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10 ATTORNEYS FOR
Plaintiff Richard MARTIN

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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

15
16 ROBERT WESTFALL, individually and on
behalf of all others similarly situated;

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18 Plaintiff,

19 v.

20 BALL METAL BEVERAGE CONTAINER
CORPORATION., a Colorado Corporation,
21 Does 1-20 inclusive.
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Case No: 2:16-cv-02632-DAD-CKD
Hon. Dale A. Drozd

**DECLARATION OF I. BENJAMIN J.
BLADY**

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DECLARATION

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— **DECLARATION OF I. BENJAMIN J. BLADY** —

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2 1. I. Benjamin Blady, declare as follows:

3 2. I am an attorney duly licensed to practice law in the State of California. I am
4 a partner and principal attorney at the law firm of Blady Workforce Law Group, APC,
5 attorneys of record for Objector and Conditional-Plaintiff-in-Intervention Richard E.
6 Martin (“Objector Martin”) in the above captioned matter.

7 3. I have personal knowledge of the facts set forth below, and if called upon as a
8 witness, I could and would competently testify to the matters set forth herein.

9 4. I make this Declaration in support of the Motion for Preliminary Approval of
10 Class Action Settlement.

11 **Settlement Terms**

12 5. A discussion of the Settlement Terms and considerations, and the case
13 history, are set forth in ¶¶ 12–133 of the Lesches Declaration.

14 6. As explained therein, the Class consists of about 389 potential members. The
15 new Settlement is for \$4,500,000. In my opinion, this amount is sufficient to settle on a
16 class basis given the relative risks and exposure, and enhances the class recovery.

17 7. Plaintiff, Defendant, and Objectors (collectively, the “Parties”) have agreed
18 to retain ILYM (“Administrator”) to administer the Class Settlement. The Administrator
19 provides cost-effective and accurate settlement administration services in other comparable
20 wage and hour class action settlements.

21 8. Prior to mediation, I reviewed discovery, including Martin’s personnel file
22 and pay records, discovery taken by Objectors, as well as the substantial spreadsheets of
23 Class Member data and other documents that Defendant provided in anticipation of
24 mediation.

25 9. Such discovery allowed me to prepare an educated forecast for purposes of
26 settlement regarding the value of the class claims. The documents and information I
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1 received were used to analyze liability and probable damages (and reasonable recovery) in
2 connection with mediation.

3 10. The Parties participated in a mediation with mediator Jeffrey Ross. The
4 mediator assisted the parties in negotiation, which resulted in a mediator's proposal on the
5 class claims for a \$4,500,000 settlement.

6 11. In preparation for the mediation, Objectors prepared a brief outlining the
7 various legal issues. Arm's-length negotiations were conducted in good faith between all
8 parties.

9 12. Based on independent investigation and evaluation and my consultations with
10 Martin, I am of the opinion that the Class Settlement with Defendant for the consideration
11 and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate,
12 and is in the best interest of the Class in light of all known facts and circumstances,
13 including: the uncertainty and risk of further litigation, the Class Members' burdens of
14 proof, the risk of significant delay, the legal and factual defenses asserted by Defendant,
15 including regarding class certification, and numerous potential appellate challenges
16 concerning representative and class issues.

17 **Counsel's Experience**

18 13. I am a 1989 graduate of University of California, Los Angeles, with a
19 Bachelor's degree in Economics and Business. I am a 1992 graduate of Loyola Law
20 School and clerked as an attorney for the Los Angeles Superior Court, and I served in the
21 chambers of Justice Daniel Curry and Judge Fredrick Lower, Jr. Since 1994, I have
22 focused my practice primarily on employment litigation, and I represent clients in class
23 action, representative, and individual litigation. I formerly practiced at the national
24 employment law defense firm Epstein Becker & Green, P.C., as well as at the boutique
25 defense employment firms of Goldstein, Kennedy & Petito and Gartner & Young. In
26 January 2003, I became a founding partner of Appleton, Blady and Magnanimo, LLP,
27 which primarily practiced labor and employment and class action law. In February 2009, I
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1 became a founding partner of Blady Weinreb Law Group, LLP, at which I have practiced
2 class action employment litigation. In 2017, I founded Blady Workforce Law Group, APC.

3 14. I have served as plaintiffs and/or defense counsel on multiple class action
4 suits, including but not limited to:

5 a) *Meyer v. Smart & Final* (Warehouse - prosecution of Overtime / Meal & Rest
6 Period violations);

7 b) *Cavanaugh v. SCPMG* (CRNAs - prosecution of misclassification claims);

8 c) *McLaughlin v. Chemical Waste Management, Inc.* (prosecution of unpaid
9 overtime claims and other wage violations).

10 d) *Garcia v. 21st Century Insurance* (prosecution of misclassification claims);

11 e) *Gonzales v. Universal Music Group* (IT Employees - prosecution of
12 Overtime/ Meal Periods/ Indemnification violations).

13 f) *Romo v. Evapco* (Manufacturing - prosecution of Overtime/ Meal & Rest
14 Periods/ Pay Stub violations).

15 g) *Sirota v. Granada Hills Community Hospital* (defense of misclassification
16 claims);

17 h) *Butler v. Home Depot* (defense of sex discrimination class action).

18 i) *Turcketta v. Exponent* (Administrative/Clerical – prosecution of Meal & Rest/
19 Pay Stub/ Labor Code violations);

20 j) *Hodge v. Cardinal Logistical Management Corp. (Drivers - prosecution of*
21 Overtime/ Meal & Rest/Pay Stub/ Lab. Code, § 203 violations));

22 k) *Rodriguez v. Scully Distribution Services/Ryder Logistics* (prosecution of
23 Drivers - Overtime/ Meal & Rest/ Pay Stub/ Lab. Code, § 203 violations);

24 l) *Cuellar v. Food Express* (prosecution of Drivers - Overtime/ Meal & Rest/
25 Pay Stub/ Lab. Code, § 203 violations).

26 15. Given my extensive experience as an employment law/wage and hour
27 litigator, I believe the proposed Settlement addresses the allegations of Defendant's
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1 violations of the Labor Code, Business and Professions Code, and Wage Order(s) and
2 provides adequate monetary relief to the Plaintiff and Class Members. I have assessed the
3 risks and inherent delays if we were to continue with the litigation. It is my professional
4 opinion that the Settlement Agreement is fair, reasonable and adequate.

5 16. The proposed incentive payment for Martin's participation totaling \$10,000 is
6 appropriate given the risk he took in delaying his individual case and his services on behalf
7 of the putative class. Martin provided information and identified witnesses, including Mr.
8 Bernstein. Martin also attended and participated in mediation and represented the interests
9 of former employees under Labor Code § 203.

10 **Request for 20 Percent of the Additional Settlement Value as Attorneys' Fees Is**
11 **Reasonable and Below Benchmark**

12 17. Objectors requested attorneys' fees award is approximately 20% (twenty
13 percent) of the additional settlement value created, in the amount of \$2,050,000, as
14 compared with the prior settlement proposal for \$2,450,000. The total amount of fees is
15 \$410,000 for Objectors, and conditionally-certified plaintiff's, Counsel's fees.

16 18. The attorneys' fees are reasonable considering my experience in employment
17 law and class actions, the issues presented in this class, the legal expertise required to
18 negotiate this class settlement and the enhancement, and the manner in which I and Mr.
19 Lesches effectuated this result to ensure payment to the Class. I am aware of numerous
20 cases in which trial courts in California have approved an attorneys' fee award of one-third
21 or more of the settlement fund in wage and hour class actions, plus reasonable costs. A fee
22 of about 33% of the settlement is comparable to, or less than, awards granted in similar
23 cases, is less than the contingency market rate, and is reasonable under the circumstances of
24 this case. A fee of 20% is also well below the Ninth Circuit benchmark.

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1 **Request for Fees Amounts to a Loadstar Multiplier of About Through Filing of the**
2 **Motion for Preliminary Approval**

3 19. The attorneys' fees are also reasonable under a loadstar calculation. The
4 objections and coming to settlement took substantial attorney time and effort. The attorney
5 time charged to the case is at or below the hourly market rate for lawyers of comparable
6 experience and expertise. I engaged in substantial discovery and legal analysis related to
7 the Class Claims. This included an in-depth knowledge of key legal areas such as regular
8 rate exposure. We were able to prosecute and negotiate as objectors on the Class' behalf
9 because of my extensive efforts, including reviewing and analyzing substantial documents
10 and information; advocating for and obtaining substantial discovery from Defendants;
11 researching novel and evolving legal principles; presenting legal and/or factual analysis in
12 mediation briefing, and otherwise; and negotiating with Defendants and other Plaintiffs
13 over an extended period of time to obtain the settlement. The requested attorneys' fees and
14 costs are justified and reasonable, especially in light of the results that I have achieved for
15 the benefit of the Class Members.

16 20. I estimate that, through January 2025, my total hours exceed 115 hours to
17 date. I estimate the total fees I have incurred in this class action at in excess of \$131,215, at
18 the Laffey Matrix used by federal courts to determine reasonable hourly rates. *See*
19 *Rubenstein, 5 Newberg on Class Actions*, §15:43, p. 148 (5th Ed. 2015);
20 <http://www.laffeymatrix.com/see.html>. As objectors' counsel, I view the Laffey Matrix
21 likely to understate the hourly value of objectors time and effort. Most class lawyers shy
22 away from substantive objections on behalf of a class and would likely demand a much
23 higher rate. I have been awarded hourly loadstar calculations above \$1,200.00 on similar
24 class claims.

25 21. Objectors' Counsel took this matter on contingency. Lesches Law has
26 represented Plaintiff Martin since 2019, and filed suit in 2020. I have been active on the
27 representation of this matter since the filing of the FAC in July 2021.

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DECLARATION