

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel.: (951) 320-1444 | Fax: (951) 320-1445

Daniel F. Gaines, Esq. SBN 251488
daniel@gaineslawfirm.com
Alex P. Katofsky, Esq. SBN 202754
alex@gaineslawfirm.com
Evan S. Gaines, Esq. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Tel.: (818) 703-8985 | Fax: (818) 703-8984

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

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

Coordination Proceeding Special Title
(Rule 3.550)

AMERICAN TIRE WAGE AND HOUR
CASES

*Rafael Martinez, et al. v. American Tire
Distributors, Inc., et al.*

Case No.: CIVSB2133396
(San Bernardino Superior Court – 12-8-21)

*Germaine Tanner Sr., et al. v. American
Tire Distributors, Inc., et al.*

Case No.: 22CECG00735
(Fresno County Superior Court – 03-8-22)

Case No.: JCCP 5239
*[Assigned to the Hon. David Cohn, Dept. S26,
for all purposes]*

**DECLARATION OF PETER J. CARLSON
IN SUPPORT OF MOTION FOR FINAL
APPROVAL**

1 I, Peter J. Carlson, state and declare:

2 1. I am an attorney duly licensed to practice law in the State of California and am a
3 senior associate at Lauby, Mankin & Lauby LLP, attorneys of record for Plaintiffs Rafael
4 Martinez and Germaine Tanner Sr. ("Plaintiffs"). I am fully familiar with the facts of this case
5 and submit this declaration in support of Plaintiffs' Motion for Final Approval. The matters set
6 forth herein are based upon my personal knowledge and, if called upon as a witness, I could and
7 would give competent testimony with respect to the matters contained herein.

8 **QUALIFICATION OF COUNSEL**

9 2. I graduated from the University of Oregon School of Law in May 2013 and have
10 been a member, in good standing, of the State Bar of California since January 2014. I am
11 licensed to practice before all courts of the State of California and am admitted to practice in the
12 United States District Court for the Central District of California and have litigated cases in
13 various courts and counties throughout California, including successful briefing and argument in
14 the Court of Appeal.

15 3. I began working at Fernandez & Lauby LLP (the predecessor of Lauby, Mankin
16 & Lauby LLP) in March 2016 and, since that time, my practice has consisted solely of
17 representing employees. The vast majority of my cases have been litigated as class actions,
18 representative PAGA actions, or a combination of the two.

19 4. I have been the handling attorney on over 155 class action and/or representative
20 PAGA actions. And, on these cases, myself and/or my firm have been appointed Class Counsel
21 on over half of these cases and have helped negotiate settlements totaling over \$88,000,000 for
22 my clients, the employees, and the State of California.

23 5. I was the handling attorney for the second largest PAGA-only settlement in
24 California's history – a \$12.5 million-dollar court approved settlement, which followed extensive
25 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
26 company (*Garcia v. Macy's*, San Bernardino Superior Court Case No. CIVDS1516007).

27 6. I have tried two major class and PAGA cases against Fortune 100 companies,
28 both of which were appealed. In 2018, I was the handling attorney on a PAGA-only case in

1 Orange County where my firm succeeded on a motion for summary adjudication and litigated
2 through trial to obtain a \$425,000 judgment for over 1,600 aggrieved employees. Also, in 2019,
3 I was the handling attorney for my firm on a class action against Walmart, where we obtained
4 class certification on behalf of over 5,000 employees. After extensive litigation, the matter went
5 to trial, and the jury returned a verdict of approximately \$6.1 million on the meal period claims.

6 7. In 2022 and 2023, I was also selected as a Super Lawyers Rising Star.

7 **HOURS INCURRED**

8 8. I have spent 248.7 hours working on this action and have kept contemporaneous
9 records of these billable hours. This includes: significant pre-filing work; legal research
10 regarding nuanced and issues unique to this matter; drafting the letter to the LWDA to begin the
11 exhaustion of administrative remedies; drafting the initial class action complaint and, later, the
12 amended first amended complaint adding causes of action under PAGA; reviewing Defendant's
13 removal to federal court and challenging the removal with extensive meet and confers that
14 resulted in remand; research and litigation regarding the petition for coordination and related
15 tasks; drafting and propounding a full set of written discovery, including special interrogatories
16 (with a draft of the *Belair* to exchange class contact information), form interrogatories, requests
17 for admission, and requests for production; review and analysis of a sampling of time and payroll
18 for approximately 25% of class members (along with relevant policy documents) prior to
19 mediation to verify and value the claims herein; analyzing all relevant documents and data and
20 drafting a mediation brief and damage model; and work on the approval processes.

21 **HOURLY RATE**

22 9. My billing rate is \$575 per hour, and this rate is usual and customary for class
23 action and/or PAGA practitioners with my level of expertise and experience.

24 10. This rate is consistent with Plaintiff and Defense attorneys who handle complex
25 class action litigation, if not somewhat lower. Indeed, the perfect starting point for analyzing the
26 reasonableness of this rate is the Wolters Kluwer Real Rate Report (the "Real Rate Report").

27 11. Importantly, the Real Rate Report is not based on self-reported numbers, surveys,
28 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual

1 hours and fees that law firms billed to clients. In this regard, the Real Rate Report is “a much
2 better reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS*
3 *Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; see also *PLCM*
4 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1085 (holding that rates should be premised upon
5 precisely this form of independent, “objective” rate data that reflects “fair market” rates actually
6 billed to clients “in the community for similar work”). Additionally, the Real Rate Report is
7 based on an enormous and statistically significant compilation of data which is compiled to
8 provide the hourly rates actually billed by partners and associates in metropolitan areas.

9 12. For the Los Angeles area, which is a logical and reasonable comparison to this
10 geographical marketplace given the overlap of counsel, the median rate for associates is \$576.00
11 per hour, with the upper quartile rate at \$770.00 per hour. The Real Rate Report also notes that
12 the median and upper quartile rates for associates with 7 or more years of experience are \$520
13 and \$789, respectively. Being that I have been in practice for over 9 years, my experience falls
14 squarely within the confines of that range, at a rate lower than those in the Real Rate Report.

15 13. My requested rate is also reasonable, consistent, and less than the rate found in the
16 Laffey Matrix (www.laffeymatrix.com), which indicates that the benchmark rate for an attorney
17 that graduated law school in 2013 is \$733 per hour.

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

20 a. *Elizarraras v. Future Foam*, Orange County Superior Court, Case No. 30-
21 2020-01152286-CU-OE-CXC (Sept. 13, 2022) (\$1,200,000 wage-and-hour class and PAGA
22 settlement approved with lodestar cross-check of \$575 rate);

23 b. *Arevalos v. Americor Funding*, Orange County Superior Court, Case No.
24 30-2019-01068606-CU-OE-CXC (Aug. 16, 2022) (\$2,212,500 wage-and-hour class and PAGA
25 settlement approved with lodestar cross-check of \$575 rate);

26 c. *Guzman v. Deckers Outdoor*, Riverside County Superior Court, Case No.
27 CVRI2100707 (Sept. 30, 2022) (\$950,000 wage-and-hour class and PAGA settlement approved
28 with lodestar cross-check of \$575 rate);

d. *Finger v. Professional Registry Holdings, LLC, et al.*, Riverside Superior Court, Case No. CVRI2101956 (June 28, 2022) (\$500,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$575 rate);

e. *Woods, et al. v. Just In Time Cargo, Inc.*, San Bernardino Superior Court, Case No. CIVDS200750 (June 8, 2022) (\$450,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$575 rate);

f. *Torres, et al. v. ePac Los Angeles, LLC, et al.*, San Bernardino Superior Court, Case No. CIVDS2017140 (April 19, 2022) (wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$575 rate);

g. *Carrillo v. BluSky Restoration Contractors LLC*, San Bernardino Superior Court, Case No. CIVSB2105793 (June 29, 2022) (\$360,000 PAGA-only settlement approved with lodestar cross-check of \$575 rate)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 13, 2023, at Riverside, California.

By:


Peter J. Carlson