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Individually and on behalf of all others similarly situated

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

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

Plaintiff,

v.

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

Defendants.

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

**PLAINTIFFS' MEMORANDUM OF  
POINTS & AUTHORITIES IN SUPPORT  
OF MOTION FOR AWARD OF  
ATTORNEYS' FEES, COSTS, AND  
ENHANCEMENT**

Date: May 4, 2026  
Time: 1:30 P.M.  
Crtm: 4

The Honorable Dale A. Drozd

Complaint filed: September 7, 2016

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**I. INTRODUCTION**

1  
2 Plaintiffs' Counsel<sup>1</sup> has spent almost a decade litigating this case to achieve a favorable  
3 settlement on behalf of Class Members. The Settlement of \$4,500,000.00 will compensate  
4 Eligible Class Members for meal and rest break interruptions for those employees working in  
5 the production and support positions at the Fairfield, California plant.  
6

7 Class Counsel are seeking \$1,500,000.00, which is one-third (1/3) of the Gross Settlement  
8 Amount. As provided in section 1 – 11(a) of the Settlement Agreement, Class Counsel seek:

9 (a) To Plaintiff's Counsel:

10 (1) One-Third of fees attributable to the initial \$2,450,000 of the Gross  
11 Settlement Amount (such sum being equal to the prior settlement),  
12 or \$816,666.66, plus  
13

14 (2) 40% of One-Third of fees attributable to the additional \$2,050,000  
15 of the Gross Settlement Amount provided for herein in excess of the  
16 initial settlement amount, or \$273,333.34 (\$683,333.33 x 40%);

17 (3) Plaintiffs' Counsels' fees therefore totaling \$1,090,000.00  
18 (constituting approximately 72.7% of One-Third of the Gross  
19 Settlement Amount)  
20

21 (b) To Objectors-Intervenors' Counsel:

22 (1) 60% of One-Third of fees attributable to the additional \$2,050,000  
23  
24

---

25 <sup>1</sup> Under the provisions of the Settlement Agreement:

26 8. Class Counsel. "Class Counsel" refers to EASON & TAMBORNINI, ALC, CASTLE LAW: CALIFORNIA  
EMPLOYMENT COUNSEL P.C., LESCHES LAW; BLADY WORKFORCE LAW GROUP LLP.

27 9. Plaintiff's Counsel. "Plaintiff's Counsel" or "Plaintiffs' Class Counsel" or "Named Plaintiffs' Class Counsel"  
shall refer to EASON & TAMBORNINI, ALC, and CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL  
P.C.

28 10. Objectors-Intervenors' Counsel. "Objectors-Intervenors' Counsel" or "Objectors' Counsel" or "Objectors-  
Intervenors' Class Counsel" shall refer to Levi Lesches of LESCHES LAW and Benjamin Blady of BLADY  
WORKFORCE LAW GROUP LLP.

1 of the Gross Settlement Amount provided for herein in excess of the  
2 initial settlement amount, or \$410,000.00 ( $\$683,333.33 \times 60\%$ );

3 (2) Objectors-Intervenors' Counsel's fees therefore constituting  
4 approximately 27.3% of One-Third of the Gross Settlement Amount.

5 (c) In summary, Total Fees to all Class Counsel and Objectors-Intervenors'  
6 Counsel, combined, as provided herein ( $\$1,090,000 + \$410,000$ ) total  
7 \$1,500,000 (One-Third of the Gross Settlement Amount), exclusive of costs.  
8

9 It is Class Counsel's position that the amount requested is fair and reasonable considering  
10 the amount of discovery conducted which included approximately numerous depositions,  
11 reviewing thousands of pages of records and four separate day-long mediations. Plaintiff's  
12 Counsel also spent considerable time preparing and drafting a class certification motion and  
13 subsequent request for reconsideration. Objectors' Counsel incurred significant effort and time  
14 in opposing the first settlement, including taking extensive Objectors' discovery and a PMK  
15 deposition. Such efforts facilitated the \$2,050,000 in additional value for the Class.  
16

17 Class Counsel's detailed time records warrants an award of the amount requested. The  
18 extensive amount of time and labor performed by Class Counsel, 1,427.35hours, supports the  
19 requested award. Further, the skill and experience of Class Counsel contributed to the  
20 settlement agreement executed by the class representatives which included not only a monetary  
21 settlement but also policy changes.  
22

23 Class Counsels' request for reimbursement of costs totaling \$40,818.88is reasonable  
24 because the costs were absolutely necessary in litigating the case and achieving a favorable  
25 settlement. Plaintiff's Counsel has incurred costs amounting to \$30,382.88. Objectors-  
26 Intervenor's Counsel has incurred costs of \$10,435. The case costs are primarily related to  
27 mediations and deposition fees which were necessary to reach a favorable resolution of the  
28 matter.

1 The Claims Administrator award of up to \$10,000 is reasonable. The appointed Claims  
2 Administrator, ILYM is an experienced and widely used class action administrator and the  
3 amount is reasonable in light of the \$4,500,000.00 settlement. For all these reasons, Class  
4 Counsel respectfully requests that the Court issue an order granting (1) attorney's fees of  
5 \$1,500,000.00, (2) reimbursement of litigation costs and expenses of \$40,818.88 , (3) Claims  
6 Administration Costs of up to \$10,000, and (4) incentive award payments of \$10,000 to each of  
7 the Named Plaintiffs, Robert Westfall, David Anderson, Lynn Bobby, and David Ellinger and  
8 Objector-Intervenors, Richard Martin and Andre Bernstein.  
9

## 10 **II. STATEMENT OF FACTS**

11 Named Plaintiffs filed their complaint for damages on September 7, 2016 in the Solano  
12 County Superior Court alleging wage and hour violations, including failure to provide lawful  
13 meal and rest breaks arising out of Ball's use of a paging system throughout its Fairfield,  
14 California plant to communicate with its employees. (Decl. of Eason 3 ¶14). Defendant  
15 removed the case to the Eastern District of California. Early in the litigation, the parties  
16 participated in mediation with Alan Berkowitz on February 7, 2017. (*Id.* at 4 ¶16-17). Since the  
17 Class had not yet been certified, the parties were too far apart and were unable to reach a  
18 resolution. (*Id.* at 4 ¶17). Following initial discovery and disclosures, Plaintiffs filed a motion to  
19 certify the class, which was granted in part/denied in part on February 5, 2018. (*Id.* at 5 ¶ 20).  
20 Plaintiffs filed a motion for reconsideration to expand on the class certification order, which was  
21 also granted. (*Id.*) Following class certification, the parties participated in a second mediation  
22 with Alan Berkowitz on August 1, 2018. (*Id.* at 5 ¶21). While the parties were able to close the  
23 gap in their settlement numbers from the prior mediation, mediation was once again  
24 unsuccessful. (*Id.*) The parties engaged in additional discovery, namely the depositions of more  
25 than twenty class members bringing the total number of depositions taken in the case to more  
26 than thirty. (*Id.* at 5 ¶22). On December 11, 2019 the parties participated in a third mediation  
27  
28

1 with the Honorable Raul Ramirez (Retired) and reached a resolution. (*Id.* at 5 ¶23). A motion  
2 for preliminary approval was granted. (*Id.* at 5-6 ¶25-26).

3 Thereafter, Objectors engaged in significant and extensive law-and-motion to oppose final  
4 approval, which Objectors undertook despite the general difficulty associated with prosecuting  
5 class objections, thereby creating significant and substantial risk of uncompensated efforts.  
6 Lesches Decl., ¶ 37. After obtaining leave to propound discovery, Objectors diligently pursued  
7 investigation into the EVA-bonus claims, which required extensive analysis of obtuse and dense  
8 policy documents, and research regarding the tax-law aspects associated with such plans. *Id.*  
9

10 After the Court denied final approval in January 2023, Plaintiffs and Objectors had limited  
11 interactions and relationship and were prepared to proceed in a non-coordinated manner.  
12 Lesches Decl., 44-46. After all the Parties agreed to seek further mediation, the Parties  
13 participated in a global Mediation on August 30, 2023 with Jeffrey Ross which ultimately led to  
14 a resolution that is subject to this Final Approval motion. (*Id.* at 6 ¶ 27). Prior to reaching that  
15 resolution, Plaintiffs and Objectors did not discuss fees, and Plaintiffs and Objectors did not  
16 enter into any agreements between themselves. Lesches Decl., 45-46. After the Parties' reached  
17 a mediated resolution, at that time Plaintiffs and Objectors first negotiated regarding fees, and  
18 thereafter entered into a Joint Prosecution Agreement. Lesches Decl., 45.  
19

20 On January 21, 2025 Class Counsel filed a motion seeking preliminary approval of the  
21 settlement. The Court granted the motion for preliminary approval of the settlement in an Order  
22 dated September 26, 2025. (*Id.* at 6 ¶29-30).  
23

24 Of the \$1,500,000.00 in attorney's fees sought by Class Counsel, Plaintiff's Counsel seeks  
25 One-Third of the fees attributable to the initial \$2,450,000 of the Gross Settlement Amount of  
26 the prior agreement for which Class Counsel sought final approval in May 2022 (\$816,666.66).  
27 In addition, Plaintiff's Counsel seeks Forty Percent (40%) of the fees attributable to the  
28 additional \$2,050,000 of the Gross Settlement Amount provided for herein in excess of the

1 initial settlement amount, or \$273,333.34 ( $[\$2,050,000 \times 1/3 = \$683,265] 683,333.33 \times 40\% =$   
2  $\$273,333.33$ ). In total Plaintiffs' Counsel seeks \$1,090,000 in attorney's fees. (Decl. of Eason ¶  
3 69).

4 Of the One-Third of fees attributable to the additional \$2,050,000 of the Gross Settlement  
5 Amount by which the current settlement increases the value of the prior proposed settlement,  
6 Objectors-Intervenor's Counsel seeks Sixty Percent, which amounts to \$410,000.00  
7 ( $[\$2,050,000 \times 1/3 = \$683,265] 683,333.33 \times 60\% = \$273,333.33$ ). See Settlement Agreement  
8  
9 5 ¶1 (11).

### 11 III. LEGAL ANALYSIS

#### 12 A. Attorney's Fees, Costs, Class Representative Incentive Award and Claims 13 Administration Fee are Fair Reasonable and Appropriate

14 Class Counsel's request for Class Counsel Fees and Costs, the Named Plaintiff  
15 Enhancement, and Objectors-Intervenor's Enhancement awards and Claims Administration  
16 Costs is fair, reasonable and appropriate and should be granted. Class Counsel has achieved an  
17 excellent settlement in this litigation, providing a substantial benefit to the Class Members. The  
18 settlement was reached after aggressive, lengthy and continuous litigation. Further, the  
19 Settlement caps attorney's fees at \$1,500,000.00. To date, more than \$40,818.88 in mediation  
20 fees and other costs have been incurred by the Class Counsel on this matter. Additional costs  
21 for the administration of the settlement of up to \$10,000 are anticipated. Class Counsel has  
22 expended more than 1,427.35 hours in attorney time over the course of this matter. (Decl of  
23 Eason at 16 ¶63; Decl of del Castillo; Decl of Lesches; Decl of Brady).

#### 26 1. Attorney's Fees are Fair and Reasonable Under Established 27 Factors for Judicial Review

28 The determination of the amount of attorney's fees and costs is a matter within the discretion

1 of the Court. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4<sup>th</sup> 224, 234-235 (2001). “Courts  
2 recognize two methods for calculating attorney’s fees in class actions: the lodestar/multiplier  
3 method and the percentage of recovery method.” *Id.* at p. 254. Class Counsel seeks a fee award  
4 of \$1,500,000.00 calculated as a percentage (33.33%) of the total value of settlement, for the  
5 successful prosecution and resolution of this action. An attorney’s fee award is justified where  
6 the legal action has produced benefits by way of voluntary settlement. *See e.g., Maria P. v.*  
7 *Riles* 43 Cal. 3d 1281, 1290-91 (1987); *Westside Cmty. For Indep. Living, Inc., v. Obledo* 33  
8 Cal. 3d 348, 352-53 (1983).

10 Class Counsel’s requested fees are reasonable and appropriate under the factors of analysis  
11 used in California jurisprudence. California courts consider several factors to determine  
12 whether a request for attorney’s fees is reasonable. These factors include the novelty and  
13 difficulty of the questions involved and the skill displayed in presenting them; the experience,  
14 reputation, and ability of the attorneys who performed the services; the amount of work  
15 involved; the extent to which the nature of the litigation precluded other employment by the  
16 attorneys; the contingent nature of the fee award; whether the award would be against the state  
17 and ultimately fall upon the taxpayers; whether the attorneys received public and charitable  
18 funding for the purpose of bringing lawsuits of the same character; and the informed consent of  
19 the client. *See e.g., Serrano v. Priest*, 20 Cal.3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48  
20 Cal.App.4<sup>th</sup> 1794, 1810 (1996), n.21; *Glendora Community Redevelopment Agency v. Demeter*  
21 155 Cal.App.3d 465, 474 (1984). This is an illustrative rather than exclusive list of potentially  
22 relevant factors. *Thayer v. Wells Fargo Bank., N.A.*, 92 Cal.App.4<sup>th</sup> 819 (2001).

25 **a. The Extensive Amount of Time and Labor**  
26 **Performed by Class Counsel Supports Requested**  
27 **Award of Attorney’s Fees.**

27 Wage and hour class litigation requires a large investment of time to determine the duties of  
28 class members, to take and defend depositions related to such duties and the time periods in

1 which they were performed, and to identify and interview possible witnesses. Here, Class  
2 Counsel devoted more than 1,427.35 hours prosecuting this contentious lawsuit including four  
3 separate all day mediations, close to thirty depositions and review of countless documents to  
4 achieve this settlement. In addition, significant research into new caselaw was done to evaluate  
5 the impact on this case. Class Counsel's hours do not include the extensive time that staff spent  
6 working on the file.

7  
8 The time and labor was necessary to achieve this settlement. Class Counsel spent more than  
9 1,427.35 hours in a hard-fought battle to reach this settlement that will greatly benefit the Class  
10 Members. (Decl. of Eason at 16 ¶ 63). These hours were spent responding to discovery,  
11 analyzing the discovery, preparing a motion for class certification and subsequent motion for  
12 reconsideration, preparing for and attending three separate mediations, and extensive  
13 negotiations and conferences determining the terms of the settlement. Additional time was spent  
14 seeking preliminary approval and dealing with the Claims Administrator.

15  
16 **b. The Skill and Experience of Class Counsel Contributed**  
17 **to the Successful Result and Supports the Requested**  
18 **Award**

19 Class Counsel's experience and abilities were essential to success in this case. Class  
20 Counsel had to develop an expansive factual record and analyze vast amounts of data. Also,  
21 Class Counsel had to research and stay abreast of a quickly evolving area of California law as  
22 the California Supreme Court decided *Augustus v. ABM Security Services* in December 2016 (2  
23 Cal.5<sup>th</sup> 257) and the Ninth Circuit Court of Appeal issued a decision in *Rodriguez v. Taco Bell*  
24 *Corp.*, in 2018 (896 F.3d 952). Class Counsel also had to conduct extensive discovery to  
25 obtain the information needed to reach a settlement. Settlement was made possible, in part, by  
26 Class Counsel's success in its Motion to Certify the Class and subsequent Request for  
27 Reconsideration.  
28

1 Class Counsel is composed of four law firms all bringing extensive experience. (Decl. of  
2 Eason 2-3 ¶4-13, Decl of Del Castillo ¶3-17; Decl of Lesches ¶3-9). Plaintiff's Counsel,  
3 Eason & Tambornini ALC has represented well over 50 successful employee rights matters  
4 before California Courts, including class action matters. These matters include class actions  
5 such as *Stocker v. Community Integrated Work Program* (Contra Costa County Superior Court)  
6 resulted in \$300,000 settlement of a lawsuit brought under state wage and labor laws; *Ames et*  
7 *al. v. Vision Precision Holdings LLC* (Sacramento County Superior Court) resulted in a  
8 \$480,000 settlement brought under state wage and labor laws; *Hernandez, Giordano v.*  
9 *BAPH3, Inc.*, (San Joaquin County Superior Court) resulted in \$70,000 settlement of a lawsuit  
10 brought under state wage and labor laws. (Decl. of Eason at 2, ¶10). Plaintiff's Counsel,  
11 Castle Law: California Employment Counsel PC represents both individuals and companies in  
12 employment law matters. Decl of Del Castillo¶7. Objector-Intervenor's Counsel has acted as  
13 counsel in multiple class actions and has litigated numerous jury trials, bench trials, class  
14 actions, appeals and petitions, and arbitrations. (Decl. of Lesches ¶8-9)Therefore, Class  
15 Counsel's experience and expertise were instrumental in reaching this negotiated settlement.  
16  
17

18 **c. Class Counsel Obtained an Exceptional Settlement for**  
19 **Class Members**

20 Class Counsel secured an exceptional settlement for Class Members. Defendants vigorously  
21 contested liability, the amount of the claimed damages and the class certification and sought an  
22 extensive post certification discovery plan. The strength of Plaintiffs' case was subject to the  
23 risks that the Court could possibly decertify the class and/or grant a motion for summary  
24 judgment or adjudication that could limit the remedies and class size, thereby adding to the  
25 intrinsic value of the settlement. (Decl. of Eason ¶38-42). The case was also premised on a  
26 theory, that to Class Counsel's knowledge, has not been addressed which, was that Defendant  
27 did not provide a Suitable Resting Facility within the meaning of Industrial Welfare  
28 Commission Order No. 1-2001 sections 13(B) and 3(G) due to the presence of a paging system.

1 Class Counsel made an effort to compensate those Class Members whose breaks were  
2 interrupted more frequently by giving greater weight to certain position groups. (Decl. of Eason  
3 ¶35(d), 36). If litigation were to proceed, Class Members would have a high risk of recovering  
4 nothing. In addition, Class Counsel also negotiated for a policy change at the Fairfield plant.  
5 Thus, a settlement is a very favorable outcome for Class Members, particularly as the “Paging  
6 Practices” settlement amount exceeded the Net Settlement Amount that was contemplated under  
7 the previously-reached 2020 settlement.  
8

9 With respect to the claims investigated and litigated by Objectors, the maximum  
10 waiting-penalties enhancement (which was capped at \$936,666) was not reached, and  
11 \$665,841.92 in *net* proceeds (*i.e.*, *post*-attorneys’ fees) is anticipated to be distributed to the 203  
12 participants. Because the maximum waiting-penalties was not reached, that means there was *no*  
13 reduction from the targeted result of a settlement that delivered 50% of the maximum favorable  
14 result that could be obtained through litigating and prevailing on that claim. Lesches Decl., ¶  
15 113-114. A 50% litigation discount was deemed reasonable because, amongst other matters, the  
16 best-obtainable-result calculation assumed favorable legal findings regarding the methodology  
17 for calculating such penalties, which issues could have been decided adversely to the Class. *See*  
18 *id.* Moreover, leave to amend may have been denied absent resolution, which would have  
19 sharply limited the limitations period for Objectors’ theories. *Id.*, ¶¶ 121.  
20

21 **d. The Requested Fee is Fair and Reasonable in Light of**  
22 **the Substantial Risks Class Counsel Undertook in**  
23 **Obtaining this Settlement**

24 Given the financial risks posed by litigating this matter on a contingency fee basis, the  
25 attorney’s fees requested are certainly reasonable. The risk inherent in pursuing a case is a  
26 primary factor in determining whether the requested attorney’s fees are reasonable. *See*  
27 *Ketchum v. Moses*, 34 Cal.4<sup>th</sup> 1122, 1133 (2001) (recognizing that attorney’s fee awards should  
28 reflect the risks of loss involved in contingency cases).

1 First, there was a risk that Plaintiffs might not prevail on the merits of the case. Plaintiffs'  
2 theory of the case is that Defendant failed to provide breaks by having a paging system that was  
3 audible in the Suitable Resting Facilities and required the Class Members to remain vigilant in  
4 listening to those pages for instruction. (Decl. of Eason 10 ¶ 39). Plaintiffs assert that the  
5 situation here is similar to that in *Augustus v. ABM Security Services*. While amenable to  
6 treatment on a class basis, there was risk in pursuing this theory on the merits. As Defendant  
7 points out in its opposition to Class Certification Motion if Plaintiff's theory proves true then  
8 Defendant has essentially not provided any meal and/or rest breaks whatsoever. (*Id.* at 10 ¶38).  
9 Defendant's position is that the facts here are distinguishable from *Augustus v. ABM*. It is  
10 possible that a trier of fact might not adopt Plaintiffs' position thereby creating risk in litigating  
11 further. (*Id.* at 10-11 ¶38-40). Plaintiffs' anticipated a motion for summary judgement and/or  
12 adjudication if the parties did not resolve at mediation.  
13

14 Second, there was a risk that Defendant might prevail in a motion to decertify the class or  
15 motion to modify the class. While the depositions of the Class Representatives were taken prior  
16 to the Court's ruling on Plaintiffs' Class Certification Motion, depositions of many Class  
17 Members occurred after Class Certification. The certified class includes several different  
18 positions within the production and support departments and while all were subject to the  
19 paging system in the Fairfield plant, some positions tended to be called off their breaks with  
20 greater frequency than others. (*Id.* at 10 ¶39). In addition, there was testimony related to  
21 variances between the day shift and the night shift. (*Id.*). Plaintiffs anticipated a motion to  
22 decertify and/or modify the class and this motion posed a risk of reducing the class size, at the  
23 very least. (*Id.*)  
24  
25

26 Lastly, there was a risk that the law might change rendering Plaintiffs' claims worthless.  
27 Wage and hour caselaw is constantly evolving and caselaw following *Augustus v. ABM* sought  
28 to limit the reach of its holding. (See e.g., *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952 (2018)).

1 Similarly, from Objectors' perspective, they vigorously represented the interests of the  
2 Class, even though prosecuting such efforts carried substantial risk of such efforts being  
3 uncompensated if the objections failed to provide substantial value.

4 **2. Attorney's Fees Are Reasonable Under the Percentage of**  
5 **Common Fund Approach.**

6 California state and federal courts have recognized that awarding attorneys' fees based on a  
7 percentage of the total value of benefits to Class Members is an appropriate method. *Boeing Co*  
8 *v. Van Gemert* 444 U.S. 472, 478 (1980); *Paul, Johnson, Alston & Hunt v. Graulty* 886 F.2d 268  
9 (9<sup>th</sup> Cir. 1989); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9<sup>th</sup> Cir. 1977); *Serrano v.*  
10 *Priest* 20 Cal.3d 25, 34-35; *Dunk*, 48 Cal. App.4<sup>th</sup> at 1809 (noting that the percentage method  
11 may be used where the amount of the settlement is a certain or easily calculable sum of money).  
12 The Ninth Circuit recognized the advantage of employing the percentage metho, noting that the  
13 lodestar method creates disincentives to early settlement and "consumes an undue amount of  
14 court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the  
15 class members." *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (9<sup>th</sup> Cir. 1989).  
16 The courts have recognized that compensating Class Counsel on a percentage basis of the  
17 common fund is preferable to the lodestar because: (1) it aligns the interests of class counsel and  
18 absent class members; (2) it encourages efficient resolution of the litigation by providing an  
19 incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial  
20 resources. (*Id.* at 1378-1379). The Ninth Circuit now routinely uses the percentage of the  
21 common-fund approach to determine the award of attorneys' fees. *See, e.g., In re Pacific*  
22 *Enterprises Securities City and County of San Francisco Litigation* 47 F.3d 373, 378-379 (9<sup>th</sup>  
23 Cir. 1994) (approving attorneys fee of 33 1/3%).  
24  
25  
26

27 The California Supreme Court has held it is appropriate for trial courts to employ the  
28 "common fund" approach to award attorneys' fees and costs to Class Counsel in class actions

1 where class representatives have secured a monetary settlement or judgment on behalf of the  
2 Class. *Serrano v. Priest*, 20 Cal.3d at 34-35. The purpose of this equitable doctrine is to avoid  
3 unjust enrichment of counsel and to “spread litigation costs proportionately among all the  
4 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v.*  
5 *Hughes Air West, Inc.*, supra 557 F.2d at 769.

6 Courts frequently award attorney’s fees worth one-third (1/3) or more of the total value of  
7 settlements received. In discussing fee ranges, the court in *In re Activision Securities Litigation*  
8 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) noted that fees typically range from 20% to 50% of  
9 the common fund. Often, reasonable fees constitute a higher percentage of the common fund  
10 when the fund is worth less than ten million dollars. See *Van Vranken v. Atlantic Richfield Co.*,  
11 901 F.Supp. 294, 297 (N.D. Cal. 1995). Numerous California trial courts have awarded  
12 attorneys’ fees at a percentage roughly equal to- or in some cases greater than-the one third  
13 portion sought here. See, e.g. *Davis v. The Money Store, Inc.*, No. 99AS01716 (Sacramento  
14 Super. Ct. 2000) [33 1/3% fee award]; *In re Milk Antitrust Litigation*, Civ. Case No. BC070061  
15 (L.A. Super. Ct. 1998) [33 1/3% award]; *In re Facsimile Paper Antitrust Litigation*, Civ. Case  
16 Nos. 963598, 964899, and 967137 (San Francisco Super. Ct. 1997) [33 1/3% fee award plus  
17 costs] [Garcia, J.]; *In re Liquid Carbon Dioxide Cases* J.C.C.P. 3012 (San Diego Super. Ct.  
18 1996) [33 1/3% award plus costs]; *Abzug v. Kerkorian* CA-00981 (L.A. Super. Ct., Nov. 1990)  
19 [45% fee award plus costs]; *Haitz v. Meyer, et al.* No. 572968-3 (Alameda Super. Ct., Aug. 20,  
20 1990) [45% fee award]; *In re California Indirect-Purchaser Infant Formula Antitrust Class*  
21 *Action Litigation* J.C.C.P. No. 2557 (L.A. Super. Ct. 1993) [30% fee award including costs].  
22  
23  
24

25 Moreover, “the Court should give substantial weight to a negotiated fee amount.” *Ingram v.*  
26 *The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001). This weight is especially  
27 appropriate when no one has objected to the award, and the amount of fees is consistent with a  
28 reasonable fee award under the circumstances of the case. *Id.* Here, Class Counsel negotiated a

1 Settlement Agreement providing attorney’s fees in the amount of one-third (1/3) of the common  
2 fund. See Settlement Agreement, Exhibit A at 3 ¶ 9. Accordingly, Class Counsel’s requested  
3 fee of one third (1/3) is well within the range of reasonableness and should be approved by the  
4 Court.

5 With respect to Objectors’ Counsels’ fee request, the request is aligned to the 25% of the  
6 common fund—indeed, it is approximately 20% [\$2,050,000 in new value x 20% = \$410,000]  
7 and such request should certainly be approved in whole.  
8

9 **3. Attorney’s Fees are Reasonable Under the Lodestar Approach**

10 Federal and California state courts often cross-checks common fund fee awards against the  
11 lodestar amount (attorney hours multiplied by hourly rate) as an additional indication of its  
12 reasonableness. See e.g., *In re California Indirect Purchases*, 1998 WL 1031494 (Cal.Superior,  
13 1998); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9<sup>th</sup> Cir. 2002) (“Calculation of the  
14 lodestar, which measures the lawyers’ investment of time in the litigation, provides a check on  
15 the reasonableness of the percentage award”).  
16

17 Under the lodestar calculation, the Court must first compute the base or “lodestar” figure,  
18 which is the product of the number of hours reasonably expended on the litigation multiplied  
19 by the reasonable hourly rate for each attorney. *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 322  
20 (1983).

21 The “prevailing local rate” is calculated according to the reasonable rates of attorneys  
22 practicing in the forum district. *Gauchat-Hargis v. Forest River, Inc.*, 2013 WL 48285594  
23 (E.D. Cal. Sept. 9, 2013). In this case, the prevailing local rate is to be calculated according to  
24 a reasonable attorney rate practicing in the Eastern District of California, more specifically,  
25 Sacramento. In the case of *Jeramie Giles v. CIK Power Distributors LLC* (Placer Super. Ct.  
26 2021)(S-CV-0044085), the court found that the requested rates of \$850 for Eric B. Kingsley,  
27 \$625 for Kelsey M. Szamet, \$750 for Darren M. Cohen and \$750 for Leonard H. Sansanowicz  
28

1 to be reasonable for attorneys of similar background and experience. Applying these rates to  
2 the present case yields a total attorney fee of \$1,070,512.50 This involves a multiplier of 1.401.

3 With respect to the combined 594.6 hours of Objectors’ Counsel, the sought fee amounts to  
4 a blended rate of \$713 between Mr. Lesches and Mr. Blady, which does not require any  
5 multiplier and/or a minimal multiplier. In light of the significant credentials detailed in their  
6 declarations, such amounts are reasonable and appropriate. Lesches Decl., ¶ 158-171.; Blady  
7 Decl., ¶¶ 5-6. It is important to mention that Class Counsel’s requested fees are only for  
8 attorney time spent on this case and excludes the numerous hours spent by Class Counsel’s  
9 legal assistants and paralegals. The positive multiplier is reasonable in light of the contingent  
10 risk counsel assumed. The risk of non-payment in a case handled on a contingent basis has  
11 been repeatedly cited as a reason to augment the lodestar. The Supreme Court of California  
12 has noted it as “one of the most common fee enhancers.” *Wershba v. Apple Computers Inc.*  
13 (2001) 91 Cal.App.4<sup>th</sup> 224, 255 (noting that “multipliers can range from 2 to 4 or even higher).  
14 As a result, using class counsel’s lodestar as a cross-check establishes the reasonableness of the  
15 requested fee award.  
16  
17

18 **4. Attorney’s Fees are Reasonable Despite Clear Sailing**  
19 **Provision**

20 Although the Settlement Agreement contains a clear sailing provision, the settlement  
21 was the result of arm’s length negotiations, and is fair when considering the amount of work that  
22 went in to litigating the case. In *Briseno v. Henderson*, the Ninth Circuit held that under the  
23 newly revised Rule 23(e)(2) standard courts must scrutinize settlement agreements—including  
24 post-class certification settlements—for potentially unfair collusion in the distribution of funds  
25 between class and their counsel. 998 F.3d 1014, 1019 (9<sup>th</sup> Cir. 2021). There, the appellate court  
26 applied to a post certification settlement the standards of *In re Bluetooth*, which identified three  
27 major signs of potential attorney collusion: “(1) when counsel receives a disproportionate  
28 distribution of the settlement; (2) when the parties negotiate a ‘clear sailing’ arrangement under

1 which defendant agrees not to challenge a request for agreed upon attorneys' fees; and (3) when  
2 the agreement contains a "kicker" or "reverter" clause that returns unawarded fees to the  
3 defendant rather than the class." See *Briseno v. Henderson* 998 F.3d at 1023 (2021) (quoting *In*  
4 *re Bluetooth Headset Products Liability Litigation* 684 F.3d 935, 947 (9<sup>th</sup> Cir. 2011)).

5 Class Counsel's request for fees is fair and reasonable when considering the *In re*  
6 *Bluetooth* signs of potential attorney collusion. The fee request in *Briseno* raised red flags  
7 because the attorney fee request was \$7 million and the distribution to the class was \$1 million.  
8 *Id.* at 1020. Whereas, here Class Counsel requested a fraction, one-third, of the Gross Settlement  
9 Amount which is much less than the Net Settlement Amount of \$2,810,000. While the  
10 Settlement Agreement does contain a clear sailing provision, it was not in exchange for  
11 accepting a lower amount for the class. Moreover, Plaintiffs' Counsel has litigated this case  
12 since 2016, *exclusive* of pre-filing investigation. . Furthermore, Class Counsel did not enter  
13 into negotiations regarding their fees until *after* they had negotiated a favorable settlement on  
14 behalf of the Class. Lesches Decl., ¶ 46.

15  
16  
17 Lastly, there is no reverter clause to the Defendant, but rather should the Court award  
18 less than what Class Counsel requested, then the difference is reverted to Eligible Class  
19 Members.

20 **B. The Requested Reimbursement of Class Counsel's Costs is Fair and**  
21 **Reasonable**

22 Class Counsel also requests an award of costs in the amount of \$40,818.88 from the  
23 settlement fund as a reimbursement for expenses incurred in connection with litigating this  
24 case. These costs were necessary to achieve the successful result for Class members reflected  
25 in the settlement.

26 Class Counsel is entitled to reimbursement for costs incurred in litigating this case. *See,*  
27 *e.g., In re United Energy Corp. Sec. Litig.*, 1989 WL 73211 (C.D. Cal. 1989) (quoting  
28 Newberg, Attorney Fee Awards § 2.19 (1987)). As on commentator has noted, "the prevailing

1 view is that expenses are awarded in addition to the fee percentage.” (*See, Conte, Attorney Fee*  
2 *Awards*, § 2.08 at 50-51 (2d ed.); *In re Warner Communications Securities Litigation*, 618  
3 F.Supp.735, 751 (D.C.N.Y., 1985); *In re GNC Shareholder Litigation: All Actions* 668  
4 F.Supp. 450, 452 (W.D.Pa., 1987).

5 The total cost reflects advances in costs by Class Counsel which primarily include filing  
6 fees, deposition costs and the cost for multiple mediations. All of these costs were absolutely  
7 necessary in connection with the litigation of this matter to benefit the Class Members. While  
8 there were multiple day long mediations, the first was aimed at seeing if the parties could  
9 resolve the case early on without the time and expense of protracted litigation. While  
10 unsuccessful, the mediation was beneficial in aiding the parties to develop a discovery plan and  
11 discover the strengths and weaknesses in their positions. The second mediation was completed  
12 after the Plaintiffs’ depositions were taken along with depositions of some of Defendant’s  
13 employees. This mediation occurred after the Court granted the class certification motion but  
14 before Plaintiff’s Motion for Reconsideration was decided upon. This mediation was also  
15 unsuccessful, but was beneficial in highlighting the strengths and weaknesses of the Parties  
16 positions. For the fourth mediation, the parties agreed to Jeffrey Ross who specialized in  
17 employment matters.  
18  
19

20 **C. The Requested Claims Administrator Award is Fair and Reasonable**

21  
22 The requested Claims Administrator fee is fair and reasonable. ILYM was appointed as the  
23 Claims Administrator. ILYM is an experienced and widely used class action administrator.  
24 Class Counsel has requested a fee not exceed \$10,000 which is reasonable. *Vasquez v. Coast*  
25 *Valley Roofing, Inc.*, 670 F.Supp.2d 1114, 1119 (E.D. Cal. 2009) (finding settlement  
26 administration fees “estimated to be less than \$25,000” reasonable in a \$300,000 settlement).  
27 Presuming Final Approval is granted, ILYM must complete its remaining duties including  
28 affecting the distribution of funds. The claims administrator fee is fair and reasonable for the

1 performance of these duties, which have benefitted the class. Thus, the Court should grant the  
2 claims administration fee of up to \$10,000.

3 **D. Enhancements to Named Plaintiffs and Objector-Intervenors are Fair and**  
4 **Proper**

5  
6 The Named Plaintiffs, Robert Westfall, David Anderson, Lynn Bobby, and David Ellinger,  
7 have been actively involved in the litigation and devoted substantial time and effort working  
8 with Class Counsel to assist in the prosecution of this matter which has lasted for almost a  
9 decade. All four made themselves available to Class Counsel to provide and assemble  
10 information regarding the policies of Defendant. Robert Westfall attended all three mediations  
11 with David Anderson, Lynn Bobby and David Ellinger being available by phone for the second  
12 mediation and physically present for the third mediation.  
13

14 All four Named Plaintiffs had their depositions taken and assisted Class Counsel in  
15 identifying key people at the Fairfield plant to be deposed. All four Class Representatives  
16 assisted in preparing initial disclosures and providing documentation. They all participated in  
17 providing feedback on Class Members as they were being deposed. Robert Westfall also  
18 assisted in circulating declarations to employees at the Fairfield plant which were used in  
19 support of Plaintiffs' Motion for Class Certification. In addition, the Named Plaintiffs were  
20 instrumental in advocating for a policy change which is part of the Settlement Agreement.  
21 (Decl. of Eason 6 ¶ 31). In recognition of these efforts, the Settlement Agreements provides for  
22 payment of an incentive award up to \$10,000 for each.  
23

24 All four were available for the fourth mediation, as well as Andre Bernstein and Richard  
25 Martin. Bernstein and Martin further spent substantial time discussing the factual issues with  
26 Counsel. Moreover, Bernstein and Martin were required to furnish releases of significant and  
27 substantial individual claims in exchange for representing the interests of the Class. *See*  
28 Lesches Decl., ¶174-176.

1 Enhancements for class representatives are common in class actions, where the class  
2 representatives' personal claims alone would never justify the effort required to prosecute  
3 complex litigation. *See, e.g., In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4<sup>th</sup>  
4 1380, 1393-95 (approving \$10,000 incentive payments to class representatives); *In re Domestic*  
5 *Air Transportation Antitrust Litigation* (N.D. Ga. 1993) 148 F.R.D. 297 (\$142,500 award out of  
6 a cash settlement fund of \$50 million); *In re Dun & Bradstreet Credit Services Customer*  
7 *Litigation* (S.D. Ohio 1990) 130 F.R.D. 366 (\$215,000 awarded out of a settlement fund of \$18  
8 million); *Spicer v. Chicago Board Options Exchange Inc.*, (N.D. Ill. 1993) 844 F.Supp. 1126  
9 (\$20,000 award out of settlement fund of \$10 million). Incentive awards compensate the class  
10 representatives for actual costs in time, money and the disruption of life incurred in the  
11 prosecution of the litigation. Such awards also encourage future plaintiffs to come forward and  
12 vindicate the rights of other injured parties despite having little to gain personally from their  
13 claims.  
14

15 Robert Westfall, David Anderson, Lynn Bobby and David Ellinger along with Andre  
16 Bernstein and Richard Martin spent copious amounts of personal time assisting in the  
17 prosecution of this case. Their efforts resulted in both a monetary settlement but also policy  
18 changes as the Fairfield plant. For these reasons the enhancement of \$10,000 to each of the four  
19 Named Plaintiffs and two objectors is fair and appropriate.  
20

#### 21 **IV. CONCLUSION**

22  
23 For the above reasons, Class Counsel on behalf of the Class respectfully request the Court to  
24 grant the motion and enter an order awarding: (1) Class Counsel attorneys' fees of \$1,500,00.00,  
25 (2) reimbursement of litigation costs and expenses of \$40,818.88 (3) Claims Administrator fee  
26 of up to \$10,000, and (4) Named Plaintiff Enhancement and Objector Enhancement of \$10,000  
27 each for Named Plaintiffs Robert Westfall, David Anderson, Lynn Bobby, and David Ellinger  
28

1 and Objectors Richard Martin and Andre Bernstein (aggregate of \$60,000).

2 Respectfully submitted,

3 Dated: March 30, 2026

**EASON & TAMBORNINI, ALC**

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5

6

/s/ Erin M. Scharg

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Erin M. Scharg

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Attorney for Plaintiffs and the Class

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