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5 *Attorneys for Plaintiff, Rita Navarro, on behalf of*
6 *herself and all other aggrieved employees*

7 **LAW OFFICE OF SCOTT ERNEST WHEELER**
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10 {Additional Counsel listed on following page}

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**

14 RITA NAVARRO, on behalf of herself and all
"aggrieved employees" pursuant to Labor code
15 § 2698 *et seq.*,

16 Plaintiff,

17 v.

18 TIRE STAFFING dba IT'S CALIBER, a
Nevada corporation, CALIBER GROUP
19 STAFFING, INC., a California corporation,
and DOES 1 through 10, inclusive,

20 Defendants.

21 JAMES D. HENRIQUEZ, individually, and on
22 behalf of all other aggrieved employees,

23 Plaintiff,

24 v.

25 TIRE STAFFING, doing business as IT'S
CALIBER, a Nevada corporation; and DOES
26 1 through 50, inclusive,

27 Defendants.
28

CASE NO.: CIVDS 2016343
Consolidated with CIVDS 202100

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF UNOPPOSED MOTION
FOR APPROVAL OF SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"),
ATTORNEY'S FEES AND COSTS AND
SERVICE AWARD**

**Date: April 28, 2022
Time: 10:00 a.m.
Dept.: S26**

**Complaint Filed: August 12, 2020
Trial Date: None**

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Rita Navarro ("Plaintiff" or
4 "Navarro") in this action. I have personal knowledge of the facts set forth herein and if called as a
5 witness to testify to them, I could and would do so competently.

6 **Counsel's Experience and Recommendation:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
12 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
14 Kenneth, at Gaines & Gaines, APLC, who is now retired from the practice of law. Our practice
15 specializes in litigation, with an emphasis in business, real estate, and employment disputes like
16 this one. Over 95% of my practice is devoted to complex employment litigation similar to the
17 instant action.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 Court-approved class and representative counsel in hundreds of class and representative action
21 matters since my admission to the Bar. Attached hereto as **Exhibit A** is a true and correct list of
22 the cases in which I have represented employees in wage and hour matters in which my firm has
23 been appointed as class and representative counsel.

24 **Attorneys' Fees:**

25 6. The results achieved by my office are significant, as Defendant has agreed to pay
26 \$300,000 pursuant to the Settlement. This is a significant recovery given the risk of success in
27 obtaining any recoverable penalties.
28

1 7. Such results were achieved in the face of significant risks. Defendant maintained
2 defenses to Plaintiff's PAGA claims that very well could have resulted in a net-zero recovery at
3 trial.

4 8. Notwithstanding this risk of loss, my office undertook representation of the instant
5 PAGA claim for the benefit of the State of California on a contingency basis. This not only required
6 my office to personally assume the risk of nonpayment in securing the very substantial financial
7 benefit the State of California stands to receive, but constitutes a "loan" on my offices' services –
8 both of which are factors warranting fee enhancement under applicable California Supreme Court
9 authority.

10 9. Counsel' fee request of \$100,000 (one-third of the Gross Settlement Amount) is fair
11 and reasonable based on a percentage of the recovery, and as well as when confirmed with a lodestar
12 cross-check. This is also consistent with my offices' experience in similar wage and hour class
13 action matters. Attached as Exhibit A is a true and correct copy of my firm's invoice for services
14 rendered in this matter that was used to compute the lodestar.

15 10. I have spent, and expect to spend, a total of 7.5 hours on this matter. Our of counsel,
16 Alex P. Katofsky, will spend a total of 31.1 hours on this matter. Our former senior associate
17 Sepideh Ardestani has spent 7.0 hours on this matter. Our senior associate Evan S. Gaines has
18 spent 9.4 hours on this matter. Our of counsel, Miriam L. Schimmel, has spent 0.3 hours on this
19 matter.

20 11. Over the past year, several California courts have approved the attorney hourly rates
21 proffered here as reasonable. My reasonable hourly rate is \$650. This is the rate prevailing in the
22 community for similar work performed by attorneys of comparable skill, experience, and
23 reputation, and has been approved as reasonable by several California state and federal courts over
24 the past nine months. Based on my education and experience as detailed above, this rate is
25 reasonable.

26 12. Mr. Katofsky is a highly skilled and experienced litigator with over 20 years of
27 experience. He earned his J.D. in 1999 from the University of the Pacific McGeorge School of
28

1 Law. His hourly rate of \$700 is reasonable based on his education and experience and comports to
2 the market rate; it has been approved as reasonable by other California courts.

3 13. Ms. Ardestani is an eleven-year lawyer with experience in litigation matters,
4 including employment law and class and representative actions. She is a 2004 graduate of
5 University of California, Los Angeles (B.A.), a 2009 graduate of Whittier School of Law (J.D.),
6 and a 2010 graduate of Santa Clara School of Law (L.L.M.). Her hourly rate of \$550 is reasonable
7 based on her education and experience and comports to the market rate; it has been approved as
8 reasonable by other California courts.

9 14. Mr. Evan S. Gaines is a 2012 graduate of Michigan State University College of
10 Law. He graduated from the University of California, Santa Barbara in 2005. Evan's reasonable
11 hourly rate is \$550, which is based on his education and experience. This rate comports to the
12 market rate and has been approved by other California courts as reasonable.

13 15. Ms. Schimmel is also a highly skilled and experienced litigator, with over 21 years
14 of experience, primarily representing employees and employers in employment-related
15 litigation. She earned her Juris Doctor in 1996 from Loyola Law School, Los Angeles. Her hourly
16 rate of \$750 is reasonable based on her education and experience and comports to the market rate;
17 it has been approved as reasonable by other California courts.

18 16. Amelia Booth and Beatriz Franco are support staff in my office. They have
19 performed 0.4 hours and 1.5 hours (respectively) on this matter. Their reasonable fee is \$100 per
20 hour.

21 17. Representative action work also requires specialized learning and the willingness to
22 take large risks. My office has extensive experience in wage and hour representative action
23 litigation, particularly in the employment context, as detailed herein.

24 18. Furthermore, as described above, the Aggrieved Employees and the State of
25 California reaped significant benefits. The success achieved by the Settlement supports my firm's
26 fee request.

27 19. A small firm like ours can only properly litigate a limited number of cases at one
28 time. The requirements of this case were significant. Had we not reached a settlement with

1 Defendant; the demands of this case would have required a significant portion of our resources.
2 We were precluded from taking other employment cases due to the demands of litigating this case.

3 **Counsel's Costs:**

4 20. My firm's total costs are \$6,289.88 and include, among other expenses, mediation
5 fees. A true and correct copy of an itemized list of costs incurred by my firm in this action is
6 attached hereto as **Exhibit B**. These costs were reasonably incurred in litigating this matter.

7 **Plaintiff Navarro's General Release Payment**

8 21. Ms. Navarro is entering into a full general release against Defendant and its Released
9 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
10 Aggrieved Employees are releasing only PAGA civil penalty claims, while Ms. Navarro is
11 releasing all her Labor Code claims which underlie the PAGA claims she asserts. No other
12 Aggrieved Employee is subject to this broad form of release.

13 22. This broad release was negotiated (and necessary) to resolve the Action. Plaintiff
14 threatened to assert her individual claims, either in arbitration or in litigation, and Defendant
15 required that they be resolved in connection with the resolution of the Action. Without the
16 resolution and release of Plaintiff's individual wage claims, litigation would continue in a
17 piecemeal fashion, and Defendant is buying peace with this settlement, such that its objectives
18 would not be achieved absent the general release.

19 23. Ms. Navarro's individual claims have real value and were negotiated separately
20 from the settlement of the representative claims. In exchange, Plaintiff is giving a general release,
21 which includes all of the overtime, meal and rest break violations within the applicable four-year
22 statute of limitations.

23 I declare, under penalty of perjury, under the laws of the State of California, that the
24 foregoing is true and correct. Executed this 21st day of March, 2022 at Calabasas, California.

25
26 
27 DANIEL F. GAINES
28

EXHIBIT A

GAINES & GAINES
A Professional Law Corporation
27200 Agoura Road, Suite 101
Calabasas, CA 91301

Invoice submitted to:
Rita Navarro

March 21, 2022

Invoice #4945

Professional Services

	<u>Hours</u>	<u>Amount</u>
8/3/2020 [ESTIMATED] Pre-timekeeping: litigation research and analysis regarding Defendant and claims	10.00	7,000.00
8/10/2020 Prepare complaint	4.00	2,200.00
9/29/2020 Review letter from defense counsel; email defense counsel	0.50	275.00
10/5/2020 Emails with defense counsel regarding status of case	0.40	220.00
11/16/2020 Call with client regarding status	0.50	287.50
12/7/2020 Follow up with defense counsel regarding mediation	0.40	230.00
1/5/2021 Follow up with co-counsel regarding mediation	0.40	230.00
1/6/2021 Call with client regarding status; emails with co-counsel and firm regarding mediators	0.80	460.00
2/16/2021 Status call with client regarding mediation coming up	0.40	230.00
5/17/2021 Call with client regarding status and next steps (mediation)	0.40	230.00
6/8/2021 Call with client regarding status	0.30	172.50
6/24/2021 Attend Case Management Conference by CourtCall & email to firm	1.30	747.50
7/2/2021 Attend Case Management Conference hearing	0.80	440.00
8/25/2021 Call with client regarding update	0.50	275.00

	<u>Hours</u>	<u>Amount</u>
9/9/2021 Revise informal discovery letter Email co-counsel	0.80	440.00
10/28/2021 Call with client regarding status and claims	0.30	172.50
1/12/2022 Draft mediation brief, review file and emails with co-counsel	1.30	747.50
Revise mediation brief and compile exhibits and damages	0.80	460.00
1/13/2022 Finish mediation brief and compile exhibits and damages	0.80	460.00
1/18/2022 Complete and send Mediation Brief	0.90	517.50
Call with client regarding mediation	0.40	230.00
1/24/2022 Attend mediation via Zoom	10.00	7,000.00
1/25/2022 Revisions to Memorandum of Understanding	1.20	840.00
Call with client regarding mediation	0.40	230.00
1/27/2022 Conference call with co-counsel and defense counsel regarding Memorandum of Understanding	0.40	280.00
2/18/2022 Review status in prep for Case Management Conference	0.30	225.00
3/17/2022 Revisions to PAGA Approval Motion; prepare supporting declarations	2.00	1,400.00
4/1/2022 [ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	5,250.00
[ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	4,875.00
For professional services rendered	55.30	\$36,125.00
Balance due		<u>\$36,125.00</u>

User Summary			
Name	Hours	Rate	Amount
Alex Katofsky	31.10	700.00	\$21,770.00
Daniel Gaines	7.50	650.00	\$4,875.00
Evan Gaines	9.40	575.00	\$5,405.00
Miriam Schimmel	0.30	750.00	\$225.00
Sepideh Ardestani	7.00	550.00	\$3,850.00

EXHIBIT B

**Navarro v. Tire Staffing
Class Counsel's Costs**

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Postage/FedEx charges	\$ 20.42
Filing fees (including related attorney service expenses)	\$ 1,269.46
Mediation fee	\$ 5,000.00
TOTAL EXPENSES	\$ 6,289.88