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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

STARLA HAGON and MICHAEL
JESPERSEN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

TRANSPORT CORPORATION OF
AMERICA, INC, a Minnesota
Corporation; ERIC ANSON, an individual;
MELINDA GREEN, an individual, and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2203409
*[Assigned to Hon. Jessica Morgan, Dept. S26,
for all purposes]*

**DECLARATION OF MISTY LAUBY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: April 5, 2024
Time: 8:30 a.m.
Dept.: S26

Complaint filed: February 14, 2022

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 Plaintiffs Starla Hagon and Michael Jespersen 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 Plaintiffs' Motion for Preliminary 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 co-counsel, and why the settlement is fair and reasonable. Those topics are covered in detail in the concurrently filed Declaration of Brian Mankin. This declaration simply provides information requested by the court as to why I am adequate class counsel.

COUNSEL'S EXPERIENCE

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

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

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

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

- a. California Employment Lawyers Association (“CELA”) Wage & Hour Boot Camp in September 2016;
- b. CELA 13th Annual Advanced Wage and Hour Seminar in May 2017;
- c. CELA 30th Annual Employment Law Conference in October 2017;
- d. Castle Publications and SheppardMullin Wage and Hour Laws in March 2018;
- e. Bridgeport PAGA Claims 2018 Seminar in March 2018;

- f. California Lawyers Association Labor & Employment Law Section 35th Labor & Employment Law Annual Meeting April 2018;
- 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.

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

8. I have been the handling attorney on over 40 class action and/or representative PAGA actions. And, on these cases, myself and/or my firm have been appointed Class Counsel

on over 21 cases, and have helped recover over \$12,000,000 for my clients, the employees, and the State of California.

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

10. Attached as **Exhibit A** is a list of 21 resolved and/or settlement class actions, collective actions, and/or PAGA actions that I have handled in the last 5.5 years (note: this list excludes currently active cases and settlements pending approval).

HOURLY RATE

11. 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.

12. This rate is consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if not somewhat lower. For instance, the 2023 Wolters Kluwer Real rate Report (“Real Rate Report”) states that the rates for partners in Los Angeles are between \$840 and \$1,159 for the middle and upper quartiles.

13. 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 160 billion in billing entries.

14. 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 \$878.

15. 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).

d. *Blanton v. CTDI*, San Joaquin Superior Court, Case No. STK-CV-UOE-2021-0005136, (August 23, 2023) (\$2,000,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

e. *Zuniga v. Desert AIDS Project*, Riverside Superior Court, Case No. RIC2003219, (August 25, 2023) (\$400,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

f. *Northrup v Guyou*, Riverside Superior Court Case No. CVRI2105858 (December 15, 2023) (\$300,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

g. *Rodarte v. Wright Business Graphics*, San Bernardino Superior Court Case No. CIVSB2206705, (December 6, 2023)(\$310,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

h. *Zubia v. Procter & Gamble*, Los Angeles Superior Court Case No. 20STCV44506, (January 17, 2024) (\$3,750,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of \$650 rate).

ADEQUACY OF CLASS REPRESENTATIVES AND APPROVAL OF SERVICE

AWARD

16. I personally discussed with Plaintiffs that they had specific burdens as the “Class Representatives,” which included: (a) representing the interests of all class members, (2) considering the interests of all class members above my own personal interests, (3) participating actively in the lawsuit, including potential testimony at deposition and trial, and keeping generally aware of the status and progress of the lawsuit. Moreover, I explained and they understood that any resolution of the lawsuit is subject to court approval and must be designed in the best interests of the class as a whole.

17. Since first initiating this action on behalf of the proposed class, Plaintiffs have more than adequately performed their duties as class representatives. They have been an active participant in this litigation, including assisting me in various ways and making themselves available when needed. At the outset, they spent substantial time discussing the issues they were having as drivers for the Defendants, providing documents, and other information related to the company's policies and practices. In advance of mediation, they spent more time going through the claims and the potential defenses to aid in the preparation of the mediation brief and risk assessment. They made themselves available during mediation to help with any additional questions or concerns. Moreover, they have also reviewed all settlement documents and indicated that they believe that this settlement is fair for the class. Finally, they have agreed to continue to take all steps necessary to finalize this settlement and obtain court approval.

18. Plaintiffs have no conflicts with the proposed class members and will continue to assist with the litigation and prosecute the case on behalf of the other employees.

19. I respectfully request that the court preliminarily approve the service award requested. As outlined above, the Plaintiffs have performed substantial services for the Class and helped obtain a highly beneficial settlement for their fellow employees. They have also agreed, as part of this Class action settlement, to waive all of claims against the company as part of this settlement and in exchange for the service award – which goes well beyond the release given by other class members. At the final approval stage, they will submit additional declarations setting forth all the work they did for this case, including an estimated number of hours spent assisting the Class and Class Counsel.

CONCLUSION

20. As set forth above, I have litigated over 40 class and representative actions, and have successfully resolved at least 21 of those cases, with many others still pending that will resolve in the future.

21. 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 preliminary approval of the settlement as being fair, reasonable, and in the best interests of

1 the class, (2) appoint Plaintiffs as the Class Representatives, (3) approve the Class
2 Representatives Service Awards, and (4) appoint Brian J. Mankin and Misty M. Lauby of Lauby,
3 Mankin & Lauby LLP as Class Counsel,

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed on March 4, 2024, at Los Angeles, California.

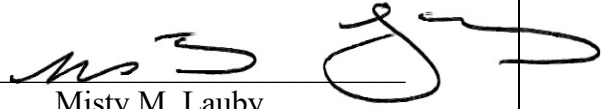
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7
8 By: 
Misty M. Lauby

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
Blanton v. CTDI	San Joaquin	2021-0005136
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
Northrup v. Guyou	Riverside	CVRI2105858
Palmer v. Charter	San Bernardino	CIVDS2013037
Redman v. Zenith	San Bernardino	CIVDS1826759
Robertson v. All Care	Los Angeles	20STCV18318
Rodarte v. Wright Business	San Bernardino	CIVSB2206705
Ruiz v. Unity Courier Service	Los Angeles	BC724435
Zubia v. P&G	Los Angeles	20STCV44506
Zuniga v. Desert AIDS	Riverside	RIC2003219