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Attorneys for Plaintiff, on a representative basis and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ANDREW ZUNIGA AND VIVIAN
VELASQUEZ, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC2003219
*[Assigned to Hon. Judge Harold Hopp, Dept
1, for all purposes]*

**DECLARATION OF MISTY M. LAUBY,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: August 24, 2023

Time: 8:30 a.m.

Dept: 1

Complaint filed: August 18, 2020

I, Misty M. Lauby, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner at Lauby, Mankin & Lauby LLP. I represent the Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement. If called as a witness, I could and would competently testify thereto.

2. For the sake of brevity, this declaration does not discuss the settlement itself, the procedural background of the litigation, the claims and investigation by my firm, and why the

1 settlement is fair and reasonable. Those topics are covered in detail in the concurrently filed
2 Declaration of Brian Mankin. This declaration simply provides information requested by the
3 court as to why I am adequate class counsel.

4 **QUALIFICATIONS OF COUNSEL**

5 1. I have been a member, in good standing, of the State Bar of California since 2006.
6 I am licensed to practice before all courts of the State of California and am admitted to practice
7 in the United States District Court for the Central District of California and have litigated cases
8 in various courts and counties throughout California.

9 2. I began working as an attorney for Fernandez & Lauby in 2006. From 2006
10 through March 2018, I worked in the firm's insurance defense department as the handling
11 attorney in approximately 250-350 complex construction defect litigation matters that I
12 successfully managed and settled on behalf of multiple insurance carrier clients.

13 3. In or around March 2018, I transitioned to handling exclusively employee vs.
14 employer litigation matters.

15 4. Leading up to the transition and continuing through the present, I have taken
16 seriously the responsibility of acquiring expertise in the field by participating in numerous
17 continuing legal education seminars specific to the representation of employees in litigated
18 matters, mediation, and complex litigation, including the following non-exhaustive list:

- 19 a. California Employment Lawyers Association ("CELA") Wage & Hour Boot
20 Camp in September 2016;
- 21 b. CELA 13th Annual Advanced Wage and Hour Seminar in May 2017;
- 22 c. CELA 30th Annual Employment Law Conference in October 2017;
- 23 d. Castle Publications and SheppardMullin Wage and Hour Laws in March
24 2018;
- 25 e. Bridgeport PAGA Claims 2018 Seminar in March 2018;
- 26 f. California Lawyers Association Labor & Employment Law Section 35th Labor
27 & Employment Law Annual Meeting April 2018;
- 28 g. Bridgeport Class Action Litigation Conference Seminar in April 2018;

- h. Los Angeles County Bar Association 2018 Complex Court Symposium in November 2018;
- i. CELA 15th Annual Advanced Wage & Hour Seminar in May 2019;
- j. CELA 6th Annual Trial College in May-June 2019;
- k. Pepperdine University Strauss Institute for Dispute Resolution – Mediation: The Art of Facilitating Settlement, An Interactive Training Program in June 2019;
- l. CELA 32nd Annual Employment Law Conference in October 2019;
- m. CELA The Ethics of a PAGA Action in May 2020;
- n. CELA Annual Advanced Wage & Hour Update in May 2020;
- o. CELA Demystifying Video/Remote Depositions: A Technical and Legal Workshop in June 2020;
- p. CELA An Epic Problem: Mass Arbitration and Other Strategies for Responding to Class Action Waivers in June 2020;
- q. CELA 9th Annual CELA/Fair Diversity Leadership Summit in June 2020;
- r. CELA AB5 and the Future of Independent Contractors In California in June 2020;
- s. Trojan Horse, LLC – Various Participatory Case Analysis and Trial Advocacy MCLE programs throughout 2020 and 2021;
- t. CELA Advanced Wage & Hour Update in May 2021; and
- u. Trial Lawyers University Live in October 2021.

5. The vast majority of my employment cases have been litigated as class actions, representative PAGA actions or a combination of the two.

6. I have been the handling attorney on over 35 class action and/or representative PAGA actions. And, on these cases, myself and/or my firm have been appointed Class Counsel on over 16 cases, and have helped recover over \$9,000,000 for my clients, the employees, and the State of California.

7. I have been involved in one contested class certification motion in a case that settled just prior to the class certification hearing.

8. Attached as **Exhibit A** is a list of 16 resolved and/or settlement class actions, collective actions, and/or PAGA actions that I have handled in the last 4 years (note: this list excludes currently active cases and settlements pending approval).

HOURS INCURRED

9. I have spent 137.34 hours working on this action and have kept contemporaneous records of these billable hours. To that end, I performed substantial work on this case, including significant pre-filing work, legal research regarding nuanced and issues unique to this matter, review and analysis of voluminous records from Defendant to verify and value the claims herein, and work on the two mediation sessions, preliminary and final approval processes.

HOURLY RATE

10. My billing rate is \$650 per hour, and this rate is usual and customary for class action and/or PAGA practitioners with my level of expertise and experience.

11. This rate is consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if not somewhat lower. For instance, the 2020 Wolters Kluwer Real rate Report (“Real Rate Report”) states that the rates for partners in Los Angeles are between \$740 and \$1,015 for the middle and upper quartiles.

12. Importantly, the Real Rate Report data is not based on self-reported numbers, surveys, or sampling – instead, these figures are based on an analysis of the actual amounts billed to clients based on more than 25.8 million billing entries and 23.9 million hours billed by other 112,100 individual timekeepers from 4,620 law firms, totaling \$9,02 billion in fees billed.

13. My requested rate is also reasonable, consistent and less than the rate found in the Laffey Matrix (www.laffeymatrix.com), which indicates that the benchmark rate for an attorney that graduated law school in 2006 is \$764.

14. My hourly rate has been approved by various courts in California, including the following non-exhaustive list of recent settlements for which I have been the handling attorney:

a. *Robertson v. All Care*, Los Angeles Superior Court, Case No 20STCV18318 (March 17, 2022) (\$1.4M wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

b. *Morales v. VPET*, San Bernardino Superior Court, Case No. CIVSB2108161 (November 22, 2022) (\$250,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

c. *Moreno v. JJ Kane*, Riverside Superior Court, Case No. CVRI2101236 (September 7, 2022) (\$235,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

CONCLUSION

15. As set forth above, I have litigated over 35 class and representative actions, and have successfully resolved at least 16 of those cases, with many others still pending that will resolve in the future.

16. For these reasons, as well as the facts and information presented in the concurrently filed Declaration of Brian J. Mankin, it is respectfully requested that the Court: (1) grant final approval of the settlement as being fair, reasonable, and in the best interests of the class, (2) appoint Plaintiff as the Class Representative, and (3) appoint Brian J. Mankin and Misty M. Lauby of Lauby, Mankin & Lauby LLP as Class Counsel,

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 31, 2023, at Los Angeles, California.

By: Misty M. Lauby

EXHIBIT “A”

Completed Class/Collective/PAGA Cases		
Case Name	Venue	Case Number
Castelo v. Millemiaaero	San Bernardino	CIVDS1825783
Constante v. Eddie's Trucking	San Bernardino	CIVDS1902466
Diaz v. Shamrock Foods	Riverside	RIC2004126
Gallardo v. Tee For 2	San Bernardino	CIVDS1719564
Garcia v. Coach	USDC	5:18-cv-01537
Garcia v. Harkins	USDC	5:18-cv-02314
Legorreta v. Paradise	Riverside	RIC1723591
Lepe v. Big Lots	San Bernardino	CIVDS1825693
Lupercio v. Access Exterminator	San Bernardino	CIVDS1921036
McCulloch v. The Gill	Los Angeles	BC722742
Morales v. VPET	San Bernardino	CIVSB2108161
Moreno v. JJ Kane	Riverside	CVRI2101236
Palmer v. Charter	San Bernardino	CIVDS2013037
Redman v. Zenith	San Bernardino	CIVDS1826759
Robertson v. All Care	Los Angeles	20STCV18318
Ruiz v. Unity Courier Service	Los Angeles	BC724435