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8 Attorneys for Plaintiff DOUGLAS BALL
9 As an individual on behalf of himself and
on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12 DOUGLAS BALL, as an individual on
13 behalf of himself and on behalf of all others
similarly situated,

14
15 Plaintiff,

16 v.

17 KRUGER FOODS, INC., a California
18 corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: STK-CV-UOE-2022-0008581

**DECLARATION OF SEPIDEH
ARDESTANI IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES AND COSTS**

Date: December 18, 2024

Time: 9:00 a.m.

Dept.: 11D

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1 On the meal and rest break claims, Plaintiff alleges numerous “de facto” violations where
2 employee meal periods and rest periods were missed completely, were untimely, and/or were
3 short. For rest breaks, Plaintiff contends employees frequently were contacted by phone or text
4 (on their personal phones) while on break, and that Kruger otherwise failed to fully relieve
5 employees of all employer control for breaks. Plaintiff also alleges employees did not receive any
6 reimbursement for having to use their own phones for work purposes, such as receiving texts and
7 calls from supervisors.

8 5. Kruger has at all times denied Plaintiff’s allegations and maintained it properly
9 instituted and an AWS for its employees, that its payroll policies and procedures comply with
10 California law and that it properly compensated the class members for all hours worked at the
11 correct rates of pay. It further argued its meal and rest break policies are fully compliant and that it
12 provided class members with all required breaks, and paid appropriate premium wages for
13 documented violations. Likewise, Kruger contended there would be no reason for an employee to
14 use their own phone while working and accordingly it owes no reimbursement. Defendant also
15 strongly contends the case cannot be maintained as any kind of class or representative action,
16 arguing determining the reasons for any off the clock work, missed/non-compliant breaks, or
17 personal cell phone use would result individualized issues predominating and that a trial on a
18 representative basis would be unmanageable.

19 6. After filing his complaints, Plaintiff initiated written discovery and, after lengthy
20 additional discovery meet and confer sessions and discussions about the merits of the case, the
21 Parties ultimately agreed to mediate. The Parties also agreed on a protocol for an exchange of
22 additional documents and information before the mediation. Consequently, Plaintiff’s counsel
23 reviewed personnel policies/handbooks, meal and rest break policies, personnel files, and a
24 random of sampling paystubs and time records for a sampling of the class. Plaintiff had those
25 records analyzed by Berger Consulting Group to look for, inter alia, violation rates for missed, late
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1 and/or short meal breaks, overtime pay lost due to failure to implement the AWS, and to help
2 formulate a damages model.

3 7. The Parties then engaged Brandon McKelvey, Esq., a respected professional
4 neutral with substantial wage and hour and class action experience and, in September 2023, the
5 Parties participated in a full day mediation with Mr. McKelvey. Throughout the day, the arms-
6 length negotiations were hard-fought and adversarial as the Parties exchanged extensive
7 information on their legal and factual positions, and made numerous offers and counter-offers, but
8 were unable to find a resolution by the end of the day. Nevertheless, with the mediator's
9 assistance, the Parties continued to negotiate and ultimately reached agreement on all major issues
10 a few months later.

11 **THE PROPOSED SETTLEMENT TERMS**

12 8. Under the settlement, Kruger will pay \$300,000 into a common fund, the Gross
13 Settlement Amount ("GSA"). Attorney's fees of up to \$100,000.00 (1/3 of the GSA), litigation costs
14 of up to \$25,000, a service award to Plaintiff of no more than \$2,500.00, settlement administration
15 costs of \$6,990, and \$30,000 for PAGA civil penalties (to be divided 75% to the Labor & Workforce
16 Development Agency and 25% to the Aggrieved Employees), all will be paid from the GSA. The
17 remainder of around \$135,510 will be allocated pro rata among the Class Members based on their
18 total weeks worked during the Class Period. No portion of the GSA will revert to Kruger.

19 9. As noted, the settlement obligates Kruger to pay \$300,000 to resolve the claims of
20 the Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$135,510 from
21 the GSA will be distributed to the Participating Class Members. This is a cash settlement that does
22 not require Participating Class Members to submit a claim form to receive their settlement share.
23 Participating Class Members will receive their settlement checks automatically via First Class U.S.
24 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
25 percent will be allocated to penalties and interest, which allocation is consistent with Kruger's
26 potential liability as discussed below. Kruger will pay any and all applicable employer-side payroll
27 taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not
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1 claimed (because a class member does not cash his or her settlement check) will be forwarded to
2 the California State Controller's Unclaimed Property Division.

3 10. Each Participating Class Member will receive a share of the Net Settlement Amount
4 based on his or her total weeks worked for Kruger during the Class Period while employed in a non-
5 exempt service position. Thus, each Class Member's Individual Settlement Payment will be
6 calculated using criteria typically used in determining appropriate amounts of unpaid overtime
7 wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties
8 under applicable law. These methods are intended to ensure each Class Member receives a portion
9 of the available settlement funds corresponding to the relative value of his or her potential claims.
10 The proposed allocation provides a reasonable way to compensate Class Members based on the
11 amount of time they worked for Kruger and the number of instances they allegedly were not paid
12 overtime due to the improper AWS, missed a meal break and/or rest break, were not provided
13 compensation in lieu of such missed breaks, etc

14 11. All Participating Class Members will release Kruger and the Released Parties from
15 all claims alleged in the operative complaint, or that could have been brought based on the factual
16 allegations in the operative complaint, including PAGA claims, during the Class Period. The release
17 is limited to the claims that were actually pleaded or could have been pleaded based on the alleged
18 facts in the operative complaint.

19 12. The Parties allocated \$30,000 to payment of civil penalties under PAGA, as
20 addressed in more detail below, and I submit that amount is fair, reasonable and adequate, and
21 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(1)(2), my
22 office gave notice of the settlement and the approval hearing to the LWDA via its online portal,
23 and further served the LWDA with the motion. A true and correct copy of the LWDA's
24 acknowledgement of receipt is attached hereto as Exhibit 1.

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The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness

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

14. Using that data, Plaintiff ran various calculations and estimated Kruger's likely maximum exposure on the class claims at approximately \$3,470,000, including about \$526,600 on the unpaid wage claims, about \$833,350 on the meal period claims, approximately \$1,203,225 on the rest break claims, about \$74,000 for expense reimbursement, about \$436,600 for wage statement violations, and approximately \$395,760 in waiting time penalties.

15. On the unpaid wage claims, Plaintiff alleges Defendant's 4/10 AWS schedule was not implemented under the strict procedures required by California law to use an AWS and therefore was invalid. In particular, Plaintiff alleges the required employee secret ballot was done improperly, that employees did not receive proper notice regarding the AWS, and that it was not properly registered with the State. Thus, per Plaintiff, Kruger failed to properly pay for daily overtime earned when employees worked over 8 hours in a shift. Plaintiff also claims that, even if the AWS is valid, Kruger did not correctly pay employees under the AWS because it failed to pay required premium wages when an employee worked less than 10 hours in a day. In response, Kruger argued its AWS was fully and properly implanted and that the company followed all legal requirements for using an AWS, and it provided relevant documentation regarding the procedures it followed. Kruger further emphasized it paid employees correctly under the terms of the valid

1 AWS, and that its payroll procedures otherwise fully compensated all class members at the correct
2 rates.

3 16. On the meal break claims, Plaintiff primarily contends there are numerous “de
4 facto” violations for missed, late, and short meal periods. Per Plaintiff, his expert’s review of the
5 time records produced suggested a violation rate of around 70% for missed and non-compliant
6 meal periods, including missed second lunches on 10+ hour shifts. In response, Kruger argued its
7 break policies are fully compliant with California law, that it provided class members with the
8 opportunity to take all required breaks, and that many class members waived second meal periods.
9 Defendant further maintained that, in light of its compliant policies, whether a class member
10 missed a meal period, received a late meal period, or missed a rest break would have been
11 aberrational and against company policy. Thus, per Kruger, these issues are not amenable to class
12 or representative treatment since their resolution would require individualized inquiries as to why
13 a break was missed or non-compliant. Further, Defendant emphasized it paid thousands in
14 premium wages for documented violations.

15 17. For rest breaks, Plaintiff again argued that there were numerous “de facto”
16 violations where class members didn’t receive a break (especially third breaks), or didn’t receive a
17 compliant break/had their breaks interrupted by supervisors. As with meal breaks, Defendant
18 argued the applicable rest break policies complied with California law, and that it authorized and
19 permitted employees to take all required breaks. Defendant further contended that, in light of the
20 fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize
21 rest periods and/or discouragement from taking rest periods would be purely anecdotal and
22 individual issues would predominate on liability. This arguably would once again make class
23 certification and a trial unmanageable since the number of instances an employee missed a rest
24 break, or had a break interrupted, would have to be tested on a case by case basis to determine
25 compliance.

26 18. For Plaintiff’s expense reimbursement claim, he argued Defendant’s supervisors
27 would routinely contact both Plaintiff and other employees during meal and rest breaks by sending
28 them work-related questions and demands to their personal cellphones, and that Defendant never paid

1 any reimbursement. When employees must use their personal cell phones for work, this statute
2 required an employer to reimburse them for such use. In response, Kruger argued there would be
3 no need for an employee use a phone to perform his or her work duties, and that supervisors thus
4 any such use would have been unnecessary and purely for personal convenience, and therefore not
5 reimbursable.

6 19. Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate
7 wage statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
8 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
9 addition to being subject to “good faith” and other defenses available to Defendant. Accordingly,
10 Plaintiff discounted the derivative claims significantly in light of these multiple potential defenses.

11 20. As far as potential PAGA liability, the theoretical penalties totaled over \$2.2
12 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
13 sections at issue for every single eligible pay period. As with the class claims, Plaintiff discounted
14 the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits,
15 and further discounted these claims since the Court possesses wide discretion to reduce such
16 penalties even if Plaintiff ultimately prevailed. Accordingly, the Parties allocated \$30,000 to
17 PAGA penalties, which amount is reasonable and in line with comparable settlements in other
18 class actions in California. Additionally, the LWDA has been informed of the terms of the PAGA
19 portion of the settlement, and will be able to weigh in as necessary.

20 21. Thus, Defendant raised various defenses to each of Plaintiff’s claims, any one of
21 which, if successful, could have decimated Plaintiff’s case. Accordingly, Plaintiff faced risky
22 issues going forward with this litigation, and given the need to secure class certification, try the
23 case, and deal with post-trial appeals, it would have taken years to realize any recovery in this
24 action. The settlement obviates the significant risk that this Court may find any kind of class or
25 representative resolution unachievable or deny certification of all or some of Plaintiff’s claims. All
26 of this would substantially delay any recovery by the class with no assurance of recovering
27 significantly more than the proposed settlement. While Plaintiff is confident in the merits of these
28 claims, legitimate controversies exist regarding each one of them. Plaintiff also recognizes proving

1 the amount of wages and penalties due each Class Member would be an expensive, time-
2 consuming, and uncertain proposition.

3 22. If the case had not settled, the risk and expense associated with litigation would
4 have been extremely time consuming and expensive. Merits discovery and trial preparation would
5 have been extensive. For example, our attorneys have been involved in comparably sized
6 class/representative cases where the parties undertook merits discovery after class certification and
7 eventually took over 40 depositions and interviewed dozens of additional witnesses before the
8 matter finally settled. It is also common now in wage and hour class/representative actions for
9 both sides to retain experts to assess various issues in a case. For instance, it is possible this
10 matter would have required one or more experts, or perhaps a special master, to review and
11 analyze the defendant's time and payroll records in order to calculate the amount to calculate the
12 exact amount of time lost by the class members, or to undertake an analysis of these issues via a
13 survey and statistical analysis. The cost of such experts easily can run into the tens of thousands
14 of dollars. Finally, even if Plaintiff certified a class, maintained certification through merits
15 discovery and trial, and prevailed at trial, Defendant would almost certainly appeal, thereby
16 delaying payment to the class for several more years.

17 23. Plaintiff and I discounted the value of the class claims consistent with the risks
18 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
19 benefit if the litigation continued. Plaintiff and I concluded – in light of these very real and
20 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
21 was in the best interests of the class. The overall \$300,000 recovery represents a significant
22 percentage of Defendant's potential exposure, and given these risks discussed above a total
23 recovery for the class of \$300,000, with an average award of some \$826 per class member, is a
24 fair result within the range of reasonableness considering all potential outcomes.

25 **SETTLEMENT ADMINISTRATION COSTS**

26 24. The settlement provides for a payment to Apex for its services as the Settlement
27 Administrator. As set forth in the Declaration of Madely Nava, Apex performed and will continue
28 to perform its required duties through final distribution of the settlement funds and incurred

1 \$6,990 in fees and expenses I accordingly requests the Court approve payment of \$6,990 to Apex
2 from the GSA.

3 **PLAINTIFF'S ENHANCEMENT AWARD**

4 25. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
5 \$2,500 for his service in bringing these claims on behalf of the Class. The request is reasonable
6 given the risks he undertook on behalf of the Class Members, and by contacting and retaining
7 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
8 Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also
9 exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
10 through a simple google search) for the benefit of other employees, placing each at risk of
11 discrimination by future prospective employers. As set forth in more detail in his declaration filed
12 with the preliminary approval motion, among taking many other actions assisting in the successful
13 litigation of this case, Plaintiff provided substantial factual information and documents to counsel,
14 attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast
15 of all significant developments.

16 **ATTORNEY'S FEES AND COSTS**

17 26. Per the terms of the settlement, up to 1/3 of the initial gross amount is allocated to
18 payment of reasonable attorney's fees, or \$100,000. Here, the parties did not negotiate the
19 inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to
20 the Class was completed. The requested fee and cost award was a product of these arms-
21 length negotiations and fairly reflects the marketplace value of the services rendered by Class
22 Counsel in this case for the reasons addressed herein.

23 27. Over the two plus years this matter has been pending, Crosner Legal's efforts have
24 included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class,
25 including legal research, research into similar claims and claims against other employers in the
26 same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting a
27 PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case
28 management, including communications with defense counsel, meeting and conferring/preparing

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

18 28. I obtained my Bachelors in Science Degree in Anthropology from the University
19 of California, Los Angeles, and attended Whittier Law School and earned by Juris Doctor in
20 2009 and an L.L.M. in 2010 from the Santa Clara University School of Law. I have fourteen
21 years of experience as a practicing attorney, most of which have focused on litigation of
22 employment, labor law, consumer, and class action claims. Prior to joining Crosner Legal in
23 2021, I worked as an associate attorney at Gaines & Gaines, APLC for ten years where I gained
24 extensive experience in wage and hour litigation and assisted in obtaining millions of dollars for
25 employees.

26 29. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
27 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
28 career, his practice has focused on litigation of wage & hour, consumer, and privacy class action

1 and representative action claims. Following graduation he immediately began working for a
2 nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked directly
3 with past presidents of the consumer attorneys and recipients of trial attorneys of the year
4 awards. He also worked for other firms that included former CAALA and CLAY trial attorney
5 of the year recipients. While with these firms, he advocated for the rights of consumers and
6 employees in class action litigation, civil rights and employment litigation, catastrophic injuries,
7 insurance bad faith and appellate litigation.

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

17 31. Mr. Crosner has been selected by Super Lawyers as a "Southern California Rising
18 Star" for employment and labor law consecutively from 2018 through 2023. Super Lawyers has
19 also named me on their "Up-and-Coming 100" Southern California Rising Stars List for
20 consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are named a
21 Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he has been
22 selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers, invitation-
23 only organization composed of the premier trial lawyers, from 2019 through 2023. He is an
24 active participant in advocacy groups, including as an executive board member of the Wage and
25 Hour Committee and the Legislative Committee for the California Employment Lawyers
26 Association; a member of the Grassroots Advocacy Team for the National Employment Lawyers
27 Association; Wage and Hour Committee member and Class Action Committee member for the
28 National Trial Lawyers; a member of the American Association for Justice; and a member of the

1 Pound Civil Justice Institute.

2 32. Jamie Serb is a partner with Crosner Legal and head of the firms' Wage & Hour
3 practice group. She graduated from the University of California, San Diego in 2004, graduated from
4 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
5 She gained extensive experience in wage and hour litigation, beginning work as a class action
6 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
7 Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate attorney. She has
8 handled wage and hour class actions and PAGA lawsuits for the past several years and has assisted
9 in obtaining millions of dollars for employees during her years of practice.

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

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

21 35. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
22 action settlements while serving as lead class counsel in recent years, including but not limited to a
23 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
24 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
25 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
26 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
27 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
28 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*

1 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
2 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
3 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
4 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
5 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
6 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
7 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
8 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
9 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
10 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
11 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
12 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
13 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
14 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
15 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
16 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
17 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
18 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
19 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
20 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
21 21STCV18512 (Los Angeles Cty. Super. Ct.).

22 36. Based upon the qualifications and experience set forth above, the following hourly
23 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M. Crosner
24 \$800/hour, Jamie Serb \$750/hour, Nikki Trenner, \$700/hour, Kiara Bramasco \$650/hour, Branden
25 Hamilton \$600/hour.

26 37. Plaintiff requests the Court apply the above hourly billing rates in this case, as these
27 rates are reasonable in the California legal market for attorneys handling wage and hour class
28 actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side wage

1 and hour class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-level
2 attorneys with experience comparable to mine and to that of my colleagues. These rates have
3 range from \$650 to \$850 per hour for calendar years 2017-2021. Some examples include attorney
4 Matthew Matern of Matern Law Group in Los Angeles, with approximately 26 years of
5 experience \$850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC with approximately
6 25 years of experience \$850/hour (2021), Michael Malk of Malk APC in Los Angeles, with
7 approximately 16 years of experience \$650/hour (2018), Michael Singer and Isam Khoury of
8 Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience respectively, both
9 \$825/hour (2018), Jason Ehrlich of McCormack & Ehrlich LLP in San Francisco, with
10 approximately 17 years of experience \$750/hour (2017), and James Kawahito of Kawahito Law
11 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

12 38. The requested rates also comport with the adjusted Laffey Matrix, which provides
13 that reasonable hourly rates for attorneys with 10+ years of experience, such as Mr Crosner, Ms.
14 Serb, and myself, is over \$800. The adjusted Laffey Matrix may be found at
15 <http://www.laffeymatrix.com/see.html>. Similarly, the December 8, 2008 article, “Billable Hours
16 Aren’t the Only Game in Town Anymore,” NATIONAL LAW JOURNAL, which set forth the
17 following hourly billing rates as reported by Sheppard, Mullin, Richter & Hampton, a leading firm
18 in the defense of wage-and-hour class actions that I have opposed when litigating wage-and-hour
19 class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335,
20 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455.36

21 39. After the analysis above, Crosner Legal’s lodestar is \$140,525, based on 194.4
22 attorney hours spent litigating this case through the filing of this motion. Further, we will almost
23 certainly spend additional time addressing settlement administration matters, responding to class
24 member questions, etc.

25 40. As noted, Crosner Legal has represented Plaintiff for some two plus years with
26 respect to this matter and has expended a significant amount of time and resources in that
27 representation. The firm agreed to litigate this case on a purely contingent basis and in so doing
28 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the

1 case with these cases in general. Under all relevant factors (as outlined herein and in the
2 accompanying memorandum), Plaintiff respectfully requests the Court award his counsel the
3 requested fees of \$100,000 based on the common fund theory with a corresponding lodestar cross-
4 check and no lodestar enhancement.

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

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

24 43. Class Counsel's litigation costs and expenses are capped at \$25,000 under the terms
25 of Settlement Agreement. A true and correct itemization of the costs and expenses incurred by my
26 firm is set forth below:

27 ////

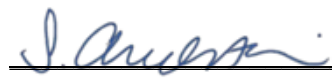
28 ////

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$2,749.18
Mediation Fees	\$7,500.00
Expert Witness Fees	\$14,695.00
Postage/Overnight/Fax	\$52.35
PAGA Filing Fee	\$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$25,071.53

44. These costs and expenses are reasonable in amount and all were necessary for the successful litigation of this matter. I therefore respectfully request the Court approve payment of \$25,000 in litigation costs and expenses to Crosner Legal, which is the cap imposed under the Settlement Agreement.

45. 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 19th day of November 2024, at Los Angeles California.


 Declarant

EXHIBIT

1

EXHIBIT

2

Douglas Ball v. Kruger Foods, Inc.
(San Joaquin Superior Court Case No. STK-CV-UOE-2022-8581)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Sepideh Ardestani	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	3.6	0.0	0.0	5.3	5.8
Pleadings and Law and Motion	6.2	0.0	0.0	0.0	9.3
Discovery and Post-Filing Investigation	2.7	1.2	6.5	0.0	0.0
Court Appearances	0.0	0.0	3.6	0.0	0.0
Case Management; Litigation Strategy & Analysis	10.2	55.2	57.2	0.0	0.0
Mediation and Settlement	6.5	9.6	11.5	0.0	0.0
Total Hours	29.2	66	78.8	5.3	15.1
Hourly Rate	\$800	\$750	\$700	\$650	\$600
Lodestar	\$23,360	\$49,500	\$55,160	\$3,445	\$9,060

Total Hours: 194.4

Total Lodestar: \$140,525