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10 ATTORNEYS FOR
Plaintiff Richard MARTIN

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

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

17
18 Plaintiff,

19 v.

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

DECLARATION OF LEVI LESCHES

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— DECLARATION OF LEVI LESCHES —

1
2 1. My name is Levi Lesches. I am Counsel for Objectors herein.

3 2. The statements herein are true and correct. Except as otherwise indicated, I make
4 this declaration based on personal knowledge.

5 **A. Attorney Experience**

6 3. I am an attorney licensed to practice law before this Court, the Central District of
7 California, the Northern District of California, the Ninth Circuit Court of Appeals, and the state
8 courts of California. I have also argued *pro hac vice* before the Second Circuit Court of Appeals.

9 4. I have personal knowledge of the facts set forth in this declaration and could and
10 would testify competently to them.

11 5. I represent, together with I. Benjamin Blady, Esq. of Blady Workforce Law Group,
12 APLC, represent Objector and Conditionally-Certified Plaintiff-in-Intervention Richard Eric
13 Martin.

14 6. I also represent Objector Andre Bernstein.

15 7. To the best of my knowledge, neither my firm, nor Mr. Blady, nor Eason &
16 Tambornini, nor Castle Law, nor Martin or Bernstein have any conflicts of interest with the
17 proposed Settlement Class.

18 8. I have been practicing law since 2015, and have been lead or co-counsel in various
19 significant cases, including a nine-figure joint venture dispute and a successful high-value
20 malpractice lawsuit against an AM100 law firm. I have extensive experience in employment
21 litigation, and I have recovered millions of dollars for single-plaintiff and class members during my
22 career.

23 9. In 2015, I graduated cum laude from Pepperdine University School of Law, where I
24 had been an associate editor for the Pepperdine University Law Review. After graduating from law
25 school, I was an associate at Blady Weinreb Law Group, LLP, a law firm that had a practice focus
26 on plaintiff-side employment cases. Thereafter, I was lead associate at Arendsen Cane Molnar LLP,
27 where opposing counsel on a class action sought to recruit me shortly after the conclusion of the
28 Final Approval of the class-action settlement. Thereafter, I opened my own law practice.

1 10. I became a member of the State Bar of California in 2015. Since such time, I have
2 been admitted to the Central District of California, the Northern District of California, and the Ninth
3 Circuit Court of Appeals. I have litigated numerous jury trials, bench trials, class actions, appeals
4 and petitions, and arbitrations. I have also litigated numerous plaintiff-side employment cases,
5 obtaining significant recoveries for numerous plaintiffs.

6 11. I have acted as counsel in the class action cases of *Doe, John (Newman) vs. Virtu*
7 *Financial Services LLC et al.*, JAMS REF# 122004502 (Overtime/ Meal & Rest/ Pay Stub/ Lab.
8 Code, § 203 violations), where I defeated the defendant’s *Vinole* motion and motion for summary
9 judgment; *Cuellar v. Food Express* (Overtime/ Meal & Rest/ Pay Stub/ Lab. Code, § 203
10 violations); *Paparella v. The Washington Group, LLC*, LASC No. BC594871 (Overtime/ Meal &
11 Rest/ Pay Stub/ Lab. Code, § 203 violations), where I successfully obtained final approval for the
12 class action settlement (\$375,000); *Doe v. University of Southern California*, 2:20-cv-06098, which
13 raised complex class claims challenging an employer practice of compelling mandatory employee
14 arbitration with an allegedly conflicted arbitration provider; *Higgins v. The American Bottling*
15 *Company*, LASC No. 22STCV13127, which was remanded over vigorous opposition in *Higgins v.*
16 *American Bottling Company*, 2022 WL 13811816 (C.D.Cal., 2022), and wherein the Plaintiff
17 recently successfully defeated the defendant’s motion to strike class claims.

18 **B. Summary of the Settlement**

19 12. The named Plaintiffs, Conditionally-Certified Plaintiff-in-Intervention Martin,
20 Objector Bernstein (collectively, “Settling Plaintiffs”) and Defendant Ball Metal Beverage
21 Container Corporation (“BMBCC” or “Defendant”) (collectively, the “Parties”) have entered into
22 a “JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT” (“Settlement
23 Agreement”) resolving the claims of the certified class, as well as the claims of the putative class
24 that have been amended into the May 30, 2024 Second Amended Complaint.

25 13. The Settlement Agreement seeks to fully release and discharge Defendant from the
26 claims brought against it in this case of approximately 389¹ current and former non-exempt
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28 ¹ Due to the significant amount of time elapsed between the close of discovery and the
execution of the MOU, in my understanding the litigation discovery is somewhat “dated” with

1 employees of Defendant as defined in Section 1, ¶¶ 18, 19, and 21 of the Settlement Agreement.

2 14. In exchange, Defendant will pay the Class the gross settlement amount of either: (1)
3 **four-million five-hundred thousand dollars (\$4,500,000.00)**; or (2) such greater amount as may
4 be calculated under the “escalator clause” contained in Section 2, ¶ 18 of the Settlement Agreement
5 (should Defendant elect to exercise such clause).

6 15. In exchange, Defendant has also implemented certain nonmonetary relief described
7 in ¶ 20 of Section 2 of the Settlement Agreement, which changes in policy and practice reflect no
8 admission of liability or wrongdoing by any Party. Specifically, the Defendant will: (1) continue
9 to de-activate speakers in the Fairfield Plant rest-break area; and (2) Defendant will provide
10 appropriate training whenever a new hazardous material is introduced to the work area at the
11 Fairfield Plant.

12 16. Plaintiffs have already been certified to represent the Class with respect to claims
13 for: (1) failure to pay wages and/or overtime, California Labor Code §§ 510, 1194 and 1199; (2)
14 failure to provide meal periods, id. §§ 226.7 and 512; (3) failure to allow rest periods, id. § 226.7;
15 (4) wage statement penalties, id. § 226(a); (5) waiting time penalties, id. § 203; (6) unfair
16 competition, Cal. Bus. & Prof. Code § 17200; and (7) civil penalties under the Private Attorneys
17 General Act, Cal. Labor Code § 2698. *See* ECF No. 54 & No. 85.

18 17. The Settlement Agreement covers such claims, and the Settlement Agreement is
19 further expanded to conditionally certify for purposes of settlement the additional claims added in
20 the Second Amendment Complaint. *See* ECF No. 195.

21 18. The claims added in the Second Amendment Complaint include claims for unpaid
22 overtime predicated on legal theories relating to the interaction between the regular rate and certain
23 bonuses paid by Defendant. *Id.*, ¶ 57. Additionally, those claims include allegations relating to

24 _____
25 respect to the Class Size. Conditionally Certified Counsel relied, with respect to the class size, on
26 certain information shared in association with the mediation as well as the December 22, 2022
27 Declaration of Melissa Benson filed as ECF No. 160-2. Such information is consistent with the
28 representations by Defendant (email of Aaron M. Cargain dated October 28, 2024) that there are
389 anticipated class members and 203 terminated-or-separated class members.

As explained below, the accuracy of such representations are ensured by the
escalator clause and the Class Notice (in addition to the corroboration of the Benson Declaration
and the representations by an officer of the court).

1 workplace-safety statutes and regulations (“Cal-OSHA Claims”), that were alleged by Martin. *Id.*,
2 ¶ 99–102.

3 19. Under the terms of the Settlement Agreement, Defendant will not oppose the Settling
4 Plaintiffs’ Attorneys’ application for a reasonable award of Plaintiffs’ and Objectors’ Attorneys’
5 Fees, not to exceed \$1,500,000—approximately 33% of \$4,500,000—in an amount of \$1,090,000
6 to Plaintiffs’ Counsel and in an amount of \$410,000 to Martin and Bernstein’s attorneys. Settling
7 Plaintiffs’ Attorneys’ expenses shall not exceed \$45,000, and the settlement administrator payment
8 is estimated not to exceed \$10,000. The Settling Plaintiffs further seek an incentive award to each
9 named Plaintiff, as well as Martin and Bernstein, in an amount of \$10,000, each, which incentive
10 award is intended in part to compensate the release of certain individual claims by the named
11 Plaintiffs, Martin, and Bernstein. Additionally, the Settlement Agreement contemplates a payment
12 to the LWDA in an amount of \$75,000 as part of the \$100,000 PAGA penalty allocation.

13 20. The Net Settlement Amount will be distributed on a checks-cashed basis (i.e., Class
14 Members are not required to submit claim forms) and is non-reversionary.

15 21. The following exhibits are attached to the Settlement Agreement: Exhibit 1-F: the
16 proposed Class Notice; Exhibit 5: Proposed Order Granting Preliminary Approval.

17 **C. Factual And Procedural History**

18 22. Plaintiffs filed this action in 2016. After the Plaintiffs obtained Class Certification
19 over the Defendant’s opposition, the Plaintiff entered a proposed settlement and Judge Kimberly J.
20 Mueller granted preliminary approval for a class-action settlement in the amount of \$2,450,000.00.
21 ECF No. 104.

22 23. On November 23, 2020, my office filed the case *Martin v. Ball Corporation et al.*,
23 Solano County Case No. FSC055690, alleging various wage-and-hour claims as well as individual
24 wrongful-termination claims.

25 24. The Defendants removed that action to the Eastern District of California. After
26 associating with Mr. Blady, on July 12, 2021, Martin filed an amended complaint, adding PAGA
27 and Class Claims for unpaid overtime, representative PAGA claims arising under the California
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1 Healthy Workplace, Healthy Families Act of 2014 (HWHFA), and adding Cal-OSHA PAGA claims
2 relating to alleged exposures to environmental contaminants.

3 25. On May 25, 2022, I, together with Mr. Blady, filed Objections to Final Approval on
4 behalf of Objectors Martin and Bernstein. ECF No. 122.

5 26. I consulted with Mr. Blady on substantially every significant legal issue relating to
6 the representation of the Objectors. Mr. Blady also acted as lead counsel for Objectors at the
7 August 30, 2023 mediation with Mr. Jeffrey Ross.

8 27. After a response by the Plaintiffs and Defendant herein, Judge Mueller granted
9 leave for Objectors Martin and Bernstein to take discovery regarding the settlement. ECF No. 134.

10 28. In conjunction with Mr. Blady, I prepared numerous interrogatories and request for
11 documents that were served on Plaintiffs' Counsel and Defendant's Counsel. Significant
12 documents were produced in response to those requests, and I also took the deposition of Defendant
13 BMBCC's 30(b)(6) designee regarding various topics related to the Defendant's bonus plan.

14 29. After reviewing the discovery, Mr. Blady and I determined that the objections to
15 Final Approval were substantiated by the discovery, and Mr. Blady and I vigorously litigated
16 objections to Final Approval. *See generally* ECF Nos. 140–163.

17 30. On January 17, 2023, this Court denied Plaintiffs' motion for final approval
18 of the \$2,450,000.00 settlement. *See* ECF No. 164.

19 31. On March 21, 2023, Objectors, Plaintiffs, and Defendant stipulated that—

20 WHEREAS, on January 17, 2023, this Court denied Plaintiff's Motion
21 for Final Approval of Class Action and PAGA Settlement. This Court
22 also ordered the Parties to meet and confer regarding a further case
23 handling plan, and indicated it would allow the Parties to potentially
24 defer outlining a case handling plan if there was a consensus
25 concerning a further mediation.

26 WHEREAS, the Parties have generally met and conferred concerning
27 mediation and believe a further mediation will likely be productive.
28 The Parties are in the process of exchanging mediator
recommendations, obtaining mediator availability, and conferring
regarding exchange of information in advance of a further mediation.
ECF No. 168.

32. Objectors conditioned participation in mediation on Defendant's provision of
significant documentation, and Objectors extensively negotiated with Defendant regarding the

1 documentation that Objectors required prior to mediation. Defendant thereafter provided Objectors
2 and Plaintiffs with significant documentation in advance of mediation.

3 33. On August 30, 2023, Plaintiffs, Objectors, and Defendant participated in mediation
4 with Mr. Jeffrey Ross from the morning until well into the evening. Mr. Blady served as lead
5 counsel for Objectors at mediation, and I acted as co-counsel for Objectors.

6 34. Mr. Martin and Mr. Bernstein actively participated in the mediation for many hours,
7 and remained on call for the entire mediation.

8 35. Plaintiffs and Objectors negotiated at arms' length, and separately, at the mediation.

9 36. Plaintiffs and Objectors did not sign or enter into any joint-prosecution agreement
10 prior to the mediation.

11 37. Additionally, Plaintiffs and Objectors did not negotiate any agreement regarding
12 fees prior to the Parties' agreement on August 30, 2023, to settle the Class claims for \$4.5 million.
13 As stated, Plaintiffs and Objectors separately reached agreement to that settlement amount, without
14 any direct contact between Plaintiffs and Objectors during the mediation.

15 38. Shortly after the mediation, the Parties collectively commenced working on the
16 Memorandum of Understanding relating to the proposed settlement.

17 39. In late September 2023, Objectors and Plaintiffs reached an agreement, after
18 approximately two weeks of internal negotiations negotiation, regarding the allocation of fees.

19 40. In September 2023, significant differences arose between Martin and Defendant
20 regarding the scope of the releases to provide under the proposed settlement. Ultimately, Martin
21 agreed to expand the scope of claims that he would release in his individual capacity.

22 41. Additionally, significant differences arose between Martin and Defendant regarding
23 the resolution of Martin's PAGA Cal-OSHA claims.

24 42. After extensive negotiations with significant involvement by the mediator, Mr.
25 Ross, Defendant and Objectors ultimately agreed to the structure described below at greater length,
26 providing for nonmonetary relief in the form of policy changes in exchange for the release for
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1 Defendant of only contended “regulatory violations,” “general violations,” and “repeat violations,”
2 as defined in 8 C.C.R. § 334, but not any “serious violation” or “willful violation.”

3 43. After continuous ongoing negotiations throughout September 2023 and October
4 2023, Objectors and Defendant reached resolution of the issue on or about November 17, 2023.

5 44. On December 4, 2023, Defendant circulated a version of the Memorandum of
6 Understanding reflecting the updated agreement. The Parties continued to negotiate the
7 Memorandum of Understanding through December 28, 2023. After numerous redlines and draft
8 versions, the Parties reached a final draft of the Memorandum of Understanding on or about
9 December 28, 2023.

10 45. Due to unresolved points relating to the method for allocating the settlement
11 proceeds between the Class Members, the Memorandum of Understanding only enumerated the
12 factors that would be considered in determining the allocation methodology and left the ultimate
13 allocation determination for future resolution.

14 46. On February 20, 2024, all Parties completed countersigning the Memorandum of
15 Understanding.

16 47. In March 2024, Objectors and Plaintiffs prepared and submitted amended PAGA
17 letters with the LWDA. Thereafter, Objectors and Plaintiffs collaborated on revising and redlining
18 the Second Amended Complaint, which the Objectors and Plaintiffs filed on May 30, 2024, after
19 waiting the 65-day waiting period provided for under section 2699.3 of the *Labor Code*. See ECF
20 No. 195.

21 48. In April 2024, the Parties agreed to ILYM as the Settlement Administrator.

22 49. On or about March 27, 2024, Objectors’ Counsel and Plaintiffs’ Counsel
23 participated in an extensive zoom meet and confer regarding the proposed allocation. Objectors’
24 Counsel and Plaintiffs’ Counsel continued to confer regarding the allocation method through April
25 and May 2024, with Objectors and Plaintiffs reaching an agreement on or about June 6, 2024.

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1 50. During such negotiations, Plaintiffs circulated an initial version of the Long Form
2 Settlement Agreement during May 2024. On July 15, 2024, Defendant circulated its proposed
3 revisions to the Long Form and Class Notice.

4 51. On August 20, 2024, Objectors circulated to Plaintiff the Objectors' proposed
5 revisions to the Long Form and Class Notice. The August 20, 2024 constituted the initial
6 integration of the other settlement provisions with the allocation method that had been negotiated
7 between Objectors and Plaintiffs between March and May of 2024.

8 52. The Parties continued working through early September 2024 towards reaching a
9 final approved version of the Long Form Settlement Agreement.

10 53. Between September 5, 2024, it became clear that a misunderstanding had arisen as
11 to Defendant's and Objectors' positions with respect to the release of PAGA HWHFA claims.

12 54. Defendant objected to language included by Objectors limiting the scope of the
13 release associated with the PAGA HWHFA claims. Previously, the Martin FAC, and Martin's
14 PAGA notice, had proceeded on the theory—since rejected in *Wood v. Kaiser Found. Hosps.*, 759,
15 305 Cal. Rptr. 3d 112, 123 (2023), *modified* (Mar. 23, 2023)—that the HWHFA authorized
16 utilizing PAGA as a means for litigating representative wrongful-termination claims.

17 55. Accordingly, Martin insisted that the release could not release the HWHFA PAGA
18 claims to the full extent alleged in the Martin FAC, because: (1) such claims had been neither
19 investigated nor compensated; and (2) in Objectors' understanding, under *Wood*, Martin lacked any
20 capacity to represent such claims, and therefore could not release claims that he lacked capacity to
21 represent.

22 56. Conversely, Defendants objected to the narrowing of the release. Such issues
23 generated significant controversy, which were resolved in late September 2024.

24 57. Between October 8, 2024 and October 24, 2024, the Parties worked on making final
25 changes and revisions to the Long Form Settlement Agreement.

26 58. On October 28, 2024, Defendant provided the number of anticipated class members
27 as well as the anticipated number of class members with Labor Code section 203 claims. After
28

1 reviewing the allocation methodology with reference to the anticipated number of participating
2 class members, and updating the class notice and long form agreement with specific definitions of
3 the participating class positions, and to provide information regarding the *Aguirre* lawsuit, the
4 Counsel for all Parties approved the final agreement on January 6, 2025.

5 59. Between January 6, 2025 and January 14, 2025, all Parties signed the Long Form
6 Settlement Agreement.

7 **D. The Settlement Agreement is Fair and Reasonable**

8 60. The Settlement Agreement is an amalgamation of the settlement of what can be
9 characterized generally as: (1) rest-break and meal-break violations for the period between
10 September 6, 2012 (four years prior to the filing of the lawsuit) through the date of operational
11 changes to Defendant's paging system (which occurred in approximately January 2020, but was
12 defined for ease of settlement administration as occurring) on December 31, 2019; (2) *Labor Code*
13 section 203 penalties; (3) de minimis wage-and-hour violations throughout the class period; (4)
14 PAGA claims; (5) Cal-OSHA PAGA claims. Each component is treated separately in the
15 Settlement Agreement.

16 A. Objectors Acted in the Capacity of Objectors During the Mediation

17 61. At the time of the mediation, there was no joint-prosecution agreement. The
18 Plaintiffs and Objectors neither shared mediation briefs, nor caucused at the mediation, nor reached
19 any agreement or understanding, at the time of mediation, as to whether Objector Martin would be
20 conditionally certified. Plaintiffs and Objectors reached no understanding, on or prior to August
21 30, 2023, regarding an allocation of fees.

22 62. Objectors position at the mediation was to communicate the terms of settlement it
23 would deem unreasonable and that would result in renewed objections.

24 63. In staking positions at the mediation, Objectors were mindful that: (1) Plaintiffs had
25 participated in fact discovery, and had plenary access to the factual record, whereas Objectors were
26 limited to certain discovery relating to the bonus plans and mediation-shared information; (2)
27 Plaintiffs were certified to act in the best interests of the Class; and (3) Plaintiffs, rather than
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1 Objectors, were the Counsel charged with trying the case, including fronting expert fees, if
2 settlement efforts failed.

3 64. With respect to settling the claims that Martin “brought to the table”—namely,
4 EVA-bonus-predicated regular-rate claims, § 203 theories, and Cal-OSHA claims—Objectors
5 sought to ensure that those claims, which Martin had investigated, were settled on terms that were
6 fair, reasonable, and adequate.

7 B. The Settlement Represents the Maximum Non-Litigated Recovery

8 65. The August 30, 2023 mediation was Defendant’s third mediation in this action.
9 Arrayed against Defendant was a very extensive and aggressive Plaintiff’s bench.

10 66. The mediation lasted into the evening, and came to resolution when Objectors
11 formed the conclusion that the proposed terms represented the practical maximum that could be
12 accomplished through a pre-trial-stage settlement.

13 C. The \$2.5 Million Augustus Allocation Represents a Reasonable Non-Litigated
14 Recovery

15 67. The *Augustus* allocation, approximately \$2,500,000 of the gross settlement amount,
16 is sufficiently non-objectionable as a fair, reasonable, and adequate recovery.

17 68. The *Augustus* allocation seeks to compensate the Class Members for “wages and/or
18 overtime pay for the time they spent taking on-duty meal breaks because they were required to
19 monitor the pages during this time.” *Westfall*, 2018 WL 705534, at *4.

20 69. Plaintiffs litigated the claim that employees were obligated to keep an ear out for
21 paging announcements, thereby rendering meal and/or rest breaks as “on duty” and requiring the
22 payment of a meal-premium obligation (in addition to triggering further overtime liability and
23 invalidating meal-period waivers on the days where shifts stretched past 12 hours). *Augustus v.*
24 *ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016), *as modified on denial of reh’g* (Mar. 15, 2017)
25 (“ABM’s policy required plaintiffs to keep radios and pagers on, remain vigilant, and respond if
26 the need arose”); see also *Westfall v. Ball Metal Beverage Container Corp.*, 2018 WL 705534, at
27 *1 (E.D. Cal. Feb. 5, 2018), *on reconsideration*, 2019 WL 202677 (E.D. Cal. Jan. 15, 2019)

1 (“Plaintiffs allege they were required to monitor pages that sounded over an intercom system at
2 defendant's plant at all times while they were working, including during their meal and rest breaks,
3 a practice they say constitutes a failure to provide breaks under California labor law”); *see also*
4 ECF No. 111, p. 11:14–18 (“Plaintiffs’ theory of the case is that Defendant failed to provide breaks
5 by having a paging system . . . and requir[ing] the Class Members to remain vigilant in listening to
6 those pages for instructions”).

7 70. As stated, Plaintiffs and Objectors negotiated at arms’ length at the mediation,
8 including, without limitation, Plaintiffs not sharing their mediation briefs with Objectors, and the
9 Parties not sharing discovery with Objectors.

10 71. Accordingly, the estimates contained below represent the Objectors’ estimate of
11 liability.

12 72. Objectors estimated *Augustus* meal break liabilities predicated on the Benson
13 declaration, reflecting an approximate 145 positions held by Class Members. Estimating 18 shifts
14 per month for Class Members, Objectors estimate that the Class Members worked approximately
15 31,320 shifts a year that would have required at least one rest and one meal break.

16 73. The Class Members’ hourly rate of pay varied from \$26 an hour at the lower end
17 and \$48 an hour on the higher end, with the Class Members’ rate of pay for the majority of
18 employees appearing to be in the range of approximately \$30 to \$37 an hour.

19 74. Because Defendant changed its paging practices in January 2020, *August* liability
20 was assumed to terminate on that date.

21 75. In terms of settlement value, Objectors take no issue with Plaintiffs’ good-faith
22 judgment to settle such claims on the terms described herein. Objectors have no reason to doubt
23 Plaintiffs’ judgment that \$2.5 million constitutes a reasonable compromise of that claim.

24 76. Reviewing the Defendant’s opposition to Plaintiffs’ motion for class certification,
25 Defendant's rationalizations for non-liability strongly indicate the *Augustus* claims are—in
26 Objectors’ view—difficult for the Class Members to litigate on an individual basis.

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1 77. The reason is that litigation risk appears to relate—in Objectors’ view—to
2 *disciplinary* consequences that stemmed from an employee’s failure to pay attention to a message
3 on the paging system.

4 78. Defendant’s opposition to Plaintiffs’ motion for class certification might be
5 summarized as arguing that the paging system was not a requirement for the Class Members to
6 listen to, but rather constituted a convenient means for on-shift employees to send an alert (*i.e.*,
7 rather than utilizing direct cellphone calls or the like.)

8 79. Defendant asserted in opposition to certification that if a Class Member was called
9 back from a break, such Class Members were thereafter allowed to restart the break and/or were
10 paid a meal-break premium—for which substantial corroborating evidence supports the
11 Defendants’ position—and that Defendant’s business inherently required and requires such ability
12 to call employees back from break, and that such ability to recall employees is not inconsistent
13 with *Brinker* or *Augustus*.

14 80. While such positions seem appear to have constituted an attenuated basis for
15 opposing *class* certification, such positions are suggestive of a substantial substantive defense.

16 81. If a jury were to conclude that the Defendant utilized the paging system solely as a
17 means for convenience prior to conducting more individualized efforts to contact the sought
18 employee (such as a direct phone call, or sending a messenger to request the employee’s return),
19 and that nonresponsive employees were not subject to discipline for ignoring pages should an
20 employee ignore a page while on a break, then the Defendant would likely prevail on such claims.

21 82. Given the absence of evidence in support of the motion for class certification
22 demonstrating a clear policy or clear practice of *disciplining* employees that had ignored a page, it
23 did not seem altogether clear to Objectors that the Plaintiffs had the necessary evidence to prevail
24 on the claim.

25 83. More problematically from Objectors’ perspective, the *Augustus* claim did not
26 appear amenable to individual litigation and, therefore, Objectors gave careful pause before
27 proceeding to attempt rejecting a compromise the Plaintiffs had approved.

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1 84. Given an individual plaintiff’s potential burden to prove that there was an obligation
2 to “keep an ear out,” it could become inefficient and prohibitively burdensome for individual
3 plaintiffs—particularly those that had never been individually disciplined for “missing a page”—to
4 attempt rebutting a contention by Defendant that the pagers existed for the convenience of
5 facilitating callbacks, and to attempt rebutting a defensive contention by Defendant that the
6 prerogative whether to “keep an ear out” lay with the employee and would be respected by
7 Defendant.

8 85. Indeed, given the extensive evidence assembled by Defendant in opposition to the
9 motion for class certification, it is demonstrable that Defendant would likely present such form of
10 opposition to an individual claim.

11 86. Furthermore, in Objectors’ view, the *Augustus* rest-break claims were even weaker
12 than the *Augustus* meal-break claim. The evidence submitted by Defendant in opposition to
13 Plaintiffs’ motion for class certification strongly suggests that employees were allowed to leave
14 during rest-breaks and/or restart their rest-breaks. Moreover, the evidence submitted by Plaintiffs
15 in seeking class certification demonstrated that the primary concern stemmed from the paging
16 system in the meal-break room, and the Plaintiffs’ declarants generally solely addressed meal
17 breaks rather than rest breaks.

18 87. Accordingly, given the practical difficulties that class members were likely to face
19 in attempting to litigate the *Augustus* claim on an individual basis, Objectors took a cautionary
20 approach with respect to pushing back against the proposed \$4.5 million resolution.

21 88. Objectors believe there is substantial basis to defer to the Plaintiffs’ approval for a
22 \$2.5 million settlement to settle the *Augustus* claims. Objectors see no basis for controverting the
23 Plaintiffs’ consensus that such resolution was fair, reasonable, and adequate.

24 89. Objectors also note that Defendant denied consent for Plaintiffs to share formal
25 discovery with Objectors. Objectors do not contend that doing so was improper by Defendant.
26 Therefore, with respect to fact-intensive claims, such as the *Augustus* claims, Objectors have
27 deferred to Plaintiffs’ Counsel’s views and positions.
28

1 90. Additionally, the Class Notice states, with respect to the allocation—

2 The declarations filed with the Court in support of preliminary
3 approval provide an explanation for the allocation, including the
4 explanations as to why different payments are being made for Class
5 Members that have separated during the Class Period; why different
6 payments are being made for the period before December 31, 2019;
7 and why Engineering positions are receiving larger payments for
8 workweeks in the period before December 31, 2019. You can obtain
9 copies of those declarations through a request to Class Counsel or to
10 the Settlement Administrator. Class Counsel can also be contacted for
11 questions you may have regarding such declarations.

12 91. Furthermore, the Settlement Agreement provides, in Section 1, ¶ 8(a), “All emails
13 sent from [the dedicated administration] email address shall be set up to include an ‘auto signature’
14 stating ‘Further information regarding the settlement can be found here,’ and the word ‘here’ shall
15 be a hyperlink to a copy of the papers filed with the court in association with the motion for
16 preliminary approval.”

17 92. The Class Members will have significant disclosure of the issues to determine
18 whether they believe, on an individualized basis, that Class participation is within their best
19 interests.

20 93. Previously, Plaintiffs sought to allocate the prior proposed settlement differently
21 between Engineering Positions, and non-Engineering Positions, based on the different facts and
22 circumstances relating to the how the pager-interruptions affected employees in those different
23 positions.

24 94. Objectors raised concern that the differential allocation was not workweek sensitive,
25 thereby risking gross disparity relating to ultimate payouts.

26 95. The presently proposed settlement continues to provide a different allocation
27 between the Engineering Positions and non-Engineering Positions, as defined in ¶¶ 18–19 of
28 Section 1 of the Settlement Agreement. Objectors defer to Plaintiffs’ position that such
differential allocation was required and warranted by the different facts and circumstances relating
to the Engineering Positions and non-Engineering Positions, as defined.

96. Given the above-discussed relationship between the merits of the *Augustus* claims,
and the issue of whether employees were subject to discipline for ignoring pages, it was

1 appropriate for Objectors—who had not participated in fact discovery—to defer to Plaintiffs’
2 certified representatives on such issues.

3 D. Allocation for Section 203 Claim

4 97. Objectors previously opposed the prior settlement on grounds that the prior
5 settlement failed to provide an allocation for the settlement of waiting-time penalties.

6 98. With respect to the waiting-time penalties, Objectors had access to their own payroll
7 records. Additionally, Objectors obtained discovery relating the EVA-bonus regular-rate claims
8 (discussed below).

9 99. Prevailing on a claim for waiting-time penalties requires showing a wage violation
10 that constitutes a violation of “black letter” law. (*See* 6 C.C.R. § 3520 [A "good faith dispute" that
11 any wages are due occurs when an employer presents a defense, based in law or fact which, if
12 successful, would preclude any recover on the part of the employee. The fact that a defense is
13 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses
14 presented which, under all the circumstances, are unsupported by any evidence, are unreasonable,
15 or are presented in bad faith, will preclude a finding of a "good faith dispute".])

16 100. Objectors considered liability relating to Defendant Ball’s: (1) failure to pay shift-
17 differentials on CHWHFA pay, (which must be paid at the regular rate, *Lab. Code*, § 246(1)); (2)
18 failure to pay shift-differentials on meal-period premiums, (which must also be paid at the regular
19 rate, *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 868 (2021)); (3) failure to pay EVA
20 percentage-pay on CHWHFA pay (“EVA Eligible Earnings do not include . . . accident and
21 sickness . . . medical leave . . . vacation payback”); (4) failure to pay EVA percentage-pay on
22 *unused* vacation time, *Lab. Code*, § 227.3; and (5) failure to add BBPNCA EVA bonuses to the
23 regular rate prior to calculating “Corporate” EVA bonuses (the “*Weninger* issue”).

24 101. The settlement settles such claims at an estimated 50% litigation discount with
25 respect to the gross allocation for the waiting-time penalties. While the allocation method
26 discusses a 33% net distribution, that net payment is predicated on a 50% gross allocation, as
27 discussed in paragraph 27(b) of section 1 of the Settlement Agreement. While a cautionary
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1 \$1,500,000 allocation cap has been imposed, based on my understanding that the Class Members’
2 rate of pay for the majority of employees appearing to be in the range of approximately \$30 to \$37
3 an hour, there is no anticipation that such cap will be exceeded. Furthermore, while not all Class
4 Members worked 12-hour days, complexity in administration constituted an ongoing concern.
5 Additionally, the waiting-time claim involves simple metrics (last rate of pay, and 30 days)—
6 unlike the *Augustus* claim—further militating against utilizing an allocation method that would
7 require applying complex “solving backwards” formulas. Participation for all waiting-time
8 allocations is therefore based, for all participating members, on a 360 hour basis.

9 102. The 203 allocation would require paying each class member at their last rate of pay
10 for 360 hours, equivalent to 12 hours pay for 30 consecutive days. See *Mamika v. Barca*, 68
11 Cal.App.4th 487, 493 (1998) (holding that waiting-time penalties apply for each calendar day, for
12 thirty days).

13 103. The allocation presumes that, under *Mamika*, the 30-consecutive day computation
14 would incorporate pay for 12 hours per day. In the first instance, unpaid lunches could reasonably
15 be excluded from calculating the length of a workday for the purpose of determining waiting-time
16 penalties, which would reduce the waiting-time penalties to 345 hours. The 360-hour estimate is
17 conservative in the first instance.

18 104. The settlement discount for waiting-time penalties also accounts for circumstance
19 that the Settlement Amount is substantially greater than simply providing payment for the
20 exclusive and sole resolution of waiting-time penalties.

21 105. The litigation-risk discount is fair and reasonable. Absent class resolution, the Class
22 Members could risk losing valuable claims. During the seven-year period since the filing of the
23 *Westfall* lawsuit, it appears that Martin, Bernstein, and the *Westfall* plaintiffs are the sole
24 employees that have filed litigation seeking recovery of waiting-time penalties, until the filing of
25 the *Aguirre* action in 2024. Given the absence of similar litigation, the Class Members could lose
26 rights if forced to individually litigate their claims, as the absence of other individual suits
27 demonstrates a lack of tendency towards individual prosecution. Additionally, as stated, the
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1 *Augustus* claims appear better suited to class prosecution. Additionally, I am familiar that various
2 law firms require a 50% contingency fee for the litigation of individual claims. Additionally, I am
3 familiar that employees encounter difficulties in seeking further employment—and/or harbor the
4 belief that they encounter difficulties in seeking further employment—due to appearing as a
5 plaintiff, in labor litigation, in a “Google” search, which further disincentivizes employees from
6 individually prosecuting wage-and-hour claims.

7 106. Martin first filed his proposed First Amended Complaint in July 2021. It is not
8 clear that, absent resolution, Class Members could recover for waiting-time penalties prior to the
9 statute running from that filing.

10 107. Objectors anticipated that attempts to amend the pleading in the *Westfall* action
11 would have been vigorously opposed, and that the Defendant would strenuously argue that
12 waiting-time penalties under the *Westfall* FAC needed to remain limited to the issue of *Augustus*-
13 derivate waiting-time penalties. As stated, under 6 C.C.R. § 3520, it would be difficult to obtain a
14 waiting-time-penalty recovery solely predicated on an *Augustus*-derivate theory.

15 108. Accordingly, given the practical difficulties in continuing to litigate the waiting-
16 time penalties on a class basis, and the disadvantages that would be faced by Class Members in
17 litigating claims on an individual basis, the proposed litigation discount is fair and reasonable.

18 E. Other Considered Claims

19 109. Martin’s other significant wage-and-hour theory raised in opposition to the prior
20 proposed settlement was Martin’s theory that Defendant needed to include annual performance-
21 based bonuses in calculating the regular rate.

22 110. That theory was significantly undercut by the recent published decision of *Lemm v.*
23 *Ecolab*, 87 Cal. App. 5th 159 (2023).

24 111. Prevailing on Martin’s theory that Defendant needed to include annual
25 performance-based bonuses in calculating the regular rate would require the Class to either prove
26 that *Lemm* is distinguishable on account of the bonus-plan in that case being predicated on
27 *employee* performance (unlike the facts herein, where the bonus plan is predicated on *employer*
28

1 performance), or that *Lemm* is wrongly decided and that a reasonable estimation of the Supreme
2 Court’s determination of such claim would be favorable to the Class Members.

3 112. Due to the foregoing circumstances, Objectors afforded minimal value to the
4 resolution of the regular-rate claim predicated on the annual performance-based bonuses (“EVA
5 bonuses”).

6 113. Objectors also considered liability under *Ferra v. Loews Hollywood Hotel, LLC*.
7 However, such issues related to marginal payments of 50 cents for scattered violations.

8 114. Objectors also considered settlement value related to individualized discrepancies
9 and anomalies existing in the pay data provided by Defendant in association with the mediation.

10 115. Objectors also considered settlement value related to Objectors’ own experiences
11 relating to pre-shift “turnover meetings,” which could support potential claims for off-the-clock
12 work. However, in Counsel’s views, such claims would be difficult to certify and would likely be
13 predominated by individualized issues.

14 116. Given the difficulties of proof associated with such claims, the settlement allocates
15 9% of the settlement—approximately \$400,000—for the settlement of such claims with respect to
16 the approximately 187 Class Members that joined employment after 2020, as disclosed by the
17 Benson Declaration.

18 117. Furthermore, with respect to the approximately 187 Class Members that joined
19 employment after 2020, the approximately 52% separation rate for the overall class suggests that
20 approximately 100 of those Class Members will receive an allocation under the waiting-time-
21 penalty allocation. Accordingly, it is estimated that the approximately 89 Class Members that
22 joined Defendant after January 1, 2020, and have not separated thereafter, are the participants that
23 are anticipated to solely participate in the post-2020 allocation.

24 F. Resolution of PAGA Claim

25 118. The Cal-OSHA PAGA claim alleged that the use of certain aerosolized coatings
26 may have escaped into the ambient air of the workplace that Martin worked in. Martin, however,
27 had never conducted testing regarding such exposures.

28

1 119. The Cal-OSHA PAGA claim also alleged that Martin had been required to clean
2 spills of “Industrial Coating” without adequate safety equipment.

3 120. The FAC did not allege PAGA penalties relating to the Nineteenth Cause of Action.
4 Rather, the FAC alleged solely injunctive relief, and the opposition to the motion to dismiss
5 acknowledged that, under Ninth Circuit law, Martin lacked standing to seek injunctive relief in the
6 federal forum.

7 121. For Martin to obtain PAGA penalties, Martin would need to succeed in moving to
8 amend; and in establishing relation back.

9 122. Furthermore, Martin would have to prevail in showing that the statute-of-limitations
10 under 6651 of the *Labor Code* would apply to such penalties, which is an issue on which no
11 decisional authority—published or unpublished—appears to exist.

12 123. Relatedly, PAGA penalties are generally never sought under Cal-OSHA, and there
13 is a complete dearth of authority addressing how such penalties might be calculated. Such lack of
14 decisional authority is *additional* to the discretionary nature of PAGA penalties.

15 124. Furthermore, proving unlawful exposures in air-quality ambience generally requires
16 environmental testing over a number of days, which likely would not occur absent a court order.
17 Additionally, such testing would require the outlay of tens of thousands of dollars in costs.

18 125. Furthermore, the *Labor Code* creates *nondiscretionary* duties for the LWDA to
19 investigate information regarding Cal-OSHA violations. Accordingly, to the extent that the
20 settlement of the Cal-OSHA PAGA claims could affect the *private-plaintiff* recovery of PAGA
21 penalties, such concerns are reduced with respect to Cal-OSHA violations, because 75% of
22 recovered penalties go to the LWDA. The LWDA, however, likely completed its mandatory
23 investigation and concluded without imposing any penalties.

24 126. Accordingly, for the foregoing reasons, Objectors agreed that nonmonetary relief
25 would adequately redress contended “regulatory violations,” “general violations,” and “repeat
26 violations,” as defined in 8 C.C.R. § 334, but not “serious violation” or “willful violation.”
27
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1 127. Under 8 C.C.R. § 334, a rebuttable presumption of a serious violation arises where
2 there “is a realistic possibility that death or serious physical harm could result from the actual
3 hazard created by the violation.” Accordingly, to the extent that any violation resulted in a
4 “realistic possibility [of] . . . serious physical harm,” such issues are not released.

5 128. Under 8 C.C.R. § 334, a willful violation occurs where “evidence shows that the
6 employer committed an intentional and knowing” violation. Accordingly, to the extent that any
7 violation was committed intentionally and knowingly, such issues are not released.

8 129. In exchange for the release of claims relating to contended “regulatory violations,”
9 “general violations,” and “repeat violations,” Defendant has agreed to provide appropriate training
10 whenever a new hazardous material is introduced to the work area at the Fairfield Plant.

11 130. Such relief is significant, because 8 C.C.R. § 5194(h) provides that, as part of such
12 training, significant and substantial information must be communicated to the relevant affected
13 employees.

14 131. In essence, the nonmonetary relief that is being stipulated to is reasonably
15 calculated to ensure employees will be timely provided relevant information relating to workplace
16 environmental exposures prior to being subjected to those exposures. Such relief ensures that
17 employees have the information necessary for addressing their concerns and have access to the
18 means and information for addressing and escalating any concerns that they might have.

19 132. Such relief is broad-based and addresses concerns relating to practically all forms of
20 chemical-based environmental exposures, rather than simply the limited chemicals that Martin
21 worked with and rather than simply the specific issues that Martin encountered.

22 133. Such relief is fair and reasonable in light of the above-described considerations,
23 including the circumstance that such issues are generally handled by the LWDA directly, and the
24 circumstance that only regulatory violations are being released, and serious violations and willful
25 violations have been excluded from the scope of any release.

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1 E. OBJECTORS' COUNSEL'S ATTORNEY FEES ARE FAIR AND REASONABLE

2 134. I believe the attorney's fees of \$410,000 for Objectors' Counsel are fair and
3 reasonable given the circumstances of this case.

4 135. Objectors have added an additional \$2,050,000 in settlement value.

5 136. Accordingly, Objectors' proposed fees are **less than** benchmark fees for class-
6 action settlements.

7 137. Objectors' Counsel has spent a significant number of hours investigating,
8 researching, and litigating this matter.

9 138. Of significant note, until the Objections were sustained, Objectors' Counsel had
10 incurred hundreds of hours of attorney time under significant litigation risk, given the circumstance
11 that the Objectors' efforts would be eliminated if the Court found the objections unhelpful to the
12 resolution of the proposed prior settlement. The degree of risk incurred by Objectors' Counsel is a
13 factor that must be considered with respect to a fee award. *See, e.g., Vizcaino v. Microsoft Corp.*,
14 290 F.3d 1043, 1048 (9th Cir. 2002).

15 139. Moreover, Lesches Law must pay—absent specific disapproval or disallowance by
16 the Court—10% of its fees to Abramson Law Group, APC, the referring firm with whom Lesches
17 Law has a written referral agreement.

18 140. Moreover, Objectors' Counsel took this matter on contingency. Lesches Law has
19 represented Plaintiff Martin since 2019, and filed suit in 2020. Mr. Blady has been active on the
20 representation of this matter since the filing of the FAC in July 2021.

21 141. Of note, Lesches Law engages in significant degree of hourly work, and the time
22 dedicated to the prosecution of this case constitutes time that had to be diverted away from paying
23 work.

24 142. I have reviewed the time spent in the prosecution of this matter. My estimated
25 hours are, based on review of my billing entries, are:

- 26 a. 178 hours relating to the filing of pleadings and briefs
27 b. 52 hours relating to correspondence
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- 1 c. 41 hours relating to calls with Martin, Bernstein, Mr. Blady, Plaintiffs' Counsel,
2 and Defendants' Counsel;
- 3 d. 6 hours relating to court time;
- 4 e. 57 hours relating to reviewing discovery, legal research, and other research;
- 5 f. 35 hours relating to reviewing and redlining the various versions of the long
6 forms and class notices;
- 7 g. 24 hours relating to the preparation of amended pleadings, PAGA letters,
8 conferring regarding the allocation method, and other issues relating to
9 finalizing the Settlement Agreement.

10 143. Accordingly, I estimate that I have incurred approximately 393 hours, or more, of
11 time incurred in association with the litigation of this matter.

12 144. The Laffey Matrix is a pre-fixed formula used by federal courts to determine
13 reasonable hourly rates. *See* Rubenstein, 5 Newberg on Class Actions, §15:43, p. 148 (5th Ed.
14 2015). *See* <http://www.laffeymatrix.com/see.html>.

15 145. The Matrix for the dates of June 1, 2024, to May 31, 2025, reflects attorneys' rates
16 with experience commiserate to my years of experience as billing upwards of \$839 per hour.

17 146. My calculations a lodestar amount for my fees would be $\$839 \times 393 \text{ hours} =$
18 $\$329,727$ in total fees for my work on this matter.

19 147. This means that lodestar multiplier for the agreed upon fee amount represents a
20 *downward* adjustment for fees incurred.

21 148. My firms current estimated costs are \$6,269.

22 149. The proposed enhancement awards are also fair and reasonable.

23 150. With respect to Mr. Martin, Mr. Martin's ability to prosecute his individual case has
24 been significantly delayed by his diligent prosecution of objections. Furthermore, Mr. Martin has
25 needed to release certain individual claims—including a bounced-check waiting-time-penalty
26 claim—as a condition of the class settlement. Accordingly, the enhancement award for Mr. Martin
27 represents fair compensation for relinquished rights.

28

1 151. Furthermore, Mr. Martin actively participated in the prosecution of this matter,
2 including attending the mediation, providing documents, reviewing and signing declarations, and
3 being available to confer with Counsel regarding factual matters and issues.

4 152. Similarly, Mr. Bernstein has needed to release certain individual claims as a
5 condition of the class settlement. Accordingly, the enhancement award for Mr. Martin represents
6 fair compensation for relinquished rights.

7 153. Furthermore, Mr. Bernstein actively participated in the prosecution of this matter,
8 including attending the mediation, providing documents, reviewing and signing declarations, and
9 being available to confer with Counsel regarding factual matters and issues.

10

11 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that I have read
12 the foregoing declaration and the facts stated in it are true.

13

Dated: January 21, 2025

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Levi Lesches

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DECLARATION