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

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF EL DORADO**

12 CHARMAINE TATE, as an individual and
on behalf of all others similarly situated,

13 Plaintiff,
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15 v.

16 PRO ENERGY SERVICES GROUP, LLC,
a Delaware Limited Liability Company;
17 and DOES 1-100, inclusive,

18 Defendants.
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Case No.: 23CV0586

Assigned for All Purposes to:
Hon. Gary S. Stossberg
Dept. 9

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

Date: February 21, 2025
Time: 8:30 a.m.
Dept. 9

1 I, BRANDON BROUILLETTE, declare as follows:

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

5 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

6 2. Defendant Pro Energy provides a wide range of construction support services for
7 the utility industry, and partners with companies engaged in the construction, maintenance, repair,
8 planning, design, testing, and inspection of electrical infrastructure and facilities. Plaintiff Tate
9 worked for the Defendant for approximately one month until she resigned in September of 2022.
10 Her title was 'Flagger' or traffic helper' and she was on the flag team that assisted with road
11 closures and traffic management. She was a member of the Local IBW union. She would work
12 anywhere from 6-12 hours per day, 5 days a week. Plaintiff Crockett worked for the Defendant for
13 approximately four years as a Senior Program Manager. He oversaw construction managers,
14 inspectors, and traffic control workers. In addition to hourly pay, a significant portion of his
15 weekly income was paid as "Per Diems." Unlike Plaintiff Tate, he was not a union employee.

16 3. Plaintiffs allege several wage and hour violations by Defendant. First, they allege
17 Defendant failed to pay employees for all hours worked, and that supervisors were tasked with
18 logging hours at each job site resulting in accurate timekeeping. Plaintiff Tate also alleges she
19 sometimes was required to ride in a company van while picking up various employees from
20 different jobs sites after her shift had ended, which time she claims was not recorded or paid for.
21 Plaintiff Crockett further alleges that Pro Energy failed to include per diem payments in the
22 calculation of the "regular rate" used to determine overtime wages and, as a result, that they and
23 class members were underpaid for their overtime hours.

24 4. Plaintiffs also claim meal and rest break violations and allege Defendant did not
25 provide 1st or 2nd meal periods to Plaintiffs and other flaggers who were required to eat while
26 working and 30 minutes "auto deducted" from their time. Plaintiffs similarly claim Defendant did
27 not provide Plaintiffs and other flaggers with any rest periods. Lastly, Plaintiffs argued they had to
28

1 use their personal cell phones for work purposes such as communicating with supervisors during a
2 shift, and that they received no reimbursement.

3 5. Based on these allegations, Plaintiff Tate filed a class action complaint in April
4 2023 alleging causes of action against Defendant for unpaid minimum wages, unpaid overtime
5 wages, failure to provide meal periods, failure to provide rest periods, violations of Labor Code
6 Section 226, failure to timely pay all wages due upon separation of employment, failure to
7 reimburse for business expenses, unfair competition. On July 27, 2023, after notice to the LWDA
8 and exhausting administrative remedies, Plaintiff Tate filed an amended complaint adding a claim
9 for violations under PAGA based on the various alleged Labor Code violations identified in her
10 PAGA notice letter. On July 21, 2023, Plaintiff Crockett filed a separate class action complaint
11 against Defendant in the Placer County Superior Court, alleging causes of action against
12 Defendant for unpaid overtime wages, violations of Labor Code Section 226, and unfair
13 competition.

14 6. Pro Energy has at all times denied Plaintiffs' collective allegations and maintained
15 its payroll and timekeeping policies and procedures comply with California law, that it paid the
16 class members for all wages due and provided all required meal and rest breaks on a fully-
17 compliant basis. Defendant also contends there would be no need for any class member to use
18 their own phone on company business and therefore no reimbursement is owed. Additionally, Pro
19 Energy strongly contends the case cannot be maintained as a class action, arguing for example that
20 to the extent class members worked off the clock, or missed any breaks, it was intermittent and
21 infrequent and evidence of such off the clock work would be anecdotal, and therefore
22 individualized issues would predominate. Lastly, Pro Energy emphasized that, like Plaintiff Tate,
23 a significant portion of the putative class were union employees and the terms of their employment
24 controlled by the terms of the relevant Collective Bargaining Agreements. Thus, per Defendant,
25 the claims of many class members were subject to federal preemption under the Labor

1 Management Relations Act and further subject to the grievance and arbitrations procedures of the
2 CBAs.

3 7. After Plaintiffs filed their respective complaints, the Parties engaged in initial
4 written discovery and, after meeting and conferring regarding discovery, law and motion, and
5 other case management issues, agreed to attempt a global mediation. The Parties also agreed on a
6 protocol for an exchange of substantial documents and information before the mediation to
7 facilitate the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records,
8 compensation plans, personnel policies/handbooks, personnel files, relevant CBAs, meal and rest
9 break policies, and a random of sampling of Class Member paystubs and time records. Plaintiffs
10 then had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates
11 for potential damages from off the clock work, violation rates for meal violations, etc. Defendant
12 also provided data regarding the total number of putative class members, the estimated total
13 amount of workweeks and pay periods they worked, average pay rates, and information regarding
14 other non-hourly compensation, among other relevant data.

15 8. The Parties then engaged Lou Marlin, Esq., a respected professional neutral with
16 substantial wage and hour and class action experience and, in April 2024, the Parties participated
17 in a full day mediation with Mr. Marlin. Throughout the day, the arms-length negotiations were
18 hard-fought and adversarial as the Parties exchanged extensive information on their legal and
19 factual positions, and made numerous offers and counter-offers. With the mediator's assistance,
20 the Parties finally reached agreement on all major issues.

21 **THE PROPOSED SETTLEMENT TERMS**

22 9. Under the settlement, Pro Energy will pay \$900,000.00 into a common fund, the
23 Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or
24 \$300,000.00, actual litigation costs of up to \$15,000, modest enhancement awards of up to
25 \$10,000 for each plaintiff, settlement administration costs of \$17,500, and \$60,000 for alleged
26 civil penalties under PAGA,¹ all will be paid from the GSA. The remainder of approximately
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28 ¹ Consistent with PAGA, \$45,000 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining \$15,000 will be distributed pro rata to the Aggrieved Employees.

1 \$ ____ will be allocated among the Participating Class Members based on their total weeks worked
2 during the Class Period. No portion of the GSA will revert to Pro Energy.

3 10. As noted, the settlement obligates Pro Energy to pay \$900,000 to resolve the
4 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$487,500 from the GSA
5 will be distributed to the Participating Class Members. This is a cash settlement that does not
6 require Participating Class Members to submit a claim form to receive their settlement share.
7 Participating Class Members will receive their settlement checks automatically via First Class
8 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
9 eighty percent will be allocated to expenses, penalties and interest. Pro Energy will pay any and all
10 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
11 Court's approval, any amounts not claimed (because a class member does not cash his or her
12 settlement check) will be forwarded to the California State Controller's Unclaimed Property Fund.

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

24 12. All Participating Class Members will be deemed to release Pro Energy from all
25 claims alleged in the operative complaint, or that could have been brought based on the allegations
26 in the operative complaint, including PAGA claims, from March 21, 2018 to April 13, 2024. The
27 release is limited to the claims that were actually pleaded or could have been pleaded based on the
28 alleged facts in the operative complaint.

13. The Parties allocated \$60,000 to payment of civil penalties under PAGA for such claims against Pro Energy, as addressed in more detail below, and which amount Plaintiffs submit is fair, reasonable and adequate and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2), my office gave notice of the settlement and preliminary approval hearing to the LWDA via its online portal, and further served the LWDA with this motion. Attached hereto as Exhibit 1 is a true and correct copy of the LWDA's acknowledgment of receipt.

The Proposed Settlement Merits Final Approval as it Meets the Dunk and Kullar Factors
and is within the Range of Reasonableness

14. Prior to settlement, the Parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding Pro Energy's payroll practices, a random sampling of pay stubs and time records from class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiffs 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. Plaintiffs' 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.

15. Using that data, Plaintiffs ran various calculations and estimated Defendant's theoretical maximum exposure on the class claims at about \$32.719 million. More specifically, the theoretical maximum includes approximately \$920,300 in unpaid wages due to alleged off the clock work, about \$3,736,800 in underpaid overtime based on the alleged regular rate issue, around \$4,432,800 for alleged meal break violations, about \$276,300 for alleged rest break violations, about \$11,294,500 on the expense reimbursement claims, \$694,500 for alleged expense reimbursement, approximately \$3,106,050, on the wage statement claims, and waiting time penalties of about \$8,534,300.

1 16. Plaintiffs contend they and class members worked “off the clock” when they would
2 travel in company vehicles after clocking out of their shift. In response, Defendant countered that
3 it accurately tracked employee time and paid class members all wages due as required under
4 applicable law. Defendant further argued it had a strict policy against off the clock work and
5 therefore if any such work occurred it was aberrational and against company policy, and done
6 without employer knowledge or consent. For the same reasons, Pro Energy argued it would require
7 individualized inquiries to determine what alleged “off the clock” work occurred and whether such
8 work was potentially compensable, and therefore class certification would not be appropriate on the
9 claim. On the underpaid overtime claim, Plaintiffs allege Pro Energy failed to include certain per
10 diem payments in the calculation of the employee’s “regular rate” of pay then used to determine the
11 correct overtime rate. In response, Defendant argued it accurately accounted for, calculated and paid
12 all overtime hours at the correct rates of pay in accordance with the applicable CBAs and applicable
13 law.

14 17. Plaintiffs next contend Defendant failed to provide legally compliant meal and rest
15 breaks, and that Defendant essentially had an “auto deduct” policy where 30 minutes of time was
16 deducted from employee hours worked regardless of whether they received a fully-compliant
17 lunch or not. Plaintiffs further argued that lunch breaks frequently were not compliant, and that
18 employees had to work through some or all of their meal breaks, meal breaks started late, and that
19 second meal periods were not always provided on shifts over 10 hours. For similar reasons,
20 Plaintiffs argued they and the class members did not receive required rest breaks either.

21 18. Defendant deny Plaintiffs’ contentions, claiming it made meal and rest breaks
22 available to Class Members in compliance with California law and the CBAs, and noted it paid
23 thousands in meal period premium payments for documented violations. Pro Energy argued its meal
24 and rest break policies are lawful and that Class Members were frequently reminded they were
25 required to take all meal and rest breaks. Defendant also contend that time records demonstrate that
26 Class Members took duty-free, timely meal and rest breaks. Defendant further contends the meal
27 and rest break policies and practices comported with the flexibility the *Brinker* court held was
28 integral to California’s meal and rest period requirements. Finally, Defendant argued that Plaintiffs’

1 meal and rest break claims are not susceptible to common proof, as the claims would require
2 individualized inquiries, including whether there was an unlawful companywide policy, whether
3 employees had the opportunity to take meal and rest periods, whether they voluntarily chose to
4 forego their meal and rest periods, and whether Defendant ever prevented them from taking meal
5 and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class
6 treatment is not appropriate.

7 19. In the expense reimbursement claim, Plaintiffs claim they and other class members
8 regularly were required to use personal phones while working to, inter alia, communicate with
9 supervisors and each other. In response, Defendant argued it provided employees with access to all
10 electronics needed to perform their job duties and, accordingly, if employees used their personal
11 phones it was purely for their own convenience rather than business necessity and therefore would
12 not be reimbursable.

13 20. As a result of the above alleged violations, Plaintiffs allege Defendant failed to
14 provide accurate wage statements and failed to timely pay all wages that were due and owing upon
15 separation of employment. In response to these derivative claims, Defendant emphasized that,
16 should the primary claims fail, Plaintiffs' claim for wage statement violations and waiting time
17 penalties would also fail. Defendant further argued it would not be liable for waiting time penalties
18 because a "good faith dispute" exists over the payment of past wages. Further, Defendant
19 contended Plaintiffs would have to prove Defendant "willfully" failed to pay Class Members
20 appropriate wages due upon separation of employment.

21 21. Lastly, Pro Energy emphasized that, like Plaintiff Tate, a significant portion of the
22 putative class were union employees and the terms of their employment controlled by the terms of
23 the relevant Collective Bargaining Agreements. Thus, per Defendant, the claims of many class
24 members were subject to federal preemption under the Labor Management Relations Act and
25 further subject to the grievance and arbitrations procedures of the CBAs.

26 22. As far as potential PAGA liability, the theoretical civil penalties likely are around
27 \$15 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor
28 Code sections at issue. As with the class claims, Plaintiffs discounted the potential PAGA penalties

1 based on Defendant's various defenses on the merits and also accounted for the Court's wide
2 discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties
3 allocated \$60,000 to PAGA penalties. Plaintiffs submit this amount is reasonable under the
4 circumstances and in line with comparable settlements in other wage and hour class actions in
5 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
6 settlement, and will be able to weigh in as necessary.

7 23. The settlement obviates the significant risk that this Court may find any kind of class
8 resolution unachievable or might deny certification of all or some of Plaintiffs' claims. Furthermore,
9 even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be
10 expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial
11 and possible appeals, and would substantially delay any recovery by the class with no assurance of
12 recovering significantly more than the proposed settlement. Overall, while Plaintiffs are confident
13 in the merits of her claims, a legitimate controversy exists as to each cause of action. Plaintiffs also
14 recognize proving the amount of wages and penalties due each Class Member would be an
15 expensive and uncertain proposition.

16 24. Plaintiffs and their counsel discounted the value of the class claims consistent with
17 the risks discussed above, and carefully weighed the likelihood of the class receiving substantially
18 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very
19 real and substantial risks – settlement on the proposed terms and without prolonged and costly
20 litigation was in the best interests of the class. The overall \$900,000 recovery represents a
21 significant percentage of Defendant's potential exposure and, given the multiple litigation risks
22 addressed above, a total recovery for the class of \$900,000, with an average award of about \$278
23 per class member, is a fair result within the range of reasonableness considering all potential
24 outcomes.

25 **PLAINTIFFS' ENHANCEMENT AWARDS**

26 25. The service payment provided to Plaintiffs as the class representatives is typical in
27 class action cases and reasonable. Both devoted time and resources to the litigation, provided
28 documents, assisted Class Counsel with investigating the claims asserted and in preparing for

1 mediation. The proposed \$10,000.00 enhancements are reasonable in recognition of Plaintiffs' time
2 spent on this matter, the risks they undertook on behalf of the class, and the benefit conferred to the
3 class, as addressed in their respective declarations filed at preliminary approval.

4 **SETTLEMENT ADMINISTRATION COSTS**

5 26. The settlement provides for a payment to Phoenix for its services as the Settlement
6 Administrator. As set forth in the Declaration of Mayra Gonzalez, Phoenix has performed and
7 will continue to perform its required duties through final distribution of the settlement funds and
8 incurred \$17,500 in fees and expenses. Accordingly, Plaintiffs respectfully request the Court
9 approve payment of \$17,500 to Phoenix from the GSA.

10 **ATTORNEY'S FEES AND COSTS**

11 27. Per the terms of the settlement, up to one-third of the gross settlement amount is
12 allocated to payment of reasonable attorney's fees. Here, the parties did not negotiate the
13 inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to
14 the Class was completed. The requested fee and cost award was a product of these arms-
15 length negotiations and fairly reflects the marketplace value of the services rendered by my
16 office in this case for the reasons addressed herein.

17 28. As is fully detailed in the Brouillette and Lee Declarations, Class Counsel's
18 efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the
19 putative class, including legal research, obtaining Plaintiffs' employment records, research into
20 similar claims and claims against other employers in the same industry, and attempts to locate and
21 contact other employees of Defendant; (2) drafting PAGA notice letters; (3) drafting the initial
22 complaints and related documents; (4) case management, including communications with defense
23 counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy
24 discussions with defense counsel regarding settlement/mediation and informal discovery needed
25 for meaningful settlement discussions; (6) engaging in substantial informal discovery, including
26 propounding informal discovery "requests" and reviewing documents and other information
27 produced; (7) drafting a mediation brief and accompanying damages model after review and
28 analysis of defendant's informal discovery production; (8) attending an all-day mediation; (9)

1 negotiating and drafting the settlement agreement and related documents; (10) drafting the
2 amended complaint; (11) drafting the motion for preliminary approval and supplemental papers re:
3 changing the notice period; (12) administration of the settlement, communications with the
4 Settlement Administrator and settlement class members; (13) drafting the motion for final
5 approval and motion for attorney's fees, and attending the final approval hearing; and (14)
6 extensive communications with the Plaintiffs regarding case status, case investigation and
7 document review, mediation, and settlement terms. Additionally, Class Counsel will incur
8 additional time to attend the final approval hearing and following final approval to, inter alia,
9 respond to class member inquiries, work with the Settlement Administrator on the distribution of
10 settlement funds, and on the compliance hearing.

11 29. I am is a graduate of Loyola Law School, Los Angeles, from which I received a
12 *juris doctorate* degree in 2009. Prior to attending law school, I attended the University of
13 Southern California, from which I received a bachelors of science in Business Administration in
14 2006.

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

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

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

25 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
26 exempt hourly employees who worked for Defendants in California)

27 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
28 (class counsel for certified class of last-mile delivery drivers who were alleged to be

1 misclassified as independent contractors)

- 2 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
3 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
4 employees who worked for Defendants in California)
- 5 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for certified
6 issue classes consisting of hourly employees who worked at Staples Center and Nokia
7 Theater)

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

- 11 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
12 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
13 Code violations.)
- 14 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
15 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
16 Labor Code violations.)
- 17 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
18 million class and PAGA settlement on behalf of class of non-hourly employees for
19 Labor Code violations.)
- 20 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
21 employees who worked at concert venues in California for alleged Labor Code
22 violations)
- 23 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
24 class settlement on behalf of group of hourly employees who worked at Oakland
25 Coliseum for alleged Labor Code violations)
- 26 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
27 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
28 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).
- r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184 (\$2.25 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).
- s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees

1 who worked at Defendant's restaurants in California for alleged Labor Code violations)
2 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
3 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees
4 for alleged Labor Code violations).

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

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

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

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

18 36. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
19 some 14 years of experience as a practicing attorney, all of which have focused on litigation of
20 employment, labor law, consumer, and class action claims. Following graduation, he
21 immediately began working for a nationally recognized plaintiff's complex litigation firm,
22 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer
23 attorneys and recipients of trial attorneys of the year awards. He also worked for former
24 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
25 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
26 consumers and employees in class action litigation, civil rights and employment litigation,
27 catastrophic injuries, insurance bad faith and appellate litigation.

28 37. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its

1 inception has focused almost exclusively on wage and hour class actions and other labor and
2 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his
3 practice is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner
4 Legal is currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty
5 (50) wage and hour class actions and/or PAGA representative actions in both federal and state
6 courts throughout California.

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

14 39. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour
15 practice group. She graduated from the University of California, San Diego in 2004, graduated from
16 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
17 She gained extensive experience in wage and hour litigation, beginning work as a class action
18 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
19 Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for nearly ten
20 years and has assisted in obtaining millions of dollars for employees during her years of practice.

21 40. 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.); a \$1.5 million wage and hour class action settlement
22 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
23 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
24 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
25 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
26 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
27 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

1 41. As noted, Crosner Legal has represented Plaintiff Tate for over a two years with
2 respect to this matter and has expended a significant amount of time and resources in that
3 representation. Crosner Legal agreed to litigate this case on a purely contingent basis and in so
4 doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as
5 is the case with these cases in general. Under all relevant factors (as outlined herein and in the
6 accompanying memorandum), Plaintiffs respectfully request the Court award their counsel the
7 requested fees of \$300,000 based on the common fund theory. Any fees awarded by the Court will
8 be split 50/50 between Crosner Legal and Diversity Law Group, and both Plaintiffs have been
9 advised of the fee split and consented thereto in writing.

10 42. This case posed considerable contingent risk, for the reasons addressed above; if
11 there had been recovery then my firm would not have received any fees for the time invested
12 litigating the case. Throughout the pendency of this case, my firm has received no compensation
13 or reimbursement for its efforts representing Plaintiffs and the Class.

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

1 44. Reimbursement for litigation costs and expenses is capped at \$15,000 under the
2 terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred
3 by Crosner Legal is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$1,768.00
Mediation Fees	\$9,000.00
PAGA Filing Fees	\$75.00
Expert Witness Fees	\$8,145.00
Postage/Delivery	\$43.30
Legal/Financial Research	(waived)
Photocopies	(waived)
Total Costs and Expenses	\$19,031.30

11 45. These costs and expenses are reasonable in amount and were necessary to the
12 successful resolution of the case. As set forth in the Lee Declaration, our co-counsel's costs total
13 \$2,112.77, for a grand total of \$21,144.07 in cost and expenses for both firms. I respectfully
14 request the Court approve payment of \$15,000 in litigation costs and expenses as provided for by
15 the cap on expenses set forth in the Settlement Agreement.

16 46. For the foregoing reasons, I respectfully request the Court grant this motion and
17 grant final approval to the proposed settlement.

18 I declare under penalty of perjury under the laws of California that the foregoing is true and
19 correct. Executed on January 28, 2025, at Los Angeles, California.

21 

22 _____
23 Brandon Brouillette

EXHIBIT

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