

GAINES & GAINES, APLC
Daniel F. Gaines (SBN 251488)
Alex P. Katofsky (SBN 202754)
27200 Agoura Road, Suite 101
Calabasas, California 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

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

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler (SBN 187998)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

[Additional Counsel Listed on Following Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

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

Plaintiff,

v.

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

Defendants.

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

Plaintiff,

v.

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

Defendants.

CASE NO.: CIVDS 2016343 Consolidated
with CIVDS 2021000

[Assigned for all purposes to the Honorable
David Cohn, Department S26]

**DECLARATION OF AUBRY WAND IN
SUPPORT OF STIPULATION FOR
APPROVAL OF PAGA SETTLEMENT**

Action Filed: July 10, 2020
Trial Date: None Set

1 **THE WAND LAW FIRM, P.C.**

Aubry Wand (SBN 281207)

2 400 Corporate Pointe, Suite 300

Culver City, CA 90230

3 Telephone: (310) 590-4503

Facsimile: (310) 590-4596

4 *Attorneys for Plaintiff, James D. Henriquez, on*
5 *behalf of himself and all other aggrieved*
6 *employees*

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

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

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

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

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

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

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

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

22
23
24
25
26
27
28

23
24
25
26
27
28

28

1 the class action context, continuously for the past ten years.

2 7. From 2012 to 2016, I worked as an associate at a law firm that was almost
3 exclusively dedicated to representing the rights of employees.

4 8. I founded WLF in the beginning of 2016. WLF is committed to litigating cases
5 on behalf of consumers and employees. I am the firm's managing partner and am responsible
6 for all litigation decisions.

7 9. I have been named a "Rising Star" from 2018 to 2022 for the Southern California
8 *Super Lawyers Magazine*.

9 10. WLF has successfully recovered substantial compensation on behalf of
10 employees in individual employment matters involving claims of, *inter alia*, discrimination,
11 harassment, and wrongful termination. For example, in 2018 WLF prevailed on a FEHA
12 discrimination claim on behalf of an employee in a private arbitration after completing a six-day
13 hearing.

14 11. WLF has significant experience litigating employment class and representative
15 actions.

16 12. On September 10, 2020, Judge Vasquez of the Sacramento Superior Court,
17 appointed my firm, along with one other firm, liaison counsel for the plaintiffs in the Judicial
18 Council Coordination Proceeding, *Western Dental Wage and Hour Cases*, JCCP No. 5079.

19 13. WLF has served as lead counsel or co-counsel in numerous wage and hour class
20 action and PAGA representative cases in which millions of dollars have been recovered for
21 thousands of employees. Set forth in the following chart are some of the wage and hour class
22 actions and/or PAGA representative actions in which WLF was appointed class counsel and
23 which have been finally approved by the court:

Case Name	Case Number
<i>Yee, et al. v. Wong & Lau, Inc., et al.</i>	Los Angeles Cty. Sup. Ct. Case No. BC600087
<i>Aguilar v. Hook Burger, LLC</i>	Los Angeles Cty. Sup. Ct. Case No. BC608694
<i>Morales v. OPARC</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1622051

1	<i>Hopper-Porter, et al. v. Desert Regional Medical Center, Inc.</i>	Riverside Cty. Sup. Ct. Case No. RIC 1610095
2	<i>Matthews v. Red Hill Country Club</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1706187
3	<i>Vinnitsky v. L.A. Overnight, LLC</i>	Los Angeles Cty. Sup. Ct. Case No. BC655314
4	<i>Delgado, et al. v. Cienega Medical Spa, Inc.</i>	Los Angeles Cty. Sup. Ct. Case No. BC637702
5	<i>Backus v. Schireson Bros, Inc.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1809620
6	<i>Carrillo v. Merchant of Tennis, Inc.</i>	Los Angeles Cty. Sup. Ct. Case No. BC707896
7	<i>Fonseca, et al. v. United Ag Personnel Management, Inc., et al.</i>	Kern Cty. Sup. Ct. Case No. BCV-17-100791
8	<i>Abelar v. American Residential Services, LLC</i>	C.D. Cal. Case No. 19-cv-00726-JAK (JPRx)
9	<i>Abbott, et al. v. Vitco Distributors, Inc.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1820214
10	<i>Machorro-Fernandez v. Tacos La Bufadora, Inc.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1831535
11	<i>Araujo v. Dealer Solution Service, Inc., et al.</i>	Los Angeles Cty. Sup. Ct. Case No. BC720944
12	<i>Arteaga, et al. v. B.W. Hotel, LLC</i>	Los Angeles Cty. Sup. Ct. Case No. BC708551
13	<i>Hurtado v. CitiStaff Solutions, Inc., et al.</i>	Los Angeles Cty. Sup. Ct. Case No. 19STCV02853
14	<i>Revels v. Bottling Group, LLC</i>	Orange Cty. Sup. Ct. Case No. 30-2018-01031810-CU-OE-CXC
15	<i>Scott, et al. v. Kuehne+Nagel, Inc.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1707477
16	<i>Green, et al. v. Material Supply, Inc.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS1928214
17	<i>Zamarripa v. Superior Talent Resources, Inc.</i>	Orange Cty. Sup. Ct. Case No. 30-2019-01060339-CU-OE-CXC
18	<i>Perez v. Contera Construction Corp.</i>	Riverside Cty. Sup. Ct. Case No. RIC 2002575
19	<i>Reising v. El Pollo Loco, Inc.</i>	Los Angeles Cty. Sup. Ct. Case No. 20STCV42951
20	<i>Lopez v. Eastern Los Angeles Regional Center for the Developmentally Disabled, Inc.</i>	Los Angeles Cty. Sup. Ct. Case No. 20STCV36703

<i>Martinez v. Simplified Labor Staffing Solutions, Inc.</i>	Los Angeles Cty. Sup. Ct. Case No. 19STCV05288
<i>Rodriguez v. California Payroll Group, Inc., et al.</i>	San Bernardino Cty. Sup. Ct. Case No. CIVDS 1829017
<i>Santos v. Walsh Shea Corridor Constructors</i>	Los Angeles Cty. Sup. Ct. Case No. BC721303

14. WLF also has extensive experience litigating consumer class actions.

15. On August 22, 2017, Judge Orrick of the U.S. District Court for the Northern District of California, granted final approval to, and appointed my office (along with co-counsel) as class counsel in a consumer class action entitled *Knapp v. Art.com, Inc.*, Case No. 3:16-cv-00768-WHO, which involved a nationwide settlement on behalf of approximately 2 million class members, based on allegations that the defendant engaged in deceptive sales practices.

16. On September 25, 2018, Judge Freeman of the U.S. District Court for the Northern District of California, granted the plaintiffs' contested motion for class certification, certifying a California damages and injunctive relief class of consumers relating to false and deceptive advertising regarding the geographical origin of certain beers in the action entitled *Broomfield, et al. v. Craft Brew Alliance, Inc.*, Case No. 5-17-cv-01027-BLF. Judge Freeman appointed my office and co-counsel as class counsel in this matter.

17. On July 29, 2019, Judge Lorenz of the U.S. District Court for the Southern District of California, granted final approval to, and appointed my office (along with co-counsel) as class counsel in a consumer class action entitled *Dashnaw, et al. v. New Balance Athletics, Inc.*, Case No. 3:17-cv-00159-L-JLB, which involved settlement of a California class of nearly one million class members, based on allegations that the defendant engaged in deceptive "Made in USA" representations with respect to some its shoes.

18. On October 26, 2021, Judge Nathan of the U.S. District Court for the Southern District of New York, granted preliminary approval to, and appointed my office (along with co-counsel) as class counsel in a consumer class action entitled *Hesse, et al. v. Godiva Chocolatier, Inc.*, Case No. 1:19-cv-0972-AJN, which involves a nationwide settlement for a class of

1 millions of consumers based on the geographical origin of certain chocolate products. The
2 settlement approval process is ongoing.

3 19. WLF is currently litigating consumer class actions and wage and hour class
4 actions in state and federal courts throughout the country, including in California, Missouri, and
5 New York.

6 **ATTORNEYS' FEES AND COSTS**

7 20. Any fee award will be distributed as follows: 25% to Gaines & Gaines, 25% to
8 the Davtyan Law Firm, 25% to the Law Office of Scott E. Wheeler, and 25% to the Wand Law
9 Firm, P.C. Consistent with Rule 1.5.1 of the Cal. Rules of Prof. Conduct, Plaintiffs approved
10 this division in writing at the commencement of this litigation.

11 21. Moreover, as explained in detail in in the Declaration of Scott E. Wheeler and the
12 Parties' Stipulation for Approval of PAGA Settlement, the requested attorneys' fees of one-third
13 of the Gross Settlement Amount are reasonable and appropriate. My office often charges a
14 contingency fee of higher than one-third in employment matters. Based on my experience, it is
15 common practice for other attorneys to charge higher than a one-third contingency fee in
16 employment matters.

17 22. To the extent the Court decides to use the lodestar method in awarding attorneys'
18 fees, or to cross-check the fee award under the percentage method based on Plaintiffs' Counsel's
19 lodestar, set forth below is information regarding Plaintiffs' Counsel's lodestar.

20 23. To date, I have spent 39.40 hours on this case. At a requested rate of \$700 per
21 hour, my lodestar is \$27,580. The basis for my lodestar is explained below.

22 **Hourly Rate**

23 24. The requested rate of \$700 per hour reflects my 2022 hourly rate. *See, e.g.,*
24 *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) ("The lodestar should be computed
25 either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to
26 compensate class counsel for delays in payment inherent in contingency-fee cases, or using
27 historical rates and compensating for delays with a prime-rate enhancement."). As explained
28 below, this rate is also appropriate because it is consistent with the prevailing rates in the

1 Southern California region for attorneys of similar skill, backgrounds, and experience litigating
2 similar complex actions.

3 25. *First*, I am informed and believe that this rate is consistent with the Southern
4 California legal market for attorneys who manage complex class actions. *See, e.g., Nozzi v.*
5 *Housing Authority*, 2018 WL 1659984, at *7 (C.D. Cal. Feb. 15, 2018) (approving hourly rate
6 of \$730 per hour for attorney with 10 years of experience); *Iorio v. Allianz Life Ins. Co. of N.*
7 *America*, No. 05-CV-0633-JLS (CAB), 2011 WL 13177361, at *9 (S.D. Cal. Mar. 3, 2011)
8 (2011 partner rates of \$750 per hour reasonable in Southern District of California); *POM*
9 *Wonderful, LLC v. Purely Juice, Inc.*, No. 07-2633-CAS (JWJx), 2008 WL 4351842, at *4
10 (C.D. Cal. Sept. 22, 2008) (2008 partner rates of \$750 to \$450 reasonable in Central District of
11 California); *Schroeder v. Envoy Air, Inc.*, 2019 WL 2000578, at *8 (C.D. Cal. May 6, 2019)
12 (approving \$750 for senior associates, and between \$500 and \$890 for partners); *Vasquez v.*
13 *Kraft Heinz Foods Co.*, 3:16-cv-2749-WQH-BLM, 2020 WL 1550234, at *7 (S.D. Cal. Apr. 1,
14 2020) (finding rates ranging from \$325 to \$900 reasonable).

15 26. *Second*, hourly rates as set forth in the *Laffey* Matrix support my requested
16 hourly rate. The *Laffey* Matrix is an attorney's fee matrix developed in *Laffey v. Nw. Airlines,*
17 *Inc.*, 572 F. Supp. 354, 371 (D.D.C. 1983), which provides market rates for attorneys working in
18 the Washington, D.C., and Baltimore areas. The LSI *Laffey* Matrix, which relies on the Legal
19 Services Index of the Bureau of Labor Statistics, provides national legal rates adjusted for
20 inflation, rather than local and generalized cost data. Federal courts in the Ninth Circuit have
21 found that hourly rates determined using the *Laffey* Matrix, "are reasonable and commensurate
22 with those charged by attorneys with similar experience in the market." *See, e.g., Kumar v.*
23 *Salov N. Am. Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898, at *7 (N.D. Cal. July 7, 2017).
24 Utilizing the *Laffey* Matrix, my hourly rate would be \$764.¹

25 27. *Third*, this rate is consistent with my hourly rate previously approved by other
26 Southern California courts. The current rate is consistent with my 2021 hourly rate, which was,

27
28 ¹ <http://www.laffeymatrix.com/see.html> (last accessed March 18, 2022).

1 as a general matter, \$650 per hour in courts sitting in Los Angeles County and Southern
2 California more generally. *See, e.g., Scott, et al. v. Kuehne+Nagel, Inc.*, San Bernardino County
3 Sup. Ct. Case CIVDS1707477; *Garcia v. Satvinder Sraon, Inc., et al.*, Los Angeles County Sup.
4 Ct. Case No. 18STCV08728; *Green, et al. v. Material Supply, Inc.*, San Bernardino County
5 Sup. Ct. Case CIVDS192821; *Perez v. Contera Construction Corp.*, Riverside Sup. Ct. Case
6 No. RIC 2002575; *Reising v. El Pollo Loco, Inc.*, Los Angeles County Sup. Ct. Case No.
7 20STCV42951.

8 28. A \$50 per hour increase from the prior year is appropriate. Courts routinely
9 recognize that a yearly increase is appropriate based on inflation and the increased costs of
10 practice, as well as increase in experience. *See, e.g., In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d
11 570, 589 n.10 (S.D.N.Y. 2008) (“The use of current rates to calculate the lodestar figure has
12 been endorsed repeatedly by courts as a means of accounting for the delay in payment inherent
13 in class actions and for inflation.”); *Charlebois v. Angeles Baseball, LP*, 993 F.Supp.2d 1109,
14 1125 (2012) (“courts routinely recognize that fee rates increase over time based on a variety of
15 factors.”); *Parker v. Vulcan Materials Co. Long Term Disability Plan*, No. EDCV 07–1512
16 ABC (OPx), 2012 WL 843623, *7 (C.D. Cal. Feb. 16, 2012) (approving as reasonable an
17 approximate 10 percent increase between 2011 rates and 2012 rates and because “[i]t is
18 common practice for attorneys to periodically increase their rates for various reasons, such as to
19 account for expertise gained over time, or to keep up with the increasing cost of maintaining a
20 practice”); *LaPeter v. Canada Life Ins. Co. of Am.*, No. CV06–121–S–BLW, 2009 WL 1313336
21 *3 (D. Idaho May 11, 2009) (“It is typical for rates to increase on a yearly basis and, also, for
22 associates’ and paralegals’ rates to increase as they gain more experience.”); *Pickett v. Sheridan*
23 *Health Care Center*, 664 F.3d 632, 649 (7th Cir. 2011) (“market value increased by more than
24 the amount of inflation as [attorney] acquired additional experience and successful outcomes
25 over the past decade”).

26 **Hours Devoted**

27 29. A true and correct copy of my contemporaneous time records in this case are
28 attached hereto as **Exhibit A**. Since these records are being filed in the public record, some

1 portions of the time records have been omitted/alterd so as not to reveal information covered
2 by attorney-client privilege, settlement privilege, and attorney-work product.

3 30. The foregoing does not include additional time that will be devoted to this case,
4 such as any court appearances and working with the settlement administrator to administer the
5 settlement if it is approved.

6 31. Plaintiffs' counsel worked hard to move this case forward in an efficient manner.
7 Although Plaintiffs' counsel vigorously litigated this case, we were also mindful of avoiding
8 unnecessary battles that would create work, but not necessarily advance the case. As such, after
9 conducting a thorough investigation, we agreed to participate in early mediation, on the
10 condition that Defendant provide all of the documents and information that we would need to
11 evaluate liability and penalties. Defendant ultimately produced numerous documents, including
12 employee time and payroll records, in furtherance of the mediation. This enabled Plaintiffs'
13 counsel to evaluate the case and ultimately make the determination that the Gross Settlement
14 Amount represents an excellent result.

15 **Contingent Risk and Quality of Work**

16 32. Risk is an important factor in determining a fair and reasonable attorney fee
17 award. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015).

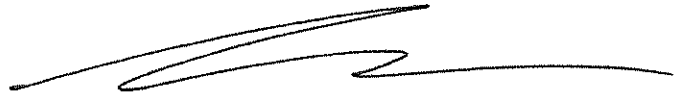
18 33. WLF faces considerable risk in every contingency-fee case that it takes on. For
19 example, WLF only recently resolved a contentious consumer class action that was litigated in
20 Hawaii District Court for over three years. WLF, along with co-counsel, devoted thousands of
21 hours of attorney time, and expended several hundred thousand dollars in out-of-pocket costs.
22 The case involved, *inter alia*, class certification, *Daubert* motions, summary judgment, and an
23 interlocutory appeal. While the case was confidentially resolved at the end of 2021, I can say
24 that litigating cases on a contingent basis presents real risks of not only recovering zero fees
25 despite considerable outlays of attorney time, but also the prospect of losing large sums of
26 money in out-of-pocket costs that are advanced in litigating these types of cases.

27 34. WLF took this case on a contingent basis and has devoted time and energy into
28 litigating this case all while receiving no payment and in the face of considerable risk. At the

1 time WLF decided to pursue this litigation, any monetary recovery was far from certain. WLF
2 also knew that there were risks regarding the legal viability of Plaintiffs' claims, whether
3 Plaintiffs would be able to obtain the evidence to support his claims, and whether Plaintiffs
4 would be able to successfully prosecute a PAGA claim based manageability and other concerns.
5 And even if a settlement or favorable judgment was reached, payment would be deferred for a
6 considerable period of time.

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10
11 Executed on March 18, 2022 at Culver City, California.

12
13 

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

EXHIBIT A

THE WAND LAW FIRM, P.C.

Matter: *Henriquez v. Tire Staffing*, Case No. CIVDS 2021000

Billor: Aubry Wand

Date	Hours	Activity Description
4/14/20	3.30	Background research into Def.
4/21/20	1.50	Begin drafting PAGA notice.
5/27/20	1.60	Review client's personnel file.
5/28/20	1.80	Review/revise PAGA letter.
9/24/20	1.60	Background research.
1/12/21	0.80	Review/revise jt report.
3/1/21	0.50	Review Def's answer.
6/11/21	0.20	Review/revise jt report.
9/3/21	2.70	Research on prior settled case involving wage statements.
9/7/21	0.60	Review/revise doc request for mediation.
9/8/21	0.20	Review confidential mediation letter.
12/23/21	0.10	Check on status of mediation info.
1/8/22	0.10	Review notice of association of counsel.
1/12/22	4.90	Doc review.
1/12/22	4.80	Review/revise mediation brief.
1/16/22	2.40	Doc review.
1/24/22	7.40	Prepare for and attend mediation.
1/24/22	0.50	Draft MOU.
1/29/22	0.20	Review updated MOU.
2/7/22	1.70	Review/revise settlement agreement/stip for approval of settlement.
2/10/22	1.60	Further review/revise settlement docs.
3/18/22	0.90	Draft dec ISO stip for approval of settlement.
TOTAL	39.40	