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Attorneys for ABEL ESCOBEDO and CHRISTOPHER
CARVER, on behalf of themselves, all others similarly
situated, and on behalf of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

ABEL ESCOBEDO and CHRISTOPHER
CARVER on behalf of themselves, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

MATHESON TRI-GAS, INC. an unknown
business entity; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 37-2020-00044507-CU-OE-CTL

DECLARATION OF ARTHUR R.
BOTHAM, JR. IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: October 20, 2023
Time: 8:30 a.m.
Judge: Hon. Ronald F. Frazier
Dept.: C-65

1 I, Arthur R. Botham, Jr., hereby declare under penalty of perjury as follows:

- 2 1. I have personal knowledge of all matters stated herein, and if called as a witness, I could
3 and would competently testify thereto, except as to those matters stated upon information
4 and belief, and as to those matters, I believe them to be true. I am an attorney licensed to
5 practice law before all courts in the State of California, and I am the co-counsel for
6 Plaintiff Abel Escobedo and the putative class members.
- 7 2. I have been a California attorney since 1999. Throughout my career, I have focused my
8 practice in various areas of litigation practice, including labor and employment, many of
9 which received class action treatment. My co-counsel Zachary T. Tyson and I have
10 handled at least 30 employment matters together, at least half were class action and/or
11 PAGA matters. At least two of which went to trial and/or arbitration. My hourly rate is
12 \$850, which is discussed below.
- 13 3. By way of example, and not by limitation, I have litigated the following class/PAGA
14 matters in superior court: (i) Shadoan v. Las Fajitas, Inc. SDSC Case No. 37-2013-
15 00079169-CU-OE-CTL; (ii) Marlette v. Mossy Nissan SDSC Case No. 37-2014-
16 00038054-CU-OE-CTL; (iii) Wooton v. Herbican, LLC 37-2015-00033233-CU-OE-
17 CTL; (iv) Fassino v. Welk Resort Properties, Inc. 37-2016-00007049-CU-OE-CTL; (v.)
18 Buckhannon v. Stone South Bay 37-2017-00012951-CU-OE-CTL (vi.) Hansen v. So-Cal
19 Dominoids, Inc. 37-2017-00025142-CU-OE-CTL; (vii) Olivas v. MYOBZ, LLC 37-
20 2018-00001881-CU-OE-CTL (viii) Tapia v. Frank Motors, Inc. 37-2019-00003807-CU-
21 OE-CTL; (ix) Meagan Burns v. World Famous, Inc. 37-2020-00025597-CU-OE-CTL
- 22 4. In or about August or September of 2019, I spoke with Able Escobedo about a relatively
23 minor accident he had while driving a truck carrying compressed gas for his employer,
24 Matheson Tri-Gas. He was blamed for the accident and fired.
- 25 5. During early 2020, we were unable to meet with Mr. Escobedo directly due to the
26 COVID shut down. However, we were able to receive and review documents between
27 ourselves, and we were able to obtain his personnel file from Matheson.

- 1 6. After reviewing Mr. Escobedo's personnel file with Mr. Escobedo and with Mr. Tyson,
2 we determined that a case could be made that he had not been paid for all the hours he
3 worked for Matheson, including time he spent inspecting his truck before clocking in,
4 and time he spent undergoing Cal-Osha training on a computer tablet. Based upon our
5 review of his documents and multiple interviews, we determined this matter was well
6 suited for class treatment based upon what appeared to be a common course of conduct
7 affecting a similarly situated group of employees.
- 8 7. On June 8, 2020, we filed a claim with the LWDA through the online portal. The LWDA
9 never sent notice they were assuming jurisdiction over this action.
- 10 8. In or about July-August of 2021, my office, along with Zachary Tyson continued
11 communications with attorney David Mara's office on behalf of the named Plaintiffs.
12 After further discussion of the merits, we agreed to join forces and to file a First
13 Amended Complaint consolidating the cases under the low case number.
- 14 9. In September/October of 2021, the parties agreed to mediate with Jeff Ross in the
15 following July, of 2022. Between August of 2021 and the mediation in July of 2022, the
16 parties were able to exchange, both formally and informally, written discovery supporting
17 treatment, including timesheets, workweeks and other data that compiled to support class
18 certification, should mediation fail.
- 19 10. Plaintiffs interests do not appear to be antagonistic to the Class. Plaintiffs were employed
20 as drivers with Defendant during the Class Period. Accordingly, Plaintiffs themselves are
21 class members. In fact, Plaintiffs' interests are typical of the class and they have been
22 cooperative and helpful throughout the litigation. It is believed that Plaintiffs' interests
23 are co-extensive with the interests of the other members of the class.
- 24 11. Based upon my experience in litigating similar matters, I believe the proposed settlement
25 in this case to be fair, reasonable and adequate. My opinion is based on a number of
26 factors, including the following:
 - 27 a. First, the gross settlement amount of \$750,000 is well within the expected
28 settlement range based on similar class actions.

- 1 b. In addition to the amount of settlement, I believe the settlement is fair, reasonable
2 and adequate because it comes after nearly three years of litigation, slowed in part
3 by the COVID-19 shutdown and associated emergency orders. Both sides,
4 Plaintiffs and Defendants, worked together to resolve the matter. Defendant's
5 agreement to provide class data was instrumental in securing settlement.
- 6 c. In addition, the settlement was the result of an arm's length bargaining process
7 and an exchange of both formal and informal class data. As stated, the parties
8 virtually attended a mediation with Jeff Ross on July 28, 2022, which had to be
9 booked 10 months in advance. With Jeff Ross' assistance, the parties reached a
10 settlement.
- 11 12. All of the forgoing facts were fully vetted between months of informal interviews with
12 Plaintiffs, written discovery, and many other similar cases. All of the foregoing
13 convinced me that the proposed settlement is fair reasonable and adequately adjudicated
14 the rights of the class members.
- 15 13. Relevant to the inquiry of attorneys' fees award sought here, the following facts support
16 this Motion:
- 17 a. The fees on this matter are split between myself and attorney Zachary T. Tyson
18 and David Mara's office pursuant to agreement.
- 19 b. Our hard costs total \$6,010 which includes:
- 20 i. PAGA Filing Fee: \$75
- 21 ii. 1st Paper Fee \$1,435
- 22 iii. Mediation: \$4,500
- 23 iv. Total: \$6,010
- 24 c. This matter was filed just at the outset of COVID. What would normally be a
25 straightforward class-action/PAGA case became a much longer matter to resolve,
26 despite the parties' willingness to resolve. The effect of this delay is discussed
27 below.
- 28

- 1 d. After speaking with Plaintiff and reviewing his documents, we were able to piece
2 together a narrative of the claims against the employer. To do so, we gathered
3 Plaintiff's paystubs, timesheets, notes and data concerning Cal-Osha training.
- 4 e. Mr. Tyson and I also spent many hours developing data we could extrapolate into
5 supporting class-wide claims of wage underpayment.
- 6 f. As Mr. Tyson and I gathered the Plaintiff's information, we took pains to
7 categorize and collate the data into programs such as excel and AirTable in order
8 to manage information such as witnesses, their phone numbers, dates of
9 employment, titles, and the like. We were also able to develop a general
10 chronology with the Plaintiff to assist in prosecuting the PAGA claims and the
11 civil lawsuit.
- 12 g. As the case gathered steam, we continued to add to the databases the information
13 we garnered. The the named Plaintiff provided data which we added to the
14 database.
- 15 h. It bears noting at this time that COVID-19 made personal contact extremely
16 difficult. Combined with the Covid lockdown, Zachary Tyson and I struggled to
17 keep this matter moving forward despite the delay.
- 18 14. As with any complex matter, resolution of this case required efforts of counsel, Plaintiffs
19 and the Court. What is not reflected in the foregoing is the long periods of time-over 3
20 years- invested in this matter without compensation. As a sole practitioner, I maintain an
21 office in Bankers' Hill and all supporting utilities, Lexis-Nexis and other "soft costs"
22 associated with private practice. As an s-corp, the State Bar (and prudence) requires I
23 maintain malpractice insurance and pay all required taxes like any business, regardless of
24 profitability. I fund all my share of my cases for clients who cannot, as they are almost
25 always unemployed and earn minimum wage when they are employed. This arrangement
26 carries soft costs that are borne by the firm. The longer a case takes to resolve, the higher
27 the soft costs.
- 28 15. My hourly rate is \$850 for contingency matters. The \$850 per hour rate reflects the risky
nature of contingency fee arrangements. I have been practicing civil litigation for over 20

1 years. I am a member of the Welsh Inns of Court, the Labor and Employment Section of
2 the San Diego County Bar Association, and I serve on the membership committee of the
3 Lawyers' Referral Information Service of San Diego. During my tenure in each, I have
4 met and spoken with other counsel in our location. My hourly rate is average when
5 measured with other attorneys in San Diego with my experience and contingency
6 experience. As the Court is aware, serving the community in this fashion, no recovery-no
7 fee, carries the risk that all time devoted, and often costs, may never be recovered.
8 Therefore, my hourly rate of \$850 is appropriate when all such factors are taken into
9 account.

10 16. I estimate I have spent at least 305 hours on this case in the past three and a half years,
11 which is slightly less than 100 hours per year, as summarized below.

12 17. Aside from the obstacles created by COVID-19, one technical issue that arose in this
13 matter involved CalOsha training by plaintiff and the other drivers. The drivers were
14 required to perform safety training using computer tablets. However, due to the nature of
15 their duties, the drivers were unable to complete the computer training while driving,
16 which was their regular duty each day, sometimes for 10 hours straight. Plaintiff
17 regularly completed the required training using his own tablet and obtained numerous
18 certificates from CalOsha once completed. At issue was whether the time devoted to
19 completing this training would count towards regular hours, overtime hours, and how to
20 prove this claim. As such, the hours I devoted to this matter over the past three and a half
years are summarized as follows:

- 21 a. Pre-litigation meetings with clients, drafting of class action pleadings, preparation
22 and filing of PAGA notice; file set up and database management: 120 hours;
- 23 b. Strategize PAGA claims, finalize Class-Action Complaint with PAGA claims;
24 service of process, attention to calendar: 25 hours
- 25 c. Draft class-wide discovery, conduct investigation into eyewitnesses including
26 telephone calls and data analysis, review of Defense documents, compiling of
27 Defense data; numerous client teleconference meetings regarding use of data
28 tablets off-the-clock to complete Cal-Osha safety training; 40 hours

- 1 d. conduct legal/factual research regarding rest breaks and CalOsha requirements
2 applicable to commercial drivers engaged in interstate commerce; rest period
3 violations, safety violations, safety inspections of vehicles: 40 hours
4 e. Prep for and attend mediation including review and contribute to mediation brief,
5 discussion with attorney Zachary Tyson; preparation of motion for preliminary
6 and final approval and supporting declarations of client, attorneys: 40 hours.

7 18. Applying the rate of \$850 per hour times 305 hours equals \$259,250. Therefore, the fees
8 sought by this Motion are reasonably earned on this matter. As such, our prayer for
9 attorneys' fees of \$250,000 for all counsel is reasonable under the circumstances.

10 I declare under penalty of perjury under the laws of the State of California that all the
11 foregoing is true and correct.

12 Dated: September 27, 2023

By: s/Arthur R. Botham, Jr.
ARTHUR R. BOTHAM, JR.

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