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13 on behalf of the State of California and all Aggrieved Employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF CONTRA COSTA**

16 LEIGHA SCHARSCH, on behalf of the State
17 of California and all Aggrieved Employees,

18 Plaintiff,

19 v.

20 VICI COLLECTION, LLC, a Delaware
21 Limited Liability Company; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: C24-02031

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
UNDER PRIVATE ATTORNEYS
GENERAL ACT**

Date: TBD

Time: 9:00 a.m.

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1 Complaint sought only PAGA civil penalties for the following alleged wage and hour violations:
2 (a) failure to pay wages, including minimum, overtime and vacation wages; (b) failure to provide
3 meal and rest periods; (c) failure to provide complete and accurate wage statements; and (d) waiting
4 time penalties, on behalf of all individuals employed by VICI as non-exempt employee in California
5 during the PAGA Period.

6 7. Defendant has at all times denied Plaintiff's allegations and maintained it complied
7 with all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends
8 among other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours
9 worked at the correct hourly rates in conformance with all applicable laws, that it authorized and
10 permitted Plaintiff and the allegedly aggrieved employees to take fully compliant meal and rest
11 periods in accordance with all applicable laws, and that Plaintiff and the alleged aggrieved
12 employees received accurate and complete itemized wage statements. Defendant also strongly
13 contends the case cannot be maintained as a representative action because among other things
14 Plaintiff's missed/interrupted/late/short meal and rest period allegations necessarily require detailed
15 individualized assessments and accordingly individualized issues predominate and a trial under
16 PAGA would be unmanageable.

17 8. Although the matter is not subject to the newly revised version of PAGA (since
18 Plaintiff filed her PAGA notice prior to June 19, 2024), the Parties' elected to pursue an early neutral
19 evaluation process (per Labor Code § 2699.3(f)). The Parties further agreed to a protocol for
20 exchanging additional documents and information before the mediation. Through this informal
21 discovery, Defendant provided Plaintiff with information including, inter alia, the number of
22 potential alleged aggrieved employees, the number of aggregate pay periods, sample pay stubs and
23 time records for around 20% of the alleged aggrieved employees, employee handbooks and manuals,
24 and relevant policy documents on Defendant's time keeping and reporting policies, etc.

25 9. The parties then attended the evaluation conference before highly-regarded
26 professional neutral Todd Smith, Esq., who has extensive experience mediating wage and hour class
27 and PAGA actions. Before and during the evaluation, Plaintiff and counsel analyzed, researched,
28 and investigated the potential issues, including matters related to the calculation of damages, trial,

1 and appellate issues and risks. At the evaluation, the Parties vigorously debated the factual and legal
2 grounds for Plaintiff's claims and Defendant's defenses, and the parties' data analyses and
3 conclusions based on data provided by Defendant. After lengthy and contentious negotiations, the
4 Parties were able to reach agreement on all major issues. The Parties subsequently formalized the
5 tentative settlement in their PAGA Settlement Agreement now before the Court for approval.

6 **SUMMARY OF SETTLEMENT TERMS**

7 10. Under the settlement, Defendant will pay a non-reversionary settlement amount of
8 \$200,000 (the "Gross Settlement Amount" or "GSA"), which is inclusive of payments to the LWDA
9 and Aggrieved Employees, costs of settlement administration, a modest service award to Plaintiff,
10 and reasonable attorney's fees and costs. As discussed below, Plaintiff's Counsel seeks a fee equal
11 to one-third (\$66,666.67) of the GSA, and reimbursement of actual litigation costs of \$13,795.20.
12 Plaintiff requests a service award in the amount of \$10,000.00. After payment of settlement
13 administration costs, service award and reasonable attorney's fees and costs from the GSA, Plaintiff
14 presently estimates about \$105,538.13 will remain (the "Net Settlement Amount" or "NSA").
15 Seventy-five of the NSA (about \$79,153.60) will go to the LWDA, and the remaining 25% (about
16 \$26,384.53) will be distributed to the Aggrieved Employees in proportion to the total number of
17 Eligible Pay Periods each individual worked during the PAGA Period. The average award currently
18 is estimated at about \$175.

19 11. The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris
20 has extensive experience administering PAGA settlements, and has agreed to cap its fees at \$4,000.
21 Within 60 calendar days of the Settlement's Effective Date, Defendant will fund the settlement.
22 Within 14 days thereafter, Simpluris will mail a Notice and settlement check to all PAGA Members
23 via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
24 Defendant's records. Recipients need not submit claim forms and will automatically receive a
25 Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time
26 any unclaimed residual funds will be forwarded to the State Controller's Unclaimed Property Fund.

27 12. The release in the Settlement Agreement narrowly releases only civil penalty claims
28 brought under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and the operative

1 Complaint. The Settlement Agreement protects the rights of the alleged aggrieved employees to
2 bring their own individual claims should they wish. In sum, the release narrowly applies only to the
3 PAGA claims alleged or that could have been alleged, based on the factual and legal allegations
4 pled in the operative Complaint.

5 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
6 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

7 13. Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break
8 violations, and failure to reimburse expenses, as well as derivative wage statement and waiting time
9 penalty claims. First, Plaintiff contends Defendant failed to pay Plaintiff and other allegedly
10 aggrieved employees for all hours worked because employees lost time waiting in long lines while
11 trying to clock in. Per Plaintiff, around 30-90 employees would be trying to clock in at the same
12 time with only five tablets available (and frequently one or two of those would not actually work),
13 and the fingerprint scanners employees had to use regularly malfunctioned and made the process
14 even last even longer. Plaintiff alleges this resulted in five or six minutes of off-the-clock time every
15 morning, and five or six minutes of off-the-clock time after every meal break, and that the warehouse
16 workers were subject to VICI's control when they were waiting to clock in. This regular
17 performance of off-the-clock work resulted in Defendant underpaying both minimum wages and
18 overtime wages owed to Plaintiff and Aggrieved Employees.

19 14. Next, Plaintiff alleges VICI failed to incorporate certain non-discretionary payments
20 into the regular rate of pay and therefore underpaid for overtime. Here, Plaintiff claims employees
21 would receive gift cards of around \$100-150 whenever they were required to work on a Saturday.
22 Review of employee wage statements suggests the amounts, which were in effect a bonus, were not
23 factored into the overtime rate as required under California law.

24 15. Plaintiff also contends Defendant failed to provide proper meal breaks due to the
25 time clock issue addressed above. Here, per Plaintiff, she and other employees typically took their
26 meal break at the same time, and all had to clock back in after a lunch break after no more than 30
27 minutes exactly. Since around 30-90 employees all were trying to simultaneously clock back in, and
28 given the unreliable tablets used to clock in, it effectively forced employees to start lining up 5-10

1 minutes before the end of the lunch or risk being disciplined. As a result, employees did not receive
2 a full net 30 minutes for their meal breaks. While Plaintiff alleged rest break violations in her
3 operative complaint, the data and other evidence that was shared for mediation did not support any
4 rest break violations. Accordingly, we did not afford that claim any value for settlement purposes.

5 16. Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and
6 failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-
7 203.

8 17. For mediation, Defendant indicated there are approximately 151 individuals who fit
9 within Plaintiff's definition of alleged aggrieved employees in California during the relevant PAGA
10 period, including about 90 former employees. Per Defendant, these individuals collectively worked
11 approximately 2,935 pay periods during the PAGA Period. Based on the data and information
12 provided by Defendant, we calculated the maximum exposure at about \$904,700.

13 18. We calculated these amounts as follows:

14 **Unpaid Wages – Off the Clock**

15 $2,935 \text{ pay periods} * 100\% \text{ violation rate} * \$100/\text{violation} = \$293,500$

16 **Underpaid Overtime- Regular Rate**

17 $2,935 \text{ pay periods} * 5\% \text{ violation rate} * \$100/\text{violation} = \$14,700$

18 **Meal Period Violations**

19 $2,935 \text{ pay periods} * 100\% \text{ violation rate} * \$100/\text{violation} = \$293,500$

20 **Wage Statement Violations**

21 $2,935 \text{ pay periods} * 100\% \text{ violation rate} * \$100/\text{violation} = \$293,500$

22 **Failure to Timely Pay Final Wages**

23 $90 \text{ former employees} * 1 \text{ violation/employee} * \$100/\text{violation} = \$9,000$

24 19. In response to Plaintiff's wage claims Defendant argued its time keeping policies are
25 legally compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved
26 employees for all hours worked at the correct rates consistent with its compliant payroll policies. It
27 further argued that "off the clock" work by employees was strictly prohibited. Per VICI, the clock
28 in process was quick and efficient, there were ample devices available for each shift, and each

1 employee needed only a few seconds to place their thumb on the scanner and clock in/out. Per
2 Defendant, the process did not involve an amount of time that would even be capable of being
3 captured and paid for. On the regular rate issue, VICI argued that, even if the gift cards occasionally
4 distributed for Saturday work should have been factored into employees' regular rate for purposes
5 of calculating overtime, this practice was so infrequent that the exposure for this claim was minimal.

6 20. For the meal and rest break claims, Defendant offered multiple defenses. First,
7 Defendant emphasized that the written meal and rest break policy generally was compliant, that it
8 authorized and permitted all required breaks, and that the allegedly aggrieved employees received
9 full 30 minute lunch periods notwithstanding the need to clock back in. As with the off the clock
10 claim, Defendant argued employees spent a few brief seconds scanning their fingerprints on the
11 tablets used for timekeeping, and accordingly lost no cognizable amount of time from their
12 otherwise fully compliant meal periods. Defendant also argued that meal periods were scheduled on
13 a staggered basis, and that employees were not disciplined for meal breaks that exceeded thirty
14 minutes.

15 21. On the wage statement and waiting time waiting time penalty claims, Defendant
16 emphasized that, to the extent they are derivative then they will rise or fall along with the primary
17 claims, in addition to being subject to "good faith" and other defenses available to Defendant.
18 Accordingly, Plaintiff had to discount the value of these claims significantly in light of these
19 multiple potential defenses. Defendant also contended a substantial discount should be applied to
20 the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize
21 Defendant multiple times for the same violation.

22 22. Defendant also emphasized that PAGA gives the Court wide latitude to reduce the
23 amount of civil penalties "based on the facts and circumstances of a particular case" if "to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." This is
25 particularly true here where the claims essentially are premised on "de facto" violations that could
26 prove difficult to establish on a representative basis, and in light of many cases that have imposed
27 substantial discounts on PAGA penalties awarded after trial. Additionally, no information came to
28 light suggesting that any violations were knowing and willful by Defendant. For these reasons, we

believe there is a high likelihood the Court would find imposition of significantly more in penalties to be “unjust, arbitrary, or confiscatory” and most probably would significantly reduce any penalties awarded.

23. Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, any one of which, if successful, could have decimated Plaintiff's case. Accordingly, Plaintiff faced risky issues going forward with this litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable, Defendant also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties.

24. Although Plaintiff and her counsel believe we could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all claims and convince the Court to award full penalties, which outcome is highly unlikely. Given Defendant's procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.

SUBMISSION TO THE LWDA

25. My office timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing, as reflected in Exhibit 2 hereto and the proof of service filed herewith.

THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

26. Under the terms of the Settlement Agreement, Plaintiff's counsel respectfully request an award of attorney's fees equal to 1/3 Gross Settlement Amount, or \$66,666.67. A one-third common fund attorney fee award is consistent with what courts have awarded Plaintiffs' counsel in other representative actions. Awarding attorney's fees of one-third of a gross settlement amount is favored by California courts when a fund established for the common benefit of others is involved, such as here.

1 27. There are several additional factors why I believe that the Court should award one-
2 third of the common fund as a reasonable attorney's fee. First, our efforts resulted in a common
3 fund settlement amount of \$200,000.00, which for the reasons explained, is fair and reasonable in
4 light of the risks/defenses Defendant raised in litigation and threatened to raise at trial and in post-
5 trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as
6 augmenting the state's enforcement capabilities, encouraging compliance with Labor Code
7 provisions, and deterring future non-compliance. Moreover, this result was achieved by the work
8 and success of this office, who negotiated the settlement after extensive preparation, informal
9 discovery, and an adversarial evaluation conference.

10 28. Second, Plaintiff faced significant risks going forward with the litigation. As
11 discussed above, Defendant raised various defenses to her claims, anyone of which, if successful,
12 could have decimated Plaintiff's case. Plaintiff faced risky legal issues going forward with this
13 litigation, and it would have taken several more years to realize any recovery in this action along
14 with the possibility of post-trial appeals,

15 29. Third, Crosner Legal are experienced class and representative action litigators, and
16 have achieved many approved PAGA settlements. This experience and expertise, combined with
17 the high quality of work performed, resulted in the settlement achieved in this case.

18 30. I am a partner at Crosner Legal, and my practice focuses primarily on representing
19 employees in class and representative wage and hour actions. Prior to joining Crosner Legal, I
20 was a partner at the law firm of Goldstein, Borgen, Dardarian & Ho in Oakland, California, where
21 I spent ten years representing plaintiffs in large employment, consumer, and disability class
22 actions. I have secured multimillion-dollar settlements on behalf of truck drivers, airline
23 passengers, and people with mobility disabilities. Notable settlements include:

24 • *Ayala v. U.S. Xpress Ents., Inc.* (C.D. Cal.): \$4.69 million wage and hour settlement on
25 behalf of truck drivers reached after three days of a jury trial.

26 • *Reni v. REACH Air Medical* (Alameda Super.): \$15 million settlement on behalf of
27 flight nurses, flight paramedics, and pilots for overtime, off-the-clock time, and failure to provide
28 meal and rest periods.

1 • *Muehe v. City of Boston* (D. Mass.): Injunctive relief settlement on behalf of people
2 with mobility disabilities requires Boston to install compliant curb ramps at every intersection.

3 • *Bazerman v. American Airlines* (D. Mass.): Settlement on behalf of a class of airline
4 passengers resulted in over \$7 million in refunded checked bag fees.

5 From 2013 to 2014, I clerked for the Honorable Marilyn L. Huff in the Southern District of
6 California. I am a 2013 cum laude graduate of Harvard Law School, where I was an editor of the
7 Harvard Law Review and was recognized for excellence in research and writing.

8 31. Brandon Brouillette is a 2009 graduate of Loyola Law School, Los Angeles. Prior to
9 attending law school, he attended the University of Southern California received a bachelors of
10 science in Business Administration in 2006. He has been a Partner at Crosner Legal since February
11 1, 2023. Prior to joining Crosner Legal, he was a Senior Associate and Team Director of a Wage
12 and Hour Litigation Team at Capstone Law APC, which he originally joined as an associate attorney
13 in May 2016. Since being admitted to the California State Bar in 2010, his entire legal career has
14 been dedicated to protecting employee and consumer rights through the prosecution of class action
15 and representative actions filed on behalf of plaintiffs in class actions and statewide representative
16 actions. He has managed or co-managed more than 100 class action and PAGA representative cases,
17 from initial filing of the complaint through final resolution. He also was selected as a Super Lawyers
18 ‘Rising Star’ every year from 2016 through 2022.

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

24 33. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
25 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
26 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
27 Ross Dixon & Bell, LLP (now Troutman Pepper Locke LLP), in Orange County, California,
28 where his practice focused on complex business, employment, and insurance coverage disputes.

1 In 2003, he became associated with Dostart Clapp & Coveney, LLP, then one of the premiere
2 plaintiffs' wage and hour class action firms in California. In 2008, he founded the Law Offices of
3 J. Kirk Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C.
4 Since 2003, his practice has focused on representing plaintiffs in wage and hour and consumer law
5 matters, including both class actions and individual matters. He has served as class/lead counsel
6 in over 50 wage and hour class and PAGA actions.

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

1 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
2 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
3 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
4 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
5 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
6 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
7 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
8 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
9 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
10 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
11 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
12 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
13 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

14 35. Based upon the qualifications and experience set forth above, I believe the
15 following hourly rates are reasonable: Raymond Wendell and Brandon Brouillette \$750/hour,
16 Kiara Bramasco, \$650/hour, J. Kirk Donnelly \$900/hour.

17 36. I request the Court apply the above hourly billing rates in this case, as is reasonable
18 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
19 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
20 class action firms in major California legal markets for partner-level attorneys with experience
21 comparable to mine. These rates have ranged from \$650 to \$900 per hour for calendar years
22 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los
23 Angeles, with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group
24 in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann
25 of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
26 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
27 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
28 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law

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

2 52. The requested rates also comport with the adjusted Laffey Matrix, which provides
3 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself and Mr.
4 Brouillette are over \$800/hour. The adjusted Laffey Matrix may be found at
5 <http://www.laffeymatrix.com/sec.html>.

6 37. Fourth, Crosner Legal has been representing Plaintiff Scharsch (and the State of
7 California) in this matter on a strictly contingent basis and as such, had to forego other financial
8 opportunities to litigate other cases, incurred the risk of non-recovery after a substantial
9 investment of time, money, and resources, and have done so since the inception of this case
10 without any payment or compensation. This is not an easy burden for a small firm. If, despite
11 these hardships and risks, the best this office could hope for is merely to be paid our customary
12 hourly rate multiplied by the number of hours worked on the case, then we would not be
13 compensated for the hardships and serious risks it faced litigating this contingency case, and
14 would not be incentivized to take on similar private attorney general cases in the future.

15 38. Fifth, the request for attorney's fees in the amount of one-third of the common fund
16 falls well within the norms accepted by state and federal courts in California in comparable wage
17 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
18 under the common fund doctrine was recently approved by the California Supreme Court in
19 Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480. For all of the above reasons, a common
20 fund fee award here in the amount of one-third of the \$200,000 common fund, or \$66,666.67, is
21 fair and reasonable.

22 39. Crosner Legal expended a total of 91 attorney hours on this matter, and accordingly
23 the firm's lodestar totals approximately \$69,005.00, excluding time to be incurred at the hearing
24 on this motion and thereafter to implement and administer the settlement. Crosner Legal's lodestar
25 is summarized in Exhibit 4 hereto.

26 40. As noted, my office has represented Plaintiff for some eighteen months with
27 respect to this matter and has expended a significant amount of time and resources in that
28 representation. We agreed to litigate this case on a purely contingent basis and in so doing

1 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
2 case with these matters in general. Under all relevant factors (as outlined herein and in the
3 accompanying memorandum), we respectfully request the Court award the requested fees of
4 \$66,666.67 based on the common fund theory with a corresponding lodestar cross-check and no
5 enhancement. Crosner Legal will not split any fees with any other attorney or law firm.

6 41. Plaintiff also requests reimbursement of Crosner Legal's actual out-of-pocket
7 expenses incurred to prosecute this action. These expenses were incidental and necessary to the
8 effective representation of the employees.

9 42. Crosner Legal's costs are \$13,795.20, including court filing/service of process fees,
10 mediation fees, expert fees, and postage. Notably, the requested costs do not include any and all
11 printing and research charges. A true and correct itemization of the costs and expenses incurred is
12 set forth below:

<u>Expense Category</u>	<u>Amount</u>
Court Filing Fees/Service of Process/Attorney Service	\$3,671.20
Mediation Fees	\$10,000.00
PAGA Filing Fee	\$75.00
Postage	\$48.36
Total Costs and Expenses	\$13,795.20

21 The requested costs are reasonable and uncontested and should be approved in full.

22
23 43. Here, pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of
24 \$10,000. This request is reasonable given the much broader release that Plaintiff is agreeing to, as
25 well as her efforts in this case and the risks she undertook on behalf of the Aggrieved Employees.
26 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this
27 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk
28 of being liable for Defendant's litigation costs. Plaintiff also exposed herself to unwanted

