

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fac. (818) 700-9973
7

8 Attorneys for Plaintiff CHRISTOPHER MADISON
9

10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**
12

13 CHRISTOPHER MADISON, as an individual
14 on behalf of himself and on behalf of all others
similarly situated,

15 Plaintiff,

16 v.
17

18 AIR CANADA, a business entity, form
unknown; AIR CANADA CORPORATION, a
19 business entity, form unknown; and DOES 1-
100, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

CASE NO. 22STCV38188
(Related to Case No. 22STCV03616)

Assigned for All Purposes to:
Hon. William F. Highberger
Dept. SSC-10

DECLARATION OF BRANDON
BROUILLETTE IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES AND COSTS

[Filed Concurrently with Notice of Motion
and Motion; Memorandum of Points &
Authorities; Declaration of Lluvia Islas;
[Proposed] Order]

Date: August 21, 2024
Time: 11:00 a.m.
Dept.: SSC-10

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal, P.C., counsel of record for plaintiff Christopher Madison. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Request for Attorney's Fees and Costs. If called to testify as to the within facts, I would and could competently do so.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

1 alleged wage and hour violations and the release period overlaps with Plaintiff's class definition
2 as alleged in this case, covering all non-exempt California employees through May 24, 2021.
3 Accordingly, the class period in this matter commences on May 25, 2021.

4 5. Further, after exhausting all required administrative remedies, on February 17,
5 2023, Plaintiff filed a PAGA-only representative action complaint against Air Canada based on
6 the same alleged Labor Code violations. The PAGA Action was deemed related to this matter.

7 6. After Plaintiff filed his complaints, the Parties initiated discovery, engaged in
8 several meet and confer discussions regarding discovery, potential law and motion, and other case
9 management issues, and ultimately agreed to attempt mediation. The Parties also agreed to
10 undertake additional and substantial informal discovery to facilitate an exchange of information
11 necessary to engage in a meaningful mediation. Prior to the mediation Defendant provided
12 Plaintiff with extensive informal discovery, including Plaintiff's personnel, time, and payroll
13 records, time and payroll records for about 50% Class, wage statement exemplars, Defendant's
14 policies and procedures regarding the payment of wages, meal and rest breaks, timekeeping
15 policies (including recording hours), applicable CBAs, expense reimbursement, and information
16 regarding the number of putative Class Members who are current and former employees, the
17 number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the
18 number of pay periods throughout the PAGA Period. From this information, Plaintiff analyzed
19 Defendant's potential liability for the claims asserted in this case and, with the assistance of
20 consulting experts from Berger Consulting Group, the potential exposure and damages. As far as
21 the sampling, Berger advised the 50% sampling provided was statistically reliable such that they
22 could extrapolate their analysis to the entire class.

23 7. On September 7, 2023, the Plaintiff and Air Canada participated in a mediation
24 with Christopher Barnes, Esq., a respected wage and hour class action mediator. The mediation
25 lasted a full day and, with the mediator's assistance, the Parties reached agreement on all major
26 issues. They then reduced the proposed settlement to the Agreement now before the Court for
27 approval.

28 ////

TERMS OF THE PROPOSED SETTLEMENT

8. Under the settlement and after application of the escalator clause, Air Canada now will pay \$616,153.57 into a common fund, the Gross Settlement Amount (“GSA”). Attorney’s fees of up to \$205,382.49 (33.33% of the escalated GSA), litigation costs of up to \$20,000 (only \$18,691.64 is requested), settlement administration costs of \$10,000, and a service award to Plaintiff of 10,000, and \$50,000.00 for PAGA civil penalties (of which \$37,500 will go to the California Labor & Workforce Development Agency (“LWDA”) for the State’s share of civil penalties and \$12,500 will go to eligible Aggrieved Employees), all will be paid from the GSA. The remainder of around \$323,079 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Air Canada.

9. As noted, the settlement obligates Air Canada to pay \$616,153.57 to resolve the Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$323,079 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-five percent of each settlement share will be allocated to wages and the remaining seventy-five percent will be allocated to non-wage premiums, penalties, and interest, which allocation is consistent with Air Canada’s potential liability as discussed below. Air Canada will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the California State Controller’s Unclaimed Property Fund.

10. Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. Thus, each Class Member’s Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives

1 a settlement award corresponding to the relative value of their potential claims. The proposed
2 allocation provides a reasonable way to compensate Class Members based on the amount of time
3 they worked for Air Canada and the amount unpaid wages, etc.

4 11. All Participating Class Members will release Air Canada from all claims alleged in
5 the operative complaint, or that could have been brought based on the factual allegations in the
6 operative complaint during the Class Period, including all PAGA claims. The release is limited to
7 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
8 operative complaint.

9 12. As noted, the Parties allocated \$50,000 from the GSA to resolution of Plaintiff's
10 claims under PAGA, and respectfully request that the Court approve that amount as fair,
11 reasonable and adequate, and consistent with PAGA's underlying purposes. Under PAGA,
12 \$37,500 of this amount will be paid to the LWDA as the state's share of the civil penalties,
13 and the remainder of \$12,500 will be distributed to the 273 Aggrieved Employees eligible to
14 receive a PAGA payment. As required by Labor Code section 2699(l)(2), my office notified the
15 LWDA of the settlement and the final approval hearing via its online portal, and a true and
16 correct copy of the LWDA's notice of receipt is attached hereto as Exhibit 1.

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

27 14. Using that data, Plaintiff ran various calculations and estimated Air Canadas's
28 theoretical maximum exposure on the class claims at about \$2,703,000. More specifically, the

1 theoretical maximum includes approximately \$58,000 in damages on the claims for unpaid
2 wages, around \$65,000 in damages for meal period violations and \$1,511,000 in damages on the
3 rest period claims (both assuming a 100% violation rate), over \$73,500 on the expense
4 reimbursement claims, approximately \$550,400 on the wage statement claims, and approximately
5 \$445,000 in waiting time penalties. Plaintiff's counsel substantially discounted the value of these
6 claims, however, in light of the multiple and considerable risks posed by proceeding with the
7 litigation, as Air Canada raised numerous defenses and vigorously defended against these claims.

8 15. First, Plaintiff contends Air Canada failed to properly pay class members for all
9 hours worked, and that review of the time and payroll records produced shows considerable
10 discrepancy between the time recorded and employee pay. Per Plaintiff, these records suggest
11 Defendant systematically adjusted and/or rounded the time records such that employees were not
12 compensated for all hours worked as reflected in their time punches. Plaintiff contends Air
13 Canada adjusted employee time in a non-neutral fashion resulting in significant chunks of time
14 that was unaccounted for in the payroll records. Plaintiff estimates that Defendant underpaid
15 employees by approximately 30 minutes for every 8-hour shift worked during the class period.
16 This time was certainly not "de minimis" and was also not compensated by Defendant.

17 16. In response, Air Canada argued its timekeeping and payroll policies are fully
18 compliant with California law, and that it captured and paid for all hours worked at the correct hourly
19 rates. Defendant also emphasized the class members are unionized employees and, accordingly, issues
20 related to payment of wages and overtime were controlled by the relevant collective bargaining
21 agreements and therefore Plaintiff's claims would be preempted under the federal Labor Management
22 Relations Act. Without considering any of Defendant's defenses to certification or on the merits.

23 17. Plaintiff next contends Defendant failed to provide legally compliant meal and rest
24 breaks. Specifically, as to meal breaks, Plaintiff contends Defendant "auto-deducted" 30 minutes
25 of time for meal periods regardless of whether a meal period was taken, or taken on a non-
26 compliant basis. Per Plaintiff, his expert's review of the sampling of time records corroborates her
27 argument, as that analysis suggests that over 98% of all recorded meal periods are exactly 30 minutes
28 in length, which essentially is a statistical impossibility. Plaintiff also contends Defendant violated

1 the rest break requirements by providing employees with a combined paid rest break directly after
2 employees took an unpaid meal period, which practice appears to have been developed as a result
3 of the CBA, which permitted such a practice even though it violates California law.

4 18. Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks
5 available to Class Members in compliance with California law. Defendant contends its meal and
6 rest break policies are lawful and that its policies and practices comport with the flexibility the
7 California Supreme Court has held are integral to California's meal and rest period requirements.
8 Per Air Canada, Class Members were frequently reminded to take all meal and rest breaks, and
9 Defendant contends its time records demonstrate that Class Members took duty-free, timely meal
10 and rest breaks. As with the unpaid wage issue, Defendant further contends the break issue also is
11 subject to LMRA preemption since it is governed by the applicable CBAs. Defendant also
12 pointed out it paid thousands in break violation premiums, which position was supported by the
13 payroll data. Finally, Defendant argues that Plaintiff's meal and rest break claims are not
14 susceptible to common proof, as the claims would require individualized inquiry, including
15 whether there was an unlawful companywide policy, whether employees had the opportunity to
16 take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods,
17 and whether Defendant ever prevented them from taking meal and rest periods. Accordingly,
18 Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate.

19 19. On the expense reimbursement claims, Plaintiff alleges Defendant failed to
20 reimburse Plaintiff and Class Members for the use of their personal cell phones, Plaintiff alleges
21 Air Canada required ticketing agents note on their own personal cellphones various work related
22 activities, such as what time flights arrive, when the doors open, when the doors close, etc.
23 Employees are then required to text message these details to the ramp manager. Employees were
24 not compensated for using their own devices for this business purpose. Per Defendant, however,
25 there would not be any conceivable need for employees to use their personal phones at work and,
26 to the extent they did so it would be purely for personal convenience and therefore not
27 reimbursable.

28 20. As a result of the above alleged violations, Plaintiff also derivatively alleged Air

1 Canada failed to provide accurate wage statements and failed timely pay all wages that were due
2 and owing upon separation of employment. Should the primary claims for unpaid wages fail,
3 Plaintiff's derivative claims for wage statement penalties and waiting time penalties would also
4 fail. Defendant also contends it would not be liable for waiting time penalties because a "good
5 faith dispute" exists over the payment of past wages. Further, Defendant contends Plaintiff would
6 have to prove it "willfully" failed to pay Class Members appropriate wages due upon separation
7 of employment.

8 21. As far as potential PAGA liability, the theoretical civil penalties likely are around
9 \$2.2 million should Plaintiff prevail on all claims and establish violations of the multiple Labor
10 Code sections at issue. As with the class claims, Plaintiff discounted the potential PAGA
11 penalties based on Defendant's various defenses on the merits and also accounted for the Court's
12 wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the
13 Parties allocated \$50,000 to PAGA penalties. Plaintiff submits this amount is reasonable under
14 the circumstances and in line with comparable settlements in other wage and hour class actions in
15 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
16 settlement and will be able to weigh in as necessary.

17 22. If the case had not settled, the risk and expense associated with litigation would
18 have been extremely time consuming and expensive. Merits discovery and trial preparation
19 would have been extensive. For example, our attorneys have been involved in comparably sized
20 class/representative cases where, after class certification, the parties undertook merits discovery
21 and still took over 40 depositions and interviewed dozens of additional witnesses before
22 settlement. It is also common now in wage and hour class/representative actions for both sides to
23 retain experts to assess various issues in a case. For instance, it is possible this matter would have
24 required one or more experts, or perhaps a special master, to review and analyze the defendant's
25 time and payroll records in order to calculate the to calculate the exact amount of pay lost to
26 Defendant's time keeping policies, or to undertake an analysis of these issues via a survey and
27 statistical analysis. Indeed, my office found this necessary just for purposes of preparing for
28 mediation. The cost of such experts easily can run into the tens of thousands of dollars.

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

16 24. Thus, Plaintiff and I discounted the value of the class claims consistent with the
17 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
18 greater benefit if the litigation continued. We concluded – in light of these very real and
19 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
20 was in the best interests of the class. The overall \$616,153.57 recovery represents a significant
21 percentage of Defendant's potential exposure, and given Defendant's multi-layered defenses and
22 all other potential risks of continued litigation, a total recovery for the class of \$616,153.57,
23 which will result in average award of some \$1,125 per class member, plus additional sums under
24 PAGA, is a significant result well within the range of reasonableness considering all potential
25 outcomes, and it will provide direct monetary awards to all Class Members without further delay.

26 25. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
27 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
28 given the risks he undertook on behalf of the Class Members. By contacting and retaining

1 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
2 Members, while shouldering the risk of being liable for Air Canada's litigation costs. Plaintiff
3 also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
4 through a simple google search) for the benefit of other employees, placing himself at risk of
5 discrimination by future prospective employers. As set forth in more detail in his declaration
6 submitted at preliminary approval, among taking many other actions assisting in the successful
7 litigation of this case, Plaintiff provided substantial factual information and documents to
8 counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
9 kept abreast of all significant developments. Accordingly, the requested enhancement payment to
10 Plaintiff is appropriate and justified as part of the settlement.

11 26. The settlement provides for a payment to Phoenix of no more than \$10,000 for its
12 services as the Settlement Administrator. As set forth in the Declaration of Luvia Islas, Phoenix
13 has performed and will continue to perform its required duties through final distribution of the
14 settlement funds, and incurred \$9,000.00 in fees and expenses. Accordingly, Plaintiff respectfully
15 requests the Court approve payment of \$9,000 to Phoenix from the GSA.

16 27. Per the terms of the settlement, up to 33.33% of the GSA is allocated to payment
17 of reasonable attorney's fees, or \$205,382.49. Here, the parties did not negotiate the inclusion
18 of attorney's fees until after extensive arms-length bargaining regarding relief to the Class
19 was completed. The requested fee and cost award was a product of these arms-length
20 negotiations and fairly reflects the marketplace value of the services rendered by Class
21 Counsel in this case for the reasons addressed herein.

22 28. Over the three year course of this litigation, Crosner Legal's efforts included:
23 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
24 legal research, research into similar claims and claims against other employers in the same
25 industry, and attempts to locate and contact other Air Canada employees; (2) drafting a PAGA
26 notice letter; (3) drafting the initial complaint and related documents; (4) case management,
27 including communications with defense counsel, meeting and conferring/preparing case
28 management statements, etc.; (5) drafting a first amended complaint; (6) propounding initial

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

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

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

23 31 Since being admitted to the California State Bar in 2010, my entire legal career has
24 been dedicated to protecting employee and consumer rights through the prosecution of class
25 action and representative actions filed on behalf of plaintiffs in class actions and statewide
26 representative actions. Throughout my career I have managed or co-managed more than 100
27 class action and PAGA representative cases, from initial filing of the complaint through final
28 resolution.

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

- 3 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of
4 non-exempt hourly employees who worked for Defendants in California)
- 5 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.
6 BC501521 (class counsel for certified class of last-mile delivery drivers who were
7 alleged to be misclassified as independent contractors)
- 8 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County
9 Superior Court, Case No. RG21099519 (class counsel for certified classes of non-
10 exempt hourly employees who worked for Defendants in California)
- 11 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for
12 certified issue classes consisting of hourly employees who worked at Staples Center
13 and Nokia Theater)

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

- 17 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15
18 million global PAGA settlement on behalf of hourly employees statewide for alleged
19 Labor Code violations.)
- 20 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C
21 15-02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees
22 for Labor Code violations.)
- 23 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone
24 (\$4.75 million class and PAGA settlement on behalf of class of non-hourly employees
25 for Labor Code violations.)
- 26 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
27 employees who worked at concert venues in California for alleged Labor Code
28 violations)

- i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M class settlement on behalf of group of hourly employees who worked at Oakland Coliseum for alleged Labor Code violations)
- j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly employees who worked at Honda center in Anaheim California for alleged Labor Code violations)
- k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No. BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of independent contractor last-mile delivery drivers alleged to be misclassified)
- o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations)
- p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees who worked at retail stores in California for alleged Labor Code violations)
- q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).

1 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No.
2 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of
3 hourly employees who worked at Defendant's McDonald's franchises in California for
4 alleged Labor Code violations).

5 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No.
6 19STCV18977 (\$1.75M class and PAGA settlement on behalf of statewide group of
7 hourly employees who worked at Defendant's restaurants in California for alleged
8 Labor Code violations)

9 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
10 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly
11 employees for alleged Labor Code violations).

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

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

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

22 35. Finally, I have been selected by my peers as a Super Lawyers 'Rising Star' every
23 year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active
24 lawyers practicing within the State of California

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

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

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

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

21 39. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour
22 Practice Group. She graduated from the University of California, San Diego in 2004 and
23 graduated from California Western School of Law in 2013, and has been a member of the
24 California Bar since 2013. She gained extensive experience in wage and hour litigation,
25 beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley &
26 Mara Law Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021
27 as an associate attorney. She has handled wage and hour class actions and PAGA lawsuits for
28

1 over six (6) years and has assisted in obtaining millions of dollars for employees during her years
2 of practice.

3 40. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
4 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
5 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
6 Ross Dixon & Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where his
7 practice focused on complex business, employment, and insurance coverage disputes. In 2003, he
8 became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage
9 and hour class action firms in California. In 2008, he founded the Law Offices of J. Kirk
10 Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C. Since
11 2003, his practice has focused on representing plaintiffs in wage and hour and consumer law
12 matters, including both class actions and individual matters. He has served as class/lead counsel
13 in over 50 wage and hour class and PAGA actions.

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

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

25 43. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
26 action settlements while serving as lead class counsel in recent years, including but not limited to
27 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
28 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action

1 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
2 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
3 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
4 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
5 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
6 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
7 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
8 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a
9 \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*,
10 Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action
11 settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753
12 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021
13 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
14 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
15 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
16 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
17 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
18 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
19 Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*
20 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million
21 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
22 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action
23 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
24 Cty. Super. Ct.); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v.*
25 *Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a
26 \$1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No.
27 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3 million wage and hour class action
28 settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super.

1 Court); a \$1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case
2 No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a \$1.19 million dollar wage and hour class
3 action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367
4 (Los Angeles Cty. Super. Ct.).

5 44.. Based upon the qualifications and experience set forth above, the following hourly
6 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M.
7 Crosner \$800/hour, J. Kirk Donnelly \$900/hour; Jamie K. Serb and Brandon Brouillette,
8 \$750/hour, and Kiara Bramasco \$650/hour, and Branden Hamilton \$600/hour.

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

24 46. The requested rates also comport with the adjusted Laffey Matrix, which provides
25 that reasonable hourly rates for attorneys with 20+ years of experience, such as Messrs. M.
26 Crosner and Jones is nearly \$1000, and a reasonable rate for an attorney with 10+ years of
27 experience, such as myself and Ms. Serb, is some \$800. The adjusted Laffey Matrix may be
28 found at <http://www.laffeymatrix.com/see.html>. Similarly, the December 8, 2008 article,

1 “Billable Hours Aren’t the Only Game in Town Anymore,” NATIONAL LAW JOURNAL,
2 which set forth the following hourly billing rates as reported by Sheppard, Mullin, Richter &
3 Hampton, a leading firm in the defense of wage-and-hour class actions that I have opposed when
4 litigating wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd
5 Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
6 8th Year - \$455.36

7 47. After the analysis above, my firm’s lodestar is \$90,520.00, based on 120.3 attorney
8 hours spent litigating this case through the filing of this motion. Further, we will almost certainly
9 spend additional time addressing providing supplemental briefing prior to the hearing, addressing
10 settlement administration matters, responding to class member questions, etc.

11 48. As noted, my firm has represented Plaintiff for some two years with respect to this
12 matter and has expended a significant amount of time and resources in that representation. My
13 firm agreed to litigate this case on a purely contingent basis and in so doing assumed considerable
14 risk of non-payment for its fees and costs, as discussed above, and as is the case with these cases
15 in general. Under all relevant factors (as outlined herein and in the accompanying memorandum),
16 Plaintiff respectfully requests the Court award his counsel the requested fees of \$205,382.49
17 based on the common fund theory and a corresponding lodestar cross-check with a reasonable
18 2.27 lodestar enhancement.

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

23 50. My firm assumes a great deal of contingent risk in every wage and hour class
24 action it undertakes. Attorneys at my firm have been involved in a number of cases where
25 plaintiffs and their counsel invested hundreds of hours to time and tens of thousands in costs with
26 no return. For example, in a matter alleging misclassification on behalf of a putative class of
27 assistant managers at major restaurant chain, after three years of exceptionally adversarial
28 litigation and the investment of over 1,000 hours of attorney time and over \$100,000 in costs, the

trial court denied plaintiffs' motion for class certification. In another misclassification case on behalf of assistant managers at a large national restaurant chain, the parties reached a settlement after three years of litigation, secured preliminary approval and completed the notice process to the settlement class, only to have the defendant file for bankruptcy a few days before the final approval hearing. Lastly, in a matter against a large regional bank seeking expense reimbursement of behalf of outside salespersons, after more than a year of combative litigation and shortly before plaintiff's class certification motion was due, the defendant was taken over by federal regulators. In each of these instances the plaintiff's firm received nothing despite the investment of hundreds of hours of attorney time and thousands of dollars in out-of-pocket costs.

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

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$2,505.55
Mediation Fees	\$7,000.00
Case Anywhere	\$716.85
Expert Witness Fees	\$8,280.00
Postage/Overnight/Fax	\$114.24
PAGA Filing Fee	\$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$18,691.64

52. I therefore respectfully request the Court approve payment of \$18,691.64 in litigation costs and expenses to my firm.

53. 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 29th day of July 2024, at Los Angeles, California.



Declarant

EXHIBIT

1

EXHIBIT

2

Christopher Madison v. Air Canada
(Los Angeles Superior court Case No. 22STCV38188)

Crosner Legal Time Report

Tasks	Zachary Crosner	Brandon Brouillette	Kiara Bramasco	Branden Hamilton	J. Kirk Donnelly
Pre-filing Case Investigation	9.4	0.0	2.2	7.3	0.0
Pleadings and Law and Motion	8.6	0.0	4.4	5.2	11.3
Discovery and Post-Filing Investigation	0.0	0.0	0.0	0.0	0.0
Court Appearances	0.0	1.5	0.0	0.0	1.0
Case Management; Litigation Strategy & Analysis	1.7	2.4	0.0	0.0	1.2
Mediation and Settlement	13.4	42.2	8.5	0.0	0.0
Total Hours	33.1	46.1	15.1	12.5	13.5
Hourly Rate	\$800	\$750	\$650	\$600	\$900
Lodestar	\$26,480	\$34,575	\$9,815	\$7,500	\$12,150

Total Hours: 120.3
Total Lodestar: \$90,520