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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ANIMAL LEGAL DEFENSE FUND, et al.)

Plaintiffs,)

v.)

C. L. "BUTCH" OTTER, in his official)
capacity as Governor of Idaho;)
LAWRENCE WASDEN, in his official)
capacity as Attorney General of Idaho,)

Defendants.)

CASE NO. 1:14-cv-00104-BLW

**DECLARATION OF LESLIE A.
BRUECKNER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COSTS**

I, Leslie A. Brueckner, declare under penalty of perjury as follows:

1. I am duly licensed to practice law in the states of California and New York and in the District of Columbia and am admitted *pro hac vice* to practice in the United States District Court for the District of Idaho. I am a Senior Attorney with Public Justice, and represent the Center for Food Safety in the above-captioned case. I submit this declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees and Costs. I have personal knowledge of the facts stated in this declaration and, if called upon to do so, could and would testify competently thereto.

2. I graduated *summa cum laude* from U.C. Berkeley in 1983 and *magna cum laude* from Harvard Law School in 1987. In December 1993, I joined Public Justice, where my areas of practice have included Title IX, federal preemption, civil rights, consumer rights, and food safety litigation.

3. In 2011, I became Director of Public Justice's Food Safety & Health Project, which seeks to hold corporations accountable for the manufacture, distribution and marketing of food and other products that endanger consumers' safety, health and nutrition. The Food Safety & Health Project spans the gamut of Public Justice's key practice areas, from workers' rights, consumers' rights and access to justice to environmental protection. In 2012, I was honored by the Animal Legal Defense Fund with its "Pro Bono Achievement Award" for my work fighting the unsafe and inhumane treatment of animals in factory farms.

4. In addition to my role in this case, I am counsel to Western Watershed Project in a recently filed challenge to a Wyoming law that, like the laws at issue in this case, seeks to criminalize whistleblowing activities involving animal agriculture. *See Western Watersheds Project, et al., v. Peter K. Michael*, Civil No. 15-cv-169-S (complaint filed October 20, 2015).

5. Among other victories, I served as lead counsel in *Sprietsma v. Mercury Marine Corp.*, 537 U.S. 51 (2002), a federal preemption case unanimously upholding an injury victim's right to sue a manufacturer for failing to install propeller guards on its recreational motor boat engines.

6. Other notable appellate cases in which I have served as lead or co-counsel include the following:

- Co-counsel in *Freightliner v. Myrick*, 514 U.S. 280 (1995), a federal preemption appeal yielding a unanimous U.S. Supreme Court ruling that injured crash victims can sue truck manufacturers for failing to install anti-lock brakes.
- Co-counsel in *Geier v. American Honda Motor Inc.*, 529 U.S. 861 (2000), a federal preemption appeal involving whether federal law prevents injury victim from suing an auto manufacturer for failing to install airbags in its cars. (The Court found preemption by a vote of 5-to-4.)
- Lead counsel in *Drelles v. MetLife*, 357 F.3d 344 (3d Cir. 2003), which yielded a unanimous ruling that consumers who opted all of their claims out of a nationwide class action settlement cannot be barred from fully prosecuting their individual cases against the defendant company.
- Co-lead counsel in *U.S. Airways v. McCutchen*, 663 F.3d 671 (3d Cir. 2011), *aff'd in part and rev'd in part*, 113 S. Ct. 1537 (2013), a challenge to the rights of an ERISA plan to recover medical expenses from an injury victim who obtained partial compensation from a third party.
- Co-lead counsel in *CGI v. Rose*, 683 F.3d 1113 (9th Cir. 2012), an ERISA reimbursement case yielding a unanimous ruling limiting the rights of an ERISA plan to recover medical expenses from an injury victim who obtained compensation from a third party.
- Co-counsel for Animal Legal Defense Fund in *National Meat Association v. Harris*, 132 S. Ct. 965 (2012), in defense of a California law designed to prevent the abuse of pigs and other livestock who become non-ambulatory on the way to the slaughterhouse.
- Co-counsel in *Aguayo v. U.S. Bank*, 653 F.3d 912 (9th Cir. 2011), a federal preemption appeal holding that federal banking law does not preempt state debt-collection laws.
- Co-counsel in *PLIVA v. Mensing*, 131 S. Ct. 2567 (2011), a federal preemption appeal asking whether a plaintiff's failure-to-warn claims against generic drug companies for injuries caused by a generic prescription drug are preempted by federal law.

7. I have also represented *amici curiae* before the U.S. Supreme Court in a host of cases including: *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997) (opposing class action settlement that purported to resolve the rights of future injury victims); *Bates v. Dow*

Agrosciences (opposing federal preemption of state law claims involving pesticides); *Wyeth v. Levine*, 555 U.S. 555 (2009) (opposing federal preemption of state-law claims involving brand-name prescription drugs); *Altria v. Good*, 555 U.S.70 (2008) (opposing federal preemption of state-law claims involving “light” cigarettes); *Bruesewitz v. Wyeth*, 131 S. Ct. 1068 (2011) (opposing federal preemption of state-law claims involving childhood vaccines); *Williamson v. Mazda*, 562 U.S. 323 (2011) (opposing federal preemption of state-law claims involving defective seatbelts); *Tyson Food’s v. Bouaphakeo*, No. 14-1146 (U.S. Supreme Court October Term 2015) (decision pending) (opposing attempt to overturn class action verdict on behalf of food processing workers); *Campbell-Ewall Co. v. Gomez*, No. 14-857 (U.S. Supreme Court October Term 2015) (decision pending) (opposing ability of class action defendants to moot out class representatives’ claims via Rule 68 offers of settlement).

8. In addition to my above-described work, I have taught appellate advocacy at American University Law School and Georgetown University School of Law.

9. In this case, work was delegated and divided among the Plaintiffs’ attorneys to avoid duplication of effort to the greatest extent possible. My principle role in the case was in reviewing, editing, and (to a lesser extent) drafting portions of our briefs in the case. I believe that my considerable experience with briefing and arguing cutting-edge legal issues was of benefit to the case and helped ensure that our arguments were presented in the most coherent and persuasive manner possible

10. My principal contributions were to the plaintiffs’ opposition to defendant’s motion to dismiss and plaintiffs’ opening and reply briefs in support of our motion for summary judgment. Regarding the former, in addition to reviewing and editing the various drafts, I played a lead role in responding to defendant’s arguments relating to the preemption claims in the complaint. In that connection, I performed substantial legal research with regard to defendants’ arguments that our preemption-based claims were not ripe for review. I authored a legal memorandum to our team analyzing those arguments, and ultimately co-wrote (with the Center for Food Safety) the portion of our opposition brief responding to that argument (which was ultimately shortened considerably to accommodate this Court’s page limitations).

10. Regarding the summary judgment briefing, my principle role was in reviewing and editing the drafts produced by my co-counsel and in assisting with overall strategy with

regard to those briefs. I also conducted substantial legal research with regard to the First Amendment and Equal Protection arguments, to enable me to strengthen the arguments presented in our briefs.

12. I also exchanged numerous emails and participated in numerous calls with my co-counsel involving overall case strategy, briefing strategy, amicus strategy, and oral argument strategy.

11. I also traveled to Boise Idaho to attend the summary judgment hearing and assist lead counsel Justin Marceau with preparation for the argument. To save time and expense, I flew to Boise the day of the hearing and returned that same evening. I also participated in a moot court before the hearing.

12. As a result of the work that I performed on this case, my ability to take on other representations was limited in various respects. Public Justice is a relatively small organization with a staff of less than a dozen attorneys. We make every effort to leverage our resources for the maximum impact. My involvement in this case necessarily restricted my ability to take on other matters. I made every effort, however, to streamline my involvement in this case in order to make the greatest possible contribution with the smallest number of hours.

13. Because this case sought only declaratory and injunctive relief and involved complicated legal issues, I believe that the likelihood that other lawyers outside of the nonprofit public interest sector would have taken on this case (except on a *pro bono* basis) is very low. As this Court knows, this case presents extremely complicated, cutting-edge legal issues. It is my experience that private attorneys are extremely reluctant to devote their resources to complex cases involving novel legal questions, particularly those that hinge on a court's willingness to declare a statute invalid on constitutional grounds. My organization generally avoids cases that would be attractive to the private bar, on the theory that such cases do not require our involvement or expertise. We took on this case precisely because, despite its importance, there was virtually no likelihood of it being brought by private attorneys, much less litigated with the degree of skill brought to bear by undersigned counsel.

14. I would also note that my organization devoted considerable resources to the issues underlying this case prior to our formal involvement. Long before this lawsuit was filed, my colleagues and I spent literally hundreds of hours researching the viability of a constitutional challenge to various Ag-gag statutes, including Idaho's. We also spent dozens of

hours conferring with various constitutional experts about the viability of such a challenge. We are not seeking compensation for any of that work in this case; I mention it only to underscore the extent to which my organization has devoted considerable resources to the legal issues presented in this litigation. I believe that all this work ultimately made me a more effective member of the litigation team in this case.

15. I kept contemporaneous time records in this case. I recorded my time on a daily basis, including notation of the nature of the services and work performed. I record my time in six minute increments (tenths of an hour). Attached hereto as **Exhibit A** is a true and correct copy of my time records so far in this case. I have carefully reviewed these records and eliminated any arguably noncompensable time (such as time spent on press, coordinating with amici, and performing administrative tasks related to litigation). I attest that the attached records reflect time that was reasonably spent in litigating this case.

16. I have consulted with our local counsel in this case regarding prevailing market rates in the area. Although I did not receive hourly or contingent compensation for my work on this matter, based upon local counsel's knowledge of the relevant billing rates, I believe that a fair market rate for my services is \$400 per hour. This is based on the fact that I graduated law school in 1987, and therefore have over 25 years relevant experience. At an hourly rate of \$400, my fees to date are \$28,248.00.

17. At various points from time to time, I was assisted on this case by other Public Justice personnel, including law clerks and fellows. I am not seeking compensation for any of their time.

18. Pursuant to 28 U.S.C. § 1924 and the District of Idaho Local Civil Rules, I certify that the information in this declaration and its exhibits is correct to the best of my knowledge, that the expenses set forth in the exhibits hereto were necessarily incurred, and that the services for which fees have been charged were actually and necessarily performed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 20th day of November, 2015 at Oakland, California.

/s/ Leslie A. Brueckner
Leslie A. Brueckner

Exhibit A

Date	Attorney	Client	Activity	Description	Time
4/4/2014	L. Brueckner	AG-GAG ID	Correspondence	Correspondence with team regarding responses to FCA preemption claim	0.50
4/7/2014	L. Brueckner	AG-GAG ID	Legal Research	Legal research regarding ripeness challenge to FCA preemption claim (in preparation for drafting section of opposition brief in response to defendants' Motion to Dismiss)	5.00
4/14/2014	L. Brueckner	AG-GAG ID	Legal Research	Legal research on ripeness challenge to FCA preemption claim; memo to co-counsel re same	6.50
4/16/2014	L. Brueckner	AG-GAG ID	Rev draft brief	Work on Brief in Opposition to Motion to Dismiss	4.00
4/21/2014	L. Brueckner	AG-GAG ID	Brief	draft opposition brief in response to motion to dismiss	3.20
4/22/2014	L. Brueckner	AG-GAG ID	Brief	more work on opposition brief (responding to motion to dismiss claims based on federal preemption)	3.30
4/25/2014	L. Brueckner	AG-GAG ID	Draft	pro hac vice application; miscellaneous calls and e-mails regarding same; conversation with local counsel regarding same	1.80
4/28/2014	L. Brueckner	AG-GAG ID	Correspondence	review and comments on proposed amendments to complaint; call with team regarding same	0.80
4/28/2014	L. Brueckner	AG-GAG ID	Miscellaneous	comment on on local counsel edits to draft opposition to defendants' motion to dismiss	0.30
5/20/2014	L. Brueckner	AG-GAG ID	Correspondence	regarding notice of appearance; follow-up documentation	0.80
5/28/2014	L. Brueckner	AG-GAG ID	Telephone call	review judge's ruling on amicus participating; emails with team re same	0.30
5/30/2014	L. Brueckner	AG-GAG ID	Miscellaneous	correspondence with team regarding issue of standing to challenge "physical injury" prong of statute; research regarding same	0.80
6/2/2014	L. Brueckner	AG-GAG ID	Correspondence	review IDA's reply on intervention; correspondence regarding same	0.60
6/20/2014	L. Brueckner	AG-GAG ID	Correspondence	with cocounsel regarding strategy for oral argument; correspondence and research regarding proposed motion for leave to file response brief	0.70
6/26/2014	L. Brueckner	AG-GAG ID	Miscellaneous	e-mail from lead counsel regarding whether to add NLRA preemption claim; quick research and call regarding same	0.80
7/7/2014	L. Brueckner	AG-GAG ID	review	review Otter/Wasden reply to response to motion of supplemental authority regarding Defendant's Motion to Dismiss for Failure to State a Claim (jurisdictional); correspondence regarding same	0.30
9/2/2014	L. Brueckner	AG-GAG ID	Correspondence	review decision and correspondence with team regarding same	0.50
9/15/2014	L. Brueckner	AG-GAG ID	Correspondence	review draft motion for summary judgment	0.40
10/29/2014	L. Brueckner	AG-GAG ID	Rev draft brief	correspondence and call with Justin Marceau re problems with draft brief and need for substantial edits; redraft intro, standard of review, statement, First Amendment analysis	1.80
10/30/2014	L. Brueckner	AG-GAG ID	Correspondence	work on Statement of Undisputed Facts; call with Justin regarding problems with draft; e-mail exchange regarding strategy issues	0.70

Date	Attorney	Client	Activity	Description	Time
11/4/2014	L. Brueckner	AG-GAG ID	Telephone call	research regarding significance of animus and the equal protection analysis; long e-mail to team regarding same, particularly use of the City of Cleburne case and the Morena case to bolster our animus argument; correspondence with team regarding whether to provide examples of legal restrictions on whistleblowing activity	0.80
11/6/2014	L. Brueckner	AG-GAG ID	Brief	review Marceau draft and "quick and dirty" revisions regarding same; call with Justin with regard to whether we should seek summary judgment on the equal protection claim and discussion of animus argument; correspondence with Prof. Pollvogt regarding animus issue	1.60
11/7/2014	L. Brueckner	AG-GAG ID	Rev draft brief	review Matthew Strugar rewritten Statement of Fax and revised Statement of Undisputed Material Fact; correspondence regarding same	0.80
11/12/2014	L. Brueckner	AG-GAG ID	Brief	edits to summary judgment brief and standing affidavits; call with Justin Marceau regarding redraft of compelling interest section	2.20
11/14/2014	L. Brueckner	AG-GAG ID	Filing	final review motion for summary judgment, brief in support, statement of undisputed material facts; etc.	0.50
11/18/2014	L. Brueckner	AG-GAG ID	Press	Review defendants' Response to Motion for Partial Summary Judgment	0.50
1/6/2015	L. Brueckner	AG-GAG ID	Brief	Review and revise Ag-Gag Reply Brief in Opposition to Motion for Summary Judgment	4.50
1/30/2015	L. Brueckner	AG-GAG ID	Review	Research re issues relating to (1) disposition of preemption claim; and (2) whether we need to move for an injunction (per JM's request); email to Justin re same	1.00
4/28/2015	L. Brueckner	AG-GAG ID	Travel	Travel to Idaho for summary judgment hearing; assist with moot court; attend hearings; return travel	16.00
6/22/2015	L. Brueckner	AG-GAG ID	Telephone call	Review summary judgment ruling; calls re same	0.80
				TOTAL	61.80