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7 Attorneys for Plaintiff LEON JOHNSON
8 As an individual and on behalf of all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 LEON JOHNSON, as an individual on
behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 CARVANA, LLC, an Arizona limited
17 liability company; CARVANA
LOGISTICS, LLC, a Delaware limited
18 liability company; and DOES 1-100,
inclusive,

19
20 Defendants.

Case No.: CIVSB2304225

Assigned for All Purposes to:
Hon. Jessica Morgan
Dept. S-26

**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 Taylor Mitzner; [Proposed] Order]

Date: July 24, 2024
Time: 8:30 a.m.
Dept.: S-26

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1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal PC, counsel of record for plaintiff Leon Johnson. 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.

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1 inaccurate wage statements and a failure to pay all wages due on termination of employment since
2 it resulted in a failure to track and pay for all hours worked.

3 5. Based on these allegations, Plaintiff filed his class action complaint against
4 Carvana on August 31, 2022, alleging causes of action for (1) recovery of unpaid minimum wages
5 and liquidated damages (2) failure to furnish accurate itemized wage statements; (3) failure to
6 reimburse business expenses; and (4) unfair competition. He also alleged claims under PAGA
7 based on the same alleged Labor Code violations.

8 6. Carvana has at all times denied Plaintiff's allegations and maintained its payroll
9 policies and procedures comply with California law, that it paid the class members all wages due,
10 and that it properly compensated the class members for all hours worked at the correct rates of
11 pay. Defendant also strongly contends the case cannot be maintained as any kind of class or
12 representative action, arguing determining the reasons for any off the clock work would result
13 individualized issues predominating and that a trial on a representative basis would be
14 unmanageable.

15 7. After Plaintiff filed his complaint, the Parties began working on discovery and,
16 after lengthy discovery meet and confer sessions and discussions about the merits of the case,
17 ultimately agreed to mediate. The Parties also agreed on a protocol for an exchange of additional
18 documents and information before the mediation. Consequently, Plaintiff's counsel reviewed
19 personnel policies/handbooks, meal and rest break policies, personnel files, compensation policies,
20 and a random of sampling paystubs and time records for about 50% of the class.

21 8. The Parties then engaged Steve Cerveris, Esq., a respected professional neutral
22 with substantial wage and hour and class action experience and, in October 2023, the Parties
23 participated in a full day mediation with Mr. Cerveris. Throughout the day, the arms-length
24 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
25 their legal and factual positions, and made numerous offers and counter-offers. By the end of the
26 day the Parties reached agreement on all major issues.

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10. As noted, after application of the escalator clause, the settlement obligates Carvana to pay \$411,732.06 to resolve the claims of the Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$205,823 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 percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to penalties and interest, which allocation is consistent with Carvana's potential liability as discussed below. Carvana 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 his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Division.

¹ Mitzner Decl., ¶ 13.

1 Member receives a portion of the available settlement funds corresponding to the relative value of
2 his or her potential claims. The proposed allocation provides a reasonable way to compensate Class
3 Members based on the amount of time they worked for Carvana as an allegedly misclassified
4 employee and lost hours worked and corresponding pay.

5 12 All Participating Class Members will release Carvana from all claims alleged in the
6 operative complaint, or that could have been brought based on the factual allegations in the
7 operative complaint, including PAGA claims, during the Class Period. The release is limited to the
8 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
9 operative complaint.

10 13. The Parties allocated \$40,000 of the GSA to payment of civil penalties under PAGA,
11 as addressed in more detail below, and I respectfully request the Court approve that amount as fair,
12 reasonable, and adequate, and consistent with PAGA's underlying purposes. As required by Labor
13 Code section 2699(l)(2), my office gave notice of the settlement and the approval hearing to the
14 LWDA via its online portal. A true and correct copy of the LWDA's acknowledgement of receipt
15 is attached hereto as Exhibit 1.

16 THE PROPOSED SETTLEMENT MEETS THE DUNK/KULLAR FACTORS

17 14. Prior to mediation, the parties engaged in formal and informal discovery to facilitate
18 settlement discussions. Thus, Plaintiff reviewed documents and information regarding Carvana's
19 payroll practices, a random sampling of pay stubs and time records for sampling of 50% of the class
20 members, applicable compensation plans, etc., and information from Defendant regarding class size
21 and breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff's
22 counsel are confident they obtained sufficient information to understand the law and facts of this
23 case and make an informed decision regarding the proposed settlement and whether it is fair and
24 reasonable.

25 15. Using that data, Plaintiff ran various calculations and estimated Carvana's likely
26 maximum exposure on the class claims at approximately \$2,678,000, including about \$629,400 on
27 the unpaid wage claims, about \$652,800 for wage statement violations, and approximately
28 \$1,396,000 in waiting time penalties.

1 16. On the unpaid wage claims, Plaintiff alleged Carvana failed to pay all wages due
2 by misclassifying of Plaintiff and other vehicle transporters as exempt, which resulted in them not
3 being paid for all hours worked. Per Plaintiff, Carvana essentially assumed Plaintiff and the class
4 members worked 40 hours per week, and paid them out at an hourly rate that was equivalent to
5 their weekly salary divided by 40 hours. Since California law requires that employees be paid for
6 “all hours worked,” employers cannot “average” hours worked by the amount paid in a pay period
7 to assess whether there was a violation of the minimum wage floor. Thus, regardless of how much
8 Plaintiff and the class members earned each week for the base 40 hour salary, Plaintiff contends a
9 minimum wage violation occurred each time they worked over 40 hours per week without
10 receiving additional compensation. On the other hand, Carvana argued it accurately tracks and
11 pays for all hours worked, and that its compensation policies are legal and fully comply with
12 California law. It also noted it completely revamped its compensation policies for vehicle
13 transporters in mid-2023 and now pays them on a piece rate system based on miles driver.

14 17. For Plaintiff’s expense reimbursement claim, he argued Defendant failed to
15 reimburse Plaintiff and the other employees for expenses incurred in using their personal mobile
16 phones and data for business purposes. Carvana, however, proffered evidence that it provided
17 class members with company cell phones to use while on duty. Accordingly, Plaintiff ultimately
18 assigned no value to this claim. Similarly, no value was assigned to the claims for unpaid overtime
19 or meal and rest break violations as those claims all are preempted under federal law since the
20 class members operate under the federal Department of Transportation’s Hours of Service
21 Regulations.

22 18. Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate
23 wage statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
24 properly record and pay for all hours worked, and these claims will rise or fall along with that
25 primary claim, in addition to being subject to “good faith” and other defenses available to
26 Defendant. Accordingly, Plaintiff discounted the derivative claims significantly in light of these
27 multiple potential defenses.
28

1 19. As far as potential PAGA liability, the theoretical penalties totaled about \$700,000
2 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
3 at issue for every single eligible pay period. As with the class claims, Plaintiff discounted the
4 potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and
5 further discounted these claims since the Court possesses wide discretion to reduce such penalties
6 even if Plaintiff ultimately prevailed. Accordingly, the Parties allocated \$40,000 to PAGA
7 penalties, which amount is reasonable and in line with comparable settlements in other class
8 actions in California. Additionally, the LWDA has been informed of the terms of the PAGA
9 portion of the settlement, and will be able to weigh in as necessary.

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

24 21. Further, continued litigation would be time-consuming and expensive as the parties
25 fought over class certification and probable motion to decertify, pursued merits discovery, a
26 probable motion to deem the PAGA claims unmanageable due to individualized inquiries, as well
27 as trial and possible appeals. Plainly continued litigation would substantially delay any recovery
28 with no assurance of recovering significantly more than the proposed settlement. While Plaintiff

1 and I are confident in the merits of these claims, a legitimate controversy exists as to each claim.
2 We also recognize proving the amount of potential wages and penalties due each Class Member
3 would be an expensive, lengthy, and uncertain proposition.

4 22. Plaintiff and I discounted the value of the class claims consistent with the risks
5 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
6 benefit if the litigation continued. We concluded – in light of these very real and substantial risks
7 – settlement on the proposed terms and without prolonged and costly litigation was in the best
8 interests of the class. The overall \$411,732 recovery represents a significant percentage of
9 Defendant’s potential exposure. Given Defendant’s multi-layered defenses and all other potential
10 risks of continued litigation, a total recovery for the class of \$411,732 is a significant result well
11 within the range of reasonableness considering all potential outcomes, and it will provide direct
12 monetary awards to all Class Members without further delay.

13 23. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
14 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
15 given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel
16 to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
17 Members, while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also
18 exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
19 through a simple google search) for the benefit of other employees, placing herself at risk of
20 discrimination by future prospective employers. As set forth in more detail in his declaration
21 submitted at preliminary approval, among taking many other actions assisting in the successful
22 litigation of this case, Plaintiff provided substantial factual information and documents to counsel,
23 attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast
24 of all significant developments.

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

1 incurred \$9,000.00 in fees and expenses. Accordingly, I respectfully request the Court approve
2 payment of \$9,000 to Phoenix from the GSA.

3 25. Per the terms of the settlement, up to 33.33% of the initially escalated gross
4 settlement amount is allocated to payment of reasonable attorney's fees, or \$135,987.24. Here, the
5 parties did not negotiate the inclusion of attorney's fees until after extensive arms-length
6 bargaining regarding relief to the Class was completed. The requested fee and cost award
7 was a product of these arms-length negotiations and fairly reflects the marketplace value of
8 the services rendered by Class Counsel in this case for the reasons addressed herein.

9 26. Over the course of this litigation, my firm's efforts included: (1) extensive pre-
10 lawsuit investigation of the claims of Plaintiff and the putative class, including legal research,
11 research into similar claims and claims against other employers in the same industry, and attempts
12 to locate and contact other employees of the Defendant; (2) drafting a PAGA notice letter; (3)
13 drafting the initial complaint and related documents; (4) case management, including
14 communications with defense counsel, meeting and conferring/preparing case management
15 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
16 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
17 informal discovery, including propounding informal discovery "requests" and reviewing
18 documents and other information produced; (7) working with a consulting expert on the analysis
19 of Defendant's production; (8) drafting a mediation brief and accompanying damages model after
20 review and analysis of defendant's formal and informal discovery production; (9) attending an all-
21 day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11)
22 drafting the motion for preliminary approval, and attending the hearing; (12) administration of the
23 settlement, including communications with the Settlement Administrator and settlement class
24 members; (13) drafting the motion for final approval and attorney's fees, and attending the final
25 approval hearing; and (14) extensive communications with the Plaintiff regarding case status, case
26 investigation and document review, mediation, and settlement terms. Additionally, Class Counsel
27 will incur additional time following final approval to, inter alia, respond to class member
28 inquiries, attend to distribution of settlement funds, and on the compliance hearing.

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

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

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

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

- 14 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of
15 non-exempt hourly employees who worked for Defendants in California)
- 16 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.
17 BC501521 (class counsel for certified class of last-mile delivery drivers who were
18 alleged to be misclassified as independent contractors)
- 19 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
20 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt
21 hourly employees who worked for Defendants in California)
- 22 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for
23 certified issue classes consisting of hourly employees who worked at Staples Center
24 and Nokia Theater)

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

- 28 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15

- 1 million global PAGA settlement on behalf of hourly employees statewide for alleged
2 Labor Code violations.)
- 3 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
4 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
5 Labor Code violations.)
- 6 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
7 million class and PAGA settlement on behalf of class of non-hourly employees for
8 Labor Code violations.)
- 9 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
10 employees who worked at concert venues in California for alleged Labor Code
11 violations)
- 12 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
13 class settlement on behalf of group of hourly employees who worked at Oakland
14 Coliseum for alleged Labor Code violations)
- 15 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
16 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
17 employees who worked at Honda center in Anaheim California for alleged Labor
18 Code violations)
- 19 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No.
20 CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly
21 employees statewide for alleged Labor Code violations)
- 22 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-
23 CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees
24 statewide for alleged Labor Code violations)
- 25 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on
26 behalf of hourly employees statewide for alleged Labor Code violations)
- 27 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
28 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of

- 1 independent contractor last-mile delivery drivers alleged to be misclassified)
- 2 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class
- 3 and PAGA settlement on behalf of statewide group of hourly employees for alleged
- 4 Labor Code violations)
- 5 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983
- 6 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees
- 7 who worked at retail stores in California for alleged Labor Code violations)
- 8 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
- 9 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
- 10 employees who worked at Defendant's McDonald's franchises in California for
- 11 alleged Labor Code violations).
- 12 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No.
- 13 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of
- 14 hourly employees who worked at Defendant's McDonald's franchises in California
- 15 for alleged Labor Code violations).
- 16 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
- 17 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly
- 18 employees who worked at Defendant's restaurants in California for alleged Labor
- 19 Code violations)
- 20 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
- 21 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly
- 22 employees for alleged Labor Code violations).

23 32. In addition, below are settlements in consumer class action cases in which I was

24 listed as an attorney of record and either managed, or co-managed with attorneys at my firm:

- 25 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
- 26 settlement on half of thousands of borrowers in California, Florida, and Texas for
- 27 UCL violations premised on improper late fee collections)
- 28 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in

1 landmark case that established the ‘McGill rule’ precluding the waiver of public
2 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
3 settlement on behalf of consumer who sued for damages and class injunctive relief
4 stemming from marketing of credit protector plan)

5 33. Finally, I have been selected by my peers as a Super Lawyers ‘Rising Star’ every
6 year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers
7 practicing within the State of California

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

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

25 36. Mr. Crosner currently is an executive board member of the Wage and Hour
26 Committee and the Legislative Committee for the California Employment Lawyers Association; a
27 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
28 Wage and Hour Committee member and Class Action Committee member for the National Trial

1 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
2 Justice Institute. He also was selected by Super Lawyers as a “Southern California Rising Star” for
3 employment and labor law for 2018-2020.

4 37. Jamie Serb is a partner with Crosner Legal and is head of the firm’s Wage and Hour
5 practice group. She graduated from the University of California, San Diego in 2004 and graduated
6 from California Western School of Law in 2013, and has been a member of the California Bar since
7 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action
8 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
9 Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for over eight
10 years and has assisted in obtaining millions of dollars for employees during her years of practice.

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

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

22 40. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
23 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
24 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
25 Ross Dixon & Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where his
26 practice focused on complex business, employment, and insurance coverage disputes. In 2003, he
27 became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs’ wage
28 and hour class action firms in California. In 2008, he founded the Law Offices of J. Kirk

1 Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C. Since 2003,
2 his practice has focused on representing plaintiffs in wage and hour and consumer law matters,
3 including both class actions and individual matters. He has served as class/lead counsel in over 50
4 wage and hour class and PAGA actions.

5 41. 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, Inc.*,
8 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
9 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
10 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
11 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
12 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
13 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
14 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
15 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
16 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
17 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
18 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
19 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
20 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
21 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
22 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
23 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 Supply*
26 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.)), a \$2.38 million wage and
27 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
28 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement

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

12 42. Based upon the qualifications and experience set forth above, the following hourly
13 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M. Crosner
14 \$800/hour, Brandon Brouillette \$750/hour, Kiara Bramasco \$650/hour, Branden Hamilton
15 \$600/hour, and J. Kirk Donnelly \$900/hour.

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

1 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

2 44. The requested rates also comport with the adjusted Laffey Matrix, which provides
3 that reasonable hourly rates for attorneys with 20+ years of experience, such as Messrs. M.
4 Crosner, Jones and Donnelly, is \$899, and a reasonable rate for an attorney with 10+ years of
5 experience, such as myself and Ms. Serb, is \$661. The adjusted Laffey Matrix may be found at
6 <http://www.laffeymatrix.com/see.html>. Similarly, the December 8, 2008 article, "Billable Hours
7 Aren't the Only Game in Town Anymore," NATIONAL LAW JOURNAL, which set forth the
8 following hourly billing rates as reported by Sheppard, Mullin, Richter & Hampton, a leading firm
9 in the defense of wage-and-hour class actions that I have opposed when litigating wage-and-hour
10 class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335,
11 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455.36

12 45. After the analysis above, my firm's lodestar is \$88,880, based on 116.7 attorney
13 hours spent litigating this case through the filing of this motion. Further, we will almost certainly
14 spend additional time addressing settlement administration matters, responding to class member
15 questions, etc.

16 46. As noted, my firm has represented Plaintiff for some two plus years with respect to
17 this matter and has expended a significant amount of time and resources in that representation.
18 My firm agreed to litigate this case on a purely contingent basis and in so doing assumed
19 considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with
20 these cases in general. Under all relevant factors (as outlined herein and in the accompanying
21 memorandum), Plaintiff respectfully requests the Court award his counsel the requested fees of
22 \$135,987.24 based on the common fund theory with a corresponding lodestar cross-check and a
23 very modest lodestar enhancement of 1.53.

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

28 48. My firm assumes a great deal of contingent risk in every wage and hour class

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

15 49. Class Counsel's litigation costs and expenses are capped at \$12,500 under the terms
16 of Settlement Agreement. A true and correct itemization of the costs and expenses incurred by my
17 firm is set forth below:

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$2,201.43
Mediation Fees	\$7,500.00
Case AnyWhere Charges	\$560.85
Expert Witness Fees	\$495.00
Postage/Overnight/Fax	\$88.80
PAGA Filing Fee	\$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$10,921.08

26 50. I therefore respectfully request the Court approve payment of \$10,921.08 in
27 litigation costs and expenses to my firm.

28 51. For all the foregoing reasons, I respectfully request that the Court approve the

1 settlement in all particulars.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed this 25th day of June 2024, at Los Angeles, California.

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7 Brandon Brouillette
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Exhibit 1

Exhibit 2

Leon Johnson vs. Carvana, LLC et al
(San Bernardino Superior court Case No. CIVSB2304225)

Crosner Legal Time Report

Tasks	Zachary Crosner	Brandon Brouillette	Kiara Bramasco	Branden Hamilton	J. Kirk Donnelly
Pre-filing Case Investigation	8.6	0.0	4.3	2.2	0.0
Pleadings and Law and Motion	5.7	3.5	0.0	9.8	11.5
Discovery and Post-Filing Investigation	5.1	4.7	0.0	0.0	0.0
Court Appearances	0.0	3.0	0.0	0.0	1.0
Case Management; Litigation Strategy & Analysis	10.4	5.5	0.0	0.0	0.0
Mediation and Settlement	4.4	3.7	0.0	0.0	0.0
Total Hours	34.2	53.7	4.3	12.0	12.5
Hourly Rate	\$800	\$750	\$650	\$600	\$900
Lodestar	\$27,360	\$40,275	\$2,795	\$7,200	\$11,250

Total Hours: 116.70
Total Lodestar: \$88,880