged derivative claims under Labor Code § 226
16 and §§ 201-203 (waiting time penalties). These derivative claims are based on the unpaid wage
17 claims and will rise or fall along with those primary claims, in addition to being subject to "good
18 faith" and other defenses available to Defendant. Defendant argued further that the wage statements
19 accurately contained all required information, and that acted in good faith all times with respect to
20 payment of wages. Plaintiff estimated the exposure on these claims at about Accordingly, Plaintiff
21 discounted these claims significantly in light of these multiple potential defenses. Plaintiff's experts
22 estimated the exposure here at about **\$340,000** on the wage statement claims (based on 6,322 pay
23 periods in the limitations period and accounting for the \$4,000 per employee cap), and **\$331,200** on
24 the waiting time penalty claims based on 69 terminated employees in the limitations period.

25 21. As far as potential PAGA liability, the alleged aggrieved employees theoretically are
26 entitled to penalties totaling about \$3.1 million should Plaintiff prevail on all claims, establish
27 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
28 issues. As with the class claims, Plaintiff discounted the potential PAGA penalties based on

1 Defendant's various defenses on the merits and also accounted for the Court's wide discretion to
2 reduce such penalties, or to decline to award penalties at all. I submit this amount is reasonable
3 under the circumstances and in line with comparable settlements in other wage and hour class
4 actions in California. Additionally, the LWDA has been informed of the terms of the PAGA portion
5 of the settlement, and will be able to weigh in as necessary.

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

21 23. Taking into account all of the above-discussed risk factors, Plaintiff calculated
22 Defendant's exposure on the class claims at around **\$789,000** on a risk-discounted basis and,
23 accordingly, the settlement represents a little under 40% of the estimated recovery after trial. Given
24 Defendant's multi-layered defenses and all other potential risks of continued litigation, a total
25 recovery for the class of \$295,000, which will result in average award of about \$1,188 per class
26 member, is a significant result well within the range of reasonableness considering all potential
27 outcomes, and it will provide direct monetary awards to all Class Members without further delay.

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1 case management statements, etc.; (5) lengthy discussions with defense counsel regarding
2 settlement/mediation and informal discovery needed for meaningful settlement discussions; (6)
3 engaging in substantial informal discovery, including propounding informal discovery “requests”
4 and reviewing documents and other information produced; (7) drafting a mediation brief and
5 accompanying damages model after review and analysis of defendant’s informal discovery
6 production; (8) attending an all-day mediation; (9) negotiating and drafting the settlement
7 agreement and related documents; (10) drafting the motion for preliminary approval and attending
8 the hearing thereon; (11) administration of the settlement, including addressing application of the
9 escalator clause, communications with the Settlement Administrator and settlement class
10 members; (12) drafting the motion for final approval and motion for attorney’s fees, and attending
11 the final approval hearing; and (13) extensive communications with the Plaintiff regarding case
12 status, case investigation and document review, mediation, and settlement terms. Additionally, the
13 firm will incur additional time to attend the final approval hearing and following final approval to,
14 inter alia, respond to class member inquiries, work with the Settlement Administrator on the
15 distribution of settlement funds, and on the compliance hearing. A true and correct summary of
16 Crosner Legal’s work performed and time expended is attached hereto as Exhibit 2.

17 28. I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC
18 (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal in
19 2020 and am currently employed as a senior associate in the wage and hour department. I have
20 solely handled wage and hour class actions and PAGA lawsuits for six (6) years. I routinely
21 write and oppose motions, draft complaints, appear before the Court at law and motion and
22 settlement hearings, engage in the discovery process, including drafting Belaire-West notices
23 and meet and confer letters. I have obtained class certification in the following matters:
24 *Hernandez v. Aviation Port Services, LLC*, Kern County Superior Court Case No. BCV-18-
25 100141. I have also assisted in obtaining millions of dollars for employees in the following
26 court-approved class action and/or representative PAGA settlements: *Michael Campbell, et al. v.*
27 *Symons Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No.
28 CIVDS1903158; *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court

1 Case No. 20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los
2 Angeles County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra*
3 *Aluminum Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856;
4 *Elaine Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No.
5 20STCV32477; *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court
6 Case No. 30-2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*,
7 Sacramento County Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro*
8 *Valencia v. VM Tree Service, Inc., et al.*, Riverside County Superior Court Case No.
9 RIC1819395; *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.*, Los Angeles County
10 Superior Court Case No. 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento
11 County Superior Court Case No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v.*
12 *Sandburst Convalescent Group, LTD, et al.*, Los Angeles Superior Court Case No.
13 19STCV15797; *Moriah Holtegaard, et al. v. Howroyd-Wright Employment Agency, Inc. dba*
14 *AppleOne Corporation Services, et al.*, Central District Court of California, Eastern Division,
15 Case No. 5:20-cv-00509 JGB (KKx); *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*,
16 Los Angeles County Superior Court Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars,*
17 *LLC dba Pomona Kia, et al.*, Riverside County Superior Court Case No. RIC1905276; *Luis*
18 *Bolanos v. FSC Corporation dba Il Pastaio Restaurant, et al.*, Los Angeles County Superior
19 Court Case No. BC722758; *Loretta Cannon v. Pasadena Hospital Association, LTD dba*
20 *Huntington Hospital*, Los Angeles County Superior Court Case No. 19STCV14554; *Nathan*
21 *Kapusta v. Cardinale Motors SLO, Inc., et al.*, Kern County Superior Court Case No. BCV-20-
22 101593; and *Jesse McCauley v. Mullahey Ford, Inc., et al.*, San Luis Obispo County Superior
23 Court Case No. 21CV0001.

24 29. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
25 some 14 years of experience as a practicing attorney, all of which have focused on litigation of
26 employment, labor law, consumer, and class action claims. Following graduation, he
27 immediately began working for a nationally recognized plaintiff's complex litigation firm,
28 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer

1 attorneys and recipients of trial attorneys of the year awards. He also worked for former
2 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
3 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
4 consumers and employees in class action litigation, civil rights and employment litigation,
5 catastrophic injuries, insurance bad faith and appellate litigation.

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

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

20 32. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage & Hour
21 Practice Group. She graduated from the University of California, San Diego in 2004, graduated from
22 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
23 She gained extensive experience in wage and hour litigation, beginning work as a class action
24 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
25 Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for over nine
26 years and has assisted in obtaining millions of dollars for employees during her years of practice.

27 33. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
28 law degree from George Washington University in 2007. She has been affiliated with my firm since

1 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost
2 exclusively on wage and hour class and representative actions. She has spent her entire career
3 representing plaintiffs in employment litigation, including several years as an associate at well-
4 known plaintiff's firm Carlin & Buchsbaum.

5 34. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
6 action settlements while serving as lead class counsel in recent years, including but not limited to a
7 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
8 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
9 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
10 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
11 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
12 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
13 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
14 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
15 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
16 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15
17 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No.
18 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020
19 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty.
20 Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West*
21 *Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar
22 wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case
23 No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
24 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
25 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx*
26 *Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million
27 wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case
28 No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action

1 settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino
2 Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo*
3 *Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million
4 wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*,
5 Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action
6 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.
7 Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case
8 No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class
9 settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super.
10 Ct); and a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v.*
11 *Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

12 35. Based upon the qualifications and experience set forth above, Crosner Legal
13 submits the following hourly rates are reasonable: Zachary Crosner \$800/hour, Jamie Serb
14 \$750/hour, Nikki Trenner \$700/hour, and Branden Hamilton \$600/hour.

15 36. I request the Court apply the above hourly billing rates in this case, as it reasonable
16 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
17 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
18 class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-level attorneys
19 with experience comparable to mine. These rates have range from \$650 to \$850 per hour for
20 calendar years 2017-2021. Some examples include attorney Matthew Matern of Matern Law
21 Group in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig
22 Ackermann of Ackermann & Tilajef, PC with approximately 25 years of experience \$850/hour
23 (2021), Michael Malk of Malk APC in Los Angeles, with approximately 16 years of experience
24 \$650/hour (2018), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego,
25 35 years and 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of
26 Crosner Legal PC, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito
27 Law Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

28 37. The requested rates also comport with the adjusted Laffey Matrix, which provides

1 that reasonable hourly rates for attorneys with 20+ years of experience, such as myself, is \$997.

2 The adjusted Laffey Matrix may be found at <http://www.laffeymatrix.com/see.html>.

3 38. After the analysis above, Crosner Legal's lodestar is \$131,620 based on 181.3
4 attorney and paralegal hours spent litigating this case through the filing of this motion. Further, we
5 will almost certainly spend additional time addressing settlement administration matters, responding
6 to class member questions, submitting the compliance report and amended judgment, etc. Given that
7 the base lodestar is slightly higher than the fees requested on a percentage of the recovery basis,
8 there is no request for a lodestar enhancement.

9 39. As noted, Crosner Legal has represented Plaintiff for over a year and half with
10 respect to this matter and has expended a significant amount of time and resources in that
11 representation. The firm agreed to litigate this case on a purely contingent basis and in so doing
12 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
13 case with these cases in general. Under all relevant factors (as outlined herein and in the
14 accompanying memorandum), Plaintiff respectfully requests the Court award his counsel the
15 requested fees of \$98,333.33 based on the common fund theory with a corresponding lodestar
16 cross-check and no lodestar modifier.

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

21 41. Crosner Legal assumes a great deal of contingent risk in every wage and hour class
22 action it undertakes. Attorneys at the firm have been involved in a number of cases where
23 plaintiffs and their counsel invested hundreds of hours to time and tens of thousands in costs with
24 no return. For example, in a matter alleging misclassification on behalf of a putative class of
25 assistant managers at major restaurant chain, after three years of exceptionally adversarial
26 litigation and the investment of over 1,000 hours of attorney time and over \$100,000 in costs, the
27 trial court denied plaintiffs' motion for class certification. In another misclassification case on
28 behalf of assistant managers at large restaurant chain, the parties reached a settlement after three

1 years of litigation, secured preliminary approval and completed the notice process to the
2 settlement class, only to have the defendant file for bankruptcy a few days before the final
3 approval hearing. Lastly, in a matter against a large regional bank seeking expense reimbursement
4 of behalf of outside salespersons, after more than a year of combative litigation and shortly before
5 plaintiff's class certification motion was due, the defendant was taken over by federal regulators.
6 In each of these instances the plaintiff's firm received nothing despite the investment of hundreds
7 of hours of attorney time and thousands of dollars in out-of-pocket costs.

8 42. Reimbursement for litigation costs and expenses is capped at \$20,000 under the
9 terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred
10 by Crosner Legal is set forth below:

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$2,626.72
Mediation Fees	\$7,000.00
Postage/Overnight/Fax	\$94.84
PAGA Filing Fee	\$75.00
Expert Fees	\$1,050.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$10,846.56

19 43. These costs and expenses are reasonable in amount and were necessary to the
20 successful resolution of the case. I respectfully request the Court approve reimbursement of these
21 costs and expenses in full amount of \$10,846.56.

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

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed this 1st day of July 2024, at Carlsbad, California.

26
27 
28 Declarant

EXHIBIT

1

EXHIBIT

2

Cervantes vs. Alpha Materials, Inc.
(Riverside Superior court Case No. CVRI2201967)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Nikki Trenner	Branden Hamilton
Pre-filing Case Investigation	7.8	0.0	0.0	4.7
Pleadings and Law and Motion	8.5	0.8	0.0	11.8
Discovery and Post-Filing Investigation	3.6	1.1	12.4	0.0
Court Appearances	0.0	0.0	1.6	0.0
Case Management; Litigation Strategy & Analysis	5.9	12.7	18.8	0.0
Mediation and Settlement	13.7	33.6	38.3	0.0
Total Hours	39.5	48.2	77.1	16.5
Hourly Rate	\$800	\$750	\$700	\$600
Lodestar	\$31,600	\$36,150	\$53,970	\$9,900

Total Hours: 181.3
Total Lodestar: \$131,620