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17 Attorneys for Plaintiffs,
18 Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger,
19 individually and on behalf of all others similarly situated

20
21 **UNITED STATES DISTRICT COURT**
22 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

23 ROBERT WESTFALL; DAVID ANDERSON;
24 LYNN BOBBY; DAVID ELLINGER,
25 individually and on behalf of all others
26 similarly situated,

27 Plaintiffs,

28 v.

BALL METAL BEVERAGE CONTAINER
CORPORATION., a Colorado Corporation, Does
1-20 inclusive,

Defendants.

Case No. 2:16-cv-02632-DAD-CKD

CLASS ACTION

**DECLARATION OF TIMOTHY B. DEL
CASTILLO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 3, 2025
Time: 1:30 p.m.
Ctrm: 4, 15th Floor
Judge: Hon. Dale A. Drozd

[Originally Solano Superior Court
Action No. FCS047654]

State Action Filed: 9-7-2016
FAC Filed: 4-6-2017
SAC Filed: 5-30-2024
Trial Date: None Set

1 I, TIMOTHY B. DEL CASTILLO, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiffs Robert Westfall, David Anderson, Lynn Bobby,
4 and David Ellinger (“Plaintiffs”) in this matter against Defendant BALL METAL BEVERAGE
5 CONTAINER CORPORATION (“Defendant” or “Ball”). I have personal knowledge of the
6 facts set forth in this declaration, and if called as a witness, could and would testify as to their
7 accuracy.

8 2. I am making this declaration on behalf of my clients, and in support of **Plaintiffs’**
9 **Motion for Preliminary Approval of Class Action and PAGA Settlement**. A true and correct
10 copy of the parties’ Joint Stipulation of Class Action and PAGA Settlement is being submitted
11 with this Motion as **Exhibit A** to the Motion.

12 **EXPERIENCE**

13 3. I am a seasoned litigation and trial attorney who has litigated numerous wage-and-
14 hour class action cases, both for Defendants and for Plaintiffs. Ever since I began practicing law, I
15 have practiced virtually exclusively California employment law, including individual and
16 representative actions on behalf of both employers and employees. I have worked on numerous
17 class action cases in California, in both Federal and Superior courts, since 2011.

18 4. I graduated with a Bachelor of Arts degree from Franciscan University of
19 Steubenville in 2001, *summa cum laude*, with a double major in philosophy and theology. I received
20 my Juris Doctor degree from Pepperdine University School of Law in 2010, *magna cum laude* and
21 graduated in the top 3% of my class. During law school I was a Lead Articles Editor for the
22 Pepperdine Law Review, served as a teaching assistant, and externed for Chief Judge Alex
23 Kozinkski of the United States Court of Appeals for the Ninth Circuit.

24 5. I started my legal career as a judicial law clerk to Williams H. Pryor Jr. of the United
25 States Court of Appeals for the Eleventh Circuit, immediately after which I practiced employment
26 law for several years with two of the largest and highly-regarded international law firms: Akin
27 Gump Strauss Hauer & Feld LLP in Los Angeles and Orrick Herrington & Sutcliffe LLP. As a
28 Senior Associate in the employment litigation group at Orrick, Herrington & Sutcliffe LLP in its
Sacramento, California office, my hourly rate exceeded \$700.00 per hour and I worked on numerous

1 complex wage-and-hour class actions like this one. I have represented numerous Fortune 500
2 companies in high-stakes employment cases involving discrimination, harassment, retaliation,
3 misclassification, claims for unpaid wages, violations of the California Labor Code, wrongful
4 termination, and many other employment-related claims. For example, I have defended wage-and-
5 hour class and PAGA cases for employers such as Sears, Starbucks, and Morgan Stanley to name a
6 few.

7 6. In 2017, I started my own independent law practice, Castle Law: California
8 Employment Counsel. I now represent both individuals and companies in employment law matters,
9 with a particular emphasis on wage-and-hour issues.

10 7. I have served on the Executive Committee for the Labor and Employment Section
11 of the Sacramento County Bar Association, and on the Board for the Solo and Small Firm Division
12 of the Sacramento County Bar Association. I have given numerous presentations on the topic of
13 California wage-and-hour employment law, including to the National Business Institute and other
14 human resources groups. In 2018 and 2021, I was selected by a vote of my peers to be included in
15 Sacramento Magazine's list of 2018 Top Lawyers in Sacramento. In 2020-2021, I was recognized
16 as a Super Lawyer Rising Star for employment law, which recognizes no more than 2.5 percent of
17 attorneys in each state. In 2022, I was selected as a Super Lawyer.

18 8. I have given presentations to numerous business groups on topics related to
19 employment law in California, including but not limited to the following:

- 20 a. *Strategies for a Successful Mediation in Wage and Hour Class and PAGA Actions*,
California Lawyers Association, 13th Annual Advanced Wage and Hour Conference.
- 21 b. *Putting in Work: Running a High-Level Employment Law Practice*, Above the Law:
22 The Legal Tech Non-Event with Jared Correia
- 23 c. *Arbitration Agreements and PAGA Claims: Good News for Employers*, Workplace
24 Wake-Up with Jennifer Shaw
- 25 d. *Employment Litigation: Perspectives from the "Other Side"*, Workplace Wake-Up
26 with Jennifer Shaw
- 27 e. *Calculating Damages, Exposure & PAGA Penalties for Mediation/Settlement in*
28 *Wage and Hour Class and Representative Actions*, Bridgeport Continuing Education

- 1 f. *Advanced Strategies in Calculating Damages, Exposure & PAGA Penalties for*
2 *Mediation/Settlement in Wage and Hour Class and Representative Actions,*
3 *Bridgeport Legal Education*
- 4 g. *The Mini MBA for Attorneys: Labor and Employment Law Essentials,* National
5 *Business Institute*
- 6 h. *How to Become a Pivotal Part of Any Wage and Hour Practice Group,* Sacramento
7 *County Bar, Labor and Employment Section*
- 8 i. *Alternative Dispute Resolution in Employment,* National Business Institute
- 9 j. *Easy as ABC?: What Business Owners Need to Know About Worker Classification,*
10 *SCORE Association*
- 11 k. *Negotiations, Settlement, and Mediation,* Federal Bar Association: Sacramento
12 *Chapter*

13 9. I have experience representing clients' interests in trials, appeals, arbitrations, and
14 mediations.

15 10. My firm has represented numerous individuals in class and PAGA representative actions,
16 including other matters in which class and PAGA action settlements have been approved with me
17 as counsel for Plaintiffs. Courts have routinely awarded my firm common fund fee percentages in
18 class and PAGA cases ranging from 33% to 40%. These cases include, but are not limited to, the
19 following:

- 20 a. *Rooney v. Save Mart Supermarkets,* Sacramento Superior Court Case No. 34-2020-
21 00274973-CU-OE-GDS (class and PAGA action final approval granted for
22 settlement for \$7,480,000 with 35% attorney fee award);
- 23 b. *Marie Hogan v. Aecom Technical Services, Inc.,* Los Angeles County Superior Case
24 No. 19STCV40072 (counsel for Plaintiff, wage-and-hour class action settlement
25 final approval granted; \$3,680,000.00 settlement with 33.33% attorney fee award);
- 26 c. *Aaron Carr v. Howroyd-Wright Employment Agency et al.,* Sacramento Superior
27 Court, Case No. 34-2018-00228290 (counsel for Plaintiff, wage-and-hour class and
28 PAGA action, final approval of settlement for \$1,195,000.00 with 35% attorney fee
award);

- d. *Christian Sipin et al. v. Salesforce.com, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629 (counsel for Plaintiffs, wage-and-hour class and PAGA action, final approval of settlement for \$1,500,000.00 with 35% attorney fee award);
- e. *Sean Lalor et al. v. Mendocino Farms*, Sacramento County Superior Court, Case No. 34-2020-00277871 (class and PAGA action, final approval granted for \$1,500,000.00 with 33.33% attorney fee award);
- f. *Deena Sakhel v. Cogir Management USA Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2020-0001215 (class and PAGA action, final approval granted for settlement for \$1,300,000.00 with 35% attorney fee award);
- g. *Melody Armstrong et al. v. Ruan Transport Corp.*, San Bernardino County Superior Court, Case No. CIVDS1605897 (class and PAGA action, final approval granted for \$1,480,000.00 with 33.33% attorney fee award);
- h. *Anthony Evans et al v. Direct Delivery Service, Inc. et al.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2020-0003776 (class and PAGA action, preliminary approval granted for settlement for \$900,000.00 with 35% attorney fee award);
- i. *Jerome Williams v. RC Willey Home Furnishings*, Sacramento Superior Court Case No. 34-2019-00272003 (class and PAGA action, final approval granted for settlement for \$750,000.00 with 35% attorney fee award);
- j. *Anthony Trujillo v. Valet Living, LLC*, Sacramento Superior Court Case No. 34-2020-00273711 (class and PAGA action, final approval granted for \$750,000.00 with 35% attorney fee award);
- k. *Susan Tanis v. Laser Eye Care of California, LLC et al.*, Sacramento County Superior Court, Case No. 34-2021-00299140 (class and PAGA action, final approval granted for \$720,000.00 with 35% attorney fee award);
- l. *Blythe Ducheneaux v. Villa Sport, et al.*, Placer County Superior Court, Case No. S-CV-0044826 (class and PAGA action, final approval granted for \$626,000.00 with 35% attorney fee award);

- 1 m. *Nicholas Simon v. Maita Enterprises, Inc.*, Sacramento Superior Court Case No. 34-
2 2020-00276615 (PAGA-only action settlement approval for \$410,000.00 with 40%
3 attorney fee award);
- 4 n. *Robert Amador v. Jeff Thompson's Auto Group, Inc.*, El Dorado County Superior
5 Court, Case No. PC20190146 (PAGA-only settlement approved for \$260,000.00
6 with 40% attorney fee award);
- 7 o. *Virginia Gottlieb v. Agilent Tech.*, Sacramento Superior Case No. 34-2018-0244298
8 (PAGA-only settlement approved for \$300,000.00 with 35% fee award);
- 9 p. *Bulos Saliba v. Amerigas Propane*, Sacramento Superior Case No. 34-2019-
10 00257327 (counsel for Plaintiff, final approval granted in wage-and-hour class and
11 PAGA action for \$195,000.00 with 40% attorney fee award);
- 12 q. *Ivan Guschin et al. v. Energy Star Lighting and Electric*, Sacramento County
13 Superior Court, Case. No. 2020-00281895-CU-OE (PAGA-only action settled for
14 \$110,000.00 with 40% attorney fee award);
- 15 r. *Kenneth Trone v. Sugar Bowl*, Placer County Superior Court, Case No. S-CV-
16 0045755 (PAGA-only settlement approved for \$142,500.00 with 40% attorney fee
17 award).
- 18 s. *Daniel McNamee et al. v. indiGO San Francisco, LLC*, Marin County Superior Court
19 Case No. 3:22-cv-04033-JSC (PAGA-only settlement approved for \$150,000 with
20 33% attorney fee award).

21 11. Additionally, my firm is counsel for Plaintiffs in numerous other currently pending
22 class and PAGA representative actions in Superior Courts throughout the state, which are at various
23 stages of litigation but have not yet gone to judgment or had settlements approved, including but
24 not limited to:

- 25 a. *Isabella Fulli v. Carter's Retail, Inc.*, Placer County Superior Court, Case No. S-
26 CV-0052518 (class action pending);
- 27 b. *Nathan Christensen v. Carter Retail, Inc.*, Central District of California, Case No.
28 8:20-cv-00776 JLS (KESx) (PAGA action pending);

- c. *Kali Bates v. MVP Event Productions, LLC et al.*, Sacramento County Superior Court, Case No. 34-2022-00317653 (putative class and PAGA action pending);
- d. *Eduardo Enriquez v. Solari Enterprises, Inc.*, Los Angeles Superior Court, Case No. 20STCV11129 (PAGA action pending);
- e. *Derek Hodson v. Remi Vista, Inc.*, Shasta County Superior Court, Case No. 200120 (PAGA Action pending);
- f. *Eric Vasconcellos v. JS Sacramento, Inc. et al.*, Sacramento County Superior Court, Case no. 23CV012199 (PAGA action pending);
- g. *Alejandro Rodriguez v. Worldwind Services, LLC*, Kern County Superior Court, Case No. BCV-19-103236 (class and PAGA action pending);
- h. *Kassidy Ali v. Favorite Healthcare Staffing, Inc. et al.*, Kern County Superior Court, Case No. BCV-22-101710 (putative class and PAGA action pending);
- i. *Carmen Garcia v. Caliber Holdings of California, LLC et al.*, Placer County Superior Court, Case No. S-CV-0050365 (PAGA action pending);
- j. *Adrian Hernandez v. Santa Fe Mercados, Inc.*, Monterey County Superior Court, Case No. 21CV000222 (class and PAGA action pending);
- k. *Edmundo Holguin v. Hawthorne Machinery Co.*, San Diego County Superior Court, Case No. 37-2021-00003107 (PAGA action pending);
- l. *LaShonta Knight v. Woodside Homes of Northern California, Inc.*, Sacramento County Superior Court, Case No. 34-2022-00317805 (PAGA action pending);
- m. *Rana Musharbash v. JPMorgan Chase Bank*, Eastern District of California, Case No. 2:22-cv-02320-DAD-KJN (PAGA action pending);
- n. *Alfonso Ortega v. Hooked on Solar, Inc.*, Placer County Superior Court, Case No. S-CV-0048541 (PAGA action pending);
- o. *Hailey Popovich v. Russell Cellular, Inc.*, Fresno County Superior Court, Case No. 20CECG02552 (PAGA action pending);
- p. *Nicole Prahm v. Hot Topic, Inc.*, Placer County Superior Court, Case No. S-CV-0049489 (PAGA action pending);

1 q. *Marjan Warmilee v. LendBuzz Funding, LLC et al.*, Sacramento County Superior
2 Court, Case No. 34-2022-00328422 (class and PAGA action pending).

3 12. The lists above do not reflect several cases in which my firm has represented
4 employers in complex wage-and-hour class and PAGA cases.

5 13. My former Senior Associate Spencer Turpen was admitted to the California Bar
6 in 2014. He obtained his law degree from University of the Pacific, McGeorge School of Law,
7 and his bachelor's degree in economics from the University of California Berkeley. I
8 understand that Mr. Turpen is now Of Counsel with Ogletree Deakins in their Sacramento office
9 and working in their employment law practice group.

10 14. During his employment with my firm, Mr. Turpen was admitted to practice in the
11 state of California, and United States District Court for the Northern, Eastern, and Central
12 Districts of California. He is also admitted to practice in the state of Texas. He was involved in
13 both jury and bench trials. Mr. Turpen was also an active member of the Labor and Employment
14 Section of the Sacramento County Bar Association and the Labor and Employment and
15 Litigation Sections of the California Lawyers Association. When working for my firm, Mr.
16 Turpen represented employers and individuals in class and collective wage and hour actions,
17 and in other employment actions, in both state and federal court. He also represented employers
18 and individuals in hearings before the Labor Commissioner and the Civil Rights Department.
19 Mr. Turpen's practice was dedicated solely to employment litigation.
20

21 15. Prior to joining my firm, Mr. Turpen worked at Sacramento area litigation law
22 firms, including Murphy Austin Adams Schoenfeld, LLC and Wilke Fleury, LLP. Mr. Turpen
23 has represented numerous Fortune 500 companies in high-stakes employment cases involving a
24 wide range of claims including, without, limitation, discrimination, harassment, retaliation,
25 misclassification, claims for unpaid wages, violations of the California Labor Code, PAGA,
26 trade secret misappropriation, and wrongful termination.
27
28

1 20. Defendant has contested the merits of this case and the suitability of the case for class
2 action treatment, and, notwithstanding its agreement to settle this matter; it believes it has complied
3 with all state and federal employment laws with respect to Plaintiffs and the class.

4 21. Plaintiffs contend they worked for Defendants as non-exempt, hourly employees.
5 From our initial investigations of Plaintiffs' claims and documents, we believed Plaintiffs' claims
6 had merit.

7 22. I understand that on September 7, 2016, Plaintiff Robert Westfall filed his action,
8 titled *Robert Westfall v. Ball Metal Beverage Container Corporation, et al.*, currently pending in
9 Solano County Superior Court, Case No. FCS047654. Defendant subsequently removed the State
10 Court Action to the United States District Court for the Eastern District of California, thereby
11 initiating the civil action entitled *Westfall v. Ball Metal Beverage Container Corporation*, Case No.
12 2:16-cv-02632 ("the Federal Action").

13 23. I understand that on September 29, 2016, Plaintiff Westfall submitted his PAGA
14 Notice to the LWDA for the purpose of complying with California Labor Code § 2699.3's notice
15 requirement. At that time, Plaintiff's counsel submitted the \$75.00 filing fee on behalf of Plaintiff.
16 The PAGA Notice was sent to Defendant via certified mail. The matter was given the LWDA case
17 number: LWDA-CM-160121-16.

18 24. I understand that on April 6, 2017, Plaintiffs filed the First Amended Complaint
19 ("FAC") in the Federal Action following the filing of a stipulation by the parties.

20 25. I understand that on May 18, 2018, Plaintiff's counsel uploaded a copy of the filed
21 FAC on the LWDA website.

22 26. I understand that on December 11, 2019, Plaintiffs and Defendant reached a
23 resolution of this matter and submitted a Motion for Final Approval on April 15, 2022. Richard
24

1 Martin and Andre Bernstein (collectively “Objectors”) filed objections to the settlement reached by
2 Plaintiffs and Defendant before the date of final approval and final approval was denied.

3 27. On March 6, 2024, Plaintiffs submitted an Amended PAGA Notice to the LWDA. At
4 that time, Plaintiff’s counsel submitted the \$75.00 filing fee on behalf of Plaintiff. The Amended
5 PAGA Notice was sent to Defendant via certified mail.

6 28. On May 30, 2024, Plaintiffs filed the Second Amended Complaint (“SAC”) in the
7 Federal Action following the filing of a stipulation by the parties.

8 29. On November 26, 2024, Plaintiff’s counsel uploaded a copy of the filed SAC on the
9 LWDA website. I understand that on January 21, 2025, a copy of the Settlement Agreement was
10 uploaded to the LWDA website.
11

12 **THE SETTLEMENT IS FAIR AND REASONABLE**

13 30. Based on the expected testimony from Plaintiffs and the class members, a review of
14 Defendants’ policies as well as pay data of class members and other documents relating to the alleged
15 claims for Plaintiffs and the class, the scope of the potential damages to Plaintiffs and class members
16 in light of the claims alleged, the negotiations that have taken place, I am convinced that the proposed
17 settlement is reasonable and fair and in the best interest of the class. The length and risks of trial and
18 other normal perils of litigation that impact the value of the claims were also considered and weighed
19 in reaching the proposed settlement. In addition, I carefully considered the difficulties of complex
20 litigation and the lengthy process of establishing damages and various possible delays and appeals
21 in agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA
22 could be substantially cut at the discretion of the Court even if Plaintiffs were successful on proving
23 those claims. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now
24 rather than to proceed with litigation and potentially obtain zero funds to the class due to legal or
25 factual issues with the case.
26
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1 31. I and my co-counsel, along with Plaintiffs' assistance, thoroughly investigated the
2 merits of the claims and potential damages for such claims. The parties engaged in substantial
3 informal and formal discovery and exchange of documents, and participated in four mediation
4 sessions prior to reaching a settlement. Defendant provided substantial documentation. It was
5 estimated that there were approximately 327 class members, who worked approximately 90,000
6 workweeks during the settlement period. This information allowed my co-counsel and me to assess
7 both liability and damages and create an accurate damages model with the help of a damages expert.
8 Additionally, I understand that Plaintiffs assisted in all aspects of this litigation including providing
9 factual information relating to his and similarly situated employees' employment conditions, and
10 answered questions regarding Defendant's factual contentions in this matter. Throughout this
11 litigation, I and my co-counsel communicated with Defendant's counsel, including via telephone and
12 email, discussing our respective positions. It was only after litigation, extensive, arm's length
13 negotiations for a period of several months, and four separate full-day mediation sessions that the
14 parties were able to reach a settlement. I understand that mediation sessions were held with Alan
15 Berkowitz on February 7, 2017 and August 1, 2018, Raul Ramirez on December 11, 2019, and
16 Jeffrey Ross on August 30, 2023. I personally attended and participated in the August 30, 2023
17 mediation, which lasted into the evening. The negotiations were at all times contentious and
18 adversarial, though still professional in nature.
19
20

21 32. The parties reviewed and analyzed substantial amounts of data regarding the class
22 claims. Nick Briscoe of Briscoe Economics Group was retained to assist with creation of a potential
23 damages analysis in anticipation of the fourth and final mediation. Based on our analysis and review
24 of all relevant documents and information on the class, we have determined that a generous likely
25 total exposure for the asserted claims, plus related statutory and civil penalties, without any reduction
26 for risk of loss, or reduction in PAGA penalties is approximately \$22,545,996, not including interest.
27
28

1 33. The proposed gross settlement amount of \$4,500,000 represents approximately
2 19.96% of the likely maximum recovery, based on our analysis, if Plaintiffs and the class were to
3 prevail at trial on all claims with no reductions in penalties, excluding interest. This amount presents
4 an excellent recovery given the risks of reduction in PAGA penalties even if the case were allowed
5 to proceed on a representative action basis, manageability concerns, the risk that Defendant will
6 prevail on some or all of their affirmative defenses, and the risk that Plaintiffs and the class may
7 obtain no recovery at all. The settlement is in the best interests of the class insofar as it provides
8 more certain and timelier relief for the class for the claims being released.
9

10 34. I also believe the Settlement Amount is a reasonable compromise of claims based
11 on the legal and factual disputes, the statutory maximum for available wage statement penalties,
12 and the fact that Courts regularly cut civil penalties on PAGA claims where statutory penalties
13 for the same violations are assessed. The statutorily authorized discretion that Courts have been
14 used to reduce penalties ranges substantially. *See, e.g., Thurman v. Bayshore Transit Mgmt.,*
15 *Inc.*, 203 Cal. App. 4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011
16 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Based on this, I believe the
17 proposed PAGA settlement is a fair, reasonable, and adequate compromise of claims and
18 represents an excellent result in light of the potentially recoverable penalties at issue and the
19 potential for reduction in the Court's discretion.
20

21 35. I believe the Settlement Amount is a reasonable compromise of claims based on the
22 legal and factual disputes, the statutory maximum for available wage statement penalties, and the
23 fact that Courts regularly cut civil penalties on PAGA claims where statutory penalties for the same
24 violations are assessed. The statutorily authorized discretion that Courts have used to reduce
25 penalties ranges and can be between a 30% and 82% reduction of total available penalties based on
26 my review of the case law. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112,
27
28

1 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D.
2 Cal. 2011) (82% reduction). Furthermore, there was substantial risk that a Court could find no
3 liability at all based on the strong defenses on the merits presented by Defendant, which would
4 eliminate the value of the claims entirely. The ability to secure a guaranteed settlement now and
5 ensure class members receive some compensation, rather than proceed to further litigation and
6 potentially recover nothing, was a motivating factor in reaching this settlement. I understand that
7 after deduction for requested attorney's fees and costs, representative enhancement, settlement
8 administrator fees, and the LWDA's portion of the PAGA penalty allocations, the Class will have a
9 net settlement amount of approximately \$2,810,000.00.
10

11 36. Some highlights of the substantial benefit to the class members under the agreement
12 are discussed below:

13 ***Average Net Settlement Amount Per Class Member***

14 37. As previously stated, by my calculations, with the 327 estimated members of the
15 class, the settlement results in an average of approximately \$8,593.27 for each class member, or
16 based on what I understand to be a more recent estimate of 389 members: \$7,223.65, from the
17 \$2,810,000.00 net settlement amount; albeit, the class members will receive a payment in proportion
18 to their workweeks and at the rates agreed upon in the settlement agreement.
19

20 ***Substantial Waiting Time Penalty Recovery***

21 38. The settlement provides that members who left their employment during the class
22 period will be entitled to an enhancement of at least 33% of their final wage multiplied by 360 hours,
23 or the equivalent of 30, 12-hour work days. This results in the class member receiving approximately
24 of at least 33% of what they would have received for 12-hour workdays if they received the maximum
25 waiting time penalties in a lawsuit themselves.
26
27
28

1 39. Importantly, recovery of waiting time penalties in California does not provide for an
2 award of attorney’s fees, so the individual class members may have had difficulty finding an attorney
3 to represent them to recover that full amount and would have likely had to pay 25-40% of the amount
4 in fees were he or she to hire an attorney to pursue them individually.

5 ***Negotiated Settlement Acknowledge the Additional Violations Suffered by the Engineering***
6 ***Group***
7

8 40. Of special consideration in the this matter are the so-called “Engineering” class
9 members who, as I understand it, despite almost complete overlap in duties, tasks, and roles with the
10 rest of the class nevertheless had a minor additional task that rendered them entitled to additional
11 compensation. That is, while these “Engineering” class members performed all the same tasks as
12 others in the class, they were additionally required to listen and report assignments and changes
13 announced over an intercom, rendering their days completely absent of any break that completely
14 relieved them of all job responsibilities.

15 41. It is my opinion that understanding and addressing these small but consequential
16 differences while preserving the benefits of resolving the matter as a class action required an
17 experienced and diligent counsel
18

19 42. Thankfully, I understand that Plaintiff’s Class Counsel and the Objector’s Counsel
20 were able to bring the experience and diligence necessary to work with one another and negotiate on
21 behalf of those class members in the “Engineering” position received additional compensation
22 thereby helping to ensure that the settlement was fair and reasonable to all class members.
23
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1 ***Most Other Class Members Likely Would Have not Recovered Anything Outside of this Class***

2 ***Action***

3 43. Besides Richard Martin, who is now an objector in this matter, I am unaware of any
4 other actions pursued by any other Class Member against Defendant for the claims during the time
5 periods alleged in this action.

6 44. I understand that the statute of limitations has since passed for any new actions to be
7 initiated on claims that accrued before April 20, 2020 that are covered by this settlement agreement.
8

9 45. Assuming that no other actions have been filed, it stands to reason that the other
10 employees of Defendant would have likely gone without any recovery whatsoever for the time period
11 of September 7, 2012 to April 20, 2020, were it not for this class action that was prosecuted by
12 Plaintiff and Plaintiff's Counsel.

13 ***Defendant Must Change Alleged Violating Policies and Procedures***

14 46. I understand that the litigation resulted in Defendant changing the paging-
15 announcement policy that underlie Plaintiffs' claims thereby preventing further violations of
16 Defendant's employees' rights. Both the first and second settlement agreement require
17 Defendant to make policy and practice changes. The second settlement agreement now provides
18 that Defendant must also modify its policies and procedures related to new hazardous materials.
19

20 The present settlement agreement that the parties no seek approval provides as follows at page
21 32 ¶ 20:

22
23 Defendant's Policy and Practice Changes. Defendant shall continue to remove,
24 disable and/or de-activate any speakers connected to the paging system at its
25 Fairfield, California facility, to the extent such speakers are located within the
26 break room or other designated break areas at the Fairfield, California facility.
27 As consideration for Objector Martin's release of his Labor Code section 6300
28 PAGA claim, Defendant Ball has modified its policies and procedures to provide
that whenever a new hazardous material is introduced into the work area at the
Fairfield Plant, Defendant will conduct an assessment to evaluate which
employees will be reasonably anticipated to be exposed to such materials, and
those employees will be trained, to the extent appropriate, on reasonably

1 foreseeable exposures on the job and general classes of hazardous chemicals.
2 These policy changes reflect no admission of liability or wrongdoing by any
3 Party.

3 **ATTORNEY'S FEES ARE REASONABLE**

4 47. I am the sole owner of Castle Law: California Employment Counsel, PC. In
5 agreeing to represent Plaintiffs and take on the PAGA case, I agreed to take this case on a
6 contingency basis, meaning that I would take a percentage of any settlement or judgment should
7 we recover a monetary amount. My co-counsel and I have also advanced all costs of litigation
8 at risk of potentially never being reimbursed. I took a risk that we would not recover any money
9 in this matter if we were unsuccessful at trial. I also took on the risk that the case may not be
10 able to proceed to trial due to manageability concerns and/or be subject to an unfavorable
11 summary judgment ruling. However, I believe it is important to make sure employees are able
12 to find affordable representation in order to ensure that employers are treating their employees
13 legally and fairly regarding their wages and other aspects of employment.
14

15 48. My law firm is a boutique law practice that focuses exclusively on employment
16 litigation. We do not have a large number of attorneys or cases and taking on PAGA actions to
17 vindicate the rights of similarly situated employees and penalties payable to the LWDA
18 represent a substantial risk and burden as PAGA litigation requires a substantial amount of time
19 and financial resources to successfully litigate. I believe the risk experienced by my firm taking
20 on PAGA litigation cases is much more substantial than what typically larger law firms would
21 face.
22

23 49. Plaintiffs, my co-counsel, and our firm have been able to secure an identifiable benefit
24 on behalf of the LWDA and similarly situated employees and equity counsels that the cost of the
25 representation should be born equally amongst all individuals and entities receiving these benefits.
26 The settlement recovery provides an excellent result in light of the legal and factual issues affecting
27
28

1 this settlement and is the product of substantial time and effort in analyzing the facts and law
2 applicable to this case. I agreed to take this case on a contingency and as a PAGA action with the
3 possibility that I would not receive any compensation for my time and efforts due to issues regarding
4 merits and/or damages and have carried that substantial financial risk over the past year. I have
5 reviewed fee arrangements and Court ordered fee awards in similar representative litigation
6 settlements and I believe that the one-third (33.33%) fee requested (\$1,500,000) is within the
7 accepted ranges and eminently reasonable in light of the results obtained in this case.
8

9 50. In my experience with contingency cases in employment law cases, the typical
10 percentage negotiated between parties ranges from thirty-five to fifty percent (35% to 50%) in
11 individual litigation. In class action litigation, my experience in my own firm and working with
12 several other firms has been that the typical percentage negotiated between parties and approved by
13 a court ranges from thirty to forty percent (30% to 40%) based on the same factors. Several recent
14 Federal District Court Cases have approved common fund based fee requests. These cases include
15 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming 33% of fund as
16 fee in securities case); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS
17 (WMC) (awarding 40% fee in a wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*,
18 USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on wage and hour
19 class action settlement). I believe our request of one-third for attorneys' fees is justified given the
20 results obtained on behalf of the similarly situated employees and the LWDA. Moreover, at this
21 time, my co-counsel and my firm have advanced all costs for Plaintiffs and PAGA members and
22 have not received any compensation whatsoever for our time expended in this case.
23
24

25 51. I understand that all of Plaintiffs' Class Counsel have all invested a substantial amount
26 of time and costs into this litigation, with the risk of netting nothing should they ultimately not
27 prevail.
28

1 52. My firm joined the litigation at a comparatively later stage, primarily focusing on
2 settlement-related work and collaborating with co-counsel Matthew Eason and Erin Scharg to
3 bring the matter to resolution. Our work was particularly concentrated on settlement
4 negotiations, preliminary approval documentation, class settlement administration, and
5 ensuring compliance with PAGA notice requirements.

6 53. I understand that by the time my firm joined the litigation, there had already been
7 substantial litigation prior to my firm joining the case and that the matter had already settled once,
8 but there was an objection to the settlement. Despite joining in a comparatively later stage of the
9 case, my firm has invested considerable time and resources to bring this matter to resolution.
10

11 54. My firm has policy of contemporaneously recording time worked on matters in an
12 online management software. In that software, my firm alone has recorded over 101.8 hours of
13 attorney-time on this matter as of drafting this declaration. That is at least 101.8 hours spent on the
14 matter from June 2023 to January 2025, less than 2 years.
15

16 55. As of drafting this section of the declaration, my firm has invested over 101.8
17 hours in this matter between June 2023 and January 2025. This time was distributed among
18 myself and two of my associates: Spencer Turpen and Bryce Fick. The majority of my firms
19 time was dedicated to mediation and settlement activities, which included preparing for and
20 participating in mediation sessions, analyzing data for negotiations, drafting and reviewing
21 mediation briefs, and working on settlement documentation.
22

23 56. A significant portion of my firm's time has also been spent on motion practice,
24 primarily focused on drafting the preliminary approval motion and preparing supporting
25 declarations.
26
27
28

1 57. My team also spent significant amount of time on case management and
2 communicating with stakeholders, which included coordinating with co-counsel, handling
3 objector issues, and handling PAGA-related correspondence and tasks.

4 58. My firm also spent significant time on document review and research, which
5 included analyzing defense positions and reviewing settlement documents. Among the time
6 spent analyzing and strategizing, this time involved addressing potential issues to class
7 certification issues, particularly regarding subclasses and allocation issues..

8 59. The Laffey Matrix is a pre-fixed formula used by federal courts to determine
9 reasonable hourly rates. *See* Rubenstein, 5 Newberg on Class Actions, §15:43, p. 148 (5th Ed.
10 2015). *See* <http://www.laffeymatrix.com/see.html>.

11 60. The Matrix for the dates of June 1, 2024 to May 31, 2025, reflects attorneys' rates
12 with experience commiserate to my years of experience as billing upwards of \$948 per hour;
13 attorneys with Mr. Turpen's years of experience at \$839; and attorneys with Mr. Fick's years
14 of experience at \$581 per hour.
15

16 61. As of the drafting of this declaration, I have recorded 36.60 hours on these matters.
17 Ignoring the varying rates of different years for simplicity, the Laffey Matrix provides a rate of \$948
18 per hour, which would reflect \$34,696.80 in fees.
19

20 62. My former associate, Spencer Turpen, recorded 56.40 hours on this matter. Ignoring
21 the varying rates of different years for simplicity, the Laffey Matrix provides a rate of \$839 per hour,
22 which would reflect \$47,319.60 in fees.
23

24 63. My current associate, Bryce Fick, has billed 8.80 hours so far in this matter. Ignoring
25 the varying rates of different years for simplicity, the Laffey Matrix provides a rate of \$839 per hour,
26 which would reflect \$7,383.20 in fees.
27
28

1 64. If my firm, alone, had billed our fees would among to a lodestar of approximately
2 \$34,696.80 + \$47,319.60 +\$7,383.20 = \$89,399.60 as of drafting this declaration. This amount
3 excludes work performed after its drafting, which includes revising and finalizing the moving papers
4 for the preliminary hearing motion and subsequent work to finalize and wrap up the matter.

5 65. Combining the \$89,399.60 with my Plaintiffs' Co-Counsel, Eason & Tambornini,
6 ALC's, calculated lodestar estimate of \$654,385.00 provides a total estimated lodestar of
7 \$743,784.60.
8

9 66. Under the proposed settlement agreement, the total fees my firm and Plaintiffs'
10 Co-Counsel will take is \$1,090,000.00.

11 67. This means that lodestar multiplier for the agreed upon fee amount is a reasonable
12 1.465 based upon the calculation of $\$1,090,000/\$743,784.60 = 1.465$.

13 *Fees In Excess of 25% Are Justified in this Matter*

14 68. In my opinion, Plaintiffs' Counsel and the Objector's Counsel have provided a
15 substantial benefit to and success for the class in this considerably complex case, which justifies the
16 fees greater than 25% of the gross settlement amount.
17

18 *This Complex Matter has Been Litigated for Nearly Nine Years*

19 69. I understand that his action was filed in Solano county in September 2016, and it has
20 been actively litigated ever since, with the limited exception of some time after the first settlement
21 reached between Plaintiff and Defendant.
22

23 70. The issues presented in this matter are complex, involving a multitude of individuals
24 and entities, documentation, and analysis to evaluate the claims and assert any conclusions regarding
25 the liability Defendant faced.
26
27
28

1 71. I understand that Plaintiff and Defendant initially reached a settlement after years of
2 litigation that involved substantial discovery, including 24 depositions of class members in 2019.
3 The final approval for that settlement, however, was denied in January 2023.

4 72. In response to an objector, the parties continued negotiations and litigation, including
5 additional discovery.

6 73. After additional discovery and litigation, the parties engaged in renewed arms-length
7 negotiations and after a full day mediation that extended into the evening hours, they were able to
8 reach a resolution in August 2023.

9 74. The parties then continued negotiations of the long form settlement over the course
10 of the next year, investing substantial time and energy to finally wrap up the settlement and the
11 manner.
12

13 75. I understand that the resolution of the matter became even more complex when
14 Objector-Intervenor Richard Martin alleged a California Labor Code Private Attorneys General
15 Act Labor Code section 6300 claim against Defendant. Thankfully, the participation of the
16 Objector-Intervenor resulted in nearly doubling the gross settlement amount.
17

18 *The Amount of Fees was Agreed Upon In the Course of Arms Length Negotiations Engaged*
19 *in After Class Certification*

20 76. The settlement agreement, along with the agreed upon attorney's fees, were
21 negotiated at arms length among the parties after the class was certified.
22

23 77. Although the Objector's counsel has since entered into a Joint Prosecution
24 Agreement, the gross amount of the fees agreed upon in the settlement agreement and the split
25 provided in the Joint Prosecution Agreement were negotiated at arms length, with no special or close
26 relationship existing among the parties when the respective amounts were negotiated. The Joint
27 Prosecution Agreement was entered into for the purpose of cooperating to complete the Settlement.
28

1 78. I understand that there still is no special relationship or connection between Plaintiff
2 and Defendant or Objector and Defendant besides a mutually expressed desire for the agreed-upon
3 settlement to be approved.

4 ***Combined Efforts of Plaintiff's and Objector's Counsel Resulted in a Significantly Increased***
5 ***Settlement***

6 79. The Plaintiff's Counsel and the Objector's Counsel (who will share the one-third
7 attorney's fees that are requested), together, helped to nearly doubled the gross settlement amount
8 from \$2,450,000 to \$4,500,000
9

10 80. Plaintiff's Counsel worked long and hard over several years to obtain a settlement of
11 \$2.45 million but was unable to push Defendant any further with the evidence and argument at their
12 disposal.

13 81. With the added pressure of the Objector, however, Plaintiff's Counsel and the
14 Objector were able to negotiate a settlement of nearly double.

15 82. While the attorney's fees in a percentage-recovery correspondingly increases with the
16 increased settlement amount, the nearly doubling of gross settlement was the result of the combined
17 effort of the Plaintiff's Counsel and Objector and will be split accordingly.
18

19 ***Combined Efforts of Plaintiff's and Objector's Counsel Resulted in a Significant Changes to***
20 ***Defendant's Policies and Procedures***

21 83. I understand that the litigation resulted in Defendant changing the paging-
22 announcement policy that underlie Plaintiffs' claims thereby preventing further violations of
23 Defendant's employees' rights. Both the first and second settlement agreement require
24 Defendant to make policy and practice changes. The second settlement agreement now provides
25 that Defendant must also modify its policies and procedures related to new hazardous materials.
26
27
28

1 Although the parties have not agreed upon a valuation for these changes, they nevertheless
2 should represent a significant benefit to the Class.

3 *The Combined Efforts of Plaintiff's and Objector's Counsel Resulted in a Fair and Reasonable*
4 *Settlement*

5 84. Based on the efforts of Plaintiff's Counsel and the subsequent combined efforts
6 with Objector's Counsel, the class will be receiving the benefit of an agreement where, among
7 other things, the average net settlement amount per class member is \$8,593.27 or, based on what
8 I understand to be a more recent estimate of 389 members: \$7,223.65; where there is a Substantial
9 Waiting Time Penalty Recovery that is resulting in recovery of up to 33% of the maximum
10 penalties that the applicable class members would have been able to recover on their own for 12-
11 hour workdays, net; where the additional violations suffered by the Engineering positions are
12 acknowledged and adequately compensated; where a substantial number of Class Members are
13 compensated who would have likely not recovered nothing outside of this Class Action for the
14 violations that they suffered from at least September 7, 2012 to April 20, 2020; and where
15 Defendant must make significant policy and procedure changes that should address the claims of
16 Plaintiffs and the Objectors
17
18

19 85. I expect to seek recovery of my firms costs from the costs allotted in the settlement
20 agreement in this matter at its conclusion.

21 86. Submitted herewith as **Exhibit B** is a true and correct copy of the second amended
22 complaint.

23 87. Submitted herewith as **Exhibit C** is a true and correct copy of the negotiated,
24 proposed notice.
25

26 ///

27 ///

1 I declare under penalty of perjury under the laws of the State of California and the
2 United States of America that the foregoing is true and correct. Executed this 21st day of January,
3 2025.

4 
5 Timothy B. Del Castillo
6 Attorney for Plaintiffs
7
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EXHIBIT A

1 MATTHEW R. EASON, Esq., Cal. Bar No. 160148
2 KYLE K. TABORNINI, Esq., Cal. Bar No. 160538
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9 <http://www.capcitylaw.com>

10 TIMOTHY B. DEL CASTILLO

11 SPENCER S. TURPEN
12 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL P.C.**
13 2999 Douglas Blvd., Suite 180
14 Roseville, CA 95661
15 Phone: 916-245-0122
16 Email: tdc@castleemploymentlaw.com

17 Attorneys for Plaintiff Robert Westfall
18 Individually and on behalf of all others similarly situated

19 **BLADY WORKFORCE LAW GROUP LLP**
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25 **LESCHES LAW**
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Email: levi@lescheslaw.com

ATTORNEYS FOR
Plaintiff Richard MARTIN Individually and on behalf of all others similarly situated; Andre
BERNSTEIN

Attorneys for Defendant BALL METAL BEVERAGE CONTAINER CORP.
(ERRONEOUSLY SUED AS “BALL METAL BEVERAGE CONTAINER CORPORATION”

24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

1 ROBERT WESTFALL, individually and on
 2 behalf of all others similarly situated,
 3
 4 Plaintiff,
 5
 6 v.
 7 BALL METAL BEVERAGE CONTAINER
 8 CORPORATION, a Colorado Corporation,
 9 Does 1-20 inclusive,
 10
 11 Defendants.
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Case No: 2:16-CV-02632-KJM-CKD

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

[Originally Solano Superior Court
 Action No. FCS047654]
 State Action Filed: 9-7-2016
 FAC Filed: 4-6-2017
 Trial Date: None Set

1 This Stipulation of Class Action Settlement and Release is entered into by the named
 2 plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger (hereinafter
 3 collectively, “Named Plaintiffs”), Objector and Conditional-Plaintiff-in-Intervention Richard
 4 Martin and Objector Andre Bernstein (collectively “Objectors-Intervenors”), and Defendant Ball
 5 Metal Beverage Container Corporation (“Ball” or “Defendant”).

6 WHEREAS, Plaintiffs and Objectors-Intervenors are former and current employees of
 7 Defendant;

8 WHEREAS, on or about September 6, 2016, Plaintiff Robert Westfall filed a “Class
 9 Action Complaint” in the California Superior Court in and for the County of Solano, thereby
 10 initiating the civil action entitled *Robert Westfall v. Ball Metal Beverage Container Corporation*,
 11 Cal. Super. Ct. (Solano) Case No. FCS047654 (hereinafter, the “State Court Action”);

12 WHEREAS, Defendant subsequently removed the State Court Action to the United States
 13 District Court for the Eastern District of California, thereby initiating the civil action entitled
 14 *Westfall v. Ball Metal Beverage Container Corporation.*, Case No. 2:16-cv-02632-KJM-GGH
 15 (the “Federal Action”);

16 WHEREAS, on April 6, 2017, Plaintiffs filed a “First Amended Class Action Complaint”
 17 in the Federal Action;

18 WHEREAS, Named Plaintiffs and Defendant reached a resolution of this matter in
 19 December 2019 and a Motion for Final Approval was submitted in 2021. Objectors-Intervenors
 20 filed objections to the previous settlement reached by Named Plaintiffs and Defendant before the
 21 date of final approval, and Plaintiffs’ Motion for Final Approval was denied;

22 WHEREAS, Named Plaintiffs, Objectors-Intervenors, and Defendant (collectively
 23 “Parties”) agreed to proceed to mediation. After a full day mediation on August 30, 2023, with
 24 mediator Jeff Ross, which lasted in excess of ten hours, the Parties ultimately agreed to a
 25 settlement proposal made by the Mediator.

26 WHEREAS, on May 30, 2024, Plaintiffs filed a “Second Amended Class Action
 27 Complaint” in the Federal Action;

28 WHEREAS, the aforementioned Complaint (attached hereto as Exhibit 1-A), First

1 Amended Class Action Complaint (attached hereto as Exhibit 1-B), Second Amended Class
2 Action Complaint (attached hereto as Exhibit 1-C), and Plaintiffs’ amended notice letter to the
3 California Labor and Workforce Development Agency pursuant to Cal. Lab. Code § 2699.3(a)(1)
4 (attached hereto as Exhibit 1-D); shall be referred to hereinafter collectively as the “Complaint”);

5 WHEREAS, in addition to the issues raised in the Complaint and attachments thereto,
6 Objector-Intervenor Richard Martin alleged a California Labor Code Private Attorneys General
7 Act Labor Code section 6300 (violation of Cal-OSHA Standards) claim against Defendant, which
8 claim is also raised in the attached Second Amended Class Action Complaint as Conditional
9 Plaintiff-in-Intervention’s Eighth Cause of Action at Paragraphs 99-102, and his March 5, 2024
10 letter to the Labor & Workforce Development Agency is attached hereto as Exhibit 1-E, and
11 incorporated by reference herein;

12 WHEREAS, Objector-Intervenor Martin further agrees and acknowledges that all of his
13 individual wage-and-hour, PAGA, Cal-OSHA PAGA, and class action claims as alleged in his
14 lawsuit against Defendant captioned *Richard Martin v. Ball Corporation, et al.*, currently venued
15 in the United States District Court for the Eastern District of California, Case No. 2:21-cv-01049-
16 DAD-CKD, originally filed in the Solano County Superior Court on November 23, 2020, Case
17 No. FCS055690 (“*Martin Action*”), are subsumed by this matter and shall be fully and finally
18 resolved should the court finally approve the Settlement in the instant action (but that Martin
19 reserves all allegations and theories asserted in Martin’s Third Amended Complaint and that
20 nothing in this Agreement resolves the claims, allegations, causes of action or theories asserted
21 in the Third Amended Complaint).

22 WHEREAS, the Named Plaintiffs, Objectors-Intervenors, and Defendant shall be
23 hereinafter collectively referred to as the “Parties;” and

24 WHEREAS, to avoid the inherent risks and costs of litigation, the Parties want to
25 completely settle all claims that were or could have been brought in the Complaint and in the
26 State Court Action and the Federal Action.

27 NOW THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE to settle all
28 such claims as follows:

1 **1. DEFINITIONS**

2 The terms defined above shall have the meanings therein given, for all purposes in this
3 Joint Stipulation of Class and PAGA Settlement, including in any exhibits hereto. And the
4 following defined terms used in this Joint Stipulation of Class and PAGA Settlement and any
5 exhibits hereto will have the meanings given them below.

6 1. Agreement. “Agreement,” “Settlement,” “Settlement Agreement,” and “Joint
7 Stipulation,” means this Joint Stipulation of Class and PAGA Settlement.

8 2. Class. “Class,” “Class Members,” “Settlement Class,” or “Settlement Class
9 Members,” shall mean all persons employed by Defendant Ball in a Class Position, at any time
10 during the Class Period.

11 3. Class Administrator. “Class Administrator” means ILYM, a third party
12 professional class action claims administrator, jointly selected by the Parties and/or appointed by
13 the Court to perform the Class Administration Duties.

14 4. Class Administrator Declaration. “Class Administrator Declaration” shall mean a
15 declaration attesting, in detail, to the steps taken through the date of such declaration in
16 performing the Class Administration Duties, that the procedures contemplated below in Section
17 2, paragraph 5 (hereinafter 2.5) – Class Administration Procedures Class List; Section 2.6 –
18 Class Administration Oversight; and Section 2.7 – Class Administration Procedures – Notice to
19 Class; are complete, and that the Class Administrator has all information needed to perform any
20 remaining Class Administration Duties, as defined below in Section 1, paragraph 6 (hereinafter
21 1.6) – Class Administration Duties, including the calculation of the amounts of the respective
22 Eligible Class Member Shares.

23 5. Class Administration Costs. “Class Administration Costs” shall mean the fees and
24 expenses reasonably and necessarily incurred by the Class Administrator as a result of
25 performing the Class Administration Duties. Class Administration Costs shall be paid from the
26 Gross Settlement Amount. Based on an estimate provided by the Class Administrator after
27 reviewing presently and reasonably available information, the Parties stipulate that Class
28 Administration Costs shall be up to Ten Thousand United States Dollars (\$10,000.00). Should

1 any actual Class Administration Costs turn out to be less than the projected amount, the Parties
 2 agree that the savings will be allocated to the Net Settlement Amount, to be distributed to Eligible
 3 Class Members in proportion to their respective numbers of Eligible Class Member Workweeks.
 4 Should any actual reasonable and necessary Class Administration Costs be more than the above
 5 estimated amount, and the Parties stipulate that the Class Administrator should be paid such
 6 amounts, the Parties will apply to the Court for an adjustment, with any additional Class
 7 Administration Costs to be paid from the Gross Settlement Amount, which shall be accompanied
 8 by a corresponding reduction of one or more specified elements of the Gross Settlement Amount
 9 as determined by the Court as part of Final Approval.

10 6. Class Administration Duties. “Class Administration Duties” shall mean the duties
 11 of the Class Administrator as set forth in this Agreement and as may be ordered by the Court.

12 7. Class Certification. “Class Certification” shall mean certification of the Class
 13 pursuant to Fed. R. Civ. P. 23(a) and (b) and other applicable law, for purposes of this Settlement
 14 only, without prejudice to Defendant’s ability to oppose or otherwise challenge such certification

15 8. Class Counsel. “Class Counsel” refers to EASON & TAMBORNINI, ALC,
 16 CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL P.C., LESCHES LAW; BLADY
 17 WORKFORCE LAW GROUP LLP.

18 9. Plaintiff’s Counsel. “Plaintiff’s Counsel” or “Plaintiffs’ Class Counsel” or
 19 “Named Plaintiffs’ Class Counsel” shall refer to EASON & TAMBORNINI, ALC, and CASTLE
 20 LAW: CALIFORNIA EMPLOYMENT COUNSEL P.C.

21 10. Objectors-Intervenors’ Counsel. “Objectors-Intervenors’ Counsel” or “Objectors’
 22 Counsel” or “Objectors-Intervenors’ Class Counsel” shall refer to Levi Lesches of LESCHES
 23 LAW and Benjamin Blady of BLADY WORKFORCE LAW GROUP LLP.

24 11. Class Counsel Fees and Costs. “Class Counsel Fees and Costs” shall mean an
 25 amount of up to One Millions Five Hundred Thousand United States Dollars (\$1,500,000), or
 26 One-Third of the Gross Settlement Amount, in Class Counsel’s and Objectors-Intervenors’
 27 Counsel’s Fees subject to Court approval, plus actual costs and expenses incurred by Class
 28 Counsel and Objectors-Intervenors’ Counsel related to the Action as supported by declarations

1 from both Class Counsel and Objectors-Intervenors' Counsel, which are currently estimated to
2 be no greater than Forty Five Thousand United States Dollars (\$45,000.00).¹ Class Counsel Fees
3 and Costs, comprised of Plaintiffs' Counsel and Objectors-Intervenors' Counsel, shall be
4 allocated, subject to Court approval, as follows:

5 (a) To Plaintiff's Counsel:

- 6 (1) One-Third of fees attributable to the initial \$2,450,000 of the Gross
7 Settlement Amount (such sum being equal to the prior settlement),
8 or \$816,666.66, plus
- 9 (2) 40% of One-Third of fees attributable to the additional \$2,050,000
10 of the Gross Settlement Amount provided for herein in excess of the
11 initial settlement amount, or \$273,333.34 (\$683,333.33 x 40%);
- 12 (3) Plaintiffs' Counsels' fees therefore totaling \$1,090,000.00
13 (constituting approximately 72.7% of One-Third of the Gross
14 Settlement Amount)

15 (b) To Objectors-Intervenors' Counsel:

- 16 (1) 60% of One-Third of fees attributable to the additional \$2,050,000
17 of the Gross Settlement Amount provided for herein in excess of the
18 initial settlement amount, or \$410,000.00 (\$683,333.33 x 60%);
- 19 (2) Objectors-Intervenors' Counsel's fees therefore constituting
20 approximately 27.3% of One-Third of the Gross Settlement Amount.

21 (c) In summary, Total Fees to all Class Counsel and Objectors-Intervenors'
22 Counsel, combined, as provided herein (\$1,090,000 + \$410,000) total
23 \$1,500,000 (One-Third of the Gross Settlement Amount), exclusive of costs.

24 12. Fees and Costs shall be paid to Class Counsel and Objectors-Intervenors'
25 Counsels from the Qualified Settlement Fund by the Class Administrator. Such payment of Class
26 Counsel and Objectors-Intervenors' Counsels' Fees and Costs shall be deemed to be full

27 _____
28 ¹ Included in Plaintiff's costs are the costs associated with the prior settlement administrator, Kroll. Class Counsel paid costs amounting to \$2,685.00. Any deficiencies or errors by Kroll were not the fault of Class Counsel.

1 satisfaction of any obligation by Defendant to pay any attorneys' fees, attorney costs and/or other
2 fees or costs to Named Plaintiffs, Objectors-Intervenors, Class Members, and/or any of their
3 attorneys in relation to the Action (but without waiver of any fees for those claims reserved under
4 section 4 of "Exhibit 3"). Any future adjustments to the amount of the Class Counsel and
5 Objectors-Intervenors' Fees and Costs, including by the Court, shall not constitute a basis for
6 this Settlement being void or Void *Ab Initio*, unless such adjustment shall have the effect of
7 increasing the Gross Settlement Amount, whereupon this Settlement will be voidable by
8 Defendant as provided for in this Agreement. Defendant agrees not to oppose such request for
9 reimbursement of litigation costs by Plaintiffs' counsel or Objectors-Intervenors' Counsel. If the
10 foregoing requests for reimbursement of litigation costs is not approved and/or is reduced by the
11 Court, any amount not approved and/or reduced by the Court will revert to the Net Settlement
12 Amount.

13 13. CRPC 1.5.1 Disclosure. Lesches Law discloses that it has a 10% referral-fee
14 agreement with a law firm whose identity shall be disclosed: (1) to all Parties herein; (2) to any
15 Class Member who requests such information in writing; (3) to the Court, if requested by the
16 Court.

17 14. B&P 6147 Disclosure. Objectors-Intervenors' Counsel disclose that, for purposes
18 of avoiding potential conflicts of interest, such Counsel preserved Objector Bernstein's rights
19 under 6147(b) of the *Business and Professions Code*. Objector Bernstein: (1) has been advised
20 of his rights under 6147(b) of the *Business and Professions Code*; (2) has been informed that
21 such rights were intended to preserve Objectors-Intervenors' Counsels' ability to withdraw as his
22 Counsel, if deemed appropriate; and (3) after such disclosures, Objector Bernstein does not
23 contest the foregoing fee allocation.

24 15. Class Notice. "Class Notice" shall mean the Notice substantially in the form
25 indicated in "Exhibit 4" hereto, and distributed by the Class Administrator in accordance with
26 Section 2.6 – Class Administration Oversight, below.

27 16. Class Member Objection. "Class Member Objection" shall mean a Class
28 Member's objection made pursuant to the provisions of Section 2.7 – Class Administration

1 Procedures – Notice to Class, below.

2 17. Class Member Objector. “Class Member Objector” shall mean a Class Member
3 who submits a Class Member Objection. A Class Member Objector shall not be considered an
4 Opt-Out unless he or she submits a valid Opt-Out Request.

5 18. Class Member Work Week. “Class Member Work Week” shall mean a Work
6 Week in which a Class Member was employed by Defendant in California during the Class
7 Period in a non-exempt employment position as an “Machinist/Mechanic,” and/or
8 “Maintenance,” or a non-exempt position within the production, and production support
9 departments, at Defendant’s facility located in Fairfield, California, or in a functionally
10 equivalent and supporting non-exempt position (but excluding Chemical Processors, Quality
11 Assurance or Production Lead [formerly known as Production Chief] positions, or “Electronic
12 Tech,” “Electronic Technician,” “ET” positions). For purposes of this Settlement, every Class
13 Member shall be deemed to have performed at least some work for Defendant during each of
14 their respective Class Member Work Weeks that wholly or partially occurred during the Class
15 Period. The Class Administrator shall thus calculate the total number of Class Member Work
16 Weeks with reference to Class Members’ dates of employment in a Class Position during the
17 Class Period. Periods when Class Members were on leaves of absence or held exempt positions
18 shall not be counted as Class Member Work Weeks.

19 19. Engineering Class Member Work Week. “Engineering Class Member Work
20 Week” shall mean a Work Week during the Class Period in which a Class Member was employed
21 by Defendant in California, at Defendant’s facility located in Fairfield, California, in a non-
22 exempt “Engineering Position,” defined as Chemical Processor, Quality assurance or Production
23 Leads (formally known as Production Chiefs) positions, or “Electronic Tech,” “Electronic
24 Technician,” “ET,” or functionally equivalent non-exempt positions in the Engineering
25 Department (and in which the Class Member was not classified as employed in a non-
26 Engineering position during any portion of the workweek). The Class Administrator shall thus
27 calculate the total number of Engineering Class Member Work Weeks with reference to dates of
28 employment in an Engineering position during the Class Period, and without regard or reference

1 to time records, records of leave of absence, sick time, or other temporary absences from work.
2 Periods when Class Members were on leaves of absence or held exempt positions shall not be
3 counted as Engineering Class Member Work Weeks.

4 20. Class Period. “Class Period” shall mean the time period from September 7, 2012
5 through April 20, 2024.

6 21. Class Position. “Class Position” shall mean a position for which workweeks are
7 eligible as a “Class Member Work Week” or as a “Engineering Class Member Work Week.”

8 22. Court. “Court” refers to the above-referenced Court, or any such further courts,
9 arbitrators, or other judicial bodies that may in the future obtain valid jurisdiction over the Action.

10 23. Date of Preliminary Approval. The “Date of Preliminary Approval” means the
11 day on which the Court enters Preliminary Approval.

12 24. Defendant’s Counsel. “Defendant’s Counsel,” “Defense Counsel” or “Counsel for
13 Defendant” shall mean Fisher & Phillips LLP, One Montgomery Street, Suite 3400, San
14 Francisco, CA 94104 and the attorneys in such firm including Jason Geller, John Skousen, and
15 Aaron Cargain.

16 25. Effective Date. “Effective Date” shall mean the latest date on which all of the
17 following have occurred:

- 18 (a) Full execution of this Agreement by all parties, and the expiration of any
19 applicable revocation periods related to such signature, such as the
20 revocation period set forth in Exhibit 3, ¶ 5.
- 21 (b) Entry by the Court of Preliminary Approval;
- 22 (c) Receipt by Defendant of written notice of such entry of Preliminary
23 Approval or Defendant’s express waiver of such notice;
- 24 (d) Completion of all those Class Administration Procedures which this
25 Settlement dictates will take place in advance of the Final Approval
26 Hearing;
- 27 (e) The Court setting and conducting a Final Approval Hearing pursuant to
28 procedures complying with Fed. R. Civ. P. 23 (e);

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- (f) Entry by the Court of an order of Final Approval of the Settlement and a Judgment that will result in the termination of the Federal Action and the State Court Action, *with prejudice*;
- (g) Receipt by Defendant of written notice of such entry of Final Approval and Judgment, or Defendant’s express waiver of such notice;
- (h) Proof of Service by Plaintiff of a written notice of such entry of Final Approval and Judgment on any Class Member, if any, that submits a written objection; and
- (i) Final Approval has become Final. For purposes of this provision, “Final” means:
 - (1) if no Class Member Objections are made and/or are made and withdrawn, the date the Court enters its order granting Final Approval of the settlement and Judgment pursuant to Fed. R. Civ. P. 23 (e);
 - (2) if any Class Member Objections are made and not withdrawn, and if no appeal, review or writ is sought from the Judgment, the sixty-first (61st) day after entry of Judgment;
 - (3) if rehearing, reconsideration and/or appellate review of the Judgment is sought, the day after any and all avenues of rehearing, reconsideration and appellate review have been exhausted and no further rehearing, reconsideration or appellate review is permitted, and the time for seeking such review has expired, and the Judgment has not been modified, amended or reversed in any way that is inconsistent with this Settlement Agreement; or
 - (4) if a Class Member Objector appeals from any ruling by the Court overruling such objection in whole or in part, the date when the Court’s order of Final Approval and Judgment have been affirmed on appeal;

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(j) The existence of a sufficient number of Eligible Class Members. Specifically, as of the date of the completion of all Class Administration Procedures, the number of Eligible Class Members must be ninety-seven percent (97%) or greater of the total Class Members, and the number of Class Members who are not Eligible Class Members does not exceed three percent (3%) of the total Class Members. If the number of Class Members who are not Eligible Class Members exceeds such percentage, then Defendant shall have the absolute right (but not the obligation) to deem this Settlement Void *Ab Initio* upon written notice to Class Counsel, Objectors-Intervenors’ Counsel, the Court, and the Class Administrator. If Defendant, within ten (10) business days of the Class Administrator’s written notice to all Parties that the number of Class Members who are not Eligible Class Members exceeds 3% of all Class Members, fails to advise Plaintiff in writing that Defendant will withdraw from the Settlement, this circumstance will not determine the Effective Date. In the event that Defendant timely exercises such right to deem this Settlement Void *Ab Initio* upon written notice in the manner provided for herein, Defendant agrees that, with respect to any pleading that Martin moves for leave to file within 30 days of such notice, for any claims previously alleged in Martin’s July 12, 2021 First Amended Complaint, or November 23, 2020 Complaint, the re-assertion of any such claims shall be deemed as though filed on such date and prosecuted without interruption from such date. Defendant reserves all rights to assert all applicable affirmative defenses, including, but not limited to, applicable statutes of limitations, the failure to exhaust administrative remedies, or affirmative defenses in response to any claims Martin may attempt to reassert should this Settlement not be finally approved.

26. Eligible Class Member. “Eligible Class Member” means a Class Member who is

1 not an Opt-Out.

2 27. Eligible Class Member Share. “Eligible Class Member Share” shall mean the
3 portion of the Net Settlement Amount that will be allocated to each Eligible Class Member. After
4 deduction of costs, attorneys fees, claims administration fees, enhancements and PAGA, the Net
5 Settlement Amount shall be distributed as follows:

6 (a) Waiting Time Penalty Enhancement: Class members that separated from
7 Defendant’s employment during the Class Period shall receive an award of up
8 to thirty-three percent (33%) of their last regular rate of pay times 360 hours.
9 For avoidance of the doubt, for Class Members that do not timely opt out of
10 the Settlement, the General Release shall release their claims for waiting time
11 penalties to the extent predicated on any wages paid prior to April 20, 2024.

12 (b) Maximum Allocation for the Waiting Time Penalty Enhancement. No more
13 than \$1,500,000 of the Gross Settlement Amount shall be allocated to the
14 Waiting Time Penalty Enhancement. The Settlement Administrator shall
15 determine the percentage value for the Net Settlement Amount as a percentage
16 of the Gross Settlement Amount, and shall multiply that percentage value
17 against \$1,500,000 to arrive at the “Maximum Allocation for the Waiting
18 Time Penalty Enhancement.” If necessary, each Waiting Time Penalty
19 Enhancement shall be decreased pro-rata until the combined total Waiting
20 Time Penalty Enhancements for all Class Members is equal to, (or, if
21 necessary to round individual allocations to the nearest penny, marginally less
22 than), the Maximum Allocation for Waiting Time Penalty Enhancement.

23 (c) Allocation for Paging-Practices Period. The Settlement Administrator shall
24 subtract from the Net Settlement Amount the: (i) Waiting Time Penalty
25 Enhancement; (ii) Allocation for Post-Filing Period; and (iii) The LWDA
26 Fund Remainder to arrive at the “Allocation for the Paging-Practices Period.”
27 This amount shall be allocated to the settlement of the Class Members’ claims
28 relating to alleged meal-period violations, as well as alleged rest-period

1 violations, as well as other alleged violations occurring prior to Defendant’s
 2 changing of its policies and procedures relating to paging announcements
 3 (“Paging-Practices Period”). For ease of Settlement Administration, the
 4 Paging-Practices Period shall be defined as the period between September 6,
 5 2012, and December 31, 2019.

6 (d) Engineering Class Member Work Weeks during the Paging-Practices Period
 7 shall be paid at 1.5 times the rate of Class Member Work Weeks. The
 8 Settlement Administrator shall then allocate the Allocation for Paging-
 9 Practices Period pro-rata between the Class Member Work Weeks for the
 10 Paging-Practices Period, except that the Settlement Administrator shall treat
 11 every Engineering Class Member Work Week in the Paging-Practices Period
 12 as equivalent to 1.5 workweeks.

13 (e) Allocation for Post-Filing Period. 9% of the Net Settlement Amount shall be
 14 allocated to the settlement of the Class Members’ claims relating to alleged
 15 violations (other than waiting time penalties) occurring on January 1, 2020,
 16 through April 20, 2024. The Settlement Administrator shall determine the
 17 percentage value for the Net Settlement Amount as a percentage of the Gross
 18 Settlement Amount, and shall multiply that percentage value against the
 19 Allocation for Post-Filing Period, and that sum shall be distributed pro-rata
 20 between all workweeks between January 1, 2020, through April 20, 2024.

21 (f) The LWDA Fund Remainder shall be distributed pro rata across all
 22 Engineering Class Member Work Weeks and Class Member Work Weeks
 23 (with no workweek to be given greater allocation than any other).

24 (g) The Parties acknowledge that such allocation formula constitutes the best
 25 judgment of Plaintiffs’ Counsel, and Objectors-Defendants’ Counsel in
 26 balancing the competing concerns of: (1) fairness of allocation; (2) allocating
 27 the settlement in accordance with the estimate value of the various claims; (3)
 28 reducing Class Member confusion; (4) reducing the risk of Administrator

1 error; and (5) minimizing administration burdens and costs.

2 28. As to the Named Plaintiffs, and Objectors, the amount of their Eligible Class
3 Member Shares is in addition to any Court-approved Named Plaintiff Enhancements and
4 Objector Enhancements.

5 29. Final Approval. “Final Approval” shall mean an order of the Court finally
6 approving this Settlement pursuant to Fed. R. Civ. P. 23 (e) and granting Class Certification.

7 30. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing on a
8 motion for Final Approval, scheduled and conducted pursuant to Fed. R. Civ. P. 23 (e).

9 31. Gross Settlement Amount. “Gross Settlement Amount” means the maximum
10 possible amount Defendant shall pay as a consequence of this Settlement, which is Four Million
11 Five Hundred Thousand United States Dollars (\$4,500,000), except as may be modified by the
12 Escalator Clause.

13 32. Judgment. “Judgment” means the judgment entered by the Court in conjunction
14 with the Final Approval Order.

15 33. LWDA. The “LWDA” shall mean the California Labor and Workforce
16 Development Agency.

17 34. LWDA Fund. “LWDA Fund” shall mean the amount payable to the LWDA
18 pursuant to the Joint Stipulation, which shall be Seventy-Five Thousand United States Dollars
19 (\$75,000). This amount shall be deemed to be seventy-five percent (75%) of an overall amount
20 of One Hundred Thousand United States Dollars (\$100,000) of the Gross Settlement Amount
21 which shall be allocated to PAGA penalties. The remaining amount of such allocation, Twenty-
22 Five Thousand United States Dollars (\$25,000) shall be deemed part of the Net Settlement Fund
23 and shall be accordingly distributed to the Eligible Class Members proportionate to their number
24 of Class Member Workweeks and/or Engineering Class Member Workweeks.

25 35. LWDA Fund Remainder. “LWDA Fund Remainder” shall mean the amount of
26 Twenty-Five Thousand United States Dollars (\$25,000) referenced above in Section 1.33 –
27 LWDA Fund.

28 36. Named Plaintiff Enhancement. “Named Plaintiff Enhancement” shall mean the

1 amount approved by the Court to be paid to Named Plaintiffs in addition to their individual
2 Eligible Class Member Shares, in consideration for their effort in coming forth as class and
3 PAGA representatives, and in consideration for their General Release set forth in “Exhibit 3”
4 hereto. The Parties agree that such amounts shall be Ten Thousand United States Dollars
5 (\$10,000.00) for each of the four Named Plaintiffs, subject to the Court’s approval.

6 37. Net Settlement Amount. “Net Settlement Amount” shall mean the Gross
7 Settlement Amount minus (a) Class Administration Costs, (b) Class Counsel and Objector-
8 Intervenor Fees and Costs; (c) the LWDA Fund, (d) the Named Plaintiff Enhancements, (e) the
9 Objector Enhancement.

10 38. Notice Packet: “Notice Packet” shall mean a packet mailed by the Class
11 Administrator pursuant to Section 2.6 – Class Administration Oversight, below, containing the
12 Class Notice, and any other accompanying documents required by this Settlement and/or
13 Preliminary Approval.

14 39. Objectors-Intervenors’ Counsel. “Objectors-Intervenors’ Counsel” shall mean
15 and refer to Benjamin Blady of the BLADY WORKFORCE LAW GROUP LLP and Levi
16 Lesches of LESCHES LAW.

17 40. Objector Enhancement. “Objector Enhancement” shall mean the amount
18 approved by the Court to be paid to Objector and Conditional-Plaintiff-in-Intervention Richard
19 Martin, and Objector Andre Bernstein, in addition to their individual Eligible Class Member
20 Shares, in consideration for their General Release set forth in “Exhibit 3” hereto. The Parties
21 agree that such amounts shall be Ten Thousand United States Dollars (\$10,000.00) for each for
22 Andre Bernstein and Richard Martin. All Parties acknowledge that in addition to their services
23 on behalf of the Class Members, the Defendant required releases from Bernstein and Martin as
24 part of this Settlement (such releases being conditional until the Effective Date, whereupon such
25 releases shall become final and binding as part of the General Release) and the Enhancement
26 Awards, in addition to compensating Bernstein and Martin for their efforts and services on behalf
27 of the Class Members, further compensate Bernstein and Martin for the claims they will be
28 releasing in facilitation of the Settlement.

1 41. Opt-Out(s). “Opt-Out(s)” refers to Class Members who have submitted an Opt-
2 Out Request.

3 42. Opt-Out Request. “Opt-Out Request” means a timely and valid written request for
4 exclusion from the Settlement by a Class Member, pursuant to the provisions of Section 2.8 –
5 Class Administration Procedures – Class Member Objections, Opt-Out Requests, and Disputes
6 Concerning Class Member Status and Number of Class Member Work Weeks, below.

7 43. PAGA. “PAGA” means the California Labor Code Private Attorneys General Act
8 of 2004, Cal. Lab. Code §§ 2698, *et seq.*

9 44. PAGA Period. “PAGA Period” shall mean the period from July 4, 2015, to April
10 20, 2024.

11 45. Party. “Party” shall mean, individually, one of the Parties, and each of them.

12 46. Preliminary Approval. “Preliminary Approval” shall mean an order of the Court
13 preliminarily approving this Settlement pursuant to Fed. R. Civ. P. 23 (e), granting conditional
14 Class Certification for purposes of the Class Administration Procedures, certifying Class
15 Counsel, approving the form of Class Notice, establishing Class Administration Procedures, and
16 scheduling a Final Approval Hearing.

17 47. QSF / Qualified Settlement Fund. “QSF” or “Qualified Settlement Fund” shall
18 mean the Qualified Settlement Fund established by the Class Administrator for the payment of
19 the Settlement Payment Amount.

20 48. Released Claims. The term “Released Claims,” as applied to releases by Eligible
21 Class Members, shall have the meaning set forth in the Release of Claims by Class (hereinafter
22 “Exhibit 2”) hereto. The term “Released Claims,” as applied to the Named Plaintiffs’ and
23 Objectors-Intervenors’ General Release, shall have the meaning set forth in Exhibit 3 hereto.

24 49. Released Parties. The term “Released Parties,” as applied to releases by Eligible
25 Class Members, shall have the meaning set forth in Exhibit 2 hereto. The term “Released Parties,”
26 as applied to the Named Plaintiffs’ and Objectors-Intervenors’ General Release, shall have the
27 meaning set forth in Exhibit 3 hereto.

28 50. Settlement Payment Amount. “Settlement Payment Amount” means the Gross

1 Settlement Amount, consisting of several elements including, without limitation: Eligible Class
2 Member Shares, Class Administration Costs, the Named Plaintiff Enhancements, Objectors-
3 Intervenor's Enhancements, the LWDA Fund, Class Counsel Fees and Costs, Objectors-
4 Intervenor's Counsel Fees and Costs, the Net Settlement Amount, and Eligible Class Members'
5 portion of withholdings, contributions, deductions, taxes, fees and any other amounts due to
6 government agencies and/or tax authorities in relation to any payments pursuant to this
7 Agreement.

8 51. Void Ab Initio. "Void *Ab Initio*" shall mean a circumstance in which this
9 Agreement is null and void and the Parties shall be returned to conditions such that the Agreement
10 had never been entered into. Such circumstance will be deemed to exist only if any of the
11 following have occurred: (a) the Court has so ordered (b) conditions have become such
12 (including, for example, that the Court has refused to approve the Settlement) that the Effective
13 Date has not occurred, is not likely to occur, or cannot occur in the future; and/or (c) as otherwise
14 specifically provided for in this Agreement.

15 52. Void Ab Initio Election. If there is an order by the Court finding that any of the
16 Parties have materially breached this Agreement and either such breach cannot be cured, or after
17 reasonable notice to such breaching Party or Parties, and a reasonable opportunity for any
18 Breaching Party to cure such breach to the satisfaction of the non-breaching Parties, such
19 breaching Party or Parties have failed to do so, then Plaintiffs and Objectors-Intervenors may
20 unanimously elect to declare this Agreement *Void Ab Initio* due to any such breach by Defendant,
21 and Defendant may elect to declare this Agreement *Void Ab Initio* due to any such breach by
22 Plaintiffs or Objectors-Intervenors. The Parties agree that a finding of material breach shall be
23 inappropriate if (i) the non-breaching Party, or Parties, have stipulated in writing that such breach
24 is non-material; or (ii) the un-cured or un-curable breach is non-material.

25 53. Void Ab Initio Tolling. In the event that this Settlement becomes *Void Ab Initio*
26 under any provision provided for herein, Defendant agrees that, with respect to any pleading that
27 Martin moves for leave to file within 30 days of such notice, for any claims previously alleged
28 in Martin's July 12, 2021 First Amended Complaint, or November 23, 2020 Complaint, the re-

1 assertion of any such claims shall be deemed as though filed on such date and prosecuted without
2 interruption from such date. Defendant reserves all rights to assert all applicable affirmative
3 defenses, including, but not limited to, applicable statutes of limitations, the failure to exhaust
4 administrative remedies, or affirmative defenses in response to any claims Martin may attempt
5 to reassert should this Settlement not be finally approved.

6 54. Work Week. “Work Week” shall mean a continuous period of seven (7) calendar
7 days, from Monday at 6:00 a.m. to Monday at 6:00 a.m., wherein any such calendar days in such
8 period, are also within the Class Period.

9 2. TERMS AND CONDITIONS OF SETTLEMENT

10 In addition to the definitional elements set forth above, the terms and conditions of the
11 class settlement shall be as follows:

12 1. Certification for Settlement Purposes Only. The Parties stipulate that the Court’s
13 prior granting of Class Certification on February 5, 2018 (ECF No. 054), and as amended on
14 Plaintiffs’ Motion for Reconsideration, on January 15, 2019 (ECF No. 085) is proper for purposes
15 of this Settlement only, and that Class Certification should be granted, for purposes of this
16 Settlement only, as to all claims within the scope of the release set forth in Exhibit 2 hereto. In
17 addition, the Parties stipulate that Objector and Conditional-Plaintiff-in-Intervention Richard
18 Martin is conditionally certified as a class representative for Settlement Purposes only, and that
19 Objectors-Intervenors’ Counsel are certified as class counsel for the limited purpose of obtaining
20 the release of Martin’s Labor Code section 6300 PAGA Claim and Overtime Class Claim. If the
21 Court denies with prejudice preliminary approval and/or denies with prejudice final approval of
22 this this Joint Stipulation of Class and PAGA Settlement, then Martin’s Conditional-Plaintiff-in-
23 Intervention status shall be revoked, and the Parties stipulate to the filing of an amended pleading
24 (“Third Amended Complaint”): (1) dropping Martin as a named Plaintiff; and (2) dropping the
25 Labor Code section 6300 PAGA Claim and Overtime Class Claim from the *Westfall* action; and
26 (3) Objectors-Intervenors’ Counsel shall immediately lose their status as Class Counsel
27 conditionally certified for purposes of settlement; and (4) Martin shall immediately lose his status
28 as class representative which is and was conditionally certified for purposes of settlement only;

1 and (5) all Parties shall be returned to the status quo that existed prior to the execution of this
2 Settlement Agreement or any other document related to the settlement of the claims contemplated
3 herein, including the Memorandum of Understanding preceding this Agreement, except that with
4 respect to any pleading that Martin moves for leave to file within 30 days after the filing of the
5 “Third Amended Complaint” contemplated herein, for any claims previously alleged in Martin’s
6 July 12, 2021 First Amended Complaint, or November 23, 2020 Complaint, the re-assertion of
7 any such claims shall be deemed as though filed on such date and prosecuted without interruption
8 from such date. Defendant reserves all rights to assert all applicable affirmative defenses,
9 including, but not limited to, applicable statutes of limitations, the failure to exhaust
10 administrative remedies, or affirmative defenses in response to any claims Martin may attempt
11 to reassert should this Settlement not be finally approved.

12 2. Contentions and Defenses: Compromise. The Parties have determined that this
13 Settlement represents a fair and reasonable compromise of disputed claims for wages and other
14 monetary and non-monetary relief, following a reasonably thorough investigation. The Parties
15 have entered into this Settlement to avoid the inherent risks and costs of further litigation. Named
16 Plaintiffs and Objectors-Intervenors do not stipulate that this Settlement represents the maximum
17 extent of such relief to which they or the Class would be entitled if the Action were to be further
18 litigated. Defendant does not stipulate by virtue of this Settlement that, should the Action be
19 further litigated, Named Plaintiffs, Objectors-Intervenors and/or the Class would be entitled to
20 any relief whatsoever. Neither Named Plaintiffs, Objectors-Intervenors, nor Defendant admit to
21 any unlawful conduct. The Parties hereby reserve all of their rights to litigate the Action and seek
22 all available forms of relief should this Settlement not be given effect.

23 3. Confidentiality and Class Member Communications. Until Class Counsel files a
24 motion for Preliminary Approval, the Parties will treat the existence and terms of Settlement
25 confidential. Until such time, Class Counsel may discuss the terms of this Settlement with Class
26 Members other than the Named Plaintiffs or Objectors-Intervenors only if such additional Class
27 Members initiate contact with Class Counsel and/or Objectors-Intervenors’ Counsel in such
28 regard. Also until such time, no Party or their counsel may otherwise make any public statement

1 or comment or make any disclosures of any kind about this Settlement to anyone, including
2 without limitation, the public, or press, or on any public or semi-public forum on the internet
3 (such as social media) without the express written permission of each of the other Parties. Such
4 confidentiality provisions shall remain in force following Preliminary Approval as well, with the
5 following exceptions: (a) the Class Administrator may take steps reasonably necessary to
6 perform Class Administration Duties; (b) Class Counsel, Named Plaintiffs, and Objectors-
7 Intervenor may take reasonably necessary steps to perform their duties as such; (c) Class
8 Counsel may list or disclose this Action and Settlement as among their handled cases in court
9 filings or motions only, but may not disclose the terms of the Settlement nor reference the
10 Settlement in any manner on any firm publication or other public media; and (d) after Class
11 Counsel files a motion for Preliminary Approval, no Parties shall be restricted with respect to
12 discussing (other than mediation privileged communications) the Settlement with the Class
13 Members. In the interest of permitting the Class Notice and administration process to function
14 on its own, Named Plaintiffs and Objectors-Intervenor themselves agree not to discuss this
15 Settlement with any other individuals except for their attorneys, financial representatives or
16 advisors, accountants and/or spouse. Defendant agrees not to discourage Class Members from,
17 and agrees not to encourage them to, exercise any of their rights or obligations pursuant to this
18 Agreement. Defendant will instruct their officers, directors, managers and supervisors that should
19 they be contacted by Class Members or persons who believe they may be Class Members in
20 relation to this Agreement, such officers, directors, managers and supervisors should make no
21 comment except by directing the employees to Defendant's supervisors and managers at its
22 Fairfield, California facility, who will be instructed to direct such Class Members to the Class
23 Administrator and to refer such Class Members to the class notice approved by the Court in
24 connection with this Settlement.

25 4. Preliminary Approval. As soon as possible following execution of this
26 Agreement, Class Counsel shall move the Court for Preliminary Approval. Class Counsel will
27 submit therewith a proposed order, substantially in the proposed form of Exhibit 5 hereto. The
28 Parties shall give all reasonable cooperation necessary to obtain Preliminary Approval from the

1 Court.

2 5. Class Administration Procedures – Class List. Within forty-five (45) days of
 3 Defendant’s receipt of notice of entry of Preliminary Approval, Defendant shall cause to be
 4 delivered by email or otherwise to the Class Administrator a list of the Class Members that
 5 includes their names, last known home address(es), full social security numbers, and dates of
 6 employment with Defendant in a Class Position during the Class Period, the last rate of pay for
 7 all Class Members that separated from employment between September 7, 2012 through April
 8 20, 2024. The Class Administrator shall determine the number of (i) Engineering Class Member
 9 Work Weeks; and (ii) Class Member Work Weeks worked by each Class Members, all of which
 10 information shall be based upon Defendant’s reasonably available business records and/or the
 11 best reasonably available personal knowledge of Defendant’s employees and agents. This
 12 information shall be based in part on the definition of “non-Exempt Engineering Position” as
 13 defined in Section 1.18 – Engineering Class Member Work Week, above.

14 6. Class Administration Oversight. At all times following Preliminary Approval, the
 15 Parties shall make good-faith efforts to ensure that Counsel for all Parties are copied on all written
 16 communications with the Class Administrator, and, in the event of any omission, the Class
 17 Administrator shall, upon request by Counsel for a Party, shall promptly provide copies of any
 18 such written communications.

19 7. Class Administration Procedures – Notice to Class. Within thirty (30) days after
 20 delivery of the information described in Section 2.5 – Class Administration Procedures – Class
 21 List, above, the Class Administrator will mail a Notice Packet to each Class Member via United
 22 States Mail, first class, postage pre-paid. Prior to such mailing, the Class Administrator will
 23 calculate the estimated Eligible Class Member Shares of each respective Class Member, based
 24 upon an assumption that all Class Members will become Eligible Class Members, that no Class
 25 Member Objections, Opt-Out Requests, or other disputes pursuant to Section 2.8 – Class
 26 Administration Procedures – Class Member Objections, Opt-Out requests, and Disputes
 27 Concerning Class Member Status and Number of Class Member Work Weeks, below will be
 28 submitted, and that no Class Members will be added to the Class. The approximate amounts of

1 such estimated Eligible Class Member Shares will be disclosed on an individual basis in each
2 Class Member's respective Class Notice, along with the basis of the calculation of such shares
3 in relation to the number of Class Member Work Weeks for each such Class Member. If any
4 mailed Notice Packets are returned as undeliverable, then the Class Administrator shall promptly
5 perform one "skip trace" or similar search and shall promptly re-mail the same Notice Packet (or
6 a true and correct copy thereof) to any new addresses disclosed by such search. If the process set
7 forth in this paragraph and any other procedures ordered by the Court are followed, the Class
8 Notice will be deemed to have been adequately provided to all Class Members as required by
9 due process. In the event the procedures in the Agreement are followed and a Class Member,
10 nonetheless, does not receive the Notice Packet, the intended recipient shall remain a Class
11 Member, and will be deemed an Eligible Class Member, unless such intended recipient submits
12 a Class Member Objection or Opt-Out Request.

13 8. Class Administration Procedures – Class Member Objections, Opt-Out Requests,
14 and Disputes Concerning Class Member Status and Number of Class Member Work Weeks.

15 (a) *Designated Settlement Email Address:* The Class Administrator shall set
16 up a designated email address, specific to this Agreement, for Class
17 Members to communicate with the Class Administrator regarding matters
18 relating to the Settlement. All emails sent from such email address shall
19 be set up to include an "auto signature" stating "Further information
20 regarding the settlement can be found here," and the word "here" shall be
21 a hyperlink to a copy of the papers filed with the court in association with
22 the motion for preliminary approval.

23 (b) *Class Member Objections – Filing and Service:* Any member of the
24 Settlement Class who wishes to make a Class Member Objection must
25 give written notice to the Class Administrator, with such notice being
26 postmarked, if mailed, no later than forty-five (45) days after the date
27 mailing of the Notice Packets to the Class Members, which date shall be
28 disclosed in writing in the Class Notice. Such written notice shall contain

1 the relevant Class Member’s name, address, telephone number, and
 2 signature, as well as a statement to the effect that the Class Member objects
 3 to the settlement, the basis and/or reason for such objection. If submitted
 4 by email, a Class Member Objection shall only be recognized if: (1)
 5 emailed to Designated Settlement Email Address specifically no later than
 6 forty-five (45) days after the date mailing of the Notice Packets to the
 7 Class Members; (2) the word “objection” is included in the email subject
 8 line; (3) the body of the email specifies that the Class Member is objecting,
 9 and the basis and/or reason for such objection; and (4) the Class Member
 10 seasonably responds to inquiries for identification of the Class Member’s
 11 name, address, telephone number, if not previously provided.

12 (c) *Class Member Objections – Responses*: Upon receipt of any documents
 13 purporting to be Class Member Objections, the Class Administrator shall
 14 forthwith forward such documents to Class Counsel and Defendant’s
 15 Counsel by e-mail and United States Mail within one business day of
 16 receipt of the Class Member Objection. Following receipt of such
 17 documents, Class Counsel and Defendant’s Counsel shall confer
 18 regarding such documents purporting to be Class Member Objections.
 19 Class Counsel shall file with the Court, in a separate document along with
 20 their motion for Final Approval, a joint statement, containing the Parties’
 21 points and authorities in response to such documents purporting to be
 22 Class Member Objections, along with copies of such Class Member
 23 Objections. If the Parties’ responses differ in any respect, the jointly-held
 24 positions shall be set forth in a separately entitled section, and the
 25 differently-held positions shall be set forth in further separately-entitled
 26 sections of the joint response. Should the Parties receive any untimely-
 27 filed, received, or sent documents purporting to be Class Member
 28 Objections (or should the Parties receive them less than ten (10) days prior

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to any due date for the motion for Final Approval), the Parties may file a further such joint response at any time prior to the Final Approval Hearing, but in any event not later than ten (10) days after receiving such untimely documents.

(d) *Class Member Objections – Disclosure of Purpose:* Within 10 days of receiving a timely objection, the Class Administrator shall furnish each objector with a Disclosure Certification, together with the instruction that the Disclosure Certification: (1) shall be signed under penalty of perjury and emailed to the Class Administrator; or (2) the Objector shall provide specific and detailed reasons as to why the Objector declines to sign the Statement of Proper Purpose. The Statement of Proper Purpose shall be signed under penalty of perjury and shall read: “I, [Name], certify under penalty of perjury that this Objection is submitted for the purpose of furthering the interests of [Check all that apply] the Class as a whole; a subclass defined as _____; the group of Class Members defined as _____; solely my own interest; the following other interests _____. I certify that I have fully and accurately disclosed, in good-faith, all interests that I seek to promote through my Objection. I further understand that the Parties may seek to take discovery regarding the representations made in this Certification, and that, absent a valid objection that is sustained by a court, I may be required to provide such information.

(e) *Opt-Out Requests:* Any member of the Settlement Class who wishes to make an Opt-Out Request must deliver written notice (to include the relevant Class Member’s name, address, telephone number, and signature) to such effect to the Class Administrator, postmarked, if mailed, no later than forty-five (45) days after the date mailing of the Notice Packets to the Class Members, which date shall be disclosed in writing in the Class

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Notice. Such written notice shall set forth a statement to the effect that the Class Member does not wish to be part of, to be bound by, and/or to receive funds pursuant to the Settlement. If submitted by email, a Class Member Objection shall only be recognized if: (1) emailed to Designated Settlement Email Address specifically no later than forty-five (45) days after the date mailing of the Notice Packets to the Class Members; (2) the word “opt out” or “request for exclusion” is included in the email subject line; (3) the body of the email contains a statement to the effect that the Class Member does not wish to be part of, to be bound by, and/or to receive funds pursuant to the Settlement; and (4) the Class Member seasonably responds to inquiries for identification of the Class Member’s name, address, telephone number, if not previously provided.

(f) The Class Administrator shall give Class Counsel and Defendant’s Counsel no less than weekly notice of the number of Class Members who have submitted Opt-Out Requests, as well as copies of any such Opt-Out Requests upon request. Should any of the Parties wish to dispute the validity of any documents purporting to be Opt-Out Requests, they shall notify the Class Administrator and all other Parties via e-mail and U.S. Mail within fifteen (15) days of receiving such documents, and in so doing they shall state the factual and legal basis for such dispute. Prior to the deadline for submitting its declaration described in Section 2.9 – Class Administration Procedures – Class Administrator Declaration, below, the Class Administrator shall make a determination as to the validity of the disputed Opt-Out Requests, and shall set forth its determinations in such declaration. The Class Administrator’s decisions in such regard shall be final and binding.

(g) *Disputes Concerning Class Member Status:* Should any person who does not receive a Class Notice directed to him or her wish to come forward

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purporting to be a Class Member, such person shall notify the Class Administrator, no later than forty-five (45) days after the Class Administrator’s mailing of the Class Notice Packets. The Class Administrator shall forthwith send any such documents to Class Counsel and Defendant’s Counsel via email and/or United States Mail. Upon receipt of such notice, Defendant shall investigate the matter, including with reference to their business records, and shall determine whether the person is a Class Member. Then, within fourteen (14) days of receipt of such notice, Defendant shall notify the Class Administrator and Class Counsel as to its determination of the person’s status as a Class Member. Defendant’s determinations in such regard shall control. If the person is determined to be a Class Member, the Class Administrator shall mail that person a Notice Packet, whereupon the same procedures for submitting Class Member Objections, Opt-Out Requests, and Disputes Concerning Work Weeks set forth in this Agreement shall apply to such person.

(h) *Disputes Concerning Class Member Work Weeks*: The Class Notices sent to each Class Member shall separately set forth that person’s estimated number of: (1) Class Member Work Weeks; and (2) if applicable, shall separately set forth that person’s estimated number of Engineering Class Member Work Weeks. If for any reason a Class Member disagrees with such estimate, such Class Member shall deliver written notice to such effect to the Class Administrator, with such notice being received by the Class Administrator within forty-five (45) days of mailing of the Notice Packets to the Class Members. Such notice shall set forth the Class Member’s basis for such disagreement, including any and all documents supporting such basis. Upon receipt of such notices, the Class Administrator shall forthwith send it to Class Counsel and Defendant’s Counsel, via e-mail and United States Mail. Defendant shall investigate

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the matter, including by examining its business records, and shall, within fourteen (14) business days of receiving notice, inform Class Counsel and the Class Administrator as to its determination regarding the Class Member’s number of Class Member Work Weeks. In the event that the Class Member does not provide any supportive documentation, Defendant’s determination shall control. In the event that the Class Member does provide supportive documentation, Defendant shall, within the same fourteen (14) business day period, either notify the Class Administrator and Class Counsel that they stipulate to the Class Member’s assertions regarding his or her number of Class Member Work Weeks, or shall notify them that they dispute such assertions, and shall provide the Class Administrator and Class Counsel with their proposed determination, and the factual basis therefor, and any supporting documentation. The Class Administrator shall then determine the Class Member’s number of Class Member Workweeks, and its determinations shall control.

- (i) Named Plaintiffs hereby agree that they will not submit a Class Member Objection or an Opt-Out Request. Any submissions by Named Plaintiffs purporting to be a Class Member Objection or an Opt-Out Request shall be null and void. Objectors-Intervenors also hereby agree that they will not submit a Class Member Objection or an Opt-Out Request. Any submissions by Objectors-Intervenors purporting to be a Class Member Objection or an Opt-Out Request shall be null and void.
- (j) No determinations by Defendant, the Class Administrator, the Court, or any other person or entity pursuant to this Section 2.7 – Class Administration Procedures – Notice to Class, shall have the effect of increasing the amount of the Gross Settlement Amount. Rather, any additional amounts to be distributed to any Class Member as a result of the resolution of such disputes shall be made in conjunction with and

1 subject to a proportionate reduction in other Eligible Class Members’
 2 Eligible Class Member Shares, with specific amounts to be determined by
 3 the Class Administrator.

4 9. Class Administration Procedures – Class Administrator Declaration. Within thirty
 5 (30) days of the expiration of all the time periods provided for in Section 2.5 – Class
 6 Administration Procedures Class List; Section 2.6 – Class Administration Oversight; and Section
 7 2.7 – Class Administration Procedures – Notice to Class; above, the Class Administrator shall
 8 provide Class Counsel, Objectors-Intervenors’ Counsel, and Defendant’s Counsel with the Class
 9 Administrator Declaration. Should the Class Administrator be unable to provide the Class
 10 Administrator Declaration at such time, it shall forthwith notify Class Counsel, Objectors-
 11 Intervenors’ Counsel, and Defendant’s Counsel, who shall cooperate with the Class
 12 Administrator to forthwith remedy any such inability.

13 10. Class Administration Procedures-Skip Trace of Separated Members. Prior to the
 14 mailing of the Notice Packets, the Settlement Administrator shall perform a mailing address skip
 15 trace for all separated members, using a credit bureau, and will make the Long Form Settlement
 16 Agreement and Class Notice available on its website. The costs of such skip traces shall be
 17 fronted by the Plaintiffs’ Counsel 72%, and Objectors-Intervenors’ Counsel 28%, with such sums
 18 to be deducted from the Gross Settlement Amount and reimbursed to Counsel following Final
 19 Approval.

20 11. Class Administration Procedures- Uncashed Checks: The Class Administrator
 21 shall notify Plaintiffs’ Counsel, Eason & Tambornini, A Law Corporation, of the names of any
 22 members whose checks remain uncashed after 120 days. For any checks remaining uncashed
 23 after 120 days, the Settlement Administrator will send out a reminder postcard. Any funds
 24 associated uncashed checks after 180 days shall be distributed to a cy pres recipient to be agreed
 25 upon by the Parties or deposited as unclaimed funds with the State of California’s Controller.

26 12. Motion for Final Approval. By the later of: (a) ten (10) days of Class Counsel’s
 27 receipt of the declaration required of the Class Administrator by Section 2.9 – Class
 28 Administration Procedures – Class Administrator Declaration, above; or (b) thirty-five (35)

1 calendar days prior to the Final Approval Hearing, Class Counsel shall file and serve upon
2 Defendant, Objectors-Intervenors' Counsel, and the Class Administrator a motion for Final
3 Approval, and shall include the Class Administrator's declaration with such filing. Should the
4 date of Class Counsel's receipt of the Class Administrator Declaration be less than ten (10) days
5 prior to the court day that is thirty-five (35) calendar prior to the Final Approval Hearing, Class
6 Counsel shall make reasonable efforts to file its motion for Final Approval not later than thirty-
7 five (35) calendar days prior. If Class Counsel is unable to do so, or if Class Counsel otherwise
8 believe based on other circumstances that they will not be able to file a timely motion for Final
9 Approval, they shall seek *ex parte* or other emergency relief from the Court in the form of
10 shortening of the time for filing and serving the Motion for Final Approval, or re-scheduling of
11 the Final Approval Hearing. Defendant shall cooperate in the seeking and obtaining of such relief.
12 If Final Approval is granted, Plaintiff shall promptly serve written notice of entry on Defendant,
13 Objectors-Intervenors, and on any objector.

14 13. Non-opposition. Defendant agrees not to oppose Plaintiffs' and/or Objectors-
15 Intervenors' Motion for Preliminary Approval, and Motion for Final Approval, to the extent said
16 motions comport with this Settlement Agreement.

17 14. Adjustments to Components of Gross Settlement Amount. This Agreement
18 contemplates that future adjustments to the amounts of components of the Gross Settlement
19 Amount listed above may be necessary and/or may be ordered by the Court. Any such future
20 adjustments shall be made only by written stipulation of the Parties or by an order of the Court.
21 Such future adjustments shall not constitute a basis for this Settlement being Void *Ab Initio*, but
22 rather shall be accompanied by adjustments to other components of the Gross Settlement
23 Amount, to avoid any increase in the Gross Settlement Amount.

24 15. Release. The Settlement includes a release of Released Claims against the
25 Released Parties. Each Eligible Class Member shall be deemed, as of the Effective Date, to have
26 provided and to be subject to the release of Released Claims against the Released Parties set forth
27 in Exhibit 2 hereto. Named Plaintiffs and Objectors-Intervenors additionally agree that as of the
28 Effective Date, each of them will be deemed to have provided and to be subject to the General

1 Release in favor of the Released Parties set forth in Exhibit 3 hereto.

2 16. Enforcement. This Agreement is enforceable pursuant Fed. R. Civ. P. 23 (e). If
3 any Party is required to seek relief for an alleged breach of this Agreement, the prevailing party
4 shall be awarded its reasonable attorney's fees and costs including, if necessary, attorney's fees
5 in connection with collection efforts or enforcement of the confidentiality provisions of this
6 Agreement; provided however, that the aggrieved Party shall be required to give notice to the
7 opposing Party and meet and confer regarding the alleged breach before filing any motion, or
8 application for enforcement of, this Agreement.

9 17. Taxation and Withholding; Settlement Checks.

10 (a) *Allocation.* The Parties agree that Thirty Percent (30)% of the Net
11 Settlement Amount shall be allocated to Form W-2 wages, and Seventy
12 Percent (70)% to penalties (including the LWDA Fund Remainder),
13 interest, and other non-wages subject to Form 1099 reporting, and that the
14 same allocations shall apply to each of the Eligible Class Member Shares.
15 This allocation is for purposes of this Settlement only. The Class
16 Administrator will pay from the QSF each Eligible Class Member Share,
17 the Eligible Class Members' shares of payroll taxes, deductions,
18 contributions and other amounts required to be paid to government
19 agencies and/or tax authorities. The payment of such taxes, deductions,
20 contributions and other amounts shall be calculated based upon
21 Defendant's reasonably available records. The Class Administrator shall
22 provide reasonable notice to Defendant's Counsel of any records required
23 for purposes of computing taxes, deductions, contributions and other
24 amounts, and Defendant shall undertake reasonable efforts to provide the
25 Class Administrator with same. The Class Administrator shall provide, as
26 appropriate, an IRS Form W-2 and Form 1099, and any other tax
27 documentation required by law, to each Eligible Class Member payee.

28 (b) *Circular 230 Disclaimer.* Each of the Parties acknowledges and agrees

1 that (1) no provision of this Agreement, and no written communication or
2 disclosure between or among the Parties or their respective counsel and/or
3 other advisers is or was intended to be, nor shall any such communication
4 or disclosure constitute or be construed or be relied upon as, tax advice
5 within the meaning of United States Treasury Circular 230 (31 CFR part
6 10, as amended); (2) each Party (a) has relied exclusively upon his, her or
7 its own, independent legal and tax advisors for advice (including tax
8 advice) in connection with this Agreement, (b) has not entered into this
9 Agreement based upon the recommendation of any other Party or any
10 Counsel or advisor to any other Party, and (c) is not entitled to rely upon
11 any communication or disclosure by any other Counsel or advisor to any
12 other Party to avoid any tax penalty that may be imposed on that Party;
13 and (3) no attorney or advisor to any other Party has imposed any
14 limitation that protects the confidentiality of any such attorney's or
15 advisor's tax strategies (regardless of whether such limitation is legally
16 binding) upon disclosure by the Party of the tax treatment or tax structure
17 of any transaction, including any transaction contemplated by this
18 Agreement. Neither Class Counsel nor Defendant or their Counsel will
19 provide tax or financial advice, and Class Members are advised to seek
20 independent professional advice as to the tax or financial consequences of
21 any payment they receive, or may receive, as Class Members.

22 (c) *No Effect on Employee Benefits.* The Eligible Class Member Shares shall
23 be deemed not to be pensionable earnings and shall not have any effect on
24 the eligibility for, or calculation of, any (i) employee benefits such as
25 vacations, holiday pay, and/or retirement plans; and/or (ii) economic
26 value-added incentive compensation and/or bonus programs applicable to
27 the Eligible Class Members. The Parties agree that any monetary
28 settlement payments to such Eligible Class Members do not represent any

1 modification of their previously credited hours of service or other
 2 eligibility criteria under any employee pension benefit plan or employee
 3 welfare benefit plan sponsored by the Released Parties. Any amounts paid,
 4 pursuant to this Agreement, shall not be considered “compensation” in any
 5 year for purposes of determining eligibility for, or benefit accrual within,
 6 an employee pension benefit plan or employee welfare benefit plan
 7 sponsored by the Released Parties. Strictly for purposes of calculating
 8 benefits to nonexempt employees under incentive plans, Defendant, and
 9 Defendant’s affiliates, shall calculate the “performance factor,”
 10 “economic value added,” and/or other metrics of performance, through
 11 treating this Settlement as though only \$2,900,000.00 were paid under the
 12 settlement (thereby treating the Waiting Time Penalty Enhancement, and
 13 PAGA penalty, as retained and not paid).

14 (d) *Non-Negotiated Instruments of Payment.* The expiration date of any
 15 instruments of payment issued by the Class Administrator to Eligible
 16 Class Members will be one hundred eighty (180) days from the date such
 17 instruments are issued and sent.

18 18. Escalator Clause. Should the workweeks worked by the Class Members exceed
 19 five percent (5%) of what Defendant represented in inducement to the Settlement (i.e., more than
 20 90,000 workweeks worked by Class Members for the period between September 7, 2012 through
 21 August 30, 2023, with an additional “Grace Allocation” of 4,500 workweeks), during the period
 22 between September 7, 2012 and April 20, 2024, Defendant shall have the option to either: (A)
 23 increase the Gross Settlement Amount on a proportional basis (e.g., if there is, for example, a six
 24 (6) percent increase in the number of workweeks during the Class Period, Defendant may agree
 25 to increase the Gross Settlement Amount by 1% (\$4,500,000 x 1% = \$45,000)); or (B) elect to
 26 end the Class and PAGA Periods to the pay-period when the actual number of workweeks
 27 triggers this Escalator Clause in lieu of paying an increase to the Gross Settlement Amount.

28 19. Defendant’s Payment of the Settlement Payment Amount. Upon the Effective

1 Date, the Class Administrator shall forthwith establish all financial accounts necessary to
2 establish the Qualified Settlement Fund, and shall promptly notify Defendant's Counsel, Class
3 Counsel, and Objectors-Intervenors' Counsel by email that such accounts have been established
4 and of the payment details necessary to fund the Qualified Settlement Fund. The Class
5 Administrator shall also advise Defendant as to any amounts it will be required to pay for its
6 portion of any payroll taxes, deductions, contributions and other amounts required to be paid to
7 government agencies and/or tax authorities as a result of this Settlement (hereinafter,
8 "Defendant's Payroll Tax"). After the Defendant's receipt of such notice from the Class
9 Administrator, and provided that the Effective Date has occurred, Defendant shall make such
10 payment, not to exceed, in aggregate, the Settlement Payment Amount and Defendant's Payroll
11 Tax. Defendant shall make such payment within thirty (30) days after receipt of such notice from
12 the Class Administrator, as well as an IRS Form W-4 for the QSF, and wire instructions for the
13 wiring of the full amount to be paid. Within ten (10) days after all funds necessary to fully fund
14 the Qualified Settlement Fund are in the accounts established by the Class Administrator and are
15 available for disbursement, the Class Administrator shall disburse, pursuant to this Settlement
16 and other applicable law, the corresponding Eligible Class Member Shares to each Eligible Class
17 Member, as well as the LWDA Fund, the Named Plaintiffs' Enhancements, the Class
18 Administration Costs, the Class Counsel Fees and Costs, and Defendant's Payroll Tax. In
19 disbursing the LWDA Fund, the Class Administrator shall also submit to the LWDA any
20 information or documentation required for such disbursement, such as a copy of the Court's Final
21 Approval order. The Class Administrator shall promptly notify Class Counsel and Defendant's
22 Counsel by email that such disbursements and submissions have been made.

23 20. Defendant's Policy and Practice Changes. Defendant shall continue to remove,
24 disable and/or de-activate any speakers connected to the paging system at its Fairfield, California
25 facility, to the extent such speakers are located within the break room or other designated break
26 areas at the Fairfield, California facility. As consideration for Objector Martin's release of his
27 Labor Code section 6300 PAGA claim, Defendant Ball has modified its policies and procedures
28 to provide that whenever a new hazardous material is introduced into the work area at the

1 Fairfield Plant, Defendant will conduct an assessment to evaluate which employees will be
2 reasonably anticipated to be exposed to such materials, and those employees will be trained, to
3 the extent appropriate, on reasonably foreseeable exposures on the job and general classes of
4 hazardous chemicals. These policy changes reflect no admission of liability or wrongdoing by
5 any Party.

6 21. Cooperation and Reasonable Modifications. The Parties and their respective
7 counsel will cooperate reasonably and in good faith for the purpose of achieving occurrence of
8 the conditions set forth in this Agreement, including without limitation, timely filing of all
9 motions, papers and evidence necessary to do so, and refraining from causing or encouraging
10 directly or indirectly the submission of any objection to this Agreement, the submission of any
11 Class Member Objection or Opt-Out Request, or any appeal or petition for writ proceedings
12 seeking review of any order or judgment contemplated by the Settlement. This Agreement
13 contemplates that the Court and the Parties may make reasonable modifications to the Agreement
14 in order to effect its essential terms and to obtain Preliminary Approval and Final Approval. Such
15 modifications shall not render this Agreement *Void Ab Initio*, but rather the Parties shall stipulate
16 to such reasonable modifications and take all necessary steps to give them effect. Any increase
17 in the Gross Settlement Amount that is not explicitly provided for herein shall not be deemed to
18 be a reasonable modification, and shall render this Agreement *Void Ab Initio*.

19 22. Warranty of Authority. The undersigned each represent and warrant that each has
20 authority to enter into this Settlement, and that by doing so they are not in breach or violation of
21 any agreement with any third parties. The Parties further agree that the Action shall be stayed in
22 all respects until the final payment called for by this Settlement is made pending the occurrence
23 or failure of the Effective Date, except for the purpose of filing motions for Preliminary Approval
24 and Final Approval.

25 23. Named Plaintiffs' Warranty of Age. Named Plaintiffs each warrant that they are,
26 as of the date of their execution of this Agreement below, more than forty (40) years of age.

27 24. Other Actions Enjoined. Defendant shall have the right to request, and neither
28 Named Plaintiffs nor Objectors-Intervenors will not oppose, that the Court enter an order that

1 pending Final Approval, Class Members who do not opt-out of the Settlement are barred from
 2 instituting or prosecuting any claims or actions against the Released Parties which fall within the
 3 definition of the Released Claims and that any pending actions against the Released Parties,
 4 whether in court or arbitration, are stayed on an interim basis only as to any claims which fall
 5 within the definition of the Released Claims.

6 25. Notices to Counsel. All notices, requests, demands and other communications
 7 required or permitted to be given pursuant to this Agreement shall be in writing and shall be
 8 delivered personally or mailed, postage prepaid, by first-class United States mail, to the
 9 undersigned persons at their respective addresses as set forth herein (and, to the extent notice by
 10 email is called for, the below email addresses shall be used:

Counsel for Plaintiffs:	Counsel for Defendant:
13 Matthew R. Eason 14 mattew@capcitylaw.com 15 EASON & TAMBORNINI, ALC 16 1234 H Street, Suite 200 17 Sacramento, CA 95814 18 Telephone: (916) 438-1819 19 Facsimile: (916) 438-1820	Jason A. Geller jgeller@fisherphillips.com Fisher & Phillips LLP 1 Montgomery Street, Ste. 3400 San Francisco, CA 94104 John K. Skousen jskousen@fisherphillips.com Fisher & Phillips, LLP 2050 Main Street, Ste. 1000 Irvine, CA 92614 Aaron M. Cargain acargain@fisherphillips.com Fisher & Phillips LLP 1 Montgomery Street, Ste. 3400 San Francisco, CA 94104
Counsel for Objectors-Intervenors:	
24 BLADY WORKFORCE LAW GROUP LLP 25 I. BENJAMIN BLADY 26 5757 Wilshire Boulevard, Suite 535 27 Los Angeles, CA 90036 28 Phone: (323) 933-1352 Email: bbldy@bwlawgroup.com LESCHES LAW LEVI LESCHES	

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5757 Wilshire Boulevard, Suite 535 Los Angeles, CA 90036 Phone: (323) 900-0580 Email: levi@lescheslaw.com	
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26. Notice to LWDA. Class Counsel shall be responsible for giving any required notice of this Settlement to the LWDA. Objector–Intervenor Martin’s counsel shall also be responsible for giving any required notice of this Settlement to the LWDA with respect to the release of the claims released herein.

27. Entire Agreement. This Agreement embodies the entire agreement of all the Parties hereto who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement; that they have not executed this Agreement in reliance on any representation, inducement, promise, agreements, warranty, fact or circumstances, not expressly set forth in this Agreement; and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, but not limited to, any purported settlements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. This Agreement may be amended, and any provision herein waived, but only in writing, signed by the Party against whom such an amendment or waiver is sought to be enforced. Nothing herein affects or limits the claims, allegations, causes of action or theories asserted in Martin’s June 4, 2024, Second Amended Complaint in that action, and in the proposed Third Amended Complaint that is the subject of his August 16, 2024, Motion for Leave, and nothing in this agreement resolves the claims, allegations, causes of action or theories asserted in those pleadings.

28. Limited Waiver of Arbitration. Upon the Effective Date, Defendant and Eligible Class Members will be deemed to have waived, for purposes of this Settlement only, any

1 contractual right to arbitrate Released Claims. Defendant waives the right to compel arbitration
2 of such Released Claims by Eligible Class Members, for purposes of giving effect to this
3 Settlement only, and conditional upon the Effective Date being reached. Nothing in this
4 Agreement shall be construed or deemed to result in a waiver of any right to arbitrate or to compel
5 arbitration as to any claims other than the Released Claims of Eligible Class Members.

6 29. Counterparts. This Agreement may be executed in counterparts by way of true
7 and correct copies (including .pdfs or other electronic images) of signatures, each of which shall
8 have the same force and effect as an original, and all of which together shall constitute one and
9 the same instrument.

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11 DATE: 01/08/2025



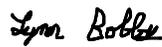
ROBERT WESTFALL
PLAINTIFF AND CLASS REPRESENTATIVE

12
13 DATE: 01/06/2025



DAVID ANDERSON
PLAINTIFF AND CLASS REPRESENTATIVE

14
15 DATE: 01/07/2025



LYNN BOBBY
PLAINTIFF AND CLASS REPRESENTATIVE

16
17 DATE: 01/06/2025



DAVID ELLINGER
PLAINTIFF AND CLASS REPRESENTATIVE

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21 Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAndvUVGtLhXh_M2lr7ZZVLpjBJeA4QGf

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23 DATE: _____

RICHARD MARTIN
OBJECTOR

24
25
26 DATE: _____

Printed Name:
Printed Titled:
For Defendant BALL METAL BEVERAGE
CONTAINER CORPORATION

1 contractual right to arbitrate Released Claims. Defendant waives the right to compel arbitration
2 of such Released Claims by Eligible Class Members, for purposes of giving effect to this
3 Settlement only, and conditional upon the Effective Date being reached. Nothing in this
4 Agreement shall be construed or deemed to result in a waiver of any right to arbitrate or to compel
5 arbitration as to any claims other than the Released Claims of Eligible Class Members.

6 29. Counterparts. This Agreement may be executed in counterparts by way of true
7 and correct copies (including .pdfs or other electronic images) of signatures, each of which shall
8 have the same force and effect as an original, and all of which together shall constitute one and
9 the same instrument.

11 DATE: _____
12 _____
13 ROBERT WESTFALL
14 PLAINTIFF AND CLASS REPRESENTATIVE

14 DATE: _____
15 _____
16 DAVID ANDERSON
17 PLAINTIFF AND CLASS REPRESENTATIVE

17 DATE: _____
18 _____
19 LYNN BOBBY
20 PLAINTIFF AND CLASS REPRESENTATIVE

20 DATE: _____
21 _____
22 DAVID ELLINGER
23 PLAINTIFF AND CLASS REPRESENTATIVE

23 DATE: 01 / 09 / 2025
24 _____
25 RICHARD MARTIN
26 OBJECTOR AND CONDITIONALLY
27 CERTIFIED CLASS REPRESENTATIVE



26 DATE: 13 January 2025
27 _____
28 *Erica Baldini*
Printed Name: Erica Baldini
Printed Titled: VP, Global HRBP Supply Chain & Operat
For Defendant BALL METAL BEVERAGE
CONTAINER CORPORATION

1 APPROVED AS TO FORM AND CONTENT:

2 EASON & TAMBORNINI, ALC

3 DATE: 01/07/2025

4 By: 

MATTHEW R. EASON
Attorneys for Plaintiff
ROBERT WESTFALL

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7
8 DATE: _____

LESCHEs LAW

9
10 By: _____

LEVI LESCHES

11 Attorney for Objectors-Intervenors
12 RICHARD MARTIN
13 ANDRE BERNSTEIN

14 DATE: _____

FISHER & PHILLIPS LLP

15
16 By: _____

17 JOHN K. SKOUSEN
18 JASON A. GELLER
19 AARON CARGAIN
Attorneys For Defendant
20 BALL METAL BEVERAGE CONTAINER
CORP.

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DATE: 01 / 09 / 2025



ANDRE BERNSTEIN
OBJECTOR

APPROVED AS TO FORM AND CONTENT:

EASON & TAMBORNINI, ALC

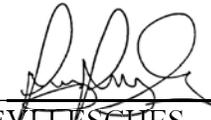
DATE: _____

By: _____

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ROBERT WESTFALL

DATE: 01 / 09 / 2025

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By: 
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DATE: January 14, 2025

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BALL METAL BEVERAGE CONTAINER
CORP.

EXHIBIT 1-A

ENDORSED FILED
Clerk of the Superior Court

SEP -7 2016

By J. WOOD
DEPUTY CLERK

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Individually and on behalf of all others similarly situated

By Fax

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**

10 ROBERT WESTFALL, individually and
11 on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 BALL METAL BEVERAGE
15 CONTAINER CORPORATION., a
Colorado Corporation, Does 1-20
16 inclusive,

17 Defendants.

Case No.: **FCS047654**

CLASS ACTION COMPLAINT

1. California Wages and Overtime Violations Under Labor Code §§510, 1194, 1199
2. Failure to Provide Meal Breaks Under Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Under Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

ASSIGNED TO
JUDGE Heeman
FOR ALL PURPOSES

19
20
21 Plaintiff Robert Westfall, individually, on behalf of himself, all others similarly situated,
22 (collectively "Plaintiffs") complain of Defendant BALL METAL BEVERAGE CONTAINER
23 CORPORATION ("Defendant BALL") and each of them, as follows:
24

25 **I**

26 **INTRODUCTION**

27 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
28 Plaintiffs and all individuals who hold or held the position of "Electronic Technician", currently

Complaint

1 employed by or formerly employed by Defendant and any subsidiaries or affiliated companies
2 and Does 1 to 20 within the State of California.

3 2. This is also a Representative Action, pursuant to Labor Code § 2699 et seq., on
4 behalf of “Plaintiff and all individuals who hold or held an hourly paid position in the
5 ‘Production’, ‘Engineering’ and ‘[Production] Support’ Departments”, currently employed by or
6 formerly employed by Defendant and any subsidiaries or affiliated companies and Does 1 to 20
7 within the State of California. (“aggrieved employees”).

8 3. Plaintiff and the aggrieved employees are persons employed in the
9 Manufacturing Industry as that term is defined in Industrial Welfare Commission Order No. 1-
10 2001 (hereinafter Wage Order #1).

11 4. Plaintiff is not a person covered within the Executive Exemption, the
12 Administrative Exemption, or Professional Exemption contained within Wage Order #1.

13 5. Wage Order #1 provides that “An ‘alternative workweek schedule’ means any
14 regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-
15 hour period.

16 6. At all times relevant within the last four years, Plaintiff and the aggrieved parties
17 were regularly scheduled to work in excess of eight hours in a 24-hour period.

18 7. Attached hereto as Exhibit 1 is a true and correct copy of the workweek schedule
19 for the Plaintiff and other aggrieved employees for the 2016 calendar year.

20 8. At all times relevant within the last four years, Plaintiffs worked an “alternative
21 workweek schedule” as defined in Wage Order #1.

22 9. Wage Order #1 provides that all work performed in excess of 12 hours per day
23 and any work in excess of eight (8) hours on those days worked beyond the regularly schedule
24 number of workdays established by the alternative workweek shall be paid at double the
25 employee’s regular rate of pay.

26 10. At all times relevant times within the last four years,, when Plaintiff and the
27 aggrieved parties were an extra non-scheduled shift, and worked in excess of eight hours, they
28 were paid time-and-a-half, and not double time.

1 11. At all times relevant time within the last four years, Plaintiff and the aggrieved
2 parties were required as part of their job duties to monitor pages over the plant intercom system
3 (hereinafter "The Pages"). On a typical workday, the number of Pages would routines exceeds
4 70 per day. Those pages were spreadout through the day based on Plant needs, and thus over
5 any given period of time would average in excess of 6 pages an hour, including during the rest
6 and meal break periods.

7 12. At all times relevant time within the last four years , if the Plaintiff and aggrieved
8 employees did not respond to a Page received while they were on their rest break, they were
9 subject to discipline.

10 13. At all times relevant time within the last four years, if the Plaintiff and aggrieved
11 employees did not respond to a Page received by them while they were on their meal break, they
12 were subject to discipline.

13 14. At all times relevant time within the last four years, while ostensibly on their
14 meal break, Plaintiff and the aggrieved employees were not free of all duties as they were
15 required to monitor The Pages.

16 15. At all times relevant time within the last four years, while ostensibly on their rest
17 break, Plaintiff and the aggrieved employees were not free of all duties as they were required to
18 monitor The Pages.

19 16. At all times relevant time within the last four years, while ostensibly on their
20 meal break, if the Plaintiff and the aggrieved employees had to respond to a Page, they were not
21 compensated for the actual time worked during their meal period.

22 17. Plaintiffs, on behalf of themselves and all aggrieved employees, bring this action
23 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 515, 558, 1194, 1199, 2699;
24 Wage Order 7-2001; and California Code of Regulations, Title 8, Section 11070, seeking wages
25 and/or overtime, meal break premiums, rest break premiums, penalties, injunctive and other
26 equitable relief, and reasonable attorneys' fees and costs.

27
28

1 18. Plaintiffs, on behalf of themselves and all aggrieved employees, pursuant to
2 Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and
3 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

4 **II**

5 **JURISDICTION AND VENUE**

6 19. This Court has subject matter jurisdiction over all causes of action asserted
7 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
8 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
9 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
10 arises under the laws of the State of California or is subject to adjudication in the courts of the
11 State of California.

12 20. This Court has personal jurisdiction over Defendant because Defendant has
13 caused injuries in the County of Solano and State of California through their acts, and by their
14 violation of the California Labor Code, California state common law, and California Business &
15 Professions Code sections 17200, *et seq.*

16 21. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
17 Civil Procedure § 395. Defendant operates within California and does business within Solano
18 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all aggrieved
19 employees within the State of California.

20 **III**

21 **PARTIES**

22 **A. PLAINTIFF**

23 22. Plaintiff Robert Westfall, is a competent adult and a resident of California, is an
24 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
25 “Electronic Technician” commencing on or about January 2001 and continuing through present.
26 Plaintiff Westfall’s claims are common to those of the Proposed Class Members.

27 23. Plaintiffs and all aggrieved employees were regularly required to:
28

- 1 a. Work without being compensated for all hours worked and the proper
- 2 corresponding rate;
- 3 b. Work without being provided meal periods uninterrupted by The Pages;
- 4 c. Work without being provided their rest periods uninterrupted by The
- 5 Pages; and
- 6 d. Work without being provided an accurate itemized wage statement that
- 7 accurately report total hours worked.

B. DEFENDANTS

9 24. Defendant BALL is believed to be a Colorado corporation operating within the
10 State of California.

11 25. Defendant BALL has done and does business throughout the State of California.

12 26. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendants sued herein as DOES 1 to 20, inclusive, are currently unknown to
14 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
15 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
16 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
17 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
18 and capacities of the Defendants designated hereinafter as DOES when such identities become
19 known.

20 27. Plaintiff is informed and believes, and based thereon allege, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
22 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
23 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
24 respects acted as the employer and/or joint employer of Plaintiffs and the aggrieved employees,

IV

CLASS ACTION ALLEGATIONS

27 28. Plaintiff brings this action on behalf of himself and all others similarly situated as
28 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent All

1 persons who hold or held an hourly paid position in the ‘Production’, ‘Engineering’ and
2 ‘[Production] Support’ Departments for Defendant” (“Proposed Class”)

3 29. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court
4 to amend or modify the class description with greater specificity, by division into subclasses, or
5 by limitation to particular issues.

6 30. Plaintiff is informed and believes that this action has been brought and may
7 properly be maintained as a class action under the provisions of § 382 of the Code of Civil
8 Procedure because there is a well-defined community of interest in the litigation and the
9 Proposed Classes are easily ascertainable.

10 **A. Numerosity**

11 31. Plaintiff is informed and believes that the potential members of the Proposed
12 Classes as defined are so numerous that joinder of all the members of the Proposed Classes is
13 impracticable.

14 32. While the precise number of proposed Class Members has not been determined
15 at this time, Plaintiff is informed and believes that Defendant currently employ, and during the
16 relevant time periods employed 200 Class Members at any given time.

17 33. Plaintiff alleges that Defendant’s employment records would provide information
18 as to the number and location of all members of the Proposed Classes.

19 34. Plaintiff is informed and believes that joinder of all members of the Proposed
20 Classes is not practicable.

21 **B. Commonality**

22 35. There are questions of law and fact common to the Proposed Classes that
23 predominate over any questions affecting only individual Proposed Class Members. These
24 common questions of law and fact include, without limitation:

25 a. Whether Defendant failed to pay wages and/or overtime compensation as
26 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

27 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC
28 Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to provide required meal

1 periods free from the duty to monitor The Pages and interruptions throughout the term of
2 employment and failing to compensate said employees one (1) hours wages in lieu of meal
3 period missed;

4 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order
5 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
6 Classes of their right to take rest periods free from duties to monitor The Pages interruptions
7 throughout the term of employment and failing to compensate said employees one (1) hours
8 wages in lieu of rest period missed;

9 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-
10 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by
11 failing to provide an accurate itemized wage statements that accurately reporting total hours
12 worked, and the applicable rates, for Plaintiffs and the members of the Proposed Classes;

13 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
14 pay compensation due and owing at the time that any proposed Class Members' employment
15 with Defendant terminated;

16 f. Whether Defendant violated § 17200 et seq. of the Business &
17 Professions Code by engaging in the acts previously alleged;

18 g. Whether Plaintiff and the members of the Proposed Classes are entitled to
19 equitable relief pursuant to Business & Professions Code § 17200, et seq.; and

20 h. Whether Defendant violated Labor Code § 2699, et seq. by engaging in
21 the acts alleged herein.

22 **C. Typicality**

23 36. Plaintiff is informed and believes that his claims are typical of the claims of the
24 Proposed Classes.

25 37. Plaintiff is informed and believes that Plaintiff and all members of the Proposed
26 Classes sustained injuries and damages arising out of and caused by Defendant's common
27 course of conduct in violation of laws, regulations that have the force and effect of law, and
28 statutes as alleged herein.

1 **D. Adequacy of Representation**

2 38. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Classes. Counsel who represent Plaintiff and the Proposed Classes are
4 competent and experienced in litigating employment class actions.

5 **E. Superiority of Class Action**

6 39. Plaintiff is informed and believes that a class action is superior to other available
7 means for the fair and efficient adjudication of this controversy.

8 40. Plaintiff is informed and believes that individual joinder of all Proposed Class
9 Members is not practicable, and questions of law and fact common to the Proposed Classes
10 predominate over any questions affecting only individual members of the Proposed Classes.

11 41. Plaintiff is informed and believes that each member of the Proposed Classes has
12 been damaged and is entitled to recovery by reason of Defendant’s illegal policy and/or practice
13 of failing to provide wages and/or overtime, meal periods, rest periods, failing to provide
14 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

15 42. Plaintiff is informed and believes that Class action treatment will allow those
16 similarly situated persons to litigate their claims in the manner that is most efficient and
17 economical for the parties and the judicial system.

18 43. Plaintiff is unaware of any difficulties that are likely to be encountered in the
19 management of this action that would preclude its maintenance as a class action.

20 **VI**

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

23 **LABOR CODE §§ 510, 1194, and 1199**

24 44. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
25 incorporate by reference all previous paragraphs.

26 45. Plaintiff and the Proposed Classes were forced to work on a regular and
27 consistent basis without receiving compensation for all hours worked at the proper rate.

28

1 46. As a result of the unlawful acts of Defendant, Plaintiffs and the members of the
2 Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at
3 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
4 fees, and costs.

5 VII

6 SECOND CAUSE OF ACTION

7 FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO
8 LABOR CODE § 226.7 AND LABOR CODE § 512

9 47. Plaintiff, on behalf of himself and the Proposed Classes, realleges and
10 incorporate by reference all previous paragraphs.

11 48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
12 compensation for each meal period the employer fails to provide.

13 49. Employees are entitled to a first meal period of at least thirty (30) minutes for
14 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
15 meal period of at least thirty (30) minutes for shifts over ten (10) hours.

16 50. Plaintiff and the Proposed Classes consistently worked shifts over five (5) hours.

17 51. Defendant failed to provide Plaintiff and the Proposed Class with proper
18 uninterrupted meal breaks free from all duties including Pages, of not less than thirty (30)
19 minutes as required by the Labor Code during the relevant time period.

20 52. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
21 to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a
22 sum to be proven at trial.

23 VIII

24 THIRD CAUSE OF ACTION

25 FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

26 53. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
27 incorporate by reference all previous paragraphs.

1 54. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
2 compensation for each rest period the employer fails to provide.

3 55. Employees are entitled to a paid ten (10) minute rest break for every four (4)
4 hours worked (or major fraction thereof).

5 56. Defendant failed to provide Plaintiff and the Proposed Class with proper
6 uninterrupted rest breaks free from all duties including pages, of not less than ten (10) minutes
7 as required by the Labor Code during the relevant time period.

8 57. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
9 to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
10 proven at trial.

11 IX

12 FOURTH CAUSE OF ACTION

13 VIOLATION OF LABOR CODE § 226(a)

14 58. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
15 incorporate by reference all previous paragraphs.

16 59. Section 226(a) of the California Labor Code requires employers to itemize in
17 wage statements all deductions from payment of wages, the appropriate rates of pay, and to
18 accurately report total hours worked by the employees. It also requires that an employer include
19 its name and address on the wage statement. Defendant has knowingly and intentionally failed
20 to comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed
21 Classes.

22 60. IWC Wage Orders require employers to maintain time records showing, among
23 others, when the employee begins and ends each work period, meal periods, split shift intervals
24 and total daily hours worked in an itemized wage statements, and must show all deductions
25 from payment of wages, and accurately report total hours worked by employees. Defendant
26 failed to keep accurate records of the total daily hours worked for Plaintiffs and members of the
27 Proposed Classes.

28

1 61. An employee suffering injury as a result of a knowing and intentional failure by
2 an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
3 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
4 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
5 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
6 costs and reasonable attorneys' fees.

7 X

8 **FIFTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

10 62. Plaintiff, on behalf of the Proposed Classes, reallege and incorporate by reference
11 all previous paragraphs.

12 63. Numerous members of the Proposed Classes are no longer employed by
13 Defendant. They were either fired or quit Defendant's employ.

14 64. Defendant's failure to pay wages, as alleged above was willful in that Defendant
15 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Classes
16 to penalties under Labor Code § 203, which provides that an employee's wages shall continue
17 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

18 65. Defendant has failed to pay others a sum certain at the time of termination or
19 within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty
20 (30) days thereafter. Pursuant to the provisions of Labor Code § 203, the Proposed Classes
21 whose employment ended are entitled to a penalty in the amount of their daily wage multiplied
22 by thirty (30) days.

23 XI

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION PURSUANT TO**

26 **BUSINESS & PROFESSIONS CODE § 17200**

27 66. Plaintiff, on behalf of himself and the Proposed Classes, reallege and incorporate
28 by reference all previous paragraphs.

1 67. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
2 himself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim
3 pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendant as alleged
4 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the
5 general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting
6 the public interest within the meaning of Code of Civil Procedure § 1021.5.

7 68. Plaintiff is a “person” within the meaning of Business & Professions Code
8 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
9 and other appropriate equitable relief.

10 69. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair
11 business practices.

12 70. California’s wage and hour laws express fundamental public policies. Providing
13 employees with proper wages and compensation are fundamental public policies of this State
14 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
15 enforce vigorously minimum labor standards, to ensure that employees are not required or
16 permitted to work under substandard and unlawful conditions, and to protect law-abiding
17 employers and their employees from competitors who lower their costs by failing to comply
18 with minimum labor standards.

19 71. Defendant has violated statutes and public policies as alleged herein. Through
20 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
21 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
22 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
23 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
24 privileges guaranteed to all employees under law.

25 72. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
26 violation of § 17200 et seq. of the Business & Professions Code.

27
28

1 73. Defendant, by engaging in the conduct herein alleged, either knew or in the
2 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
3 violation of § 17200 et seq. of the Business & Professions Code.

4 74. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
5 others similarly situated have been damaged in a sum as may be proven.

6 75. Unless restrained, Defendant will continue to engage in the unlawful conduct as
7 alleged above. Pursuant to the Business & Professions Code, this court should make such
8 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
9 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
10 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
11 restitution and disgorgement of profits which may be necessary to restore Plaintiff and members
12 of the Proposed Classes the money Defendant has unlawfully failed to pay.

13 **RELIEF REQUESTED**

14 **WHEREFORE**, Plaintiff prays for the following relief:

15 1. For compensatory damages in the amount of unpaid wages and/or overtime not
16 paid to Plaintiff and each other member of the Proposed Classes from at least four (4) years
17 prior to the filing of this action to the present as may be proven;

18 2. For compensatory damages in the amount of Plaintiff's and each member of the
19 Proposed Classes' hourly wage for each rest period and/or meal period missed or taken late
20 during the liability period as may be proven;

21 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
22 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
23 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
24 exceeding an aggregate penalty of four thousand dollars (\$4,000);

25 4. For penalties pursuant to Labor Code § 203 for all employees who were
26 terminated or resigned equal to their daily wage times thirty (30) days;

27 5. An award of prejudgment and post judgment interest;

28

1 6. An order enjoining Defendant and its agents, servants, and employees, and all
2 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
3 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon
4 termination/resignation pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 515, 558, 1194,
5 1199 and IWC 7-2001;

6 7. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200, including disgorgement or profits, in an amount as may be proven;

8 8. For penalties and other relief pursuant to Labor Code §2699, et seq.;

9 9. As Plaintiff has properly given Defendant Notice, Plaintiff seeks unpaid wages
10 and penalties pursuant to Labor Code §558, as permitted by Labor Code §2699(f), in the amount
11 of, fifty dollars (\$50) for each initial violation for each underpaid employee for each pay period
12 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
13 wages and one hundred (\$100) dollars for each subsequent violation for each underpaid
14 employee for each pay period for which the employee was underpaid in addition to an amount
15 sufficient to recover underpaid wages;

16 10. Prejudgment interest;

17 11. An award providing for payment of costs of suit;

18 12. An award of attorneys' fees; and

19 13. Such other and further relief as this Court may deem proper and just.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

22
23 Dated: September 6, 2016

Eason & Tambornini, ALC

24
25 By: 
26 Matthew R. Eason
27 Attorneys for Plaintiff and the Proposed Class
28

EXHIBIT 1-B

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 2 KYLE K. TABORNINI, Esq., Cal. Bar No. 160538
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 5 <http://www.capcitylaw.com>

6 Attorneys for Plaintiff Robert Westfall
 Individually and on behalf of all others similarly situated

7
 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**
 10 (Sacramento Division)

11 ROBERT WESTFALL, individually and
 12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 BALL METAL BEVERAGE
 16 CONTAINER CORPORATION., a
 Colorado Corporation,
 Defendant.

Case No.: 2:16-cv-02632-KJM-GGH

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

1. California Wages and Overtime Violations Under Labor Code §§510, 1194, 1199
2. Failure to Provide Meal Breaks Under Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Under Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

JURY TRIAL IS DEMANDED

22
 23 Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger,
 24 individually, on behalf of himself, all others similarly situated, (collectively "Plaintiffs")
 25 complain of Defendant BALL METAL BEVERAGE CONTAINER CORPORATION
 ("Defendant BALL") and as follows:

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I

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiffs and all individuals who hold or held the position of “Electronic Technician”, “Machinist/Mechanic”, and/or Maintenance” currently employed by or formerly employed by Defendant and any subsidiaries or affiliated companies within the State of California.

2. This is also a Representative Action, pursuant to Labor Code § 2699 et seq., on behalf of “Plaintiffs and all individuals who hold or held an hourly paid position in the ‘Production’, ‘Engineering’ and ‘[Production] Support’ Departments”, currently employed by or formerly employed by Defendant and any subsidiaries or affiliated companies and Does 1 to 20 within the State of California. (“aggrieved employees”).

3. Plaintiffs and the aggrieved employees are persons employed in the Manufacturing Industry as that term is defined in Industrial Welfare Commission Order No. 1-2001 (hereinafter Wage Order #1).

4. Plaintiffs are not persons covered within the Executive Exemption, the Administrative Exemption, or Professional Exemption contained within Wage Order #1.

5. Wage Order #1 provides that “An ‘alternative workweek schedule’ means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

6. At all times relevant within the last four years, Plaintiffs and the aggrieved parties were regularly scheduled to work in excess of eight hours in a 24-hour period.

7. Attached hereto as Exhibit 1 is a true and correct copy of the workweek schedule for the Plaintiffs and other aggrieved employees for the 2016 calendar year.

8. At all times relevant within the last four years, Plaintiffs worked an “alternative workweek schedule” as defined in Wage Order #1.

9. Wage Order #1 provides that all work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly schedule

1 number of workdays established by the alternative workweek shall be paid at double the
2 employee's regular rate of pay.

3 10. At all times relevant times within the last four years,, when Plaintiffs and the
4 aggrieved parties worked an extra non-scheduled shift, and worked in excess of eight hours,
5 they were paid time-and-a-half, and not double time.

6 11. At all times relevant time within the last four years, Plaintiff and the aggrieved
7 parties were required as part of their job duties to monitor pages over the plant intercom system
8 (hereinafter "The Pages"). On a typical workday, the number of Pages would routines exceeds
9 70 per day. Those pages were spread out through the day based on Plant needs, and thus over
10 any given period of time would average in excess of 6 pages an hour, including during the rest
11 and meal break periods.

12 12. At all times relevant time within the last four years , if the Plaintiffs and
13 aggrieved employees did not respond to a Page received while they were on their rest break,
14 they were subject to discipline.

15 13. At all times relevant time within the last four years, if the Plaintiffs and
16 aggrieved employees did not respond to a Page received by them while they were on their meal
17 break, they were subject to discipline.

18 14. At all times relevant time within the last four years, while ostensibly on their
19 meal break, Plaintiffs and the aggrieved employees were not free of all duties as they were
20 required to monitor The Pages.

21 15. At all times relevant time within the last four years, while ostensibly on their rest
22 break, Plaintiffs and the aggrieved employees were not free of all duties as they were required to
23 monitor The Pages.

24 16. At all times relevant time within the last four years, while ostensibly on their
25 meal break, if the Plaintiffs and the aggrieved employees had to respond to a Page, they were
26 not compensated for the actual time worked during their meal period.

27 17. Plaintiffs, on behalf of themselves and all aggrieved employees, bring this action
28 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 515, 558, 1194, 1199, 2699;

1 Wage Order 7-2001; and California Code of Regulations, Title 8, Section 11070, seeking wages
2 and/or overtime, meal break premiums, rest break premiums, penalties, injunctive and other
3 equitable relief, and reasonable attorneys' fees and costs.

4 18. Plaintiffs, on behalf of themselves and all aggrieved employees, pursuant to
5 Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and
6 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7 **II**

8 **PARTIES**

9 **A. PLAINTIFFS**

10 19. Plaintiff Robert Westfall, is a competent adult and a resident of California, is an
11 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
12 "Electronic Technician" commencing on or about January 2001 and continuing through present.
13 Plaintiff Westfall's claims are common to those of the Proposed Class Members.

14 20. Plaintiff David E. Anderson, is a competent adult and a resident of California, is
15 an employee of the Defendants. Plaintiff was employed by the Defendants to perform services
16 as a "Electronic Technician" from approximately 2006 to October 15, 2016, when he became
17 employed as a Machinist in the Production Department. and continuing through present.
18 Plaintiff Anderson's claims are common to those of the Proposed Class Members.

19 21. Plaintiff Lynn Bobby, is a competent adult and a resident of California, is an
20 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
21 "Machinist/Mechanic" in the Production Department for Ball Metal from approximately 2012
22 until January 13, 2017. Plaintiff Lynn Bobby's claims are common to those of the Proposed
23 Class Members.

24 22. Plaintiff David Ellinger, is a competent adult and a resident of California, is an
25 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
26 "Maintenance Worker" Plaintiff David Ellinger's claims are common to those of the Proposed
27 Class Members.

28 23. Plaintiffs and all aggrieved employees were regularly required to:

- 1 a. Work without being compensated for all hours worked and the proper
- 2 corresponding rate;
- 3 b. Work without being provided meal periods uninterrupted by The Pages;
- 4 c. Work without being provided their rest periods uninterrupted by The
- 5 Pages; and
- 6 d. Work without being provided an accurate itemized wage statement that
- 7 accurately report total hours worked.

B. DEFENDANTS

9 24. Defendant BALL is believed to be a Colorado corporation operating within the
10 State of California.

11 25. Defendant BALL has done and does business throughout the State of California.

III

CLASS ACTION ALLEGATIONS

14 26. Plaintiffs bring this action on behalf of themselves and all others similarly
15 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to
16 represent All persons who hold or held an hourly paid position in the ‘Production’,
17 ‘Engineering’ and ‘[Production] Support’ Departments for Defendant” (“Proposed Class”)

18 27. Plaintiffs reserve the right to amend or modify the class description with greater
19 specificity, by division into subclasses, or by limitation to particular issues.

20 28. Plaintiffs are informed and believe that this action has been brought and may
21 properly be maintained as a class action under the provisions of § 382 of the Code of Civil
22 Procedure because there is a well-defined community of interest in the litigation and the
23 Proposed Classes are easily ascertainable.

A. Numerosity

25 29. Plaintiffs are informed and believe that the potential members of the Proposed
26 Classes as defined are so numerous that joinder of all the members of the Proposed Classes is
27 impracticable.

1 30. While the precise number of proposed Class Members has not been determined
2 at this time, Plaintiffs are informed and believe that Defendant currently employ, and during the
3 relevant time periods employed 200 Class Members at any given time.

4 31. Plaintiffs alleges that Defendant’s employment records would provide
5 information as to the number and location of all members of the Proposed Classes.

6 32. Plaintiffs are informed and believes that joinder of all members of the Proposed
7 Classes is not practicable.

8 **B. Commonality**

9 33. There are questions of law and fact common to the Proposed Classes that
10 predominate over any questions affecting only individual Proposed Class Members. These
11 common questions of law and fact include, without limitation:

12 a. Whether Defendant failed to pay wages and/or overtime compensation as
13 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

14 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC
15 Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to provide required meal
16 periods free from the duty to monitor The Pages and interruptions throughout the term of
17 employment and failing to compensate said employees one (1) hours wages in lieu of meal
18 period missed;

19 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order
20 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
21 Classes of their right to take rest periods free from duties to monitor The Pages interruptions
22 throughout the term of employment and failing to compensate said employees one (1) hours
23 wages in lieu of rest period missed;

24 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-
25 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by
26 failing to provide an accurate itemized wage statements that accurately reporting total hours
27 worked, and the applicable rates, for Plaintiffs and the members of the Proposed Classes;

28

1 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
2 pay compensation due and owing at the time that any proposed Class Members' employment
3 with Defendant terminated;

4 f. Whether Defendant violated § 17200 et seq. of the Business &
5 Professions Code by engaging in the acts previously alleged;

6 g. Whether Plaintiffs and the members of the Proposed Classes are entitled
7 to equitable relief pursuant to Business & Professions Code § 17200, et seq.; and

8 h. Whether Defendant violated Labor Code § 2699, et seq. by engaging in
9 the acts alleged herein.

10 **C. Typicality**

11 34. Plaintiffs are informed and believes that his claims are typical of the claims of
12 the Proposed Classes.

13 35. Plaintiffs are informed and believes that Plaintiffs and all members of the
14 Proposed Classes sustained injuries and damages arising out of and caused by Defendant's
15 common course of conduct in violation of laws, regulations that have the force and effect of
16 law, and statutes as alleged herein.

17 **D. Adequacy of Representation**

18 36. Plaintiffs will fairly and adequately represent and protect the interests of the
19 members of the proposed Classes. Counsel who represent Plaintiffs and the Proposed Classes
20 are competent and experienced in litigating employment class actions.

21 **E. Superiority of Class Action**

22 37. Plaintiffs are informed and believe that a class action is superior to other
23 available means for the fair and efficient adjudication of this controversy.

24 38. Plaintiffs are informed and believes that individual joinder of all Proposed Class
25 Members is not practicable, and questions of law and fact common to the Proposed Classes
26 predominate over any questions affecting only individual members of the Proposed Classes.

27 39. Plaintiffs are informed and believes that each member of the Proposed Classes
28 has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or

1 practice of failing to provide wages and/or overtime, meal periods, rest periods, failing to
2 provide accurate itemized wage statements, and failing to pay all wages upon resignation or
3 termination.

4 40. Plaintiffs are informed and believe that Class action treatment will allow those
5 similarly situated persons to litigate their claims in the manner that is most efficient and
6 economical for the parties and the judicial system.

7 41. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action.

9 **IV**

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

12 **LABOR CODE §§ 510, 1194, and 1199**

13 42. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
14 incorporate by reference all previous paragraphs.

15 43. Plaintiffs and the Proposed Classes were forced to work on a regular and
16 consistent basis without receiving compensation for all hours worked at the proper rate.

17 44. As a result of the unlawful acts of Defendant, Plaintiffs and the members of the
18 Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at
19 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
20 fees, and costs.

21 **V**

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

24 **LABOR CODE § 226.7 AND LABOR CODE § 512**

25 45. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
26 incorporate by reference all previous paragraphs.

27 46. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
28 compensation for each meal period the employer fails to provide.

1 47. Employees are entitled to a first meal period of at least thirty (30) minutes for
2 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
3 meal period of at least thirty (30) minutes for shifts over ten (10) hours.

4 48. Plaintiffs and the Proposed Classes consistently worked shifts over five (5)
5 hours.

6 49. Defendant failed to provide Plaintiff and the Proposed Class with proper
7 uninterrupted meal breaks free from all duties including Pages, of not less than thirty (30)
8 minutes as required by the Labor Code during the relevant time period.

9 50. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
10 to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a
11 sum to be proven at trial.

12 VI

13 THIRD CAUSE OF ACTION

14 FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

15 51. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
16 incorporate by reference all previous paragraphs.

17 52. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
18 compensation for each rest period the employer fails to provide.

19 53. Employees are entitled to a paid ten (10) minute rest break for every four (4)
20 hours worked (or major fraction thereof).

21 54. Defendant failed to provide Plaintiffs and the Proposed Class with proper
22 uninterrupted rest breaks free from all duties including pages, of not less than ten (10) minutes
23 as required by the Labor Code during the relevant time period.

24 55. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
25 to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
26 proven at trial.

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VII

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

56. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

57. Section 226(a) of the California Labor Code requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by the employees. It also requires that an employer include its name and address on the wage statement. Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed Classes.

58. IWC Wage Orders require employers to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statements, and must show all deductions from payment of wages, and accurately report total hours worked by employees. Defendant failed to keep accurate records of the total daily hours worked for Plaintiffs and members of the Proposed Classes.

59. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

VIII

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

60. Plaintiffs, on behalf of the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

1 61. Numerous members of the Proposed Classes are no longer employed by
2 Defendant. They were either fired or quit Defendant’s employ.

3 62. Defendant’s failure to pay wages, as alleged above was willful in that Defendant
4 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Classes
5 to penalties under Labor Code § 203, which provides that an employee’s wages shall continue
6 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

7 63. Defendant has failed to pay others a sum certain at the time of termination or
8 within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty
9 (30) days thereafter. Pursuant to the provisions of Labor Code § 203, the Proposed Classes
10 whose employment ended are entitled to a penalty in the amount of their daily wage multiplied
11 by thirty (30) days.

12 IX

13 SIXTH CAUSE OF ACTION

14 UNFAIR COMPETITION PURSUANT TO
15 BUSINESS & PROFESSIONS CODE § 17200

16 64. Plaintiffs, on behalf of himself and the Proposed Classes, reallege and
17 incorporate by reference all previous paragraphs.

18 65. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of
19 themselves, on behalf of the general public, and on behalf of the Proposed Classes, bring this
20 claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendant as
21 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to
22 Plaintiffs, the general public, and the Proposed Classes. Plaintiffs seek to enforce important
23 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

24 66. Each of the Plaintiffs are a “person” within the meaning of Business &
25 Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive
26 relief, restitution, and other appropriate equitable relief.

27 67. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair
28 business practices.

1 68. California’s wage and hour laws express fundamental public policies. Providing
 2 employees with proper wages and compensation are fundamental public policies of this State
 3 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
 4 enforce vigorously minimum labor standards, to ensure that employees are not required or
 5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
 6 employers and their employees from competitors who lower their costs by failing to comply
 7 with minimum labor standards.

8 69. Defendant has violated statutes and public policies as alleged herein. Through
 9 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
 10 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
 11 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
 12 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
 13 privileges guaranteed to all employees under law.

14 70. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
 15 violation of § 17200 et seq. of the Business & Professions Code.

16 71. Defendant, by engaging in the conduct herein alleged, either knew or in the
 17 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
 18 violation of § 17200 et seq. of the Business & Professions Code.

19 72. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs and
 20 others similarly situated have been damaged in a sum as may be proven.

21 73. Unless restrained, Defendant will continue to engage in the unlawful conduct as
 22 alleged above. Pursuant to the Business & Professions Code, this court should make such
 23 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
 24 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
 25 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
 26 restitution and disgorgement of profits which may be necessary to restore Plaintiffs and
 27 members of the Proposed Classes the money Defendant has unlawfully failed to pay.

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SEVENTH CAUSE OF ACTION

BY PLAINTIFF ROBERT WESTFALL IN HIS REPRESENTATIVE CAPACITY ON BEHALF OF ALL OTHER EMPLOYEES SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL ACT—LABOR CODE SECTION 2698, ET. SEQ. AGAINST DEFENDANTS

76. Plaintiff Robert Westfall incorporates paragraphs 1 through 75 of this complaint as if fully alleged herein.

77. Plaintiff Robert Westfall and the Plaintiff Class Members are aggrieved employees as defined in *Labor Code §2699(a)*. Plaintiff Robert Westfall brings this cause of action on behalf of himself and the Plaintiff Class Members affected by the labor law violations alleged in this complaint.

78. Defendant committed the following violations of the California Labor Code against Plaintiff Robert Westfall and Plaintiff Class Members, and, on information and belief, against other current or former “Electronic Technician” while they were and are employed by Defendant, and each of them:

a. Defendants, and each of them, violated *Labor Code §§226.7 and 512* by not providing lawful meal breaks free from all duties for Plaintiff Robert Westfall and Plaintiff Class Members.

b. Defendants, and each of them, violated *Labor Code §226.7* by not providing lawful rest periods for Plaintiff Robert Westfall and Plaintiff Class Members;

c. Defendants, and each of them, violated *Labor Code §226(a)* by not providing an accurate itemized wage statement to Plaintiff Robert Westfall and Plaintiff Class Members;

d. Defendants, and each of them, violated *Labor Code §510 and §1194* by failing to pay Plaintiff Robert Westfall and Plaintiff Class Members wages for all hours worked including payment of overtime wages for all hours worked beyond an eight (8) hour day and forty (40) hours per week.

1 e. Defendants, and each of them, violated *Labor Code §§201-203* by failing to
2 timely pay Plaintiff Robert Westfall and Plaintiff Class Members all wages owed to an
3 employee who is discharged or quits.

4 f. Defendants, and each of them, violated *Business and Professions Code §§17200*
5 *et. seq.* by committing unlawful business practices.

6
7 79. Pursuant to *Labor Code Section 2699(a)* Plaintiff Robert Westfall seeks to
8 recover civil penalties, as otherwise provided by statute, for which Defendants, and each of
9 them, are liable as a result of Defendants' violation of the *Labor Code* set forth herein above
10 in an amount to be proved at trial.

11 Wherefore, Plaintiff Robert Westfall request relief as pray for hereinafter.

12
13 **XI**

14 **RELIEF REQUESTED**

15 **WHEREFORE**, Plaintiffs prays for the following relief:

16 1. For compensatory damages in the amount of unpaid wages and/or overtime not
17 paid to Plaintiffs and each other member of the Proposed Classes from at least four (4) years
18 prior to the filing of this action to the present as may be proven;

19 2. For compensatory damages in the amount of Plaintiffs' and each member of the
20 Proposed Classes' hourly wage for each rest period and/or meal period missed or taken late
21 during the liability period as may be proven;

22 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
23 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
24 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of four thousand dollars (\$4,000);

26 4. For penalties pursuant to Labor Code § 203 for all employees who were
27 terminated or resigned equal to their daily wage times thirty (30) days;

1 5. That the court determine that the failure of the Defendants to pay wages to the
2 Plaintiffs and Plaintiff Class members be adjudged and decreed to violate the applicable
3 regulations and statutes;

4 6. An award of prejudgment and post judgment interest;

5 7. An order enjoining Defendant and its agents, servants, and employees, and all
6 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
7 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon
8 termination/resignation pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 515, 558, 1194,
9 1199 and IWC 7-2001;

10 8. For restitution for unfair competition pursuant to Business & Professions Code
11 § 17200, including disgorgement or profits, in an amount as may be proven;

12 9. For penalties and other relief pursuant to Labor Code §2699, et seq.;

13 10. As Plaintiffs has properly given Defendant Notice, Plaintiffs seek unpaid wages
14 and penalties pursuant to Labor Code §558, as permitted by Labor Code §2699(f), in the amount
15 of, fifty dollars (\$50) for each initial violation for each underpaid employee for each pay period
16 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
17 wages and one hundred (\$100) dollars for each subsequent violation for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages;

20 11. Prejudgment interest;

21 12. An award providing for payment of costs of suit;

22 13. An award of attorneys' fees; and

23 14. Such other and further relief as this Court may deem proper and just.

24
25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial of his claims by jury to the extent authorized by law.
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28

1 Dated: April 6, 2017

Eason & Tambornini, ALC

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By: 

Matthew R. Eason
Erin M. Scharg
Attorneys for Plaintiffs and the Proposed Class

PROOF OF SERVICE

I, Angelica Saechao, hereby declare and state that:

I am over the age of eighteen years, employed in the County of Sacramento, California, and not a party to the within action. My business address is 1234 h. Street, Suite 200, Sacramento, California.

On April 6, 2017, I served the following:

FIRST AMENDED CLASS ACTION COMPLAINT

on the parties in said action addressed as follows:

Christopher M. Ahearn
Fisher & Phillips LLP
2050 Main St., Suite 1000
Irvine, CA 92614

(BY MAIL) I caused such envelopes with postage fully prepaid to be placed in the United States mail at Sacramento, California.

(BY FEDERAL EXPRESS) I caused such envelope(s) to be placed in the Federal Express repository at Sacramento, California.

(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the office of the addressee(s)

(BY FACSIMILE/TELECOPIER) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents. Thereafter, I caused a true copy to be placed in the United States mail at Sacramento, California, with first-class postage affixed thereto

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

On April 6, 2017, at Sacramento, California.



ANGELICA SAECHAO

EXHIBIT 1-C

1 MATTHEW R. EASON, Esq., Cal. Bar No. 160148
 2 KYLE K. TABORNINI, Esq., Cal. Bar No. 160538
 3 **EASON & TAMBORNINI, ALC**
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 Sacramento, CA 95811
 (916) 438-1819
 4 Facsimile (916) 438-1820
 Matthew@capcityLaw.com
 5 <http://www.capcitylaw.com>

6 Attorneys for Plaintiff Robert Westfall
 Individually and on behalf of all others similarly situated

7
 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**
 10 (Sacramento Division)

11 ROBERT WESTFALL, individually and
 12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 BALL METAL BEVERAGE
 16 CONTAINER CORPORATION., a
 Colorado Corporation,
 Defendant.

Case No.: 2:16-cv-02632-KJM-GGH

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

1. California Wages and Overtime Violations Under Labor Code §§510, 1194, 1199
2. Failure to Provide Meal Breaks Under Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Under Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

JURY TRIAL IS DEMANDED

22
 23 Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger,
 24 individually, on behalf of himself, all others similarly situated, (collectively "Plaintiffs")
 25 complain of Defendant BALL METAL BEVERAGE CONTAINER CORPORATION
 ("Defendant BALL") and as follows:

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I

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiffs and all individuals who hold or held the position of “Electronic Technician”, “Machinist/Mechanic”, and/or Maintenance” currently employed by or formerly employed by Defendant and any subsidiaries or affiliated companies within the State of California.

2. This is also a Representative Action, pursuant to Labor Code § 2699 et seq., on behalf of “Plaintiffs and all individuals who hold or held an hourly paid position in the ‘Production’, ‘Engineering’ and ‘[Production] Support’ Departments”, currently employed by or formerly employed by Defendant and any subsidiaries or affiliated companies and Does 1 to 20 within the State of California. (“aggrieved employees”).

3. Plaintiffs and the aggrieved employees are persons employed in the Manufacturing Industry as that term is defined in Industrial Welfare Commission Order No. 1-2001 (hereinafter Wage Order #1).

4. Plaintiffs are not persons covered within the Executive Exemption, the Administrative Exemption, or Professional Exemption contained within Wage Order #1.

5. Wage Order #1 provides that “An ‘alternative workweek schedule’ means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

6. At all times relevant within the last four years, Plaintiffs and the aggrieved parties were regularly scheduled to work in excess of eight hours in a 24-hour period.

7. Attached hereto as Exhibit 1 is a true and correct copy of the workweek schedule for the Plaintiffs and other aggrieved employees for the 2016 calendar year.

8. At all times relevant within the last four years, Plaintiffs worked an “alternative workweek schedule” as defined in Wage Order #1.

9. Wage Order #1 provides that all work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly schedule

1 number of workdays established by the alternative workweek shall be paid at double the
2 employee's regular rate of pay.

3 10. At all times relevant times within the last four years,, when Plaintiffs and the
4 aggrieved parties worked an extra non-scheduled shift, and worked in excess of eight hours,
5 they were paid time-and-a-half, and not double time.

6 11. At all times relevant time within the last four years, Plaintiff and the aggrieved
7 parties were required as part of their job duties to monitor pages over the plant intercom system
8 (hereinafter "The Pages"). On a typical workday, the number of Pages would routines exceeds
9 70 per day. Those pages were spread out through the day based on Plant needs, and thus over
10 any given period of time would average in excess of 6 pages an hour, including during the rest
11 and meal break periods.

12 12. At all times relevant time within the last four years , if the Plaintiffs and
13 aggrieved employees did not respond to a Page received while they were on their rest break,
14 they were subject to discipline.

15 13. At all times relevant time within the last four years, if the Plaintiffs and
16 aggrieved employees did not respond to a Page received by them while they were on their meal
17 break, they were subject to discipline.

18 14. At all times relevant time within the last four years, while ostensibly on their
19 meal break, Plaintiffs and the aggrieved employees were not free of all duties as they were
20 required to monitor The Pages.

21 15. At all times relevant time within the last four years, while ostensibly on their rest
22 break, Plaintiffs and the aggrieved employees were not free of all duties as they were required to
23 monitor The Pages.

24 16. At all times relevant time within the last four years, while ostensibly on their
25 meal break, if the Plaintiffs and the aggrieved employees had to respond to a Page, they were
26 not compensated for the actual time worked during their meal period.

27 17. Plaintiffs, on behalf of themselves and all aggrieved employees, bring this action
28 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 515, 558, 1194, 1199, 2699;

1 Wage Order 7-2001; and California Code of Regulations, Title 8, Section 11070, seeking wages
2 and/or overtime, meal break premiums, rest break premiums, penalties, injunctive and other
3 equitable relief, and reasonable attorneys' fees and costs.

4 18. Plaintiffs, on behalf of themselves and all aggrieved employees, pursuant to
5 Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and
6 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7 **II**

8 **PARTIES**

9 **A. PLAINTIFFS**

10 19. Plaintiff Robert Westfall, is a competent adult and a resident of California, is an
11 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
12 "Electronic Technician" commencing on or about January 2001 and continuing through present.
13 Plaintiff Westfall's claims are common to those of the Proposed Class Members.

14 20. Plaintiff David E. Anderson, is a competent adult and a resident of California, is
15 an employee of the Defendants. Plaintiff was employed by the Defendants to perform services
16 as a "Electronic Technician" from approximately 2006 to October 15, 2016, when he became
17 employed as a Machinist in the Production Department. and continuing through present.
18 Plaintiff Anderson's claims are common to those of the Proposed Class Members.

19 21. Plaintiff Lynn Bobby, is a competent adult and a resident of California, is an
20 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
21 "Machinist/Mechanic" in the Production Department for Ball Metal from approximately 2012
22 until January 13, 2017. Plaintiff Lynn Bobby's claims are common to those of the Proposed
23 Class Members.

24 22. Plaintiff David Ellinger, is a competent adult and a resident of California, is an
25 employee of the Defendants. Plaintiff was employed by the Defendants to perform services as a
26 "Maintenance Worker" Plaintiff David Ellinger's claims are common to those of the Proposed
27 Class Members.

28 23. Plaintiffs and all aggrieved employees were regularly required to:

- 1 a. Work without being compensated for all hours worked and the proper
- 2 corresponding rate;
- 3 b. Work without being provided meal periods uninterrupted by The Pages;
- 4 c. Work without being provided their rest periods uninterrupted by The
- 5 Pages; and
- 6 d. Work without being provided an accurate itemized wage statement that
- 7 accurately report total hours worked.

B. DEFENDANTS

9 24. Defendant BALL is believed to be a Colorado corporation operating within the
10 State of California.

11 25. Defendant BALL has done and does business throughout the State of California.

III

CLASS ACTION ALLEGATIONS

14 26. Plaintiffs bring this action on behalf of themselves and all others similarly
15 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to
16 represent All persons who hold or held an hourly paid position in the ‘Production’,
17 ‘Engineering’ and ‘[Production] Support’ Departments for Defendant” (“Proposed Class”)

18 27. Plaintiffs reserve the right to amend or modify the class description with greater
19 specificity, by division into subclasses, or by limitation to particular issues.

20 28. Plaintiffs are informed and believe that this action has been brought and may
21 properly be maintained as a class action under the provisions of § 382 of the Code of Civil
22 Procedure because there is a well-defined community of interest in the litigation and the
23 Proposed Classes are easily ascertainable.

A. Numerosity

25 29. Plaintiffs are informed and believe that the potential members of the Proposed
26 Classes as defined are so numerous that joinder of all the members of the Proposed Classes is
27 impracticable.

1 30. While the precise number of proposed Class Members has not been determined
2 at this time, Plaintiffs are informed and believe that Defendant currently employ, and during the
3 relevant time periods employed 200 Class Members at any given time.

4 31. Plaintiffs alleges that Defendant’s employment records would provide
5 information as to the number and location of all members of the Proposed Classes.

6 32. Plaintiffs are informed and believes that joinder of all members of the Proposed
7 Classes is not practicable.

8 **B. Commonality**

9 33. There are questions of law and fact common to the Proposed Classes that
10 predominate over any questions affecting only individual Proposed Class Members. These
11 common questions of law and fact include, without limitation:

12 a. Whether Defendant failed to pay wages and/or overtime compensation as
13 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

14 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC
15 Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to provide required meal
16 periods free from the duty to monitor The Pages and interruptions throughout the term of
17 employment and failing to compensate said employees one (1) hours wages in lieu of meal
18 period missed;

19 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order
20 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
21 Classes of their right to take rest periods free from duties to monitor The Pages interruptions
22 throughout the term of employment and failing to compensate said employees one (1) hours
23 wages in lieu of rest period missed;

24 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-
25 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by
26 failing to provide an accurate itemized wage statements that accurately reporting total hours
27 worked, and the applicable rates, for Plaintiffs and the members of the Proposed Classes;

28

1 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
2 pay compensation due and owing at the time that any proposed Class Members' employment
3 with Defendant terminated;

4 f. Whether Defendant violated § 17200 et seq. of the Business &
5 Professions Code by engaging in the acts previously alleged;

6 g. Whether Plaintiffs and the members of the Proposed Classes are entitled
7 to equitable relief pursuant to Business & Professions Code § 17200, et seq.; and

8 h. Whether Defendant violated Labor Code § 2699, et seq. by engaging in
9 the acts alleged herein.

10 **C. Typicality**

11 34. Plaintiffs are informed and believes that his claims are typical of the claims of
12 the Proposed Classes.

13 35. Plaintiffs are informed and believes that Plaintiffs and all members of the
14 Proposed Classes sustained injuries and damages arising out of and caused by Defendant's
15 common course of conduct in violation of laws, regulations that have the force and effect of
16 law, and statutes as alleged herein.

17 **D. Adequacy of Representation**

18 36. Plaintiffs will fairly and adequately represent and protect the interests of the
19 members of the proposed Classes. Counsel who represent Plaintiffs and the Proposed Classes
20 are competent and experienced in litigating employment class actions.

21 **E. Superiority of Class Action**

22 37. Plaintiffs are informed and believe that a class action is superior to other
23 available means for the fair and efficient adjudication of this controversy.

24 38. Plaintiffs are informed and believes that individual joinder of all Proposed Class
25 Members is not practicable, and questions of law and fact common to the Proposed Classes
26 predominate over any questions affecting only individual members of the Proposed Classes.

27 39. Plaintiffs are informed and believes that each member of the Proposed Classes
28 has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or

1 practice of failing to provide wages and/or overtime, meal periods, rest periods, failing to
2 provide accurate itemized wage statements, and failing to pay all wages upon resignation or
3 termination.

4 40. Plaintiffs are informed and believe that Class action treatment will allow those
5 similarly situated persons to litigate their claims in the manner that is most efficient and
6 economical for the parties and the judicial system.

7 41. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action.

9 **IV**

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

12 **LABOR CODE §§ 510, 1194, and 1199**

13 42. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
14 incorporate by reference all previous paragraphs.

15 43. Plaintiffs and the Proposed Classes were forced to work on a regular and
16 consistent basis without receiving compensation for all hours worked at the proper rate.

17 44. As a result of the unlawful acts of Defendant, Plaintiffs and the members of the
18 Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at
19 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
20 fees, and costs.

21 **V**

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

24 **LABOR CODE § 226.7 AND LABOR CODE § 512**

25 45. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
26 incorporate by reference all previous paragraphs.

27 46. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
28 compensation for each meal period the employer fails to provide.

1 47. Employees are entitled to a first meal period of at least thirty (30) minutes for
2 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
3 meal period of at least thirty (30) minutes for shifts over ten (10) hours.

4 48. Plaintiffs and the Proposed Classes consistently worked shifts over five (5)
5 hours.

6 49. Defendant failed to provide Plaintiff and the Proposed Class with proper
7 uninterrupted meal breaks free from all duties including Pages, of not less than thirty (30)
8 minutes as required by the Labor Code during the relevant time period.

9 50. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
10 to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a
11 sum to be proven at trial.

12 VI

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

15 51. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
16 incorporate by reference all previous paragraphs.

17 52. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
18 compensation for each rest period the employer fails to provide.

19 53. Employees are entitled to a paid ten (10) minute rest break for every four (4)
20 hours worked (or major fraction thereof).

21 54. Defendant failed to provide Plaintiffs and the Proposed Class with proper
22 uninterrupted rest breaks free from all duties including pages, of not less than ten (10) minutes
23 as required by the Labor Code during the relevant time period.

24 55. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
25 to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
26 proven at trial.

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VII

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

56. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

57. Section 226(a) of the California Labor Code requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by the employees. It also requires that an employer include its name and address on the wage statement. Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed Classes.

58. IWC Wage Orders require employers to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statements, and must show all deductions from payment of wages, and accurately report total hours worked by employees. Defendant failed to keep accurate records of the total daily hours worked for Plaintiffs and members of the Proposed Classes.

59. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

VIII

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

60. Plaintiffs, on behalf of the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

1 61. Numerous members of the Proposed Classes are no longer employed by
2 Defendant. They were either fired or quit Defendant’s employ.

3 62. Defendant’s failure to pay wages, as alleged above was willful in that Defendant
4 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Classes
5 to penalties under Labor Code § 203, which provides that an employee’s wages shall continue
6 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

7 63. Defendant has failed to pay others a sum certain at the time of termination or
8 within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty
9 (30) days thereafter. Pursuant to the provisions of Labor Code § 203, the Proposed Classes
10 whose employment ended are entitled to a penalty in the amount of their daily wage multiplied
11 by thirty (30) days.

12 IX

13 SIXTH CAUSE OF ACTION

14 UNFAIR COMPETITION PURSUANT TO
15 BUSINESS & PROFESSIONS CODE § 17200

16 64. Plaintiffs, on behalf of himself and the Proposed Classes, reallege and
17 incorporate by reference all previous paragraphs.

18 65. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of
19 themselves, on behalf of the general public, and on behalf of the Proposed Classes, bring this
20 claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendant as
21 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to
22 Plaintiffs, the general public, and the Proposed Classes. Plaintiffs seek to enforce important
23 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

24 66. Each of the Plaintiffs are a “person” within the meaning of Business &
25 Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive
26 relief, restitution, and other appropriate equitable relief.

27 67. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair
28 business practices.

1 68. California’s wage and hour laws express fundamental public policies. Providing
 2 employees with proper wages and compensation are fundamental public policies of this State
 3 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
 4 enforce vigorously minimum labor standards, to ensure that employees are not required or
 5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
 6 employers and their employees from competitors who lower their costs by failing to comply
 7 with minimum labor standards.

8 69. Defendant has violated statutes and public policies as alleged herein. Through
 9 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
 10 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
 11 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
 12 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
 13 privileges guaranteed to all employees under law.

14 70. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
 15 violation of § 17200 et seq. of the Business & Professions Code.

16 71. Defendant, by engaging in the conduct herein alleged, either knew or in the
 17 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
 18 violation of § 17200 et seq. of the Business & Professions Code.

19 72. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs and
 20 others similarly situated have been damaged in a sum as may be proven.

21 73. Unless restrained, Defendant will continue to engage in the unlawful conduct as
 22 alleged above. Pursuant to the Business & Professions Code, this court should make such
 23 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
 24 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
 25 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
 26 restitution and disgorgement of profits which may be necessary to restore Plaintiffs and
 27 members of the Proposed Classes the money Defendant has unlawfully failed to pay.

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SEVENTH CAUSE OF ACTION

BY PLAINTIFF ROBERT WESTFALL IN HIS REPRESENTATIVE CAPACITY ON BEHALF OF ALL OTHER EMPLOYEES SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL ACT—LABOR CODE SECTION 2698, ET. SEQ. AGAINST DEFENDANTS

76. Plaintiff Robert Westfall incorporates paragraphs 1 through 75 of this complaint as if fully alleged herein.

77. Plaintiff Robert Westfall and the Plaintiff Class Members are aggrieved employees as defined in *Labor Code §2699(a)*. Plaintiff Robert Westfall brings this cause of action on behalf of himself and the Plaintiff Class Members affected by the labor law violations alleged in this complaint.

78. Defendant committed the following violations of the California Labor Code against Plaintiff Robert Westfall and Plaintiff Class Members, and, on information and belief, against other current or former “Electronic Technician” while they were and are employed by Defendant, and each of them:

a. Defendants, and each of them, violated *Labor Code §§226.7 and 512* by not providing lawful meal breaks free from all duties for Plaintiff Robert Westfall and Plaintiff Class Members.

b. Defendants, and each of them, violated *Labor Code §226.7* by not providing lawful rest periods for Plaintiff Robert Westfall and Plaintiff Class Members;

c. Defendants, and each of them, violated *Labor Code §226(a)* by not providing an accurate itemized wage statement to Plaintiff Robert Westfall and Plaintiff Class Members;

d. Defendants, and each of them, violated *Labor Code §510 and §1194* by failing to pay Plaintiff Robert Westfall and Plaintiff Class Members wages for all hours worked including payment of overtime wages for all hours worked beyond an eight (8) hour day and forty (40) hours per week.

1 e. Defendants, and each of them, violated *Labor Code §§201-203* by failing to
2 timely pay Plaintiff Robert Westfall and Plaintiff Class Members all wages owed to an
3 employee who is discharged or quits.

4 f. Defendants, and each of them, violated *Business and Professions Code §§17200*
5 *et. seq.* by committing unlawful business practices.

6
7 79. Pursuant to *Labor Code Section 2699(a)* Plaintiff Robert Westfall seeks to
8 recover civil penalties, as otherwise provided by statute, for which Defendants, and each of
9 them, are liable as a result of Defendants' violation of the *Labor Code* set forth herein above
10 in an amount to be proved at trial.

11 Wherefore, Plaintiff Robert Westfall request relief as pray for hereinafter.

12
13 **XI**

14 **RELIEF REQUESTED**

15 **WHEREFORE**, Plaintiffs prays for the following relief:

16 1. For compensatory damages in the amount of unpaid wages and/or overtime not
17 paid to Plaintiffs and each other member of the Proposed Classes from at least four (4) years
18 prior to the filing of this action to the present as may be proven;

19 2. For compensatory damages in the amount of Plaintiffs' and each member of the
20 Proposed Classes' hourly wage for each rest period and/or meal period missed or taken late
21 during the liability period as may be proven;

22 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
23 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
24 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of four thousand dollars (\$4,000);

26 4. For penalties pursuant to Labor Code § 203 for all employees who were
27 terminated or resigned equal to their daily wage times thirty (30) days;

1 5. That the court determine that the failure of the Defendants to pay wages to the
2 Plaintiffs and Plaintiff Class members be adjudged and decreed to violate the applicable
3 regulations and statutes;

4 6. An award of prejudgment and post judgment interest;

5 7. An order enjoining Defendant and its agents, servants, and employees, and all
6 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
7 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon
8 termination/resignation pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 515, 558, 1194,
9 1199 and IWC 7-2001;

10 8. For restitution for unfair competition pursuant to Business & Professions Code
11 § 17200, including disgorgement or profits, in an amount as may be proven;

12 9. For penalties and other relief pursuant to Labor Code §2699, et seq.;

13 10. As Plaintiffs has properly given Defendant Notice, Plaintiffs seek unpaid wages
14 and penalties pursuant to Labor Code §558, as permitted by Labor Code §2699(f), in the amount
15 of, fifty dollars (\$50) for each initial violation for each underpaid employee for each pay period
16 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
17 wages and one hundred (\$100) dollars for each subsequent violation for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages;

20 11. Prejudgment interest;

21 12. An award providing for payment of costs of suit;

22 13. An award of attorneys' fees; and

23 14. Such other and further relief as this Court may deem proper and just.

24
25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial of his claims by jury to the extent authorized by law.
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Dated: April 6, 2017

Eason & Tambornini, ALC

By: 

Matthew R. Eason
Erin M. Scharg
Attorneys for Plaintiffs and the Proposed Class

PROOF OF SERVICE

I, Angelica Saechao, hereby declare and state that:

I am over the age of eighteen years, employed in the County of Sacramento, California, and not a party to the within action. My business address is 1234 h. Street, Suite 200, Sacramento, California.

On April 6, 2017, I served the following:

FIRST AMENDED CLASS ACTION COMPLAINT

on the parties in said action addressed as follows:

Christopher M. Ahearn
Fisher & Phillips LLP
2050 Main St., Suite 1000
Irvine, CA 92614

(BY MAIL) I caused such envelopes with postage fully prepaid to be placed in the United States mail at Sacramento, California.

(BY FEDERAL EXPRESS) I caused such envelope(s) to be placed in the Federal Express repository at Sacramento, California.

(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the office of the addressee(s)

(BY FACSIMILE/TELECOPIER) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents. Thereafter, I caused a true copy to be placed in the United States mail at Sacramento, California, with first-class postage affixed thereto

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

On April 6, 2017, at Sacramento, California.



ANGELICA SAECHAO

EXHIBIT 1-D

EXHIBIT 1-E



P: 323.900.0580
E: levi@lescheslaw.com

5757 Wilshire Boulevard, Ste 535
Los Angeles, CA 90036

November 22, 2019

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
Electronic Service

Ball Corporation
Attention: Myra Rivera
2400 Huntington Dr.
Fairfield, CA 94533
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1905

Ball Corporation
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1912

Ball Aerospace & Technologies Corp.
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1899

**Re: MARTIN V. BALL CORPORATION; BALL AEROSPACE &
TECHNOLOGIES CORP.**

**PRIVATE ATTORNEY GENERAL ACT LETTER AND FORMAL
REQUEST TO INVESTIGATE**

Dear Sir or Madam:

This office represents Richard Martin, a former employee of Ball Corporation and/or Ball Aerospace & Technologies Corp. (“Ball”). Mr. Martin is preparing to file a civil complaint or arbitration demand on his own behalf and on behalf of other similarly situated employees of Ball, arising from unlawful acts committed against him and others, including class or representative allegations of unpaid wages and other *Labor Code* violations during the applicable statute of limitations period.

Mr. Martin may be contacted through this office. Ball has its executive offices located at 10 Longs Peak Dr, Broomfield, CO 80021, and operates a facility in California located at 2400 Huntington Dr, Fairfield, CA 94533.

Mr. Martin is claiming penalties for violations of the *Labor Code*, which may be covered by *Labor Code* § 2698, *et seq.* (the “Private Attorneys General Act” or “PAGA”). To ensure exhaustion of administrative remedies of those penalties only recoverable through PAGA, we provide the notice contained herein to you and the employer. This letter is to exhaust the reporting requirements of *Labor Code* § 2699.3.

Summary of PAGA Claims

Factual Background: Mr. Martin worked as a machinist at Ball’s manufacturing plant in Fairfield California. Mr. Martin and other employees were subjected to the same pay plan. Mr. Martin alleges that his overtime pay was not properly calculated during pay periods when he and others did not

qualify as exempt from overtime. Mr. Martin alleges that Ball failed to include non-discretionary pay, such as bonuses, into the regular rate of pay; and, accordingly, Ball failed to pay adequate overtime pay during non-exempt pay periods.

Labor Code section 201 (Representative Claim): Mr. Martin alleges that Ball failed to pay vested bonuses to employees upon termination.

Labor Code section 221 (Representative Claim): Mr. Martin alleges that Ball violated section 221 of the *Labor Code* by denying vested bonuses to employees that were involuntary terminated prior to the bonus pay date.

Labor Code section 246 (Representative Claim): Mr. Martin alleges that Ball failed to provide employees with three paid sick days annually, and only provided three unpaid sick days.

Labor Code section 246 retaliation; Labor Code section 98.6 (Representative Claim): Mr. Martin alleges that employees who utilized their statutory annual three sick days had those days counted towards maximum-absence limits, thereby constituting retaliation against the exercise of statutorily-protected rights.

Inaccurate Pay Stubs (Representative Claim): Mr. Martin's and others' pay stubs did not contain all required information. Overtime pay was not calculated based on the regular rate. Pay stubs did not contain information on sick leave.

Overtime violations (Representative Claim): Mr. Martin alleges that Ball inaccurately paid overtime, as Ball failed to count annual "attendance bonuses" into the regular rate as required under *Alvarado v. Dart Container Corp. of*

California. Ball paid an annual attendance bonus based on the number of overtime hours worked in the previous year. Either the entire attendance bonus was required to be spread across hours worked; or, alternatively, the portion of the attendance bonus attributable to the mandatory 16 hours of weekly overtime needed to be spread across the regular-rate hours.

Alternative Work-Week Violations (Representative Claim): Mr. Martin was, on certain weeks, compelled to work involuntary overtime which resulted in five or six consecutive days of 12-hour shifts. Mr. Martin contends that *Labor Code* section 511 contains an implied right for regular work-week employees on 12-hour shifts to receive double-time for hours exceeding 8 hours on the fifth and sixth days.

Not paid all wages due upon termination (Representative Claim): Mr. Martin alleges he and others were not paid all wages due on termination of employment.

Meal Break Violations (Representative Claim): Mr. Martin also alleges that Ball's meal and rest period policies and practices were not compliant, because Ball failed to pay a premium and/or penalty for meal breaks in which employees were required to remain on call.

Labor Code sections 98.6 & 1102.5: Mr. Martin alleges that he was terminated for exercising his rights to obtain and receive Worker's Compensation medical treatment.

Labor Code section 203.1: Mr. Martin alleges that his final paycheck bounced, and Mr. Martin was not paid 30 days' wages.

Labor Code section 230.8: Mr. Martin alleges that his workweek was altered when he incurred a disability, but that

Ball failed to provide him with time to arrange for childcare due to his changed schedule.

Representative Claims: Mr. Martin alleges that he and others were subject to unlawful policies and practices concerning, for example, calculating overtime pay when the inside sales pay exemption was not met, failing to separately compensate for rest breaks, and failure to pay all wages due on the date of termination. Ball failed to pay overtime when due based on the regular rate of pay. Ball failed to include pay such as attendance bonuses.

As a result, Mr. Martin and other employees were not timely paid all wages due to them at the time their employment was terminated, and their final paychecks did not include all wages owed.

Further, Ball failed to furnish accurate itemized wage statements.

Applicable Labor Code Sections and Specific Violations

The boxes checked below set forth and include, but are not limited to, the claims that Mr. Martin is making under the Labor Code, on his own behalf and on behalf of other employees. Mr. Martin also intends to exhaust all Labor Code claims related to those enumerated below or that share a similar factual predicate.

- Labor Code section 96(k) (demotion, suspension or discharge for lawful conduct occurring away from work);
- Labor Code section 98.6 (retaliation for enforcing employee and labor rights);

- Labor Code section 201 (payment of all wages, including accrued vacation time, upon involuntary termination of employment);
- Labor Code section 202 (payment of all wages, including accrued vacation time, upon voluntary resignation with at least 72 hours' notice);
- Labor Code section 203 (where the employer willfully violates the provisions of sections 201-202 regarding timing of payment, section 203 provides "waiting time penalties" of up to 30 days' wages);
- Labor Code section 203.1 (payment of up to 30 days wages as a penalty when employer's check to employee bounces);
- Labor Code section 204 (failure to timely pay wages due to current employees);
- Labor Code section 206 (failure to pay undisputed wages);
- Labor Code section 206.5 (employer may not require employee to release claim for wages);
- Labor Code section 208 (place of payment of final paycheck);
- Labor Code section 210 (civil penalty for failure to make payments; action for recovery; disposition of money recovered);
- Labor Code section 212 (prohibited forms of payment);
- Labor Code section 221 (repayment of wages to employer);
- Labor Code section 222 (withholding of part of wage - collective bargaining agreement);
- Labor Code section 222.5 (cost of pre-employment physical exam);
- Labor Code section 223 (payment of less than statutory or contractual wage scale);
- Labor Code section 224 (authorized deductions);
- Labor Code section 226(a) (failing to furnish accurate itemized wage statements);
- Labor Code section 226.7(a) (failure to provide meal or rest period; no employer may require an employee to work

- during any meal or rest period an IWC Wage Order mandates);
- Labor Code section 227 (failure to make agreed payments to health, welfare or pension fund or vacation plan);
 - Labor Code section 227.3 (unlawful failure to pay vested vacation upon termination at regular rate of pay);
 - Labor Code section 230 (employer cannot discharge or discriminate against employee for serving jury duty);
 - Labor Code section 230.1 (victims of domestic violence or sexual assault);
 - Labor Code section 230.2 (time off for victims of crime);
 - Labor Code section 230.8 (discharge or discrimination for taking time off to visit child's school);
 - Labor Code section 231 (employer to bear cost of physical exam for required driver's license);
 - Labor Code section 232(c) (discharge, discipline, or discrimination against employee who discloses his/her wages);
 - Labor Code section 232.5(c) (discharge, discipline or discrimination against employee who discloses information about employer's working conditions);
 - Labor Code section 233 (sick leave to attend to illness in family);
 - Labor Code section 234 (sick leave to attend to illness in family; employer absence control policy);
 - Labor Code section 246 (paid sick days);
 - Labor Code section 246.5 (denial of right to use sick time; discrimination and retaliation);
 - Labor Code section 351 (employer may not share or keep any portion of gratuity left for or given to employee);
 - Labor Code section 353 (employer must maintain accurate records of all gratuities received by employees);
 - Labor Code section 432.2 (polygraph or lie detector test);
 - Labor Code section 432.5 (unlawful terms and conditions of employment);

- Labor Code section 432.7 (disclosure of arrest or detention not resulting in conviction);
- Labor Code section 435 (audio or video recording employees in restroom, locker room or changing room);
- Labor Code section 450 (coercing employees to patronize employer's business);
- Labor Code section 510 (8 hours of labor constitutes a day's work; any work in excess of 8 hours in one work day and any work in excess of 40 hours in any one work week shall be compensated at a rate of no less than one and one-half times the regular rate of pay);
- Labor Code section 511 (alternate work week schedule);
- Labor Code section 512 (an employer may not employ an employee for a work period without providing the employee with a legally compliant meal period of not less than 30 minutes);
- Labor Code section 513 (make-up work);
- Labor Code section 551 (one day's rest in 7 days);
- Labor Code section 552 (maximum consecutive working days);
- Labor Code section 921 (contracts against public policy regarding labor organization membership);
- Labor Code section 922 (coercion not to join labor organization);
- Labor Code section 923 (designation of representation, self-organization or concerted activity);
- Labor Code section 970 (misrepresentation resulting in employees relocation);
- Labor Code section 976 (publishing advertisement offering employment as salesman, broker or agent; misrepresentation as to compensation or commissions);
- Labor Code section 1033 (break time to express breast milk);
- Labor Code section 1050 (misrepresentation preventing employment of former employee);

- Labor Code section 1051 (misuse of employee fingerprints or photographs);
- Labor Code section 1101 (employer may not prevent or control employees' political activities);
- Labor Code section 1102 (retaliation for enforcing employee and labor rights);
- Labor Code section 1102.5 (employer may not prohibit employees from disclosing information to government or law enforcement);
- Labor Code section 1174(c) (failure to keep records of names and addresses of employees);
- Labor Code section 1174(d) (failure to keep adequate time records);
- Labor Code section 1194 (action to recover minimum wage, overtime compensation, interest, attorneys' fees and costs);
- Labor Code section 1197 (payment of less than minimum wage);
- Labor Code section 1197.1 (failure to keep adequate time records; civil penalty);
- Labor Code section 1197.5 (equal wage rates);
- Labor Code section 1198 (maximum hours of work);
- Labor Code section 1198.3(b) (mandatory days off requirements);
- Labor Code section 1198.5 (right to inspect records);
- Labor Code section 1199 (misdemeanor for violating any order of the commission);
- Labor Code section 1199.5 (misdemeanor for violating any order of the commission; \$10,000 fine).

Mr. Martin is sending this letter to ensure compliance with Labor Code § 2699.3.

Please advise this office within the 30-day statutory period if your office will be investigating these matters. Thank you for your attention to this matter. Please feel free to contact me with any questions you may have.

Sincerely

LEVI LESCHES
Attorney for Richard Martin



P: 323.900.0580
E: levi@lescheslaw.com

5757 Wilshire Boulevard, Ste 535
Los Angeles, CA 90036

November 22, 2019

California Division of Occupational Safety & Health
1515 Clay Street, Suite 1901
Oakland, CA 94612
Electronic Service

Ball Corporation
Attention: Myra Rivera
2400 Huntington Dr.
Fairfield, CA 94533
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1905

Ball Corporation
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1912

Ball Aerospace & Technologies Corp.
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7015 1520 0002 1555 1899

**Re: MARTIN V. BALL CORPORATION; BALL AEROSPACE &
TECHNOLOGIES CORP.**

**PRIVATE ATTORNEY GENERAL ACT LETTER AND FORMAL
REQUEST TO INVESTIGATE**

Dear Sir or Madam:

This office represents Richard Martin, a former employee of Ball Corporation and/or Ball Aerospace & Technologies Corp. (“Ball”). Mr. Martin is preparing to file a civil complaint or arbitration demand on his own behalf and on behalf of other similarly situated employees of Ball, for workplace and safety hazards, and other *Labor Code* violations, during the applicable statute of limitations period.

Mr. Martin may be contacted through this office. Ball has its executive offices located at 10 Longs Peak Dr, Broomfield, CO 80021, and operates a facility in California located at 2400 Huntington Dr, Fairfield, CA 94533.

Mr. Martin asks the Division to investigate and address numerous violations of Safety and Health regulations at his former place of employment, so that his remaining fellow-employees will not remain subjected to ongoing threats of injury, or worse.

This letter is to exhaust the reporting requirements of *Labor Code* § 2699.3 and to provide Cal-OSHA with the facts and theories supporting the described violations.

SUMMARY OF WORKPLACE HAZARDS

a. Violations of Ergonomic Standards

On November 6, 2018, Mr. Martin was injured at Ball Corporation’s Fairfield manufacturing facility while lowering a hopper of manufactured cans. Martin reported that he was injured. However, his supervisor, Claude Vaughan, gave him

ibuprofen, temporarily placed Martin on light-duty work, and then ordered Mr. Martin back to work.

Every day for the following four days, Martin reported to his supervisors that he was injured, yet each day he was sent back to work. Finally, Martin advised Vaughan that unless he was provided medical assistance, he would leave work and work it out himself. Only after Martin made this ultimatum, Martin's supervisors sent him to meet with a Human Resources representative.

The HR representative took Martin to a hospital where Martin was diagnosed with a pulled muscle behind his rotator cuff.

Even though Martin had been diagnosed with an apparent RMI ergonomic injury, and HR knew of such facts, Martin is informed and believes that Ball failed to investigate the circumstances of Martin's injury or to otherwise follow the requirements of 8 C.C.R. § 5110. To the contrary, Ball retaliated against Martin by terminating him for taking time off to seek treatment with a Workers Compensation doctor.

b. Violations of Control of Hazardous Substances

Part of Mr. Martin's work obligations involved the regular use and handling of Industrial Coatings ("IC"), particularly Valspar.

In violation of 8 C.C.R. § 5139 *et seq.*, Mr. Martin was required to work in a confined area with significant IC fumes, without a facemask or other adequate protective clothing. Mr. Martin experienced significant coughing due to such fumes.

On one occasion, a significant spill of IC occurred, and Mr. Martin, in violation of 8 C.C.R. §§ 5189 & 5192 was required to clean the spill without adequate protective gear, guidance, or

procedures. Mr. Martin's mouth skin entirely peeled due to the fume exposures.

Mr. Martin is sending this letter to ensure compliance with *Labor Code* § 2699.3.

Please advise this office within the 30-day statutory period if your office will be investigating these matters. Thank you for your attention to this matter. If you have any questions, please contact me.

Sincerely

LEVI LESCHES
Attorney for Richard Martin



P: 323.900.0580
E: levi@lescheslaw.com

5757 Wilshire Boulevard, Ste 535
Los Angeles, CA 90036

November 27, 2019

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
Electronic Service

Ball Corporation
Attention: Myra Rivera
2400 Huntington Dr.
Fairfield, CA 94533
U.S. Mail

Ball Corporation
818 W. 7th St., Ste 930
Los Angeles, CA 90017
U.S. Mail

**Re: MARTIN V. BALL CORPORATION; BALL AEROSPACE &
TECHNOLOGIES CORP.**

**AMENDED PRIVATE ATTORNEY GENERAL ACT LETTER AND
FORMAL REQUEST TO INVESTIGATE**

Dear Sir or Madam:

This office represents Richard Martin, a former employee of Ball Corporation and/or Ball Aerospace & Technologies Corp. (“Ball”).

It has been clarified that certain errors had been inadvertently submitted to the LDWA in Mr. Martin’s November 22, 2019 PAGA Notice (LWDA Case No. LWDA-CM-758859-19).

The following allegations are **withdrawn** from the LWDA Case No. LWDA-CM-758859-19 Notice:

~~***Labor Code section 246 (Representative Claim):*** Mr. Martin alleges that Ball failed to provide employees with three paid sick days annually, and only provided three unpaid sick days.~~

~~***Labor Code section 246 retaliation; Labor Code section 98.6 (Representative Claim):*** Mr. Martin alleges that employees who utilized their statutory annual three sick days had those days counted towards maximum absence limits, thereby constituting retaliation against the exercise of statutorily protected rights.~~

In their stead, the following allegations are **added** to the LWDA Case No. LWDA-CM-758859-19 Notice:

Labor Code section 246 (Representative Claim): Mr. Martin alleges that Ball do not permit employees to use paid sick leave in increments of two hours or more and instead required employees to take off their entire shift when using § 246 sick time.

Thank you for your attention to this matter. Please feel free to contact me with any questions you may have.

Sincerely

LEVI LESCHES
Attorney for Richard Martin



P: 323.900.0580
E: levi@lescheslaw.com

5757 Wilshire Boulevard, Ste 535
Los Angeles, CA 90036

November 23, 2020

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
Electronic Service

Ball Corporation
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7020-1810-0000-8734-8667

Ball Aerospace & Technologies Corp.
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7020-1810-0000-8734-8674

Ball Metal Beverage Container Corp.
818 W. 7th St., Ste 930
Los Angeles, CA 90017
Certified Mail (Return Receipt)
Tracking No.: 7020-1810-0000-8734-8698

**Re: MARTIN V. BALL CORPORATION; BALL AEROSPACE &
TECHNOLOGIES CORP.; BALL METAL BEVERAGE
CONTAINER CORP.**

LWDA CASE No. LWDA-CM-758859-19
LWDA CASE No. LWDA-CM-758861-19

**SECOND AMENDED PRIVATE ATTORNEY GENERAL ACT
LETTER AND FORMAL REQUEST TO INVESTIGATE**

Dear Sir or Madam:

This office represents Richard Martin, a former employee of Ball Corporation and/or Ball Aerospace & Technologies Corp. and/or Ball Metal Beverage Container Corp. (“Ball”).

This amendment **adds** the entity known as “Ball Metal Beverage Container Corp.” as an additional employer (and/or joint employer and/or integrated enterprise and/or alter ego) to:

- (1) CASE No. LWDA-CM-758859-19
- (2) CASE No. LWDA-CM-758861-19

Enclosed herewith are copies of all prior Notices relating to the above-referenced cases.

Thank you for your attention to this matter. Please feel free to contact me with any questions you may have.

Sincerely

LEVI LESCHES
Attorney for Richard Martin



P: 323.900.0580
E: levi@lescheslaw.com

5757 Wilshire Boulevard, Ste 535
Los Angeles, CA 90036

March 5, 2024

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
Electronic Service

Ball Corporation
c/o CT Corp. System
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203
Certified Mail (Return Receipt)

Ball Metal & Beverage Container Corp.
c/o CT Corp. System
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203
Certified Mail (Return Receipt)

Aaron M. Cargain
acargain@fisherphillips.com
Fisher & Phillips LLP
1 Montgomery Street | Suite 3400
San Francisco, CA 94104
Via E-Mail

Timothy B. Del Castillo
tdc@castleemploymentlaw.com
Castle Law: CA Employment Counsel, PC
2999 Douglas Blvd, Ste 180
Roseville, CA 95661
Via E-Mail

Erin M. Scharg
erin@capcitylaw.com
Eason & Tambornini, A Law Corporation
1234 H Street, Suite 200
Sacramento, California 95814
Via E-Mail

**Re: MARTIN V. BALL CORPORATION; BALL AEROSPACE &
TECHNOLOGIES CORP.; BALL METAL BEVERAGE
CONTAINER CORP.**

**LDWA CASE No. LWDA-CM-758859-19
LDWA CASE No. LWDA-CM-758861-19**

**THIRD AMENDED PRIVATE ATTORNEY GENERAL ACT
LETTER**

Dear Sir or Madam:

This office represents Richard Martin, a former employee of Ball Corporation and/or Ball Aerospace & Technologies Corp. and/or Ball Metal Beverage Container Corp. (“Ball”) with respect to the following Case Numbers:

- (1) CASE No. LWDA-CM-758859-19
- (2) CASE No. LWDA-CM-758861-19

This amendment clarifies the November 22, 2019 PAGA letter by Martin (and amendments thereto) to the California Division of Occupational Safety & Health.

Martin’s November 22, 2019 PAGA letter contended that the named respondents failed to follow the requirements of 8 C.C.R. § 5110; that the named respondents failed to follow the requirements of 8 C.C.R. §§ 5189 & 5192, and that the named respondents failed to comply with HAZMAT-response regulations; that the named respondents failed to provide adequate protective clothing to protect against airborne

exposures from “Internal Coating”; and that employees were exposed to airborne exposures caused by “Internal Coating.”

This amendment clarifies that Martin’s November 22, 2019 PAGA letter, and the amendments thereto, only contended “regulatory violations,” “general violations,” and “repeat violations,” as defined in 8 C.C.R. § 334. Nothing in Martin’s November 22, 2019 PAGA letter should be construed as contending, in any way, a “serious violation” or “willful violation” of any matters described therein.

Enclosed herewith are copies of all prior Notices relating to the above-referenced cases. Thank you for your attention to this matter. Please feel free to contact me with any questions you may have.

Sincerely

LEVI LESCHES
Attorney for Richard Martin

EXHIBIT 1-F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT WESTFALL, individually and on behalf of all others similarly situated; DAVID ANDERSON; LYNN BOBBY; DAVID ELLINGER,

Plaintiffs,

Richard MARTIN, Individually and on behalf of all others similarly situated,

Plaintiff-Intervenor,

v.

BALL METAL BEVERAGE CONTAINER CORPORATION., a Colorado Corporation, Does 1-20 inclusive,

Defendants.

CASE NO. 2:16-CV-02632-KJM-GGH

CLASS ACTION

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, AND HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT

ATTENTION: ALL CURRENT AND FORMER EMPLOYEES OF BALL METAL BEVERAGE CONTAINER CORPORATION AT ITS FAIRFIELD, CALIFORNIA PLANT AT ANY TIME DURING THE PERIOD BETWEEN SEPTEMBER 7, 2012, AND APRIL 20, 2024, IN THE POSITIONS OF “ELECTRONIC TECHNICIAN,” “MACHINIST/MECHANIC,” AND/OR “MAINTENANCE”; OR WHO WORKED IN NON-EXEMPT POSITIONS IN THE PRODUCTION, ENGINEERING, AND PRODUCTION SUPPORT DEPARTMENTS AT THE FAIRFIELD PLANT.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO A SETTLEMENT AWARD OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement of the United States District Court of the Eastern District of California entered _____, 2025, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the United States District Court of the Eastern District of California on behalf of all current and former non-exempt employees by Defendant in California at any time between September 7, 2012, through April 20, 2024 (the “Settlement Class” or the “Class Members”); however, the Settlement Class does not include persons: (1) who previously settled, released or received awards for claims covered by the Settlement; or (2) who submit valid Requests for Exclusion (as explained below).

“Defendant” and “Released Parties” in the Action include (i) BALL METAL BEVERAGE CONTAINER CORPORATION (“Defendant”); each of its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-employers, payroll service providers, staffing agencies, Professional Employer Organizations (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations, and/or privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant.

You have received this Notice because Defendant’s records indicate you worked as a Class Member during the Class Period (defined below). This notice is to advise you of how you can participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On September 6, 2016, Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger filed this action, titled *Robert Westfall, et al. v. Ball Metal Beverage Container Corporation, et al.*, in Solano County Superior Court, Case No. FCS047654. Defendant subsequently removed the State Court Action to the United States District Court for the Eastern District of California, thereby initiating the civil action entitled *Westfall v. Ball Metal Beverage Container Corporation*, Case No. 2:16-cv-02632-KJM-GGH. Plaintiffs filed a First Amended Class Action Complaint on April 6, 2017.

Separately, on November 23, 2020, Objector and conditional Plaintiff-in-Intervention Richard Martin filed a separate lawsuit, titled *Martin v. Ball Corporation et al.*, in Solano County Superior Court, Case No. FSC055690. Defendant subsequently removed the State Court Action to the United States District Court for the Eastern District of California, thereby initiating the civil action entitled *Martin v. Ball Corporation, et al.*, Case No. 2:21-cv-01409. Thereafter, on July 12, 2021, Martin filed a First Amended Class Action Complaint in that action. On May 31, 2024, Plaintiffs Westfall, Anderson, Bobby, and Ellinger filed a Second Amended Class Action Complaint in the *Westfall* action, to which Martin conditionally joined, together with the Class claims, and PAGA claims, that had been previously alleged in the *Martin* action. The Class Period is between September 7, 2012, and April 20, 2024 (the “Class Period”).

The Operative *Westfall* Second Amended Complaint alleges causes of action for: (1) California Wages and Overtime violations under Labor Code §§ 510, 1194, 1199; (2) failure to provide meal breaks under Labor Code §§ 226.7 and 512; (3) failure to provide rest breaks under Labor Code § 226.7; (4) violation of Labor Code § 226(a); (5) penalties pursuant to Labor Code § 203; (6) violation of Business & Professions Code § 17200, *et seq.*; (7)-(8) violations of Cal. Lab. Code §§ 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004 “PAGA”), and, in association with “IC spray” practices and procedures, any “regulatory violations,” “general violations,” and “repeat violations” of Cal. Lab. Code §§ 6300 *et seq.*, as defined in 8 C.C.R. § 334, on behalf of Class Members, as alleged in the Second Amended Complaint, from September 7, 2012 through trial. Plaintiffs also seek recovery of alleged damages, penalties, interest, and attorneys’ fees. The “PAGA Period” shall mean the period from July 4, 2015, to April 20, 2024.

Defendant denies all claims and liability, denies that Plaintiffs and the Class Members are entitled to any recovery, and asserts affirmative defenses in response to Plaintiffs’ and Class Members’ claims.

The Action has been actively litigated. There have been on-going investigations, extensive discovery, multiple mediation sessions, and an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement after their negotiations. Previously, the Plaintiffs and Defendant reached a proposed settlement, to which Objector-Intervenor Martin, and Objector Andre Bernstein, objected on various grounds. Thereafter, Plaintiffs, Objector-Intervenor Martin, Objector-Intervenor Bernstein, and Defendant reached, after extensive negotiations, the class-wide Settlement which Plaintiffs, Objector-Intervenor Martin, Objector-Intervenor Bernstein all support as fair, reasonable, and adequate as to the Class Members. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendant continues to expressly deny all allegations and claims and confirms that this Settlement shall not constitute an admission of liability by Defendant.

The Parties have entered into a Joint Stipulation of Class and PAGA Settlement (“Settlement Agreement”), which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you are entitled to participate in the Settlement and object to it or to exclude yourself (“opt out”) from the Settlement.

On April 3, 2024, Ivan Aguirre filed an action entitled *Ivan Aguirre, an individual and on behalf of all others similarly situated vs. Ball Metal Beverage Container Corp et al.* Solano County No. CU24-02471 (“Aguirre Class Action”). On July 8, 2024, Ivan Aguirre filed a separate PAGA action entitled *Ivan Aguirre vs. Ball Metal Beverage Container Corp. et al.*, Solano County No. CU24-05147 (“Aguirre PAGA Action”). The lawsuits filed by Aguirre allege substantially similar class-action and PAGA claims against the same Defendant. The Settlement in the instant matter will impact the class-action and PAGA claims as alleged in the *Aguirre* lawsuits for the Class Period but will not otherwise affect your rights outside of the Class Period.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay a maximum of \$4,500,000 (“Gross Settlement Amount”), which sum shall include all Settlement Awards for Class Members, Class Counsels’ and Objectors-Intervenor’s attorneys’ fees, Class Counsels’ and Objectors-Intervenor’s litigation expenses and costs, the enhancement award to the Class Representatives and Objectors-Intervenor’s, \$100,000 allocated to penalties under the PAGA with \$75,000 paid to the California Labor and Workforce Development Agency (“LWDA”) and \$25,000 paid to the Settlement Class, and all Settlement administration expenses, including skiptracing expenses to verify the addresses of the Class Members no longer employed by Defendant (“Maximum Settlement Amount”). The entire Maximum Settlement Amount will be fully paid out.

The net settlement amount will be calculated by deducting Class Counsels’ and Objectors-Intervenor’s attorneys’ fees, Class Counsels’ and Objectors-Intervenor’s litigation expenses and costs, the enhancement award to the Class Representatives and Objectors-Intervenor’s, the fees and expenses of the Claims Administrator (as well as \$2,685 paid to Kroll in association with the prior attempted settlement), and \$75,000 payable to the LWDA for alleged PAGA penalties, which will result in a “Net Settlement Amount” for distribution to all Class Members. As explained further below, the amount of each Class Member’s Settlement Award will depend on the number of eligible Class Member Work Weeks attributed to Class Members individually during the Class Period as defined by the Settlement. Additionally, as explained further below, eligible Class Members will receive enhanced amounts if: (1) they were employed in an “Engineering” position during the Class Period; and, separately and additionally, if: (2) they separated from Defendant’s employment during the Class Period. Additionally, according to the Settlement, PAGA Members employed during the PAGA Period will be entitled to a pro-rata share of the PAGA Penalties.

This Notice will list for each Class Member the individual Class Member’s estimated Settlement Award assuming all Class Members participate in the Settlement, which amount is based on the Class Member’s applicable percentage of the Net Settlement amount, the number of eligible Class Member Work Weeks attributed to the Class Member individually, whether the Class Member worked in an “Engineering” Position, whether the Class Member separated from employment during the Class Period, and the Class Member’s share of PAGA penalties. The actual Settlement Awards may be more or less than the amount estimated depending on the number of participating Class Members, and on the distributions approved and allocated by the Court.

B. Settlement Formula, and Your Settlement Award

Each Class Member will receive an individual Settlement Award unless they submit a valid and timely Request for Exclusion. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as follows: 30% will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; 70% will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC will issue. Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the Class Period covered by the Settlement.

In addition to the above, the following factors will be determinative of your “Eligible Class Member Share” or “Settlement Award.”

- (a) **Waiting Time Penalty Enhancement:** Class members that have left employment during the Class Period shall receive an award of at least fifty percent (50%) of their last regular rate of pay times 360 hours. These class members shall also receive payment as set forth below.
- (b) **PAGA Penalty:** The \$25,000 PAGA penalty paid to the Settlement Class shall be divided equally between all pay periods worked by the Class Members during the Class Period.
- (c) **Post-Filing Period Allocation:** For the period after the time when Defendant implemented changes relating to its paging policies, (which period is defined, for purposes of simplifying administration, as January 1, 2020 and thereafter), nine percent (9%) of the Net Settlement Amount shall be divided equally between all workweeks worked by the Class Members during the period between January 1, 2020 through April 20, 2024.

- (d) From the funds that remain of the Net Settlement Amount after payment of the above (such remaining funds constituting the majority of the Net Settlement Amount), those funds shall be divided between all workweeks worked by the Class Members during the period between September 12, 2012, through December 31, 2019, in the following manner: (1) payments to Class Members for workweeks worked in Engineering positions shall be paid at 1.5 times the amount paid for workweeks worked in any other position; (2) the amounts paid for workweeks worked in Engineering positions between September 12, 2012, through December 31, 2019 shall be equal, with no such workweek paid more than another; and (3) the amounts paid for workweeks worked in non-Engineering positions between September 12, 2012, through December 31, 2019 shall be equal, with no such workweek paid more than another.
- (e) After extensive discussion between Plaintiffs, Objector-Intervenor, and Objector, it was concluded that the allocation above best balances the competing concerns of: (1) fairness of allocation; (2) allocating the settlement in accordance with the estimate value of the various claims; (3) reducing Class Member confusion; (4) reducing the risk of Administrator error; and (5) minimizing administration burdens and costs. The declarations filed with the Court in support of preliminary approval provide an explanation for the allocation, including the explanations as to why different payments are being made for Class Members that have separated during the Class Period; why different payments are being made for the period before December 31, 2019; and why Engineering positions are receiving larger payments for workweeks in the period before December 31, 2019. You can obtain copies of those declarations through a request to Class Counsel or to the Settlement Administrator. Class Counsel can also be contacted for questions you may have regarding such declarations.

Based on Defendants' records your estimated Settlement Share is <<_____>>.

D. Resolution of Settlement Award Disputes

If a Class Member disputes the accuracy of Defendant's records as to the number of workweeks worked during the Class Period, any documentation supporting such dispute must be submitted to the Claims Administrator and postmarked or actually received via facsimile or email by the Claims Administrator before _____, 2025, which is 45 calendar days from the date this Notice was mailed to all Class Members. Defendant's records, and any additional evidence, will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. All disputes regarding settlement award amounts will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all disputes will be final and binding.

E. Release of Claims

The Joint Stipulation of Class and PAGA Settlement between Plaintiffs/Class Members and Defendant contains a release which releases Defendant and the Released Parties from any and all claims, debts, liabilities, demands, penalties, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of any nature under any state, federal or local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including claims alleged pursuant to California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 225.5 (as derivative of 216), 226, 226.3, 226.7, 227.3, failure to pay all sick time owed and at the regular rate of pay under § 246 *et seq.*, 256, 500, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.* (i.e., PAGA), 3289; as well as, to the extent predicated on "regulatory violations," "general violations," or "repeat violations" associated with "IC spray" practices and procedures, Labor Code §§ 6300, *et seq.* (OSHA Standards), California Industrial Commission Wage Orders, the federal Fair Labor Standards Act, and the California Business and Professions Code sections 17200, *et seq.*; as well as all claims for or related to alleged unpaid wages, minimum wages, overtime or double time wages (at the regular rate of pay), bonus pay (at the regular rate of pay), regular rate of pay claims generally, off-the-clock work (at the regular rate of pay), timely payment of wages during employment and at separation, sick pay (at the regular rate of pay), vested but unused vacation pay (at the regular rate of pay), meal periods and meal period premiums (at the regular rate of pay), rest periods and rest period premiums (at the regular rate of pay), claims for inaccurate wage statements, as well as derivative claims alleging unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, liquidated damages,

penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from September 7, 2012, through April 20, 2024. The aforementioned claims shall be referred to as the “Released Claims.”

F. Enhancement Award for the Class Representative

Subject to approval by the Court, the Class Representatives, and Objectors–Intervenors, will each receive an Enhancement Award not to exceed \$10,000. This payment will be made for service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel’s costs or paying Defendant’s attorneys’ fees and costs for an unsuccessful outcome in the Action, as well as for providing certain releases that were required by Defendant.

G. Attorneys’ Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, and as part of the Gross Settlement Amount, Defendant agrees to pay Class Counsel’s attorneys’ fees and costs, and Objectors–Intervenors Counsel’s attorneys’ fees and costs, to be set by the Court, not to exceed one-third of the Maximum Settlement Amount which equals \$1,500,000, and attorneys’ costs not to exceed \$45,000, subject to approval by the Court. Class Counsel and Objectors–Intervenors Counsel have asked the Court to approve attorneys’ fees in the amount of \$1,500,000, or one third of the Maximum Settlement Amount. Class Counsel and Objectors–Intervenors Counsel attorneys’ fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participate in the Settlement

To receive a cash payment from the Settlement, you do not have to do anything. After final approval by the Court, the payment will be mailed to you at the same address as referenced in this Notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section II.E. above. If your address has changed, you must notify the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (i.e., “opt out”) by submitting a timely written request to the Claims Administrator stating you have received this notice of the Settlement, decided not to participate in the Settlement, and want to be excluded from the Settlement, or words to that effect (“Request for Exclusion”). Your Request for Exclusion must also state your full name, address, date of birth, and the dates you worked for Defendant as a Class Member in California. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, facsimile or email, or the equivalent, to the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

The Request for Exclusion must be postmarked or received via facsimile or email no later than _____, 2025. If you submit a Request for Exclusion which is not postmarked or received via facsimile or email by _____, 2025, your Request for Exclusion will be rejected and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion. If you submit the Request for Exclusion via email, the email must be addressed to _____, must be sent no later than 11:59 p.m. on _____, 2025, and, in addition to including all the information required for submitting a Request for Exclusion, the email must also include the words “opt out” or “request for exclusion” in the subject line.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall receive no Settlement Award or benefits from the Settlement, shall not be deemed to have relinquished the Released Claims against the Released Parties, and, at the excluding Class Member’s own expense, may pursue any claims the

excluding Class Member may have against the Released Parties.

Individuals otherwise meeting the definition of Class Members who exclude themselves from the class and who were employed during the PAGA Period nonetheless shall still receive a payment for the amount of each such individual’s estimated share of the PAGA Payment that was included by the Settlement Administrator in calculating the Claim Amount and shall still be bound by the PAGA release. PAGA Members may not opt-out or object to the PAGA portion of the Settlement. Regardless of whether you exclude yourself from the Class Settlement or “opt out,” you still will be bound by the PAGA Release, you will be deemed to have released the PAGA Released Claims, and you will receive a share of the Net PAGA Amount.

C. Objection to Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you must timely submit a written objection to the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates you were employed in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be sent to the Claims Administrator and must be postmarked or received via facsimile or email no later than _____, 2025. If you submit the objection via email, the email must be addressed to _____, must be sent no later than 11:59 p.m. on _____, 2025, and, in addition to including all the information required for submitting an objection, the email must also include the words “objection” in the subject line. **DO NOT TELEPHONE THE COURT.**

If you choose to submit an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the United States District Court Eastern District of California and deliver copies to the Claims Administrator and each of the attorneys listed below. Such Entry of Appearance must be filed with the Court and delivered to the above Claims Administrator no later than 45 days after the Claims Administrator mails the Notice to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. Additionally, you will be required to certify whether the objection is being made in the interest of the class and/or the identity of any interests being represented by the objection.

D. How to Contact the Settlement Administrator

The Settlement Administrator’s contact information is as follows:

[Settlement Administrator]
 [Address Line 1]
 Address Line 2]
 Telephone: 1 (800) XXX-XXXX
 Facsimile: 1 (800) XXX-XXXX
 Email: XXXXXXXXXXX

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Claims as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue as though the Settlement never occurred and without prejudice to any Party.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final hearing in the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814, on _____, at _____ a.m./p.m. in Department_____, to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for Attorneys' Fees and Costs and the Enhancement Awards to be paid to the Class Representatives.

The Final Approval Hearing may be continued without further notice to the Class. It is not necessary for you to appear at this hearing unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Joint Stipulation of Class and PAGA Settlement" which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Joint Stipulation of Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814.

If you want additional information about this lawsuit and its proceedings, you can also contact Class Counsel in this matter:

Matthew R. Eason, Esq.
EASON & TAMBORNINI, ALC
1234 H Street
Sacramento, CA 95814
(916) 438-1819
Matthew@capcityLaw.com

Timothy B. Del Castillo, Esq.
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
(916) 245-0122
tdc@castleemploymentlaw.com

If you want additional information about the bonus-related overtime claims and Cal-OSHA claims, and the prior objection to the initial settlement, you can contact counsel for Objectors-Intervenors:

BLADY WORKFORCE LAW GROUP LLP
I. Benjamin Blady
5757 Wilshire Boulevard, Suite 535
Los Angeles, CA 90036
Phone: (323) 933-1352
Email: bblady@bwlawgroup.com

LESCHES LAW
Levi Lesches
5757 Wilshire Boulevard, Suite 535
Los Angeles, CA 90036
Phone: (323) 900-0580
Email: levi@lescheslaw.com

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

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EXHIBIT 2

RELEASE OF CLAIMS BY CLASS

A. In exchange for the consideration recited in this Settlement, Named Plaintiffs, Objectors-Intervenors, and all Eligible Class Members on behalf of themselves and on behalf of all who claim by or through them or in their stead, for the period from September 7, 2012 to the April 20, 2024 do hereby and forever release, acquit and discharge and covenant not to sue Defendant, and each of its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-employers, payroll service providers, staffing agencies, Professional Employer Organizations (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations, and/or privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant (referred to as the “Released Parties”) for any and all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties, interest, demands, damages, controversies, attorneys’ fees, costs of suit, losses, expenses, and liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory, federal, state or otherwise), arising from or that could have reasonably been asserted based on the allegations in the Complaint (Exhibits 1-A, 1-B, and 1-C hereto), for:

- (1) Failure to pay wages owed, including claims for: the failure to properly pay all minimum wages (including any and all theories as alleged, or that could have been alleged by Plaintiffs or Objectors-Intervenors related to “off the clock work” or incorrect calculation of the “regular rate of pay”); failure to pay all overtime wages (including any and all theories as alleged, or that could have been alleged, by Plaintiffs and Objectors-Intervenors related to the failure to pay overtime at the “regular rate of pay”); and the failure to pay vested vacation or sick pay wages (including at the regular rate of pay);

- 1 (2) Failure to provide meal periods;
- 2 (3) Failure to authorize and/or permit rest periods;
- 3 (4) Failure to pay “premiums” related to meal and/or rest periods pursuant to
- 4 Cal. Lab. Code § 226.7 at the regular rate of pay;
- 5 (5) Failure to furnish accurate, itemized wage statements in compliance with
- 6 California Labor Code § 226(a);
- 7 (6) Failure to pay all wages upon separation of employment;
- 8 (7) Alleged violation of and/or based on California Labor Code §§ 200, 201-
- 9 203, 204, 210, 218, 218.5, 218.6, 221, 223, 226, 226(a), 226.3, 226.7,
- 10 227.3, failure to pay sick time, including at the regular rate of pay, and any
- 11 claim for PAGA penalties predicated thereon under § 246 *et seq.*, 500, 510,
- 12 511, 512, 515, 558, 1174, 1174.5, 1175, 1182.11, 1182.12, 1185, 1193.6
- 13 1194, 1194.2, 1197, 1197.1, 1198, 1199, 3289, 3751, as well as, to the
- 14 extent predicated on “regulatory violations,” “general violations,” or
- 15 “repeat violations” associated with “IC spray” practices and procedures,
- 16 Labor Code §§ 6300, *et seq.* (OSHA Standards), and Sections 3, 4, 5, 7,
- 17 11, and 12 of the IWC Wage Orders;
- 18 (7) Alleged violations of the California Unfair Competition Law (Business
- 19 and Professions Code sections 17200 *et seq.*); and
- 20 (8) Violation of any provision of the California Labor Code that are subject
- 21 to penalties pursuant to the California Labor Code Private Attorneys
- 22 General Act of 2004 that were or could have been asserted based on the
- 23 allegations in the Complaint, as well as PAGA penalties that were or could
- 24 have been sought in relation to violation of such provisions. This includes
- 25 the §§ 6300 PAGA claims alleged by Objector Martin in the *Martin*
- 26 Action.

Such claims shall be known herein as the “Released Claims.” This Release by Plaintiffs,

1 Objectors-Intervenors, and the Eligible Class Members is intended to settle any and all of the
2 above Released Claims that any of them may have against the Released Parties as of the Effective
3 Date of the Settlement. Such release of Released Claims is also intended to apply regardless of
4 whether such claims are known or unknown, and the release in this Exhibit 2 shall be deemed to
5 include a waiver and relinquishment of the provisions of Section 1542 of the California Civil
6 Code, which provides as follows:

7 **SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO**
8 **CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
9 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**
10 **OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
11 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
12 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

13 Such waiver and relinquishment of Section 1542 *shall only apply to claims meeting the*
14 *limited definition of “Released Claims” as defined above.*

15 Upon the Effective Date of this Settlement, this waiver and release of claims shall be
16 binding on Named Plaintiffs, Objectors-Intervenors, and all Eligible Class Members, including
17 each of their respective attorneys, agents, spouses, executors, representatives, guardians *ad litem*,
18 heirs, successors, and assigns, and shall inure to the benefit of Defendant. Unless they are Opt-
19 Outs, the members of the Settlement Class are deemed to have specifically and knowingly agreed
20 to the waiver and release of claims set forth above.

21 Furthermore, upon occurrence of the Effective Date of the Settlement, Named Plaintiffs
22 and each and every Eligible Class Member and all successors in interest shall be permanently
23 enjoined and forever barred from prosecuting any and all Released Claims against the Released
24 Parties, and each of them.
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EXHIBIT 3

GENERAL RELEASE BY NAMED PLAINTIFFS AND OBJECTORS-INTERVENORS

THIS GENERAL RELEASE AGREEMENT (hereinafter, the “General Release”) is made and entered into by and between Defendant, Named Plaintiffs, and Objectors-Intervenors. In consideration of and exchange for the promises, covenants, and releases contained herein, the Parties agree as follows:

1. No Admission of Liability. It is understood and agreed by the Parties that this Agreement shall not be construed to be an admission of any liability or obligation owed by Defendant, Named Plaintiffs, Objectors-Intervenors, and each of them and/or any other person.

2. Consideration. In consideration of, and exchange for the promises, covenants, and releases contained herein and in the Joint Stipulation, including Named Plaintiffs’ and Objectors-Intervenors respective roles as class and PAGA representatives in the Action, and subject to the Effective Date of the Joint Stipulation, Defendant, Named Plaintiffs, and Objectors-Intervenors agree to the terms set forth herein. Named Plaintiffs and Objectors-Intervenors hereby acknowledge and agree that the Named Plaintiff Enhancements and Objectors-Intervenors Enhancements, along with the other terms agreed to by Defendant in the Joint Stipulation, shall serve as consideration for this General Release, regardless of whether the Court awards the Named Plaintiff Enhancements and/or Objectors-Intervenors Enhancements, or awards it in the amount set forth in the Joint Stipulation. Named Plaintiffs, Objectors-Intervenors, and Class Counsel further acknowledge and agree that they are not owed any additional consideration pursuant to this General Release, including for attorneys’ fees and costs, interest, penalties, or any other amounts, other than as provided in the Joint Stipulation. Named Plaintiffs and Objectors-Intervenors further acknowledge and agree that the amount of consideration provided in this section is not otherwise owed by the Defendant and that Named Plaintiffs and Objectors-Intervenors would not otherwise be entitled to the amounts set forth in this section were it not for their covenants, promises, and releases set forth hereunder. The consideration provided herein shall not prevent Named Plaintiffs and Objectors-Intervenors from receiving their respective Eligible Class Member Shares. Named Plaintiffs and Objectors-Intervenors further acknowledge

1 and agree that they have received all compensation due and payable from Defendant and that
2 nothing further is owed by Defendant, once Named Plaintiffs and Objectors-Intervenors receive
3 the consideration set forth herein.

4 3. Release by Named Plaintiffs and Objectors-Intervenors. Named Plaintiffs and
5 Objectors-Intervenors agree on behalf of themselves, and their respective heirs, executors,
6 administrators, successors, assigns, and lawyers, to release and discharge Defendant and each of
7 its respective attorneys, past, present and future divisions, affiliates, predecessors, successors,
8 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
9 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-
10 employers, payroll service providers, staffing agencies, Professional Employer Organizations
11 (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations,
12 and/or privies, both individually and collectively, and any individual or entity which could be
13 jointly liable with Defendant or any of them (referred to as the “Released Parties”) from any and
14 all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties,
15 interest, demands, damages, controversies, attorneys’ fees, costs of suit, losses, expenses, and
16 liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory,
17 federal, state or otherwise) of every nature whatsoever, whether known or unknown, suspected
18 or unsuspected, anticipated or unanticipated, filed or unfiled, arising out of or in connection with
19 Named Plaintiffs’ and Objectors-Intervenors’ employment with the Defendant. Such released
20 claims shall be known as the “Released Claims.” The Released Claims include, but are not
21 limited to, all claims arising directly or indirectly from Named Plaintiffs’ and Objectors-
22 Intervenors’ employment; or claims or demands related to Named Plaintiffs’ and Objectors-
23 Intervenors’ performance of services, including but not limited to claims arising under federal,
24 state or local law or cause of action, including, but not limited to, unpaid wages (straight time,
25 overtime, bonuses, vacation, wage premiums; other wages); breach of contract; breach of the
26 implied covenant of good faith and fair dealing; infliction of emotional harm; wrongful or
27 retaliatory discharge; harassment, discrimination, or other violation of public policy; defamation
28 and impairment of economic opportunity; violation of the California Fair Employment and

1 Housing Act, the California Labor Code, the California Business and Professions Code, the
2 California Constitution; and any claims for violation of the Civil Rights Act of 1866, Title VII
3 of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990.
4 Notwithstanding the foregoing, the Released Claims shall not include any claims that cannot be
5 released as a matter of law, including without limitation, any workers' compensation claims by
6 Named Plaintiffs and Objectors-Intervenors against the Defendant. This release contemplated by
7 this Section includes Objector-Intervenor Martin's individual-wage-and-hour, PAGA, and Class
8 Action claims as alleged in the *Martin* Action.

9 4. No Release of Martin's Individual Claims. Nothing in this Release, in the General
10 Release, in the Joint Stipulation of Class and PAGA Settlement, the Memorandum of
11 Understanding, or any other document executed as part of the *Westfall* action, resolves, releases,
12 waives, limits, or otherwise affects the Causes of Action, allegations, theories, or claims asserted
13 in Martin's Third Amended Complaint, filed August 29, 2024. Martin acknowledges that his
14 wage-and-hour, PAGA, and Class Claims as alleged in his Original Complaint, First Amended
15 Complaint, and Second Amended Complaint are otherwise subsumed by the Settlement, and
16 subject to the Releases contemplated herein. Martin further acknowledges that all other claims
17 that are not specifically alleged in his Third Amended Complaint in his lawsuit are subject to the
18 General Release and Civil Code section 1542 waiver contemplated herein. Similarly, this Release
19 shall not affect or dispose of Martin's California Labor Code § 132a Workers' Compensation
20 Petition.

21 5. Waiver of Section 1542. Subject to the preceding Section, Named Plaintiffs and
22 Objectors-Intervenors hereby state that it is their intention in executing the above Joint
23 Stipulation that the same shall be effective as a bar to each and every claim, demand, causes of
24 action, obligation, damage, liability, charge, attorneys' fees and costs hereinabove released.
25 Named Plaintiffs and Objectors-Intervenors hereby expressly waive and relinquish all rights and
26 benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of
27 California which provides:

28 **SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO**

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CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. Older Workers’ Benefit Protection Act. Named Plaintiffs and Objectors-Intervenors, and each of them, acknowledge that they are knowingly and voluntarily waiving and releasing any rights each of them may have under the Age Discrimination in Employment Act (“ADEA”). Named Plaintiffs and Objectors-Intervenors also acknowledge that the consideration given them for the waivers and releases in this Agreement is in addition to anything of value to which he was already entitled. Named Plaintiffs and Objectors-Intervenors further acknowledge that they have been advised by this writing, as required by the Older Workers’ Benefit Protection Act, that: (a) their waivers and releases do not apply to any rights or claims that may arise after their respective executions of this agreement; (b) they should each consult with an attorney prior to executing this Agreement; (c) they each have at least twenty-one (21) days to consider this Agreement (although Named Plaintiffs and Objectors-Intervenors may by their own respective individual choice execute this Agreement earlier); (d) they each have seven (7) days following their respective executions of this Agreement to revoke the Agreement; and (e) this Agreement shall not be effective until the date upon which such revocation period has expired. Named Plaintiffs and Objectors-Intervenors may revoke this Agreement only by effecting the delivery of written notice of such revocation to Jason Geller and Aaron Cargain of Fisher & Phillips LLP, located at One Montgomery Street, Suite 3400, San Francisco, CA 94104; email: jgeller@fisherphillips.com and acargain@fisherphillips.com; fax: 415-490-9001, to be received by the close of business on the seventh (7th) day following Named Plaintiffs’ and Objectors-Intervenors’ execution of this Agreement.

7. Agreement to Dismiss All Claims. Because the intent of this Agreement is to bring to an end all claims, controversies, and causes of action Named Plaintiffs and Objectors-Intervenors may have or claim to have against the Released Parties, Named Plaintiffs and Objectors-Intervenors agree, as part of, and consistent with, the Joint Stipulation set forth above, to abandon and/or dismiss with prejudice any claim, proceeding, or cause of action that may be

1 contemplated, filed, or pending in any forum, against the any of the Released Parties; provided
2 however, that Named Plaintiffs and Objectors-Intervenors will be permitted to participate in the
3 Action for which they are appointed class representatives for purposes of effecting the
4 aforementioned Joint Stipulation.

5 8. Binding Nature. This General Release, and all the terms and provisions contained
6 herein, shall bind the heirs, personal representatives, successors and assigns of each Party, and
7 inure to the benefit of each Party, its agents, directors, officers, employees, servants, successors,
8 and assigns.

9 9. Construction. This Agreement shall not be construed in favor of one party or
10 against the other.

11 10. Partial Invalidity. Should any portion, word, clause, phrase, sentence, section, or
12 paragraph of this General Release be declared void or unenforceable, such portion shall be
13 considered independent and severable from the remainder, the validity of which shall remain
14 unaffected.

15 11. Compliance with Terms. The failure to insist upon compliance with any term,
16 covenant or condition contained in this General Release shall not be deemed a waiver of that
17 term, covenant or condition, nor shall any waiver or relinquishment of any right or power
18 contained in this Agreement at any one time or more times be deemed a waiver or relinquishment
19 of any right or power at any other time or times.

20 12. Costs. The Parties agree that in the event any party breaches any provision of this
21 General Release, the breaching party shall pay all costs and attorney's fees incurred in
22 conjunction with enforcement of this General Release.

23 13. Governing Law and Jurisdiction. This General Release shall be interpreted under
24 the law of the State of California, both as to interpretation and performance.

25 14. Section Headings. The section and paragraph headings contained in this General
26 Release are for reference purposes only and shall not affect in any way the meaning or
27 interpretation of this General Release.

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EXHIBIT 5

1 Matthew R. Eason (SBN 160148)
 2 Kyle K. Tambornini (SBN 160538)
 Erin M. Scharg (SBN 285311)
 3 **EASON & TAMBORNINI, ALC**
 1234 H Street, Suite 200
 4 Sacramento, CA 95814
 Telephone: (916) 438-1819
 5 Facsimile: (916) 438-1820

6 Timothy B. Del Castillo (SBN: 277296)
 tdc@castleemploymentlaw.com
 7 Spencer S. Turpen (SBN: 296483)
 st@castleemploymentlaw.com
 8 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**
 2999 Douglas Blvd., Suite 180
 9 Roseville, CA 95661
 Telephone: (916) 245-0122

10 Attorneys for Plaintiffs,
 11 Robert Westfall, individually and
 on behalf of all others similarly situated
 12

13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**
 15

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

18 Plaintiff,

19 v.

20 BALL METAL BEVERAGE CONTAINER
 CORPORATION, a Colorado Corporation, Does
 21 1-20 inclusive,

22 Defendants.
 23

CASE NO. 2:16-CV-02632-DAD-CKD

CLASS ACTION

**[PROPOSED] ORDER GRANTING
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT**

Date:

Time:

Dept.:

Judge:

[Originally Solano Superior Court
 Action No. FCS047654]

State Action Filed: 9-7-2016

FAC Filed: 4-6-2017

Trial Date: None Set

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7 Phone: (323) 900-0580
Email: levi@lescheslaw.com
8

9 ATTORNEYS FOR
Plaintiff Richard MARTIN Individually and on behalf of all others similarly situated; Andre
10 BERNSTEIN

11 Jason A. Geller
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12 Aaron Cargain
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13 John K. Skousen
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14 FISHER & PHILLIPS LLP
15 One Montgomery Street, Ste. 3400
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16 Telephone: (415)490-9000

17 Attorneys for Defendant BALL METAL BEVERAGE CONTAINER CORP.
18 (ERRONEOUSLY SUED AS “BALL METAL BEVERAGE CONTAINER CORPORATION”)
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TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

The Motion for Preliminary Approval of a Class Action Settlement came before this Court, on _____, in Courtroom 3, before the Honorable Dale A Drozd, presiding. The Court having considered the papers submitted in support of the application of the parties, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Stipulation of Settlement”). All terms used herein shall have the same meaning as defined in the Stipulation of Settlement. The settlement set forth in the Stipulation of Settlement (“Settlement”) appears to be fair, adequate and reasonable to the Class.

2. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court.

3. A final fairness hearing on the question of whether the proposed Settlement, attorneys’ fees to Class Counsel, and the Class Representative’s Enhancement Award should be finally approved as fair, reasonable and adequate as to the members of the Class is scheduled in Department _____ on the date and time set forth in the implementation schedule below.

4. This Court approves, as to form and content, the Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement (“Notice”) in substantially the form attached to the Joint Stipulation of Class Action and PAGA Settlement Between Plaintiffs and Defendant as **Exhibit A**. The Court approves the procedure for Class Members to participate in, to opt out of, and to object to, the Settlement as set forth in the Joint Stipulation of Class Action and PAGA Settlement Between Plaintiffs and Defendant, and the Notice.

5. The Court directs the mailing of the Notice by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the

1 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

2 6. It is ordered that the Settlement Class is preliminarily certified for settlement
3 purposes only.

4 7. The Court confirms Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby,
5 and David Ellinger, and Objectors Richard Martin and Andre Bernstein as the Class
6 Representatives, and Timothy B. Del Castillo and Spencer S. Turpen of Castle Law: California
7 Employment Counsel, PC; Matthew R. Eason and Erin Scharg of Eason & Tamborini, ALC; Levi
8 Lesches of Lesches Law; and I. Benjamin Blady of Blady Workforce Law Group LLP as Class
9 Counsel.

10 8. The Court confirms ILYM as the Settlement Administrator.

11 9. To facilitate administration of the Settlement pending final approval, the Court
12 hereby enjoins Plaintiffs and all Class Members from filing or prosecuting any claims, suits or
13 administrative proceedings (including filing claims with the Division of Labor Standards
14 Enforcement of the California Department of Industrial Relations) regarding claims released by
15 the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with
16 the Settlement Administrator.

17 10. The Court orders the following **Implementation Schedule** for further proceedings:

	Event	Date
a.	Deadline for Defendant to Submit Class Member Information to Settlement Administrator	[45 days after Defendant receives Notice of Entry of Preliminary Approval]
b.	Deadline for Settlement Administrator to Mail Notice	[30 days after Defendant submits the Class Member Information to Settlement Administrator]

	Event	Date
c.	Deadline for Class Members to Postmark Requests for Exclusion	[45 calendar days after mailing of the Notice]
d.	Deadline for Receipt by Court and Settlement Administrator of any Objections to Settlement	[45 calendar days after mailing of the Notice and Claim Form]
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days before Final Approval Hearing]
f.	Deadline for Settlement Administrator to file Declaration of Due Diligence and Proof of Mailing	[30 days after expiration of all time periods provided for in sections 10(a) through 10(d) above]
g.	Final Fairness Hearing and Final Approval	Date: _____ Time: _____
h.	Deadline for Settlement Administrator to mail the Settlement Awards, the Enhancement Award, and the Attorneys' Fees and Costs (if Settlement is Effective)	[60 calendar days after Effective Date] (if Settlement is Effective)
i.	Deadline for Settlement Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs (if Settlement is Effective)	[120 calendar days after Effective Date] (if Settlement is Effective)

IT IS SO ORDERED.

Dated: _____

 HON. DALE A. DROZD
 UNITED STATES DISTRICT JUDGE



Title	For Signature
File name	Final_Settlement.pdf
Document ID	41f674240f7c7c802af131cbf8fc8bd1d0841eea
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



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Sent for signature to Andre Bernstein (19andre.bernstein69@gmail.com) and Richard Martin (remcycle8308@gmail.com) from levi@lescheslaw.com
IP: 172.113.227.179



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IP: 71.202.222.36



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The document has been completed.

EXHIBIT B

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16 Attorneys for Plaintiff Robert Westfall
17 Individually and on behalf of all others similarly situated

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ATTORNEYS FOR
Plaintiff Richard MARTIN Individually and on behalf of all others similarly situated; Andre
BERNSTEIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
(Sacramento Division)

ROBERT WESTFALL, individually and
on behalf of all others similarly situated;
DAVID ANDERSON; LYNN BOBBY;
DAVID ELLINGER,

Plaintiffs,

v.

Case No.: 2:16-cv-02632-KJM-GGH

**SECOND AMENDED CLASS ACTION
COMPLAINT**

1. California Wages and Overtime Violations Under Labor Code §§510, 1194, 1199
2. Failure to Provide Meal Breaks Under Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Under

Complaint

1 Richard MARTIN, Individually and on
2 behalf of all others similarly situated,

3 Plaintiff-Intervenor,

4 BALL METAL BEVERAGE
5 CONTAINER CORPORATION., a
6 Colorado Corporation, Does 1-20
7 inclusive,

8 Defendants.

Labor Code § 226.7

- 4. Violation of Labor Code § 226(a)
- 5. Penalties Pursuant to Labor Code § 203
- 6. Violation of Business & Professions Code § 17200
- 7. Penalties Pursuant to Labor Code §2699, et seq.
- 8. Penalties Pursuant to Labor Code § 2699 et seq.

(Amendment permitted as a Matter of Right Pursuant to Labor Code §2699.3(a)(2)(C)

9
10 Plaintiffs Robert Westfall, David Anderson, Lynn Bobby, David Ellinger individually,
11 on behalf of himself, all others similarly situated, (collectively “Plaintiffs”) complain of
12 Defendant BALL METAL BEVERAGE CONTAINER CORPORATION (“Defendant BALL”)
13 and each of them, as follows:

14
15 **I**

16 **INTRODUCTION**

17 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
18 Plaintiffs and all non-exempt employees who hold or held the position of "Electronic
19 Technician," "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who
20 worked in the production, engineering, and production support departments of, Defendant and
21 any subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
22 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
23 94533.

24 2. This is also a Representative Action, pursuant to Labor Code § 2699 et seq., on
25 behalf of Plaintiff and all individuals who hold or held the position of "Electronic Technician,"
26 "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who worked in the
27 production, engineering, and production support departments of, Defendant and any
28

1 subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
2 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
3 94533 (“aggrieved employees”).

4 3. This is also a Representative Action, pursuant to Labor Code §§ 2699 et seq., and
5 §§ 6300 *et seq.* on behalf of Plaintiff-Intervenor Richard Martin and all employees who are
6 currently employed by or formerly employed in the Internal Coating “spray operation” area of
7 the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA 94533.

8 4. Plaintiffs, Plaintiff-Intervenor, and the aggrieved employees are persons
9 employed in the Manufacturing Industry as that term is defined in Industrial Welfare
10 Commission Order No. 1-2001 (hereinafter Wage Order #1).

11 5. Plaintiffs, Plaintiff-Intervenor is not a person covered within the Executive
12 Exemption, the Administrative Exemption, or Professional Exemption contained within Wage
13 Order #1.

14 6. Wage Order #1 provides that “An ‘alternative workweek schedule’ means any
15 regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-
16 hour period.

17 7. At all times relevant within the last four years, Plaintiffs, Plaintiff-Intervenor and
18 the aggrieved parties were regularly scheduled to work in excess of eight hours in a 24-hour
19 period.

20 8. Attached hereto as Exhibit 1 is a true and correct copy of the workweek schedule
21 for the Plaintiffs and other aggrieved employees for the 2016 calendar year.

22 9. At all times relevant within the last four years, Plaintiffs, Plaintiff-Intervenor
23 worked an “alternative workweek schedule” as defined in Wage Order #1.

24 10. Wage Order #1 provides that all work performed in excess of 12 hours per day
25 and any work in excess of eight (8) hours on those days worked beyond the regularly schedule
26 number of workdays established by the alternative workweek shall be paid at double the
27 employee’s regular rate of pay.

28

1 11. At all times relevant times within the four years prior to the filing of the
2 complaint, when Plaintiffs, Plaintiff-Intervenor and the aggrieved parties were an extra non-
3 scheduled shift, and worked in excess of eight hours, they were paid time-and-a-half, and not
4 double time.

5 12. At all times relevant time within the four years prior to the filing of the
6 complaint, Plaintiffs and the aggrieved parties were required as part of their job duties to
7 monitor pages over the plant intercom system (hereinafter “The Pages”). On a typical workday,
8 the number of Pages would routinely exceeds 70 per day. Those pages were spread out through
9 the day based on Plant needs, and thus over any given period of time would average in excess of
10 6 pages an hour, including during the rest and meal break periods.

11 13. At all times relevant time within the four years prior to the filing of the complaint
12 , if the Plaintiffs, Plaintiff-Intervenor and aggrieved employees did not respond to a Page
13 received while they were on their rest break, they were subject to discipline.

14 14. At all times relevant time within the four years prior to the filing of the
15 complaint, if the Plaintiffs, Plaintiff-Intervenor and aggrieved employees did not respond to a
16 Page received by them while they were on their meal break, they were subject to discipline.

17 15. At all times relevant time within the four years prior to the filing of the
18 complaint, while ostensibly on their meal break, Plaintiffs, Plaintiff-Intervenor and the
19 aggrieved employees were not free of all duties as they were required to monitor The Pages.

20 16. At all times relevant time within the four years prior to the filing of the
21 complaint, while ostensibly on their rest break, Plaintiffs, Plaintiff-Intervenor s and the
22 aggrieved employees were not free of all duties as they were required to monitor The Pages.

23 17. At all times relevant time within the four years prior to the filing of the
24 complaint, while ostensibly on their meal break, if the Plaintiffs, Plaintiff-Intervenor and the
25 aggrieved employees had to respond to a Page, they were not compensated for the actual time
26 worked during their meal period, and the Plaintiffs and Plaintiff-Intervenor and the aggrieved
27 employees were not paid at the overtime rate; and/or double the regular rate in instances where
28

1 such practices resulted in Plaintiffs and the aggrieved employees working in excess of 12 hours
2 in a workday

3 18. At all times relevant time within the four years prior to the filing of the
4 complaint, the Plaintiffs and Plaintiff Intervenor and aggrieved employees were subject to
5 annual bonuses which were paid by Defendant. The amount of the bonus paid to each employee
6 differs. Some employees' bonuses are calculated using a percentage that is applied with
7 reference to the employee's gross income for the preceding year and/or their cumulative hours
8 and/or their cumulative overtime hours for the preceding year. Conversely, other employees'
9 bonuses are calculated using a percentage based on number of overtime hours worked. The
10 "percentage-pay" bonus that did not spread the bonus across the non-overtime and/or mandatory
11 hours for the previous year, in order to calculate the regular rate. Rather, overtime was paid at
12 the regular rate of 1.5x the straight hourly pay. Additionally, the Defendant paid two
13 simultaneous bonuses (the BBPNCA bonus and the "Corporate" bonus), without recalculating
14 the regular rate based on the one bonus. Instead, Defendant paid the second bonus as a straight
15 percentage of the underlying gross income (*i.e.* without the other simultaneous bonus).
16 Additionally, Defendant excluded vacation payback, disability pay, medical leave, and other
17 pay, when calculating the percentage bonus. At all times relevant time within the four years
18 prior to the filing of the complaint, the Plaintiffs and Plaintiff Intervenor and aggrieved
19 employees worked scheduled weeks of four (4) consecutive twelve (12) hour workdays,
20 followed by four (4) days off work. The first eight hours of every day would be scheduled
21 regular time, and the last four hours would be paid as scheduled and mandatory overtime.
22 Employees were encouraged to volunteer for fifth and sixth days for such shifts. If insufficient
23 employees volunteered, then employees would be assigned mandatory overtime. Whether
24 mandatory or voluntary, fifth days and sixth days on shifts were paid as straight overtime for all
25 twelve hours. Defendant's employees at the Fairfield location averaged about 400 hours of
26 overtime a year. As a result of these violations, Defendant failed to pay overtime at the regular
27 rate of pay. Additionally, Defendant failed to pay double the regular rate of pay as required.

28

1 19. Additionally, as a result of these violations, Defendant failed to pay overtime in
2 within the time periods specified in §§ 204 *et seq.* of the *Labor Code*.

3 20. Defendant failed to pay sick pay at the regular rate of pay as required under
4 § 264(l) of the *Labor Code*, because Defendant failed to include sick pay in the gross income
5 that Defendants the applied a “percentage bonus” to. Furthermore, Defendant did not include
6 the shift-differential and/or the continuous-operating bonus in calculation of the regular rate
7 when paying sick time.

8 21. At all relevant times within the four years prior to the filing of the complaint, the
9 Plaintiffs, Plaintiff Intervenor and aggrieved employees were required to pass through a security
10 gate to commence their work-day, but they were not compensated for the time reasonably
11 necessary to traverse from the security gate until the point that they could first clock in for their
12 shifts. During such times, Claimant and similarly situated employees were under the control of
13 Defendant, and/or suffered or permitted to work, but were not paid for such work. Employees
14 are owed wages at the overtime rate for this time. Additionally, Employees are owed
15 doubletime to the extent that they worked, when considering such hours worked, more than 12
16 consecutive hours.

17 22. Additionally, Richard Martin, and other employees in the Internal Coating “spray
18 operation” area of the Fairfield Plant, were subjected to “regulatory violations,” “general
19 violations,” and “repeat violations,” as defined in 8 C.C.R. § 334, relating to airborne exposures.

20 23. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and all aggrieved
21 employees, bring this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512,
22 515, 558, 1194, 1199, 2699; Wage Order 7-2001; and California Code of Regulations, Title 8,
23 Section 11070, seeking wages and/or overtime, meal break premiums, rest break premiums,
24 penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

25 24. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and all aggrieved
26 employees, pursuant to Business & Professions Code §§ 17200-17208, also seek injunctive
27
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1 relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct
2 as described herein.

3 **II**

4 **JURISDICTION AND VENUE**

5 25. This Court has subject matter jurisdiction over all causes of action asserted for
6 the reasons set forth in the Notice of Removal, ECF No. 1.

7 26. This Court has personal jurisdiction over Defendant because Defendant has
8 caused injuries in the County of Solano and State of California through their acts, and by their
9 violation of the California Labor Code, California state common law, and California Business &
10 Professions Code sections 17200, *et seq.*

11 27. Venue as to each Defendant is proper in this judicial district, pursuant to section
12 1391(b) of title 28 of the *United States Code*. Defendant operates within California and does
13 business within Solano County. The unlawful acts alleged herein have a direct effect on
14 Plaintiff and all aggrieved employees within the State of California.

15 **III**

16 **PARTIES**

17 **A. PLAINTIFF**

18 28. Plaintiff Robert Westfall, is a competent adult and was a resident of California,
19 was an employee of the Defendants. Plaintiff Westfall was employed by the Defendants to
20 perform services as a “Electronic Technician” commencing on or about January 2001 and
21 continuing through present. Plaintiff Westfall’s claims are common to those of the Proposed
22 Class Members.

23 29. Plaintiffs, Plaintiff-Intervenor and all aggrieved employees were regularly
24 required to:

25 a. Work without being compensated for all hours worked and at the proper
26 corresponding rate;

1 b. Work without being provided meal periods uninterrupted by the Pages or
2 provided a meal period premium at the proper corresponding rate;

3 c. Work without being provided their rest periods uninterrupted by The
4 Pages or provided a rest period premium at the proper corresponding rate; and

5 d. Work without being provided an accurate itemized wage statement that
6 accurately report total hours worked.

7 30. Plaintiff Richard Martin, is a competent adult and a resident of Virginia, is a
8 former employee of the Defendants. Pursuant to stipulation between Plaintiff Westfall, Martin,
9 and Defendant, Plaintiff Martin is conditionally stipulated to as a Plaintiff-Intervenor herein,
10 subject to the agreement that, in the event that certain agreed to conditions are not met, Martin
11 shall take appropriate action to seek his dismissal as a Plaintiff herein.

12 **B. DEFENDANTS**

13 31. Defendant BALL is believed to be a Colorado corporation operating within the
14 State of California.

15 32. Defendant BALL has done and does business throughout the State of California.

16 33. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of Defendants sued herein as DOES 1 to 20, inclusive, are currently unknown to
18 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil
19 Procedure § 474. Plaintiffs, Plaintiff-Intervenor are informed and believes, and based thereon
20 alleges, that each of the Defendants designated herein as a DOE is legally responsible in some
21 manner for the unlawful acts referred to herein. Plaintiffs, Plaintiff-Intervenor will seek leave of
22 court to amend this Complaint to reflect the true names and capacities of the Defendants
23 designated hereinafter as DOES when such identities become known.

24 34. Plaintiffs, Plaintiff-Intervenor are informed and believe, and based thereon
25 allege, that each Defendant acted in all respects pertinent to this action as the agent of the other
26 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
27 and the acts of each Defendant are legally attributable to the other Defendants. Furthermore,
28

1 Defendants in all respects acted as the employer and/or joint employer of Plaintiffs and the
2 aggrieved employees.

3 **IV**

4 **CLASS ACTION ALLEGATIONS**

5 35. Plaintiffs Westfall, Bobby, Anderson and Ellinger bring this action on behalf of
6 themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of
7 Civil Procedure and/or Rule 23(b)(3) and/or Rule 23(b)(2) of the Code of Civil Procedure.
8 Plaintiff Westfall, Anderson, Bobby and Ellinger seeks to represent All non-exempt employees
9 who hold or held the position of "Electronic Technician," "Machinist/Mechanic," and/or
10 "Maintenance", or non-exempt employees who worked in the production, engineering, and
11 production support departments of, Defendant and any subsidiaries or affiliated companies and
12 Does 1 to 20, and who are currently employed by or formerly employed at the Fairfield Plant,
13 located at or near 2400 Huntington Dr, Fairfield, CA 94533 ("Proposed Class").

14 36. Plaintiff Martin brings this action on behalf of himself and all others similarly
15 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure and/or Rule 23(b)(3)
16 and/or Rule 23(b)(2) of the Code of Civil Procedure. Plaintiff seeks to represent All non-
17 exempt employees who hold or held the position of "Electronic Technician,"
18 "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who worked in the
19 production, engineering, and production support departments of, Defendant and any
20 subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
21 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
22 94533 ("Proposed Class").

23 37. Plaintiffs, Plaintiff-Intervenor reserves the right under Rule 3.765(b) of the
24 California Rules of Court and similar applicable governing Federal Rules and Code provisions
25 to amend or modify the class description with greater specificity, by division into subclasses, or
26 by limitation to particular issues.

1 38. Plaintiffs, Plaintiff-Intervenor are informed and believe that this action has been
2 brought and may properly be maintained as a class action under the provisions of § 382 of the
3 Code of Civil Procedure because there is a well-defined community of interest in the litigation
4 and the Proposed Classes are easily ascertainable.

5 **A. Numerosity**

6 39. Plaintiffs, Plaintiff-Intervenor are informed and believes that the potential
7 members of the Proposed Classes as defined are so numerous that joinder of all the members of
8 the Proposed Classes is impracticable.

9 40. While the precise number of proposed Class Members has not been determined
10 at this time, Plaintiffs, Plaintiff-Intervenor are informed and believes that Defendant currently
11 employ, and during the relevant time periods employed approximately 385 Class Members.

12 41. Plaintiffs, Plaintiff-Intervenor allege that Defendant's employment records
13 would provide information as to the number and location of all members of the Proposed
14 Classes.

15 42. Plaintiffs, Plaintiff-Intervenor are informed and believes that joinder of all
16 members of the Proposed Classes is not practicable.

17 **B. Commonality**

18 43. There are questions of law and fact common to the Proposed Classes that
19 predominate over any questions affecting only individual Proposed Class Members. These
20 common questions of law and fact include, without limitation:

21 a. Whether Defendant failed to pay wages and/or overtime compensation
22 and/or double-time compensation, and at the proper corresponding rate, as required by the Labor
23 Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

24 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC
25 Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to provide required meal
26 periods free from the duty to monitor The Pages and interruptions throughout the term of
27
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1 employment and failing to compensate said employees one (1) hours wages in lieu of meal
2 period missed;

3 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order
4 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
5 Classes of their right to take rest periods free from duties to monitor The Pages interruptions
6 throughout the term of employment and failing to compensate said employees one (1) hours
7 wages at the regular rate in lieu of rest periods missed;

8 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-
9 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by
10 failing to provide accurate itemized wage statements that accurately reported, among other
11 things, total hours worked, and the applicable rates, for Plaintiffs and the members of the
12 Proposed Classes;

13 e. Whether Defendant violated §§ 201-203 of the Labor Code by willfully
14 failing to pay Plaintiffs, Plaintiff-Intervenor and the members of the Proposed Classes all
15 compensation that was due and owing upon termination and which was attributable to the
16 alleged violations herein, whether such compensation was due and owing for time spent while
17 on the clock, based on unpaid or underpaid premiums related to failure to provide meal and rest
18 periods, and/or arising in whole or in part based on Defendant's alleged failure to compensate
19 Plaintiffs, Plaintiff-Intervenor and the members of the Proposed Classes for various entitlements
20 which were tied to the regular rate calculation;

21 f. Whether Defendant violated § 204 of the Labor Code by failing to timely
22 pay regular wages, premiums, and overtime, and/or underpayments of such wages, premiums,
23 and overtime, attributable to the alleged violations during the course of employment of Plaintiffs
24 and the members of the Proposed Classes;

25 g. Whether Defendant violated §§ 221, 223, 3751 of the Labor Code by
26 making non-permitted deductions when calculating the percentage bonuses;

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1 h. Whether Defendant employees in the Internal Coating “spray operation”
2 area of the Fairfield Plant, were subjected to airborne exposures constituting “regulatory
3 violations,” “general violations,” and “repeat violations,” (as those terms are defined in 8 C.C.R.
4 § 334);

5 i. Whether Defendant violated § 17200 et seq. of the Business &
6 Professions Code by engaging in the acts previously alleged;

7 j. Whether Plaintiffs, Plaintiff-Intervenor and the members of the Proposed
8 Classes are entitled to equitable relief pursuant to Business & Professions Code § 17200, et seq.;
9 and

10 k. Whether Defendant violated Labor Code § 2699, et seq. by engaging in
11 the acts alleged herein.

12 **C. Typicality**

13 44. Plaintiffs, Plaintiff-Intervenor f are informed and believe that their claims are
14 typical of the claims of the Proposed Classes.

15 45. Plaintiffs, Plaintiff-Intervenor are informed and believes that Plaintiffs, Plaintiff-
16 Intervenor and all members of the Proposed Classes sustained injuries and damages arising out
17 of and caused by Defendant’s common course of conduct in violation of laws, regulations that
18 have the force and effect of law, and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 46. Plaintiffs will fairly and adequately represent and protect the interests of the
21 members of the proposed Classes. Counsel who represent Plaintiffs and the Proposed Classes
22 are competent and experienced in litigating employment class actions.

23 **E. Superiority of Class Action**

24 47. Plaintiffs, Plaintiff-Intervenor are informed and believes that a class action is
25 superior to other available means for the fair and efficient adjudication of this controversy.

26 48. Plaintiffs, Plaintiff-Intervenor are informed and believes that individual joinder
27 of all Proposed Class Members is not practicable, and questions of law and fact common to the
28

1 Proposed Classes predominate over any questions affecting only individual members of the
2 Proposed Classes.

3 49. Plaintiffs, Plaintiff-Intervenor are informed and believes that each member of the
4 Proposed Classes has been damaged and is entitled to recovery by reason of Defendant’s illegal
5 policy and/or practice of failing to provide wages and/or overtime, meal periods, rest periods,
6 failing to provide accurate itemized wage statements, and failing to pay all wages upon
7 resignation or termination.

8 50. Plaintiffs, Plaintiff-Intervenor are informed and believes that Class action
9 treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 51. Plaintiffs, Plaintiff-Intervenor are unaware of any difficulties that are likely to be
12 encountered in the management of this action that would preclude its maintenance as a class
13 action.

14
15 **VI**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

18 **LABOR CODE §§ 510, 1194, and 1199**

19 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, ELLINGER, and MARTIN,**

20 **individually and on behalf of all employees similarly situated, against ALL**

21 **DEFENDANTS, and DOES 1 through 20**

22 52. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
23 incorporate by reference all previous paragraphs.

24 53. Plaintiffs and the Proposed Classes were forced to work on a regular and
25 consistent basis without receiving compensation for all hours worked at the proper rate.

26 54. Plaintiffs and the Proposed Classes were not provided meal and rest breaks free
27 from duty as a result of a paging system that was used to communicate in the Fairfield,
28

1 California plant. Each missed meal period was an on-duty meal period and should have been
2 paid at the regular rate of pay. Plaintiffs and the Proposed Classes were not paid for the on-duty
3 meal breaks at the regular rate of pay. Failure to pay wages for the on duty meal break deprived
4 Plaintiffs and the Proposed Classes, of, among other compensation owed, overtime wages.

5 55. Plaintiffs and the Proposed Classes were required to attend turnover meetings at
6 the beginning and end of each shift to advise and communicate with the oncoming shift
7 employees of the events that had occurred during the prior shift. Plaintiffs and the Proposed
8 Classes were not always paid for this time which often extended beyond the scheduled twelve
9 hour shift. Plaintiffs and the Proposed Classes are owed wages at the overtime rate for this time.
10 Plaintiffs and the Proposed Classes are owed doubletime to the extent that they worked, when
11 considering such hours worked, more than twelve consecutive hours.

12 56. Plaintiffs and the Proposed Classes were required to pass through a security gate
13 to commence their work day but they were not compensated for the time reasonably necessary
14 to traverse form the security gate until the point that they could first clock in for their shifts.
15 During such times, Plaintiffs and the Proposed Classes were under the control of Defendant
16 and/or suffered or permitted to work, but were not paid for such work. Plaintiffs and the
17 Proposed Classes are owed wages at the overtime rate for this time. Additionally, Plaintiffs and
18 the Proposed Classes are owed doubletime to the extent that they worked, when considering
19 such hours worked, more than twelve consecutive hours.

20 57. Defendant has been paying annual bonuses to Plaintiffs and the Proposed
21 Classes, which bonuses are paid in mid-February annually. The amount of the bonus paid to
22 each employee differs. Some employees' bonuses are calculated using a percentage that is
23 applied with reference to the employee's gross income for the preceding year and/or their
24 cumulative hours and/or their cumulative overtime hours for the preceding year. Conversely,
25 other employees' bonuses are calculated using a percentage based on number of overtime hours
26 worked. Plaintiffs and the Proposed Classes worked scheduled weeks of four (4) consecutive
27 twelve (12) hour workdays, followed by four (4) days off work. The first eight hours of every
28 day would be scheduled regular time, and the last four hours would be paid as scheduled and
mandatory overtime. Employees were encouraged to volunteer for fifth and sixth days for such

1 shifts. If insufficient employees volunteered, then employees would be assigned mandatory
2 overtime. Whether mandatory or voluntary, fifth days and sixth days on shifts were paid as
3 straight overtime for all twelve hours. Defendant’s employees at the Fairfield location averaged
4 about 400 hours of overtime a year. Defendant does not spread the bonus across the non-
5 overtime and/or mandatory hours for the previous year, in order to calculate the regular rate.
6 Rather, overtime is paid at the regular rate of 1.5x the straight hourly pay. Additionally, the
7 Defendant paid two simultaneous bonuses (the BBPNCA bonus and the “Corporate” bonus),
8 without recalculating the regular rate based on the one bonus. Instead, Defendant paid the
9 second bonus as a straight percentage of the underlying gross income (*i.e.* without the other
10 simultaneous bonus). As a result of these violations, Defendant failed to pay overtime at the
11 regular rate of pay.

12 58. In addition, Defendant failed to pay Plaintiffs and the Proposed Classes sick pay
13 at the regular rate of pay as required under § 264(l) of the *Labor Code*, because Defendant failed
14 to include sick pay in the gross income that Defendants the applied a “percentage bonus” to.
15 Furthermore, Defendant did not include the shift-differential and/or the continuous-operating
16 bonus in calculation of the regular rate when paying sick time. Defendant also violated *Labor*
17 *Code* §227.3 which requires employers to pay unused vacation time at the regular rate.
18 Defendant violated this section by failing to include shift differential and/or the continuous
19 operating bonus in the calculation of the regular rate at the time of Plaintiffs and the Proposed
20 Class Members use of vacation time and/or upon payment at termination of employment.

21 59. Defendant often scheduled Plaintiffs and the Proposed Classes for mandatory
22 fifth and/or sixth days of 12-hour shifts, and Plaintiffs maintain that section 511(b) of the *Labor*
23 *Code*, by implication, requires the payment of doubletime for all hours worked in excess of
24 eight hours on the fifth, sixth, and seventh days of consecutive shifts that all exceed 10 hours in
25 length. Additionally, Defendants failed to adhere to its designated start time and/or to its
26 designated week start for purposes of calculating overtime and doubletime.

27 60. As a result of the unlawful acts of Defendant, Plaintiffs and the members of the
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1 Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at
2 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
3 fees, and costs.

4 VII

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

7 **LABOR CODE § 226.7 AND LABOR CODE § 512**

8 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**

9 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**

10 **through 20**

11
12 61. Plaintiffs on behalf of himself and the Proposed Classes, realleges and
13 incorporate by reference all previous paragraphs.

14 62. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
15 compensation for one or more meal periods the employer fails to provide each day.

16 63. Employees are entitled to a first meal period of at least thirty (30) minutes for
17 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
18 meal period of at least thirty (30) minutes for shifts over ten (10) hours, to be provided within
19 ten (10) hours of work.

20 64. Plaintiffs and the Proposed Classes consistently worked shifts over five (5)
21 hours.

22 65. Defendant failed to provide Plaintiffs and the Proposed Class with proper
23 uninterrupted meal breaks free from all duties including Pages, of not less than thirty (30)
24 minutes as required by the Labor Code during the relevant time period.

25 66. Defendant's Fairfield plant manufactures cans and employees in the engineering,
26 production and support departments generally work a rotating schedule working twelve-hour
27 shifts, four days on, four days off. Defendant utilized a paging system to communicate with
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1 employees of the needs and changes to the production line. The paging system had a speaker in
2 the breakroom. The applicable Wage Order, 1-2001, requires that “suitable resting facilities
3 shall be provided in an area separate from the toilet rooms and shall be available to employees
4 during work hours.” The same Wage Order requires that “if a meal period occurs on a shift
5 beginning or ending at or between the hours of 10:00 p.m. and 6:00 a.m., facilities shall be
6 available for securing hot food and drink or for heating food or drink, and a suitable sheltered
7 place shall be provided in which to consume such food or drink.” While Defendant provided a
8 room that complied on its face with these two portions of the Wage Order, when the employees
9 used the suitable resting facilities, they did so on the condition that they remained vigilant and
10 continued to work by monitoring pages, thus depriving them of meal and rest breaks free from
11 duties. Employees are owed a meal break premium and rest break premium at the regular rate of
12 pay for each day that they worked.

13 67. Additionally, even for those meal periods for which Defendants paid a meal
14 period premium, Defendants failed to pay the premium at the regular rate of pay, because,
15 amongst other matters, Defendants did not include the shift-differential, economic value added
16 bonus, and/or the continuous-operating bonus, among others, in calculation of the regular rate.

17 68. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
18 to damages in an amount equal to one (1) hour of wages at the regular rate of compensation for
19 one or more denied meal breaks per day in a sum to be proven at trial.

20 **VIII**

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

23 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**

24 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**

25 **through 20**

26 69. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
27 incorporate by reference all previous paragraphs.

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1 on written orders of the employee may be aggregated and shown as one item, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal
5 entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period
6 and the corresponding number of hours worked at each hourly rate by the employee”

7 77. Section 226(a) of the California Labor Code requires employers to itemize in
8 wage statements all deductions from payment of wages, the appropriate rates of pay, and to
9 accurately report total hours worked by the employees. It also requires that an employer include
10 its name and address on the wage statement. Defendant has knowingly and intentionally failed
11 to comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed
12 Classes.

13 78. IWC Wage Orders require employers to maintain time records showing, among
14 others, when the employee begins and ends each work period, meal periods, split shift intervals
15 and total daily hours worked in an itemized wage statements, and must show all deductions
16 from payment of wages, and accurately report total hours worked by employees. Defendant
17 failed to keep accurate records detailing, among other things, the total daily hours worked for
18 Plaintiffs and members of the Proposed Classes.

19 79. Defendant provided itemized wages statements that failed to reflect, among
20 other things, the correct regular wage rate, overtime wage rate, and accurate number of hours
21 worked.

22 80. An employee suffering injury as a result of a knowing and intentional failure by
23 an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
26 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
27 costs and reasonable attorneys’ fees.

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X

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1 through 20

81. Plaintiffs, on behalf of the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

82. Numerous members of the Proposed Classes are no longer employed by Defendant. They were either terminated or quit Defendant’s employ.

83. Defendant’s failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Classes to penalties under Labor Code § 203, which provides that an employee’s wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

84. Defendant has failed to pay others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, the Proposed Classes whose employment ended are entitled to a penalty in the amount of their daily wage multiplied by thirty (30) days.

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XI

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200

By Plaintiffs WESTFALL, ANDERSON, BOBBY, MARTIN and ELLINGER,

individually and on behalf of all employees similarly situated, against ALL

DEFENDANTS, and DOES 1 through 20

85. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

86. This is a Class Action for Unfair Business Practices. Plaintiffs, Plaintiff-Intervenor, on behalf of themselves, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Plaintiff-Intervenor, the general public, and the Proposed Classes. Plaintiffs, Plaintiff-Intervenor seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

87. Plaintiffs, Plaintiff-Intervenor are “persons” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

88. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair business practices.

89. California’s wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding

1 employers and their employees from competitors who lower their costs by failing to comply
2 with minimum labor standards.

3 90. Defendant has violated statutes and public policies as alleged herein. Through
4 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
5 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
6 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
7 Plaintiffs, Plaintiff-Intervenor, and all persons similarly situated, and all interested persons of
8 rights, benefits, and privileges guaranteed to all employees under law.

9 91. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
10 violation of § 17200 et seq. of the Business & Professions Code.

11 92. Defendant, by engaging in the conduct herein alleged, either knew or in the
12 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
13 violation of § 17200 et seq. of the Business & Professions Code.

14 93. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs,
15 Plaintiff-Intervenor and others similarly situated have been damaged in a sum as may be proven.

16 94. Unless restrained, Defendant will continue to engage in the unlawful conduct as
17 alleged above. Pursuant to the Business & Professions Code, this court should make such
18 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
19 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
20 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
21 restitution and disgorgement of profits which may be necessary to restore Plaintiffs, Plaintiff-
22 Intervenor and members of the Proposed Classes the money Defendant has unlawfully failed to
23 pay.

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1 XII

2 SEVENTH CAUSE OF ACTION

3 **BY PLAINTIFF IN HIS REPRESENTATIVE CAPACITY ON BEHALF OF ALL**
4 **OTHER EMPLOYEES SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL**
5 **ACT—LABOR CODE SECTION 2698, ET. SEQ. AGAINST DEFENDANTS**

6 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**
7 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**
8 **through 20**

9 95. Plaintiffs incorporates paragraphs 1 through 75 of this complaint as if fully
10 alleged herein.

11 96. Plaintiffs and the Plaintiff Class Members are aggrieved employees as defined *in*
12 *Labor Code §2699(a)*. Plaintiffs bring this cause of action on behalf of themselves and the
13 Plaintiff Class Members affected by the labor law violations alleged in this complaint.

14 97. Defendant committed the following violations of the California Labor Code
15 against Plaintiffs and Plaintiff Class Members, and, on information and belief, against other
16 current or former “Electronic Technician” while they were and are employed by Defendant,
17 and each of them:

18 a. Defendants, and each of them, violated *Labor Code §§226.7 and 512* by not
19 providing lawful meal breaks free from all duties for Plaintiffs and Plaintiff Class Members or
20 paying meal period premiums in lieu thereof at the regular rate of pay.

21 b. Defendants, and each of them, violated *Labor Code §226.7* by not providing
22 lawful rest periods for Plaintiffs and Plaintiff Class Members or paying rest period premiums in
23 lieu thereof at the regular rate of pay;

24 c. Defendants, and each of them, violated *Labor Code §226(a)* by not providing an
25 accurate itemized wage statement to Plaintiffs and Plaintiff Class Members;

26 d. Defendants, and each of them, violated *Labor Code §510 and §1194* by failing to
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1 pay Plaintiffs and Plaintiff Class Members wages for all hours worked including payment of
2 overtime wages at the regular rate for all hours worked beyond an eight (8) hour day and forty
3 (40) hours per week.

4 e. Defendants, and each of them, violated *Labor Code §1194, 1197.1, IWC Wage*
5 *Order No. 1-2001 §4* by failing to pay minimum wages to Plaintiffs and Plaintiff Class
6 Members.

7 f. Defendants, and each of them, violated *Labor Code §227.3* which requires
8 employers to pay unused vacation time at the regular rate. Defendant violated this section by
9 failing to include shift differential and/or the continuous operating bonus in the calculation of
10 the regular rate.

11 g. Defendants, and each of them, violated *Labor Code §1174* by failing to
12 accurately record all time worked on their time records.

13 h. Defendants, and each of them, violated *Labor Code §204* by failing to pay
14 Plaintiffs and the Plaintiff Class Members for all overtime and doubletime no later than the
15 second payday after the overtime and doubletime labor occurred. Defendants, and each of them,
16 violated *Labor Code §246* by failing to provide a reasonable minimum increment, not to exceed
17 two hours for the use of paid sick leave.

18 i. Defendants, and each of them, violated *Labor Code §§ 221, 224, 3751, IWC*
19 *Wage Order No. 1-2001 §11* by deducting from employee wages based on reductions to
20 financial performance that were attributable to cash shortage, breakage, loss of equipment and
21 payments relating to workers' compensation benefits.

22 j. Defendants, and each of them, violated *Labor Code §§201-203* by failing to
23 timely pay Plaintiffs and Plaintiff Class Members all wages owed to an employee who is
24 discharged or quits.

1 k. Defendants, and each of them, violated *Business and Professions Code §§17200*
2 *et. seq.* by committing unlawful business practices.

3 98. Pursuant to *Labor Code Section 2699(a)* Plaintiff seeks to recover civil penalties,
4 as otherwise provided by statute, for which Defendants, and each of them, are liable as a
5 result of Defendants' violation of the *Labor Code* set forth herein above in an amount to be
6 proved at trial.

7
8 Wherefore, Plaintiffs request relief as pray for hereinafter.

9 **XII**

10 **EIGHTH CAUSE OF ACTION**

11 **BY PLAINTIFF-IN-INTERVENTION RICHARD MARTIN IN HIS**
12 **REPRESENTATIVE CAPACITY ON BEHALF OF ALL OTHER EMPLOYEES**
13 **SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL ACT—LABOR CODE**
14 **SECTION 2698, ET. SEQ. AGAINST DEFENDANTS**

15 **By Plaintiffs MARTIN, individually and on behalf of all employees similarly situated,**
16 **against ALL DEFENDANTS, and DOES 1 through 20**

17 99. Plaintiff Martin incorporates the foregoing paragraphs of this complaint as if
18 fully alleged herein.

19 100. Plaintiff Martin all employees who are currently employed by or formerly
20 employed in the Internal Coating "spray operation" area of the Fairfield Plant, located at or
21 near 2400 Huntington Dr, Fairfield, CA 94533, are aggrieved employees as defined in *Labor*
22 *Code §2699(a)*. Plaintiff Martin brings this cause of action on behalf of himself and the
23 Class Members affected by the labor law violations alleged in this cause of action.

24 101. Defendant committed the following violations of the California Labor Code
25 against Plaintiff and relevant Class Members while they were and are employed by
26 Defendant, including:

27 a. Defendants, and each of them, violated 8 C.C.R § 5149 by not providing adequate
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1 training regarding handled chemicals.

2 b. Defendants, and each of them, violated 8 C.C.R § 5144 by not providing adequate
3 engineering controls. (See also 8 C.C.R. § 5153(b)(1); id., § 5153(e)& (g).)

4 c. Defendants, and each of them, violated 8 C.C.R § 5192, § 5149; § 5149; § 5144 by
5 not providing adequate response training.
6

7 102. Pursuant to *Labor Code Section 2699(a)* Plaintiff seeks to recover civil
8 penalties, as otherwise provided by statute, for which Defendants, and each of them, are
9 liable as a result of Defendants’ violation of the *Labor Code* set forth herein above in an
10 amount to be proved at trial.

11 Wherefore, Plaintiff request relief as pray for hereinafter.

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14 **XIII**

15 **RELIEF REQUESTED**

16 **WHEREFORE**, Plaintiffs, Plaintiff-Intervenor pray for the following relief:

17 1. For compensatory damages in the amount of unpaid wages and/or overtime not
18 paid to Plaintiffs, Plaintiff-Intervenor and each other member of the Proposed Classes from at
19 least four (4) years prior to the filing of this action to the present as may be proven;

20 2. For compensatory damages in the amount of Plaintiffs, Plaintiff-Intervenor and
21 each member of the Proposed Classes’ correct hourly premium wage for each rest period and/or
22 meal period missed or taken late during the liability period as may be proven;

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1 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
2 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
3 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000);

5 4. For penalties pursuant to Labor Code § 203 for all employees who were
6 terminated or resigned equal to their daily wage times thirty (30) days;

7 5. That the court determine that the failure of the Defendants to pay wages to the
8 Plaintiffs, Plaintiff-Intervenor and Plaintiff Class members be adjudged and decreed to violate
9 the applicable regulations and statutes;

10 6. An award of prejudgment and post judgment interest;

11 7. An order enjoining Defendant and its agents, servants, and employees, and all
12 persons acting under, in concert with, or for it from providing Plaintiffs, Plaintiff-Intervenor
13 with proper wages, premiums, and/or overtime, meal periods, rest periods, accurate itemized
14 wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 203,
15 226(a), 226.7, 510, 512, 515, 558, 1194, 1199 and IWC 7-2001;

16 8. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200, including disgorgement or profits, in an amount as may be proven;

18 9. For penalties and other relief pursuant to Labor Code §2699, et seq.;

19 10. As Plaintiffs, Plaintiff-Intervenor have properly given Defendant Notice,
20 Plaintiffs, Plaintiff-Intervenor seeks unpaid wages and penalties pursuant to Labor Code §558,
21 as permitted by Labor Code §2699(f), in the amount of, fifty dollars (\$50) for each initial
22 violation for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover such underpaid wages and one hundred
24 (\$100) dollars for each subsequent violation for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount sufficient to recover such
26 underpaid wages;

27 11. Prejudgment interest;

28

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT WESTFALL, individually and on behalf of all others similarly situated; DAVID ANDERSON; LYNN BOBBY; DAVID ELLINGER,

Plaintiffs,

Richard MARTIN, Individually and on behalf of all others similarly situated,

Plaintiff-Intervenor,

v.

BALL METAL BEVERAGE CONTAINER CORPORATION., a Colorado Corporation, Does 1-20 inclusive,

Defendants.

CASE NO. 2:16-CV-02632-KJM-GGH

CLASS ACTION

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, AND HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT

ATTENTION: ALL CURRENT AND FORMER EMPLOYEES OF BALL METAL BEVERAGE CONTAINER CORPORATION AT ITS FAIRFIELD, CALIFORNIA PLANT AT ANY TIME DURING THE PERIOD BETWEEN SEPTEMBER 7, 2012, AND APRIL 20, 2024, IN THE POSITIONS OF “ELECTRONIC TECHNICIAN,” “MACHINIST/MECHANIC,” AND/OR “MAINTENANCE”; OR WHO WORKED IN NON-EXEMPT POSITIONS IN THE PRODUCTION, ENGINEERING, AND PRODUCTION SUPPORT DEPARTMENTS AT THE FAIRFIELD PLANT.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO A SETTLEMENT AWARD OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement of the United States District Court of the Eastern District of California entered _____, 2025, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the United States District Court of the Eastern District of California on behalf of all current and former non-exempt employees by Defendant in California at any time between September 7, 2012, through April 20, 2024 (the “Settlement Class” or the “Class Members”); however, the Settlement Class does not include persons: (1) who previously settled, released or received awards for claims covered by the Settlement; or (2) who submit valid Requests for Exclusion (as explained below).

“Defendant” and “Released Parties” in the Action include (i) BALL METAL BEVERAGE CONTAINER CORPORATION (“Defendant”); each of its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-employers, payroll service providers, staffing agencies, Professional Employer Organizations (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations, and/or privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant.

You have received this Notice because Defendant’s records indicate you worked as a Class Member during the Class Period (defined below). This notice is to advise you of how you can participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On September 6, 2016, Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger filed this action, titled *Robert Westfall, et al. v. Ball Metal Beverage Container Corporation, et al.*, in Solano County Superior Court, Case No. FCS047654. Defendant subsequently removed the State Court Action to the United States District Court for the Eastern District of California, thereby initiating the civil action entitled *Westfall v. Ball Metal Beverage Container Corporation*, Case No. 2:16-cv-02632-KJM-GGH. Plaintiffs filed a First Amended Class Action Complaint on April 6, 2017.

Separately, on November 23, 2020, Objector and conditional Plaintiff-in-Intervention Richard Martin filed a separate lawsuit, titled *Martin v. Ball Corporation et al.*, in Solano County Superior Court, Case No. FSC055690. Defendant subsequently removed the State Court Action to the United States District Court for the Eastern District of California, thereby initiating the civil action entitled *Martin v. Ball Corporation, et al.*, Case No. 2:21-cv-01409. Thereafter, on July 12, 2021, Martin filed a First Amended Class Action Complaint in that action. On May 31, 2024, Plaintiffs Westfall, Anderson, Bobby, and Ellinger filed a Second Amended Class Action Complaint in the *Westfall* action, to which Martin conditionally joined, together with the Class claims, and PAGA claims, that had been previously alleged in the *Martin* action. The Class Period is between September 7, 2012, and April 20, 2024 (the “Class Period”).

The Operative *Westfall* Second Amended Complaint alleges causes of action for: (1) California Wages and Overtime violations under Labor Code §§ 510, 1194, 1199; (2) failure to provide meal breaks under Labor Code §§ 226.7 and 512; (3) failure to provide rest breaks under Labor Code § 226.7; (4) violation of Labor Code § 226(a); (5) penalties pursuant to Labor Code § 203; (6) violation of Business & Professions Code § 17200, *et seq.*; (7)-(8) violations of Cal. Lab. Code §§ 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004 “PAGA”), and, in association with “IC spray” practices and procedures, any “regulatory violations,” “general violations,” and “repeat violations” of Cal. Lab. Code §§ 6300 *et seq.*, as defined in 8 C.C.R. § 334, on behalf of Class Members, as alleged in the Second Amended Complaint, from September 7, 2012 through trial. Plaintiffs also seek recovery of alleged damages, penalties, interest, and attorneys’ fees. The “PAGA Period” shall mean the period from July 4, 2015, to April 20, 2024.

Defendant denies all claims and liability, denies that Plaintiffs and the Class Members are entitled to any recovery, and asserts affirmative defenses in response to Plaintiffs’ and Class Members’ claims.

The Action has been actively litigated. There have been on-going investigations, extensive discovery, multiple mediation sessions, and an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement after their negotiations. Previously, the Plaintiffs and Defendant reached a proposed settlement, to which Objector-Intervenor Martin, and Objector Andre Bernstein, objected on various grounds. Thereafter, Plaintiffs, Objector-Intervenor Martin, Objector-Intervenor Bernstein, and Defendant reached, after extensive negotiations, the class-wide Settlement which Plaintiffs, Objector-Intervenor Martin, Objector-Intervenor Bernstein all support as fair, reasonable, and adequate as to the Class Members. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendant continues to expressly deny all allegations and claims and confirms that this Settlement shall not constitute an admission of liability by Defendant.

The Parties have entered into a Joint Stipulation of Class and PAGA Settlement (“Settlement Agreement”), which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you are entitled to participate in the Settlement and object to it or to exclude yourself (“opt out”) from the Settlement.

On April 3, 2024, Ivan Aguirre filed an action entitled *Ivan Aguirre, an individual and on behalf of all others similarly situated vs. Ball Metal Beverage Container Corp et al.* Solano County No. CU24-02471 (“Aguirre Class Action”). On July 8, 2024, Ivan Aguirre filed a separate PAGA action entitled *Ivan Aguirre vs. Ball Metal Beverage Container Corp. et al.*, Solano County No. CU24-05147 (“Aguirre PAGA Action”). The lawsuits filed by Aguirre allege substantially similar class-action and PAGA claims against the same Defendant. The Settlement in the instant matter will impact the class-action and PAGA claims as alleged in the *Aguirre* lawsuits for the Class Period but will not otherwise affect your rights outside of the Class Period.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay a maximum of \$4,500,000 (“Gross Settlement Amount”), which sum shall include all Settlement Awards for Class Members, Class Counsels’ and Objectors-Intervenors’ attorneys’ fees, Class Counsels’ and Objectors-Intervenors’ litigation expenses and costs, the enhancement award to the Class Representatives and Objectors-Intervenors, \$100,000 allocated to penalties under the PAGA with \$75,000 paid to the California Labor and Workforce Development Agency (“LWDA”) and \$25,000 paid to the Settlement Class, and all Settlement administration expenses, including skiptracing expenses to verify the addresses of the Class Members no longer employed by Defendant (“Maximum Settlement Amount”). The entire Maximum Settlement Amount will be fully paid out.

The net settlement amount will be calculated by deducting Class Counsels’ and Objectors-Intervenors’ attorneys’ fees, Class Counsels’ and Objectors-Intervenors’ litigation expenses and costs, the enhancement award to the Class Representatives and Objectors-Intervenors, the fees and expenses of the Claims Administrator (as well as \$2,685 paid to Kroll in association with the prior attempted settlement), and \$75,000 payable to the LWDA for alleged PAGA penalties, which will result in a “Net Settlement Amount” for distribution to all Class Members. As explained further below, the amount of each Class Member’s Settlement Award will depend on the number of eligible Class Member Work Weeks attributed to Class Members individually during the Class Period as defined by the Settlement. Additionally, as explained further below, eligible Class Members will receive enhanced amounts if: (1) they were employed in an “Engineering” position during the Class Period; and, separately and additionally, if: (2) they separated from Defendant’s employment during the Class Period. Additionally, according to the Settlement, PAGA Members employed during the PAGA Period will be entitled to a pro-rata share of the PAGA Penalties.

This Notice will list for each Class Member the individual Class Member’s estimated Settlement Award assuming all Class Members participate in the Settlement, which amount is based on the Class Member’s applicable percentage of the Net Settlement amount, the number of eligible Class Member Work Weeks attributed to the Class Member individually, whether the Class Member worked in an “Engineering” Position, whether the Class Member separated from employment during the Class Period, and the Class Member’s share of PAGA penalties. The actual Settlement Awards may be more or less than the amount estimated depending on the number of participating Class Members, and on the distributions approved and allocated by the Court.

B. Settlement Formula, and Your Settlement Award

Each Class Member will receive an individual Settlement Award unless they submit a valid and timely Request for Exclusion. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as follows: 30% will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; 70% will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC will issue. Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the Class Period covered by the Settlement.

In addition to the above, the following factors will be determinative of your “Eligible Class Member Share” or “Settlement Award.”

- (a) **Waiting Time Penalty Enhancement:** Class members that have left employment during the Class Period shall receive an award of at least fifty percent (50%) of their last regular rate of pay times 360 hours. These class members shall also receive payment as set forth below.
- (b) **PAGA Penalty:** The \$25,000 PAGA penalty paid to the Settlement Class shall be divided equally between all pay periods worked by the Class Members during the Class Period.
- (c) **Post-Filing Period Allocation:** For the period after the time when Defendant implemented changes relating to its paging policies, (which period is defined, for purposes of simplifying administration, as January 1, 2020 and thereafter), nine percent (9%) of the Net Settlement Amount shall be divided equally between all workweeks worked by the Class Members during the period between January 1, 2020 through April 20, 2024.

- (d) From the funds that remain of the Net Settlement Amount after payment of the above (such remaining funds constituting the majority of the Net Settlement Amount), those funds shall be divided between all workweeks worked by the Class Members during the period between September 12, 2012, through December 31, 2019, in the following manner: (1) payments to Class Members for workweeks worked in Engineering positions shall be paid at 1.5 times the amount paid for workweeks worked in any other position; (2) the amounts paid for workweeks worked in Engineering positions between September 12, 2012, through December 31, 2019 shall be equal, with no such workweek paid more than another; and (3) the amounts paid for workweeks worked in non-Engineering positions between September 12, 2012, through December 31, 2019 shall be equal, with no such workweek paid more than another.
- (e) After extensive discussion between Plaintiffs, Objector-Intervenor, and Objector, it was concluded that the allocation above best balances the competing concerns of: (1) fairness of allocation; (2) allocating the settlement in accordance with the estimate value of the various claims; (3) reducing Class Member confusion; (4) reducing the risk of Administrator error; and (5) minimizing administration burdens and costs. The declarations filed with the Court in support of preliminary approval provide an explanation for the allocation, including the explanations as to why different payments are being made for Class Members that have separated during the Class Period; why different payments are being made for the period before December 31, 2019; and why Engineering positions are receiving larger payments for workweeks in the period before December 31, 2019. You can obtain copies of those declarations through a request to Class Counsel or to the Settlement Administrator. Class Counsel can also be contacted for questions you may have regarding such declarations.

Based on Defendants' records your estimated Settlement Share is <<_____>>.

D. Resolution of Settlement Award Disputes

If a Class Member disputes the accuracy of Defendant's records as to the number of workweeks worked during the Class Period, any documentation supporting such dispute must be submitted to the Claims Administrator and postmarked or actually received via facsimile or email by the Claims Administrator before _____, 2025, which is 45 calendar days from the date this Notice was mailed to all Class Members. Defendant's records, and any additional evidence, will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. All disputes regarding settlement award amounts will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all disputes will be final and binding.

E. Release of Claims

The Joint Stipulation of Class and PAGA Settlement between Plaintiffs/Class Members and Defendant contains a release which releases Defendant and the Released Parties from any and all claims, debts, liabilities, demands, penalties, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of any nature under any state, federal or local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including claims alleged pursuant to California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 225.5 (as derivative of 216), 226, 226.3, 226.7, 227.3, failure to pay all sick time owed and at the regular rate of pay under § 246 *et seq.*, 256, 500, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.* (i.e., PAGA), 3289; as well as, to the extent predicated on "regulatory violations," "general violations," or "repeat violations" associated with "IC spray" practices and procedures, Labor Code §§ 6300, *et seq.* (OSHA Standards), California Industrial Commission Wage Orders, the federal Fair Labor Standards Act, and the California Business and Professions Code sections 17200, *et seq.*; as well as all claims for or related to alleged unpaid wages, minimum wages, overtime or double time wages (at the regular rate of pay), bonus pay (at the regular rate of pay), regular rate of pay claims generally, off-the-clock work (at the regular rate of pay), timely payment of wages during employment and at separation, sick pay (at the regular rate of pay), vested but unused vacation pay (at the regular rate of pay), meal periods and meal period premiums (at the regular rate of pay), rest periods and rest period premiums (at the regular rate of pay), claims for inaccurate wage statements, as well as derivative claims alleging unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, liquidated damages,

penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from September 7, 2012, through April 20, 2024. The aforementioned claims shall be referred to as the “Released Claims.”

F. Enhancement Award for the Class Representative

Subject to approval by the Court, the Class Representatives, and Objectors–Intervenors, will each receive an Enhancement Award not to exceed \$10,000. This payment will be made for service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel’s costs or paying Defendant’s attorneys’ fees and costs for an unsuccessful outcome in the Action, as well as for providing certain releases that were required by Defendant.

G. Attorneys’ Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, and as part of the Gross Settlement Amount, Defendant agrees to pay Class Counsel’s attorneys’ fees and costs, and Objectors–Intervenors Counsel’s attorneys’ fees and costs, to be set by the Court, not to exceed one-third of the Maximum Settlement Amount which equals \$1,500,000, and attorneys’ costs not to exceed \$45,000, subject to approval by the Court. Class Counsel and Objectors–Intervenors Counsel have asked the Court to approve attorneys’ fees in the amount of \$1,500,000, or one third of the Maximum Settlement Amount. Class Counsel and Objectors–Intervenors Counsel attorneys’ fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participate in the Settlement

To receive a cash payment from the Settlement, you do not have to do anything. After final approval by the Court, the payment will be mailed to you at the same address as referenced in this Notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section II.E. above. If your address has changed, you must notify the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (i.e., “opt out”) by submitting a timely written request to the Claims Administrator stating you have received this notice of the Settlement, decided not to participate in the Settlement, and want to be excluded from the Settlement, or words to that effect (“Request for Exclusion”). Your Request for Exclusion must also state your full name, address, date of birth, and the dates you worked for Defendant as a Class Member in California. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, facsimile or email, or the equivalent, to the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

The Request for Exclusion must be postmarked or received via facsimile or email no later than _____, 2025. If you submit a Request for Exclusion which is not postmarked or received via facsimile or email by _____, 2025, your Request for Exclusion will be rejected and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion. If you submit the Request for Exclusion via email, the email must be addressed to _____, must be sent no later than 11:59 p.m. on _____, 2025, and, in addition to including all the information required for submitting a Request for Exclusion, the email must also include the words “opt out” or “request for exclusion” in the subject line.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall receive no Settlement Award or benefits from the Settlement, shall not be deemed to have relinquished the Released Claims against the Released Parties, and, at the excluding Class Member’s own expense, may pursue any claims the

excluding Class Member may have against the Released Parties.

Individuals otherwise meeting the definition of Class Members who exclude themselves from the class and who were employed during the PAGA Period nonetheless shall still receive a payment for the amount of each such individual's estimated share of the PAGA Payment that was included by the Settlement Administrator in calculating the Claim Amount and shall still be bound by the PAGA release. PAGA Members may not opt-out or object to the PAGA portion of the Settlement. Regardless of whether you exclude yourself from the Class Settlement or "opt out," you still will be bound by the PAGA Release, you will be deemed to have released the PAGA Released Claims, and you will receive a share of the Net PAGA Amount.

C. Objection to Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you must timely submit a written objection to the Settlement Administrator. The Settlement Administrator's contact information is listed below in Section III.D.

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates you were employed in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be sent to the Claims Administrator and must be postmarked or received via facsimile or email no later than _____, 2025. If you submit the objection via email, the email must be addressed to _____, must be sent no later than 11:59 p.m. on _____, 2025, and, in addition to including all the information required for submitting an objection, the email must also include the words "objection" in the subject line. **DO NOT TELEPHONE THE COURT.**

If you choose to submit an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the United States District Court Eastern District of California and deliver copies to the Claims Administrator and each of the attorneys listed below. Such Entry of Appearance must be filed with the Court and delivered to the above Claims Administrator no later than 45 days after the Claims Administrator mails the Notice to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. Additionally, you will be required to certify whether the objection is being made in the interest of the class and/or the identity of any interests being represented by the objection.

D. How to Contact the Settlement Administrator

The Settlement Administrator's contact information is as follows:

[Settlement Administrator]
[Address Line 1]
Address Line 2]
Telephone: 1 (800) XXX-XXXX
Facsimile: 1 (800) XXX-XXXX
Email: XXXXXXXXXXX

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Claims as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue as though the Settlement never occurred and without prejudice to any Party.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final hearing in the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814, on _____, at _____ a.m./p.m. in Department_____, to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for Attorneys' Fees and Costs and the Enhancement Awards to be paid to the Class Representatives.

The Final Approval Hearing may be continued without further notice to the Class. It is not necessary for you to appear at this hearing unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Joint Stipulation of Class and PAGA Settlement" which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Joint Stipulation of Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814.

If you want additional information about this lawsuit and its proceedings, you can also contact Class Counsel in this matter:

Matthew R. Eason, Esq.
EASON & TAMBORNINI, ALC
1234 H Street
Sacramento, CA 95814
(916) 438-1819
Matthew@capcityLaw.com

Timothy B. Del Castillo, Esq.
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
(916) 245-0122
tdc@castleemploymentlaw.com

If you want additional information about the bonus-related overtime claims and Cal-OSHA claims, and the prior objection to the initial settlement, you can contact counsel for Objectors-Intervenors:

BLADY WORKFORCE LAW GROUP LLP
I. Benjamin Blady
5757 Wilshire Boulevard, Suite 535
Los Angeles, CA 90036
Phone: (323) 933-1352
Email: bblady@bwlawgroup.com

LESCHES LAW
Levi Lesches
5757 Wilshire Boulevard, Suite 535
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Phone: (323) 900-0580
Email: levi@lescheslaw.com

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA