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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

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS AND PAGA SETTLEMENT

Date: May 4, 2026
Time: 1:30 p.m.
Crtm: 3

The Honorable Dale A. Drozd

Complaint filed: September 7, 2016

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I. INTRODUCTION

This Motion seeks final approval of a wage and hour class action and Private Attorneys General Act ("PAGA") settlement in the total gross amount of $4,500,000.00. *See generally* **Exhibit A** (Joint Stipulation of Class Action and PAGA Settlement) (hereinafter, "Settlement Agreement" or "SA"). Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger ("Plaintiffs") bring this class and PAGA action on behalf of themselves and other similarly situated individuals employed by Defendant Ball Metal Beverage Container Corporation, and all subsidiary, affiliated, or related persons or entities ("Defendants").

Plaintiffs' SAC [ECF 195] alleges Eight Causes of Action: (1) California Wages and Overtime violations under *Labor Code* §§ 510, 511, 1194, 1199, (*id*., ¶¶ 52–60); (2) failure to provide meal breaks under *Labor Code* §§ 226.7 and 512, (¶¶ 62–68); (3) failure to provide rest breaks under *Labor Code* § 226.7, (¶¶ 70–74); (4) violation of Labor Code § 226(a) for failure to provide compliant wage-statements, (¶¶ 76–80); (5) waiting-time penalties pursuant to *Labor Code* §§ 203, (*id*., ¶¶ 82–84); (6) violation of *Business & Professions Code* § 17200, *et seq*., (¶¶ 86–94); (7) violation of *Cal. Lab. Code* §§ 2698, *et seq*. (California Private Attorneys General Act of 2004, "PAGA"), on behalf of Class Members, (¶¶ 96–98); and (8) for PAGA violations predicated on Cal-OSHA workplace-safety statutes. (¶¶ 100–102.) Plaintiffs sought remedies for the period of September 7, 2012[1] through trial. Plaintiffs also sought recovery of alleged damages, penalties, interest, and attorneys' fees. Defendant has denied all of Plaintiffs' allegations and any liability or wrongdoing of any kind. *See* Declaration of Matthew R. Eason in Support of Motion for Final Approval *et al.* ("Eason Decl.") ¶ 37; Declaration of Timothy B. Del Castillo ISO Motion for Final Approval ("Del Castillo Decl.") ¶ 20.

However, subject to final approval by this Court, Plaintiffs and Defendant have been able to compromise and settle all claims for monetary compensation, pursuant to extensive discovery relating to the factual bases for all of Plaintiffs' claims—including discovery by Martin and Bernstein—and following considerable litigation, negotiation, as well as four different mediations (Alan Berkowitz on Feb. 7, 2017 & Aug. 1, 2018; Hon. Raul A. Ramirez (Ret.) on

[1] Other than for PAGA penalties, for which, as explained below in section IV.A, Plaintiffs sought PAGA penalties with respect to the period from July 4, 2015, through the date of trial.

Dec. 11, 2019; and Jeffrey Ross on Aug. 30, 2023). Eason Decl. ¶¶ 14–27.

Based on their formal discovery and informal discovery, investigations, negotiations, review of the papers filed by Defendants in opposition to certification, as well as detailed knowledge of the issues in this case, Plaintiffs' counsel and Objectors' Counsel[2] are convinced that the proposed settlement is in the best interest of the proposed class. *See* Eason Decl. ¶¶ 31-46; Del Castillo Decl., ¶¶ 30-46; Declaration of Levi Lesches ("Lesches Decl.") ¶¶ 69–157. The benefits of the settlement were weighed against the prospect of potential adverse rulings, difficulties and delays of further litigation, court discretion to reduce civil penalties, and various possible delays and appeals, which were all carefully considered before agreeing to the proposed settlement. *See* Eason Decl. ¶¶ 31-46; Del Castillo Decl., ¶¶ 30-35; Lesches Decl. ¶¶ 69-157.

The settlement achieved is the favorable result of vigorous arms-length negotiating. The settlement is fair, adequate, and reasonable, as required for final approval. On September 26, 2025, the settlement was preliminarily approved by the United States District Court, for the Eastern District of California. ILYM was appointed as Claims Administrator and has been appropriately administering the claims. The Proposed Class Notice has provided the Class Members with what is believed to have been the best notice practicable under the circumstances, including the utilization of skip traces, and the provision of a website containing all material documents relating to the settlement. There have been zero (0) opt outs and zero (0) objections. See Brown Decl. ¶¶11-12. Plaintiffs now respectfully request an order confirming: (1) certification of the Classes conditionally certified in the Preliminary Approval Order; and (2) approval of the preliminary approved settlement as fair, adequate, and reasonable under rules 23.

II. STATEMENT OF FACTS

A. Background of the Litigation

On September 7, 2016, Plaintiff Robert Westfall filed this action as *Robert Westfall v. Ball Metal Beverage Container Corporation, et al.*, Solano County Superior Court Case No. FCS047654. Defendant subsequently removed to this Court, thereby initiating this action

[2] Martin has been conditionally certified as a Plaintiff-in-Intervention, in addition to being a named Objector. For ease of review, this motion simply utilizes "Objectors" as shorthand for Conditionally Certified Plaintiff-in-Intervention & Objector Martin, and Objector Bernstein.

Westfall v. Ball Metal Beverage Container Corporation, Case No. 2:16-cv-02632 ("the Federal Action"). Eason Decl. ¶¶ 14-16. On September 29, 2016, Plaintiff Robert Westfall submitted his PAGA Notice to the LWDA, in compliance with California *Labor Code* § 2699.3's notice requirement. Plaintiff's counsel submitted the $75.00 filing fee, and the PAGA Notice was sent to Defendant via certified mail. Eason Decl. ¶ 14.

On April 6, 2017, Plaintiffs filed the First Amended Complaint ("FAC") in this action following a stipulation by the parties. Del Castillo Decl. ¶ 24 On February 5, 2018, Judge Mueller granted—over vigorous opposition, ECF Nos. 42–43—Class Certification for five causes of action: (1) Failure to pay wages; (2) Failure to provide meal periods; (3) Failure to provide rest periods; (4) UCL claims; and (5) PAGA penalties. ECF No. 58, pp. 16:19–22. Thereafter, Judge Mueller extended class certification to the additional causes of action for (6) waiting-time penalties; and (7) noncompliant wage statements. ECF No. 85, pp. 3:15–18. On May 18, 2018, Plaintiff's counsel uploaded a copy of the filed FAC to the LWDA website. Del Castillo Decl. ¶ 25.

On December 11, 2019, Plaintiffs and Defendant reached a resolution of this matter, and preliminary approval was granted on September 16, 2021. ECF No. 104. Plaintiffs moved for Final Approval on April 15, 2022. Eason Decl. ¶¶ 26; Del Castillo Decl. ¶26. Richard Martin and Andre Bernstein, (collectively "Objectors"), filed objections to the settlement and final approval was denied. Eason Decl. ¶ 26; Del Castillo Decl. ¶ 26; Lesches Decl. ¶¶ 34-36. The Parties thereafter participated in a global mediation on August 30, 2023, with mediator Jeffrey Ross, in a mediation session that lasted well into the evening. Eason Decl. ¶27; Del Castillo Decl. ¶ 31; Lesches Decl. ¶¶ 42. During that full-day mediation, there were further exchanges of information and contentions facilitated by the mediator. Eason Decl. ¶ 27; Del Castillo Decl. ¶ 31; Lesches Decl. ¶¶ 41. The full-day mediation extended into the late evening hours. Eason Decl. ¶ 27. Ultimately, mediation served to bring the parties together, and the Parties were successful in negotiating a resolution based upon a mediator's proposal. Eason Decl. ¶ 27; Lesches Decl. 46. Thereafter the parties negotiated more specific terms of their resolution. After significant initial disagreement regarding the

scope of the release, the Parties reached a compromise relating to the scope of release. Lesches Decl., ¶¶ 49-52. Settlement terms were thereafter memorialized in a Memorandum of Understanding ("MOU"), which was executed in February 2024. Eason Decl. ¶ 27.

On March 6, 2024, Plaintiffs submitted an Amended PAGA Notice to the LWDA, and counsel submitted the $75.00 filing fee. Del Castillo Decl. ¶ 27. The Amended PAGA Notice was sent to Defendant via certified mail. *Id*. On March 5, 2024, Objector Martin submitted additional Amended PAGA Notices to the LWDA, which were served on Defendant electronically as well as by certified mail. Lesches Decl., ¶ 5.

On May 30, 2024, Plaintiffs filed the Second Amended Complaint ("SAC") following the filing of a stipulation that was approved by the Court. Eason Decl. ¶ 28; Del Castillo Decl. ¶ 28. On November 26, 2024, Plaintiff's counsel uploaded a copy of the filed SAC on the LWDA website. Del Castillo Decl. ¶29. On January 21, 2025, Plaintiffs' Counsel uploaded a copy of the Settlement Agreement to the LWDA website. Eason Decl. ¶ 30.

On January 21, 2025, Plaintiffs and Objectors filed the Motion for Preliminary Approval of the Class and PAGA Settlement. Eason Decl. ¶29. That motion sought an order for: (1) preliminary and conditional approval of the payment of a class representative enhancement award of $10,000.00 each to Plaintiffs Westfall, Anderson, Bobby, and Ellinger; (2) preliminary and conditional approval of payment of an objector enhancement award of $10,000 each to Objectors Martin and Bernstein; (3) preliminary appointment of firms Castle Law: California Employment Counsel PC; Eason & Tambornini, ALC; Lesches Law; and Blady Workforce Law Group LLP as class counsel for purposes of settlement; (4) preliminary and conditional approval of the proposed class-action settlement; (5) preliminary and conditional approval of application to reimburse class counsel reasonable costs in an amount not to exceed $45,000; (6) preliminary and conditional approval of ILYM as the class action settlement administrator, and for payment to ILYM in an amount up to $10,000; (7) preliminary and conditional approval of application for payment to class counsel of reasonable attorneys' fees in the amount of $1,500,000.00 (1/3 of Settlement Amount); (8) Approval as to form and content of the proposed Notice of Proposed Class Action Settlement and Hearing

Date for Court Approval of Settlement ("Class Notice"); (9) approval of proposed procedures to notify the class; (10) directing Defendant to report employment information to the claims administrator; (11) scheduling a fairness hearing on whether the proposed settlement should be finally approved as fair reasonable and adequate; (12) directing that any residue from settlement checks that were not cashed within 180 days of issuance be paid in accordance with *Code of Civil Procedure* § 384(b); and (13) adoption of the Proposed Order and its implementation schedule. On September 26, 2025 the Court issued an order granting preliminary approval. On November 4, 2025 Plaintiffs' Counsel uploaded a copy of the Order Granting Preliminary Approval of Class Action Settlement to the LWDA website.

On January 23, 2026, the claims administrator, ILYM, mailed out the Class Notice. Brown Decl., ¶ 7. The last day to object or opt out was March 9, 2026.

Plaintiffs now respectfully request that the Court issue an order confirming: (1) certifying settlement classes; and (2) approval of the preliminarily approved settlement as fair, adequate, and reasonable under Rule 23.

III. SUMMARY OF SETTLEMENT TERMS AND CLAIMS PROCESS

A. The Terms of the Settlement

Under the settlement agreement, the Parties have agreed to the following:

1. The scope of the settlement class:
(1) "Class," "Class Members," "Settlement Class," or "Settlement Class Members," shall mean all persons employed by Defendant Ball in a Class Position, at any time during the Class Period.

See SA ¶ 1(2). The class period is from September 7, 2012 through April 20, 2024. SA ¶ 1(20). The agreement than breaks down the payments between the general class versus "Engineering Class Member Workweeks", and provides payments as discussed below. SA ¶¶ 1(18)-(19), (21).

2. Defendant will pay the Maximum Gross Settlement Amount of $4,500,000.00 to resolve the class and representative claims. SA ¶ 1(31).

3. The cost of administering the class-action settlement is to be paid from the settlement proceeds. Subject to Court approval, the parties selected ILYM to act as the class action administrator. ILYM provided a quote to administer the settlement for a capped fee of $10,000. SA ¶ 1(5).

4. The amount of $100,000.00 of the settlement proceeds will be allocated to PAGA claims, to be allocated $75,000.00 to the State of California and $25,000.00 to be added to the Net Settlement Amount. *See* SA ¶ 1(34).

5. For up to One Third (1/3) of the total gross settlement, $1,500,0000.00, to be paid for Class Counsels' attorneys' fees incurred in the litigation of this case. SA at ¶ 1(11). Additionally, Class Counsel will also be entitled to the actual litigation costs as demonstrated to, and approved by, the Court in an amount not to exceed $45,000.00. SA at ¶ 1(11). The difference between actual costs and $45,000 will be added to the Net Settlement Amount. *Id.*

6. For $10,000.00 (taken from the total gross settlement) to be paid to each Plaintiff as a Representative Enhancement Award, SA ¶ 1(36), as well as to each Objector as an Objector Enhancement award. *Id.*

7. For the settlement administrator to send notice to Class members based on the last contact information in Defendant's possession. SA ¶ 2(7). The Settlement Agreement further outlined timelines for notice to class members, as well as timelines and processes for the submission of any request to opt out, object, or to dispute the allocation of money. SA ¶ 2(8)(b) through (e). The Settlement Agreement further provided for Class members to receive notice of their total number of weeks worked during the class period, the estimated amount of settlement monies payable to them, information on how to opt-out and how to object to settlement terms, and how to dispute their total number of workweeks. SA ¶ 2(7); Exhibit C (Proposed Class Notice). The Settlement Agreement further provided to make case documents available to class members to download. SA ¶ 2(8)(a).

8. For any portion of the Net Settlement Amount allocated to class members not claimed by class members, (*i.e.*, by cashing their respective settlement checks within 180 days), the amount shall be paid to the Cal. State Controller Unclaimed Property Division in the name of the Qualified Claimant. SA ¶ 2(11) (the parties have elected not to utilize a *cy pres* fund).

B. <u>Allocation of Settlement Funds</u>

Settlement Awards to Class Members will be determined based on the number of workweeks worked in California in a non-exempt position by such Class Members during the Class Period, as based on information to be provided by Defendant. Consideration is given to

whether the Eligible Class Member is entitled to a Waiting Time Penalty Enhancement. Further consideration is given to those working in "Engineering" positions. Lastly, consideration is given to the time period for which the Eligible Class Members were employed with Defendant. After deduction for requested attorney's fees and costs, representative enhancements, settlement administrator fees, and the LWDA's portion of the PAGA penalty allocations, the Class will have a Net Settlement Amount of approximately $2,810,000.00. Eason Decl. ¶ 31. The amount to be paid to Class Members will be calculated by the Settlement Administrator as follows:

> (a) Waiting Time Penalty Enhancement: Class members that separated from Defendant's employment during the Class Period shall receive an award of up to thirty-three percent (33%) of their last regular rate of pay times 360 hours. For avoidance of the doubt, for Class Members that do not timely opt out of the Settlement, the General Release shall release their claims for waiting time penalties to the extent predicated on any wages paid prior to April 20, 2024.
>
> (b) Maximum Allocation for the Waiting Time Penalty Enhancement. No more than $1,500,000 of the Gross Settlement Amount shall be allocated to the Waiting Time Penalty Enhancement. The Settlement Administrator shall determine the percentage value for the Net Settlement Amount as a percentage of the Gross Settlement Amount, and shall multiply that percentage value against $1,500,000 to arrive at the "Maximum Allocation for the Waiting Time Penalty Enhancement." If necessary, each Waiting Time Penalty Enhancement shall be decreased pro-rata until the combined total Waiting Time Penalty Enhancements for all Class Members is equal to, (or, if necessary to round individual allocations to the nearest penny, marginally less than), the Maximum Allocation for Waiting Time Penalty Enhancement.
>
> (c) Allocation for Paging-Practices Period. The Settlement Administrator shall subtract from the Net Settlement Amount the: (i) Waiting Time Penalty Enhancement; (ii) Allocation for Post-Filing Period; and (iii) The LWDA Fund Remainder to arrive at the "Allocation for the Paging-Practices Period." This amount shall be allocated to the settlement of the Class Members' claims relating to alleged meal-period violations, as well as alleged rest-period violations, as well as other alleged violations occurring prior to Defendant's changing of its policies and procedures relating to paging announcements ("Paging-Practices Period"). For ease of Settlement Administration, the Paging-Practices Period shall be defined as the period between September 6, 2012, and December 31, 2019.
>
> (d) Engineering Class Member Work Weeks during the Paging-Practices Period shall be paid at 1.5 times the rate of Class Member Work Weeks. The Settlement Administrator shall then allocate the Allocation for Paging-Practices Period pro-rata between the Class Member Work Weeks for the Paging-Practices Period, except that the Settlement Administrator shall treat every Engineering Class Member Work Week in the Paging-Practices Period as equivalent to 1.5 workweeks.
>
> (e) Allocation for Post-Filing Period. 9% of the Net Settlement Amount shall be allocated to the settlement of the Class Members' claims relating to alleged violations (other than waiting time penalties) occurring on January 1, 2020, through April 20, 2024. The Settlement Administrator shall determine the percentage value

> for the Net Settlement Amount as a percentage of the Gross Settlement Amount, and shall multiply that percentage value against the Allocation for Post-Filing Period, and that sum shall be distributed pro-rata between all workweeks between January 1, 2020, through April 20, 2024.
>
> (f) The LWDA Fund Remainder shall be distributed pro rata across all Engineering Class Member Work Weeks and Class Member Work Weeks (with no workweek to be given greater allocation than any other).

Settlement Agreement ¶ 1(27); Decl. Eason ¶ 35; *see* Del. Castillo Decl. ¶¶ 38-40. Such allocation formula constitutes the best judgment of Plaintiffs' Counsel, and Objectors-Defendants' Counsel as to how to balance the competing concerns of: (1) fairness of allocation; (2) allocating the settlement in accordance with the estimate value of the various claims; (3) reducing Class Member confusion; (4) reducing the risk of Administrator error; and (5) minimizing administration burdens and costs.

C. The Release of Claims of Representatives and the Class

In exchange for the aforementioned benefits, Named Plaintiffs, Objectors-Intervenors, and all Eligible Class Members that have not timely opted out of the settlement will release Defendant from claims brought in this litigation. *See* SA Exhibits 2 and 3. The release covers:

> Defendant, and each of their respective attorneys, past present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-employers, payroll service providers, staffing agencies, Professional Employer Organizations ("PEO's"), Administrative Service Organizations ("ASO's"), insurers, related corporations, and/or privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant (referred to as the "Release Parties")…

Settlement Agreement; Exh 2.

> Class Members will be deemed to have released any and all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties, interest, demands, damages, controversies, attorneys' fees, costs of suit, losses, expenses, and liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory, federal, state or otherwise), arising form or that could have reasonably been asserted based on the allegations in the Complaint and any exhibits thereto, including for:
> (1) failure to pay wages owed, including claims for: failure to properly pay all minimum wages (including any and all theories as alleged, or that could have been alleged by Plaintiffs or Objectors-Intervenors related to "off the clock work" or incorrect calculation of the "regular rate of pay"); failure to pay all overtime wages (including any and all theories as alleged, or that could have been alleged, by Plaintiffs and Objectors-Intervenors related to the failure to pay overtime at the "regular rate of pay"); and the failure to pay vested vacation or sick pay wages

(including at the regular rate of pay);
(2) failure to provide meal periods;
(3) failure to authorize and/or permit rest periods;
(4) failure to pay "premiums" related to meal and/or rest periods pursuant to Cal. Lab. Code §226.7; at the regular rate of pay;
(5) failure to furnish accurate, itemized wage statements in compliance with California Labor Code § 226(a);
(6) failure to pay all wages upon separation of employment;
(7) alleged violation of and/or based on California Labor Code §§ 200, 201-203, 204, 210, 218, 218.5, 218.6, 221, 223, 226, 226(a), 226.3, 226.7, 227.3, failure to pay sick time, including at the regular rate of pay, and any claim for PAGA penalties predicated thereon under § 246 et seq, 500, 510, 511, 512, 515, 558, 1174, 1175, 1182.11, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 3289, 3751, as well as, to the extent predicated on "regulatory violations," "general violations," or "repeat violations" associated with "IC spray" practices and procedures, Labor Code §§ 6300, et seq. (OSHA Standards) , and Sections 3, 4, 5, 7, 11, and 12 of IWC Wage Orders;
(8) alleged violations of the California Unfair Competition Law (Business and Professions Code sections 17200 et seq.); and
(9) violation of any provisions of the California Labor Code that are subject to penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 that were or could have been asserted based on the allegations in the Complaint, as well as PAGA penalties that were or could have been sought in relation to violation of such provisions. This includes the §§ 6300 PAGA claims alleged by Objector Martin in the *Martin* Action.

See Settlement Agreement Exh 2.

D. Notices Objections, Opt-Out Process and Disputes

The Claims Administrator mailed out 357 notices to the Class Members. Brown Decl. ¶¶6-9. Of those 34 Notices were returned and were subsequently traced. The Claims Administrator remailed 29 Notices. *Id.* The Claims Administrator did not report any objections to the Settlement or any opt outs. Brown Decl., ¶¶11–12. Class Members had the option to opt out or object to the settlement by sending an opt-out notice or objection (including via email) within 45 days after the date on which the Notice was mailed. SA at 20-22, ¶8(b)-(d). The Notice explained the opt-out and objection procedures, set forth the language to be included in an opt-out notice or objection, and provided the addresses to which an opt-out notice or objection could be sent. *Id.* at 20-22, ¶ 8; Brown Decl., Ex. A.

The Settlement Agreement provided procedures for disputes concerning Class Member Work Weeks. SA, pp. 24-26 ¶8 (g)-(h). Some Class Members employed during the Class Period as chemical processors raised disputes that their Engineering Class Member Work

Weeks were incorrect. Defendant provided the Claims Administrator with data for fifteen Class Members who disputed their Engineering Class Member Work Weeks and revised notices were re-sent to those individuals. Brown Decl., ¶13. Plaintiff's Counsel is optimistic that the dispute over Class Member Work Weeks is resolved by the time of the hearing.

E. Termination of the Settlement Agreement

Ball did not exercise its option to rescind the settlement agreement. Ball had reserved the right to withdraw from the Settlement Agreement if the total number of Eligible Class Members were less than ninety-seven percent (97%) of the total Class Members. SA, pp. 9-10 ¶ 25(j). If the number of Class Members who were not Eligible Class Members exceeded three percent (3%), then Defendant had the right (but not the obligation) to deem the Settlement Agreement Void Ab Initio upon written notice to the Class Counsel, the Court and the Class Administrator. *Id*. The deadline for Ball to exercise this right was within ten (10) business days of the Class Administrator's written notice to all Parties that the number of Class Members who were no longer Eligible Class Members exceeded 3% of all Class Members. *Id.* No-one opted out, Brown Decl., ¶ 12, so the termination clause was not triggered.

F. Escalator Clause

An Escalator Clause stated that if workweeks worked by the Class Members exceeded five percent (5%) of what Defendant represented in inducement to the Settlement (*i.e.* if it were to transpire that there were more than 90,000 workweeks between September 7, 2012 – April 20, 2024, with an additional "Grace Allocation" of 4,500 workweeks). SA 31 ¶18. The workweeks did not exceed the limit, Brown Decl., ¶17, and therefore the Escalator Clause was not triggered.

G. Named Plaintiff Enhancements and Objector Enhancement

To recognize the time and effort the Named Plaintiffs expended for the benefit of the Class, as well as the risks they accepted by leading the litigation, Named Plaintiffs ask the Court to award a $10,000 enhancement of to each Named Plaintiff (Westfall, Anderson, Bobby and Ellinger) (aggregate $40,000). *See* SA ¶ 1 (36). Objectors-Intervenors (Andre Bernstein and

Richard Martin) also seek $10,000 each as Objector Enhancement Awards. *Id*. The enhancement recognizes the time and effort of the Named Plaintiffs Westfall, Anderson, Bobby, and Ellinger, who played a major role in the litigation of this matter, and which effort was critical to the successful outcome for the class, including investigation related to the paging system at the Fairfield Plant, providing deposition testimony, and participating in mediations. Eason Decl. ¶ 31. Robert Westfall actively participated in all three separate day-long mediations, and was available for the fourth mediation. Anderson, Bobby and Ellinger were available by phone for the second and fourth mediations and were present for the third. *Id*.

This case further owes its origin to Robert Westfall's careful review of the applicable Wage Order and knowledge of the paging system at the Fairfield Plant. Westfall provided critical insight into Defendant's paging system and policies as it related to meal and rest breaks. Messrs. Westfall, Anderson, Bobby and Ellinger met with Class Counsel, assisted in preparing initial disclosures, engaged in telephonic conferences, provided deposition testimony, provided insight as to other deposed class members, assisted when needed for the preparation of the class certification motion, and attended mediation. *Id.* at ¶¶ 18-19.

H. Private Attorney General Award

The Parties have allocated one hundred thousand dollars ($100,000) of the Gross Settlement Amount as the LWDA Fund. Of this, $75,000 is allocated to PAGA penalties and the remaining $25,000 is deemed part of the Net Settlement Fund and shall be distributed to the Eligible Class Members proportionate to their number of pay periods. See § IV(j) below.

I. Policy and Practice Changes

Ball agreed to policy and practice changes as outlined in the Settlement Agreement. See SA pp. 32 ¶20. As to its Fairfield, California facility, Ball shall continue to remove, disable and/or de-activate any speakers connected to the paging system, to the extent such speakers are located within the break room or other designated break areas at the Fairfield, California facility. *Id*. As consideration for Objector Martin's release of his *Labor Code* section 6300

PAGA claim, Defendant Ball has modified its policies and procedures to provide that whenever a new hazardous material is introduced into the work area at the Fairfield Plant, Defendant will conduct an assessment to evaluate which employees will be reasonably anticipated to be exposed to such materials, and those employees will be trained, to the extent appropriate, on reasonably foreseeable exposures on the job and general classes of hazardous chemicals. *Id.*

J. Attorneys' Fees

By a separate application to be filed concurrently, Class Counsel seeks, and Ball has agreed not to oppose, an award of attorneys' fees in an amount equal to one third of the Gross Settlement Amount, namely One Million Five Hundred Thousand Dollar ($1,500,000), plus actual costs and expenses incurred by Class Counsel, not to exceed $45,000. SA p. 4 ¶ 1(11).

K. Uncashed Checks

The Settlement Agreement outlines procedure for uncashed checks whereby the Class Administrator shall notify Plaintiff's Counsel, Eason & Tambornini, A Law Corporation, of the names of any members whose checks remain uncashed after 120 days. *See* SA 27 ¶11. For any checks remaining uncashed after 120 days, the Class Administrator will send out a reminder postcard and any funds uncashed after 180 days shall be distributed as unclaimed funds with the State of California's Controller. Id.

IV. ISSUES RAISED BY WAY OF THE SEPTEMBER 26, 2025 ORDER; AND ADDITIONAL ISSUES

The Court's Order of September 26, 2025, instructed Plaintiffs to address certain issues in their motion for final approval. Plaintiffs address the issue *seriatim*.

A. Definition of "Aggrieved Parties" for Purposes of the PAGA Settlement

Section 1 – 44 of the settlement agreement defines the PAGA period as "July 4, 2015, to April 20, 2024." Accordingly, it is Plaintiffs' view that the appropriate definition of "Aggrieved Employees," as derived from section 1 – 18, 1 –19, and 1 – 44 of the Settlement Agreement, as well as Section A.(7) of the release that is appended as Exhibit 2 of the Settlement Agreement, is—

> All current and former employees employed by Ball Metal Beverage Container Corporation at its Fairfield, California plant at any time during the period in California between July 4, 2015, and April 20, 2024, in a non-exempt employment position, in the positions of "Electronic Technician," "Machinist/Mechanic," and/or "Maintenance"; or who worked in non-exempt positions in the production, engineering, and production support departments of the Fairfield, California plant.

It is not anticipated that Defendant will take a differing view regarding the definition of "Aggrieved Employees." [3]

B. Notice Regarding Inability to Opt Out of PAGA Release

Section III.B of the Class Notice informed the Class Members that:

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

Section I of the Class Notice informed the Class Members that:

> On April 3, 2024, Ivan Aguirre filed an action entitled Ivan Aguirre, an individual and on behalf of all others similarly situated vs. Ball Metal Beverage Container Corp et al. Solano County No. CU24-02471 ("Aguirre Class Action"). On July 8, 2024, Ivan Aguirre filed a separate PAGA action entitled Ivan Aguirre vs. Ball Metal Beverage Container Corp. et al., Solano County No. CU24-05147 ("Aguirre PAGA Action"). The lawsuits filed by Aguirre allege substantially similar class-action and PAGA claims against the same Defendant. The Settlement in the instant matter will impact the class-action and PAGA claims as alleged in the Aguirre

[3] Plaintiffs note, however, that there is an error in section 1 – 44 of the Settlement Agreement. That section (as well as the Class Notice) defines the PAGA period as reaching back to "July 4, 2015," which is a date somewhat more than one year prior to the initial September 29, 2016 PAGA Notice and/or September 7, 2016 Complaint.

Nevertheless, Plaintiffs believe that it would be appropriate to approve the definition in accordance with the terms of the Settlement Agreement, because any potential oversight appears immaterial. PAGA claims regarding the period of July 4, 2015–September 7, 2015 would be, outside this action, entirely stale and timebarred, and Plaintiffs are not aware of any Aggrieved Employees (as defined) that are seeking to prosecute PAGA claims, outside this action, with respect to the period of July 4, 2015–September 7, 2015. Nor is there any potential tolling, as no Class Members have opted out. Accordingly, the rights of the Aggrieved Employees would not be impacted whether the PAGA period were defined with reference to July 4, 2015, or with reference to September 7, 2015.

Nevertheless, if the Court were to prefer reforming the date of the PAGA period, section 2 – 21 of the Settlement Agreement delegates authority to the Court to make such change. *See id.* ("This Agreement contemplates that the Court and the Parties may make reasonable modifications to the Agreement in order to effect its essential terms and to obtain Preliminary Approval and Final Approval").

> lawsuits for the Class Period but will not otherwise affect your rights outside of the Class Period.

Consequently, adequate notice was given to the Class Members. *See also Moniz v. Adecco USA, Inc*. (2025) 109 Cal.App.5th 317, 334 (holding that there is no right to opt out of PAGA settlement). Moreover, no Class Members have objected to the settlement or have sought to be excluded from the settlement. Brown Decl., ¶¶ 11–12.

C. Divergence Between Conditional Stipulation of Certification and Prior Certification Orders

As explained, Judge Mueller previously granted Class Certification with respect to all seven causes of action asserted in the First Amended Complaint ("FAC"). ECF No. 58, pp. 16:19–22; ECF No. 85, pp. 3:15–18. Thereafter, Judge Mueller approved conditional certification with respect to a release of all claims asserted in the FAC. *See* ECF No. 104, p. 4:5; ECF No. 96-3, pp. 1 [Exhibit 3].

The Second Amended Complaint principally differs from the FAC with respect to the allegations in ¶ 55 [unpaid wages for "turnover meetings"]; *id*., ¶ 56 [unpaid wages for travel between checkpoints]; ¶ 57 [failure to correctly include bonus pay in the regular rate]; *id*., ¶ 58 [failure to pay HWHFA sick pay at the regular rate]; ¶ 59 [implied rights under section 511(b) of the *Labor Code*].

All such allegations are appropriately certifiable. It was Martin and Plaintiffs' experience that such allegations pertained to common practices, for which common issues would have predominated:

(1) In Martin's experience, there were regular meetings to provide to the incoming shift a brief summary of issues that needed to be resolved or addressed from the previous shift; and such meetings regularly occurred prior to punching in; Martin was not informed of an policy requiring employees to punch in prior to participating in turnover meeting; and in Martin's perception, he, and his co-workers, commonly participated in turnover meetings. Lesches Decl., ¶21. Martin Decl. ¶8

Such matters concern a "common contention capable of class-wide resolution." *Willis v. City of Seattle*, 943 F.3d 882, 885 (9th Cir. 2019). Martin had adequate interest in fully and

vigorously investigating and prosecuting the turnover-meeting theory, because Martin sought full renumeration for all his injuries and claims—an objective in which Martin succeeded. Lesches Decl., ¶¶ 21-22. While Plaintiffs certainly had concern that individualized issues could prove an obstacle to certification, there is no basis for Plaintiffs to believe that individual issues would have proved "overwhelm[ing]" with respect to attempted class resolution of the turnover-meeting theory. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022). In other words, a motion to certify a claim for settlement does not require proving that an opposed-and-controverted motion for class certification would have been successful. Moreover, as stated, no Class Members have objected to, or have sought to be excluded from, the proposed settlement.

(2) Martin perceived that all employees were required to check into a security gate, and thereafter were required to park, and traverse distances that were more than *de minimis*, in order to reach locations where the employees could "swipe in" to check in. Lesces Decl., ¶¶ 20; Martin Decl. ¶7. Such matters concern a "common contention capable of class-wide resolution." *Willis*, 943 F.3d at 885.[4]

(3) Objectors' Counsel obtained extensive discovery relating to the bonus plan, which discovery demonstrated that bonuses were paid out to Class Members pursuant to a uniform policy. Lesches Decl., ¶¶ 18; *Kincaid v. Educ. Credit Mgmt. Corp., Inc*., No. 221CV00863TLNJDP, 2024 WL 1344595, at *4 (E.D. Cal. Mar. 29, 2024).

(4) Martin's pay data, as well as all pay data reviewed by Objectors, indicated that Defendant's practice was to pay sick time at the hourly rate rather than the regular rate. While such claim was not of a nature that was likely to yield significant damages, Defendant's pay practice and/or policy constituted a "common contention capable of class-wide resolution." *Willis*, 943 F.3d at 885.

(5) Defendant's own policies establish that Defendant utilized, during at least

[4] While the viability of such claim was seriously undercut in *Huerta v. CSI Elec. Contractors*, 15 Cal. 5th 908, 928, 544 P.3d 1118, 1131 (2024), the holding in *Huerta* goes solely to the merits and fails to bear on the "whether the Rule 23 prerequisites for class certification are satisfied." *In re HIV Antitrust Litig*., No. 19-CV-02573-EMC, 2022 WL 22609107, at *3 (N.D. Cal. Sept. 27, 2022).

portions of the class period, work schedules consisting of "Four (4) days on/four (4) days off. Twelve (12) hours and includes a one-half (1/2) hour uninterrupted, unpaid lunch break." Lesches Decl., ¶¶ 24. Defendant would commonly assign mandatory overtime of fifth, sixth, and seventh days, but would only pay overtime for consecutive fifth and sixth shifts, and doubletime was reserved solely for consecutive *seventh* shifts. Lesches Decl., ¶¶ 23-25; Martin Decl. ¶6-7. Objectors proceeded on a legal theory that section 511(b) of the Labor Code requires, by implication, paying doubletime for all hours worked in excess of eight hours on the fifth and sixth days wherein all consecutive shifts exceed 10 hours in length. Ball's policy and practice of not paying doubletime for consecutive fifth and sixth shifts concerned a "common contention capable of class-wide resolution." *Willis*, 943 F.3d at 885.

With respect to the Eighth Cause of Action asserted in the Second Amended Complaint, the merits of that claim are addressed below under subsection I.(c) (scope of releases). Such claim is a PAGA claim, and, accordingly, there is no burden to demonstrate the certifiability of such claim. *Hamilton v. Wal-Mart Stores, Inc*., 39 F.4th 575, 585 (9th Cir. 2022); *Achal v. Gate Gourmet, Inc*., 114 F. Supp. 3d 781, 805 (N.D. Cal. 2015).

D. Response from LWDA

As explained, on January 21, 2025, Plaintiffs' Counsel uploaded a copy of the Settlement Agreement to the LWDA website. Decl. del Castillo 10 ¶ 2. The LWDA has not contacted any Counsel with respect to the settlement. Eason Decl., 6 ¶ 30. Plaintiff's Counsel submitted the Order Granting Preliminary Approval to the LWDA on November 4, 2025. *Id*.,

E. Election to Decline *Cy Pres* Designation

Plaintiffs request that the Court "direct that unclaimed funds be paid to the California State Controller Unclaimed Property Division in the name of the Qualified Claimant." ECF 222, p. 16, n.7. It is patently unlikely that any Qualified Claimant is deceased and without next of kin; consequently, the interests of the Class Members would be better served through a procedure that preserves unclaimed funds for the benefit of Qualified Claimants.

F. Fees and Costs

Fees and Costs are addressed in Plaintiffs' concurrent motion.

G. Payout Data

The largest anticipated payout is $22,962.09. Brown Decl., p.. 6 ¶22. Fourteen (14) Class Members are anticipated to receive payouts exceeding $20,000.01; fifty-five (55) Class Members are anticipated to receive payouts of between $15,000.01 to $20,000.00; and sixty-seven (67) Class Members are anticipated to receive payouts of between $10,000.01 to $15,000.00. In other words, more than one third of the Class will receive payouts in excess of $10,000. *Id.* ¶ 12. The median settlement payment is $5,350.22. *Id* ¶ 22. The average payment is $ 7,871.15. *Id.* The lowest anticipated payment is $35.78. *Id*.

H. Scope of Releases

The Class Release (as opposed to the Named Representatives' Individual Releases) are narrowly drawn, and the Class Release was the subject of much wrangling between Plaintiffs and Defendant. Lesches Decl., ¶ 49-52.

a. **Exhaustive Investigation of Claims.** Plaintiffs in this action were represented by three sets of attorneys (Eason & Tambornini; Castle Law; and Lesches Law with Blady Workforce Law Group) each of whom *independently* and rigorously investigated claims and theories relating to the Class. For instance, the Plaintiffs' firms did not share their mediation briefs with each other, and the Objectors and Plaintiffs caucused separately with the mediator throughout the 2023 mediation.

Moreover, counsel were exhaustive and thorough with respect to investigating claims. Investigated claims included, without limitation, an on-site travel theory that was largely restricted, post-settlement, in *Huerta*; as well as §§ 6300 PAGA claims, which constitute an area of law regarding which very little caselaw exists.

Consequently, the release appropriately purports to encompass all claims "arising from or that could have reasonably been asserted based on the allegations in the Complaint." *See* "Release of Claims by Class." With respect to claims that "could have reasonably been asserted based on the allegations in the Complaint," multiple teams of attorneys engaged in extensive and exhaustive investigation of such claims. Moreover, no Class Member elected to seek

exclusion from the settlement or objected to the settlement.

b. No Release of Claims Unrelated to the Alleged Facts

It is well-settled that the release only extends to claims arising from the "*identical* factual predicate as that underlying the claims in the settled class action." (*Hesse v. Sprint Corp*., 598 F.3d 581, 590 (9th Cir. 2010), (italics added); *see, e.g*., 6 Newberg on Class Actions (5th ed. 2021) § 18:19; *Marshall v. Northrop Grumman Corp*., 469 F.Supp.3d 942, 948-949 (C.D. Cal. 2020); *Stonehocker v. Kindred Healthcare Operating, LLC*, 2019 WL 4542466, at *8 (N.D. Cal., Sept. 19, 2019, No. 19-CV-02494-YGR); *Chalian v. CVS Pharmacy, Inc*., 2018 WL 6016163, at *2 (C.D. Cal., Mar. 22, 2018). Under Ninth Circuit law, there is little risk of the release being afforded preclusive effect extending beyond the issues, claims, and theories that could have been based upon the factual predicates alleged in the Second Amended Complaint.

Moreover, the Settlement involves significant injunctive relief. As provided under section 2 – 20 of the Settlement Agreement, Defendant has agreed to deactivate speakers located within the break room, and Defendant has modified its policies to ensure that adequate training is provided every time a new hazardous material is introduced into the workplace.[5]

Moreover, Counsel reviewed the release to guard against the risk of inadvertent release of unlitigated claims. Lesches Decl. ¶¶ 48-52.

c. **Extensive Negotiation Over Language of the Release**.

The Parties invested hours in negotiating the scope of release, and appropriately guarded against the utilization of overbroad language in the release. For instance, Defendants sought to have the release encompass all Cal-OSHA claims asserted under PAGA. Lesches Decl., ¶¶ 50. Objectors' Counsel refused to stipulate to language that could have the effect of releasing employee rights if harmful exposures at the workplace caused/were to cause injury. After extensive negotiations, Objectors and Defendants reached a resolution under which: (1) Defendant provided stipulated policy changes reasonably calculated to reduce risk of employees being subjected to the harmful exposures Martin alleged having been exposed to; and (2) Martin amended his PAGA claim and limited the claim, and ensuing release, *solely* to "regulatory

[5] As provided in the SA, Defendant's agreement to stipulate to such modifications of polices and procedures is **not** a concession of wrongdoing or prior omission by Defendant. *See* Settlement Agreement, § 2 – 20.

violations," "general violations," and "repeat violations," as defined in 8 C.C.R. § 334. Lesches Decl., ¶¶ 51. Such resolution ensures that the release will not extend to any potential harms caused by an exposure—which circumstance would generally be classified as a "serious violation" under 8 C.C.R. § 334(c)—and which matters would *not* be released. Similarly, the SAC, and PAGA claim, was amended to exclude "willful violations," to ensure that the PAGA release would not extend to intentional violations. The carefully-crafted compromise was and is calculated to provide the still-employed employees with significant and valuable relief—*i.e.*, procedures that are reasonably calculated to prevent risk of harmful exposures—while carefully limiting the scope of releases to technical violations. Lesches Decl., ¶¶151-156.

Similarly, Defendant sought to have the release encompass all HWHFA-predicated PAGA claims, which, again, constituted a concession that Objectors refused to stipulate to. Under Objectors' reading of *Wood v. Kaiser Found. Hosps*., 88 Cal. App. 5th 742, 759, (2023), only the attorney general and district attorneys have the right to seek certain forms of HWHFA-predicated PAGA relief that an ordinary private litigants cannot obtain; accordingly, Objectors refused to stipulate to language in the release that would extend to releasing remedies solely obtainable by attorney general and/or district attorneys. Lesches Decl., ¶¶ 149.

In summary: (1) claims were exhaustively litigated; (2) by operation of law, the releases are limited to the factual predicates alleged in the Second Amended Complaint; and (3) care was given towards avoiding overbroad releases. Accordingly, the releases are fair and reasonable.

I. Scriveners Error between Long Form Agreement and Notice Resolved

During the administration process the Parties learned that there was a scrivener's error in the long-form Settlement Agreement. Notably, Section 1.27(f) and section 34 of the Settlement Agreement provide that the $75,000 "LWDA Fund Remainder" shall be allocated to the Eligible Class Members proportional to their number of "Workweeks." See ECF 218-3, pp.41. The Proposed Class Notice, by contrast, specifies that the $25,000 LWDA Fund Remainder shall be divided equally between all pay periods worked by the Class Members during the Class Period. The Parties conferred and agreed that it was intended that the $25,000 LWDA Fund Remainder is to be divided equally between all *pay periods* worked by the Class Members. Counsel for *all*

Parties further informed ILYM to mail Notice Packets without modification. The Parties estimate that the variance is unlikely to exceed more than $3.50 per participating work-year for employees paid biweekly and $6 per year for employees paid monthly. Therefore, the Parties agreed, subject to Court approval, that the Joint Stipulation of the Class Action and PAGA Settlement is amended at § 1.27(f) and § 1.34 to replace "Work Weeks" with "pay periods."

V. LEGAL ANALYSIS

A. Final Approval of the Proposed Settlement is Appropriate

Before approving class action settlements under Rule 23, courts engage in "a two-step process in which the Court first determines whether the settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). The first step, preliminary approval, "establishes an initial presumption of fairness to be tested upon notice given." *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 10799 (N.D. Cal. 2007). Final approval does not occur until after a fairness hearing at which the court considers the fairness, adequacy, and reasonableness of the settlement.

Courts should approve settlements "in recognition of the policy encouraging settlement of disputed claims." *In re Prudential Sec. Inc. Ltd Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995). In examining overall fairness, "it is the settlement taken as a whole, rather than the individual component parts, that must be examined…" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In determining whether to grant final approval, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Officers for Justice,* 688 F.2d at 625.) Here, the proposed settlement should be granted approval because it is fair, adequate, and reasonable.

1. The Settlement is Presumed to be Fair.

There is a strong and uniform California policy favoring compromises leading to the expeditious resolution of litigation. *Hamilton v. Oakland School Dist.* 219 Cal. 322, 329 (1933)

("It is the policy of the law to discourage litigation and to favor compromises.") To that end, a proposed settlement is entitled to a presumption of fairness where the parties, with the aid of counsel experienced in class action litigation, negotiated the proposed Settlement in good faith conducted by capable counsel and at arm's length after extensive discovery which included more than two dozen depositions and four separate day-long mediations. *Dunk,* 48 Cal.App.4th at 1802; *see also M. Berenson Co. v. Faneuil hall marketplace, Inc.* (D. Mass. 1987) 671 F.Supp. 819, 822 ("Whereas here, a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair.").

The settlement proposed by the Parties is presumptively fair. The Parties engaged in extensive discovery beginning with initial disclosures and exchanged numerous documents. Dec. of. Eason at 4¶18. All four named Plaintiffs had their depositions taken. *Id.* at 5 ¶19. Class Counsel took the depositions of three key people related to the paging system at the Fairfield plant. *Id.* at ¶18. Following class certification Defendant presented an extensive discovery plan seeking to take more than 100 Class Member depositions which Plaintiffs opposed. The depositions of several additional Class Members were taken ahead a third day long mediation. *Id*. at ¶22. Thereafter, the parties participated in a fourth mediation with mediator Jeffrey Ross. Additional information was exchanged between the parties in association with mediation. *Id*. at ¶27.

The Parties prepared diligently for each of the four mediations. The first and second mediations were conducted by Alan Berkowitz, an experienced and neutral mediator in February 2017 and August 2018. *Id*. at ¶17, 21. The first mediation was early in the litigation and while unsuccessful educated the Parties about each sides' strengths and weaknesses. *Id.* at ¶17. The second mediation occurred after the Court approved in part and denied in part Plaintiffs' motion for class certification but prior to the Court's ruling on Plaintiffs' motion for reconsideration. *Id*. at ¶21. Following depositions of the Class Members, the Parties participated in a third mediation in December 2019 with Judge Raul Ramirez (Retired), where the Parties reached a resolution. *Id.* at ¶23. Following the denial of the motion for final approval, the parties participated in a global mediation with Jeffrey Ross that continued well in to the evening hours and resolved with a mediator's proposal. The result was an additional $2,050,000 in gross settlement funds. *Id*. at ¶

27. Thus, the Settlement is presumptively fair because the parties conducted meaningful discovery, both Parties were represented by experienced and capable counsel, and the Parties negotiated at arm's length.

2. All Applicable Criteria Support Final Approval of the Settlement

The settlement approval process traditionally consists of three steps: first preliminary approval of the proposed settlement at an informal hearing; second, dissemination of mailed and/or published notice of the settlement to all affected class members; and third, a "formal fairness hearing," or final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. (*Manual,* §§21.632 – 21.634, at 449-51.) Now at the third step and final step, class members may be heard regarding the Settlement, and Class Counsel will present evidence and argument supporting the fairness, adequacy, and reasonableness of the Settlement. *(Manual,* § 21.634 at 322.)

In deciding whether to grant final approval to a class action settlement, California courts consider several factors, including: (1) the amount offered in the settlement, (2) the risks inherent in continued litigation and the strength of plaintiffs case, (3) the extent of discovery completed and the stage of the proceedings when settlement was reached, (4) the complexity, expense and likely duration of the litigation absent settlement, (5) the experience and views of Class Counsel, and (6) the reaction of class members. *Wershba v. Apple Computer, Inc.* (2009) 91 Cal.App.4th 224, 244-45; *Dunk,* 48 Cal.App.4th at 1801. Each of these criteria support final approval.

B. The Value of the Settlement Favors Final Approval

The substantial Settlement Fund of $4,500,000 for a class of 356 members strongly favors approval. The Class's potential recovery for the claim's ranges from zero, if the Defendants are successful, to an estimated maximum of $22,545,996 under Plaintiffs' damages model if Plaintiffs are successful on all claims. Dec.Del Castillo at 11 ¶32. This is the based on the assertion that the use of the paging system at the Fairfield plant rendered *all* meal and rest breaks on-duty and therefore non-compliant and includes related statutory and civil penalties without reduction. It is important to note that while paging system was used throughout Defendant's Fairfield plant, there were variances in the frequency of the pages for different positions especially between the production and support positions. Decl. of Eason 10 ¶39. Additionally, there were variances

between those that worked the night shift and those that worked the day shift. *See also* Lesches Decl., ¶¶ 123-138 [addressing other investigated legal theories].

Given the significant risks of proceeding with the litigation, the value of the settlement strongly supports final approval.

C. Plaintiffs Face Inherent Risk if Litigation Continues

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court must weigh the immediacy and certainty of settlement proceeds against the risks inherent in continued litigation. This analysis entails a comparison of the amount of the proposed settlement with the present value of the damages Plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing. *See Dunk,* 48 Cal.App.4th at 1802; *Girsh v. Jepson,* 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.* 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

This factor supports final approval. First, there was a risk that Plaintiff's might not prevail on the merits of the case. Plaintiffs' theory of the case is that Defendant failed to provide breaks by having a paging system that was audible in the Suitable Resting Facilities and required the Class Members to remain vigilant in listening to those pages for instruction. Decl. of. Eason at ¶15, 39, 40. Plaintiff asserts that the situation here is similar to that in *Augustus v. ABM Security Services*. While amenable to treatment on a class basis, there was risk in pursuing this theory on the merits. And Defendant pointed out in its opposition to Class Certification Motion issues presenting significant risk if further litigated. ECF No. 42, pp. 1:6-8. Plaintiffs also anticipated a motion for summary judgement and/or adjudication if the parties did not resolve at mediation. Decl. of Eason at ¶*39*. *See also* Lesches Decl., ¶¶ 118-122.

Second, there was a risk that Defendant might prevail in a motion to decertify the class or motion to modify the class. While the depositions of the Named Plaintiffs were taken prior to the Court's ruling on Plaintiffs' Class Certification Motion, depositions of many Class Members occurred after Class Certification. The certified class includes several different positions within the production and support departments and while all were subject to the paging system in the Fairfield plant, some positions tended to be called off their breaks with greater frequency than others. In addition, there was testimony related to variances between the day shift and the night shift. Plaintiffs anticipated a motion to decertify and/or modify the class and this motion posed

a risk of reducing the class size, at the very least. Dec. of Eason at ¶39.

Lastly, there was a risk that the law might change rendering Plaintiffs' claims worthless. Wage and hour caselaw is constantly evolving and cases following *Augustus v. ABM* have sought to limit the reach of its holding. (See e.g., *Rodriguez v. Taco Bell Corp*., 896 F.3d 952 (2018)). As evidence of the unsettled nature of California wage and hour law, Assembly Bill 1512 was signed into law by Governor Gavin Newsom on September 20, 2020 which amended Labor Code section 226.7 authorizing employers to require certain unionized security guards to remain on premises during rest breaks and to remain on call and carry a communication device.

The settlement is fair, adequate and reasonable given such risks had litigation continued.

D. The Extent of Discovery Performed by Plaintiffs' Counsel Supports Final Approval

"[T]he extent of discovery completed and the stage of proceedings" are factors the courts consider in determining the fairness adequacy and reasonableness of a settlement. *Dunk,* 48 Cal.App.4th at 1801. Plaintiffs' counsel performed substantial discovery and investigation prior to negotiating the Settlement. Decl.. Eason at ¶18-19.

Plaintiffs' counsel obtained ample employment data of class members during discovery to determine the fairness, adequacy, and reasonableness of the final settlement agreement. *Id*. Defendant produced thousands of pages of records and data during the course of litigation. Id. All four Named Plaintiffs provided extensive deposition testimony and Class Counsel took the deposition of three of Defendant's key people related to the paging system at the Fairfield plant and its meal and rest break policies. *Id*.. Following class certification, Defendant took the deposition of numerous Class Members. Id. at ¶22. In addition, Objectors-Intervenor's Counsel conducted discovery which included both written discovery and deposition. Extensive discovery was performed by both sides before a settlement was reached which allowed both sides to assess the strengths and weaknesses of their positions.

E. Litigation Would Have Been Complex and Expensive

The Court must weigh the benefits of the Settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz* 447 F.2d 431, 434 (5th Cir. 1971). The policy under California law that favors settlements of this class actions

and other complex cases applies with particular force in this case. Employment cases, and specifically wage and hour cases, are expensive and time-consuming to prosecute. That this is a class action further amplifies the economies of time, effort and expense achieved by this Settlement. The alternative to a class action – individual litigation – would tax private and judicial resources over a period of years. Moreover, individual litigation would be uneconomical even for those with the finances, sophistication, and tenacity to secure individual legal representation given the amount of damages each Class Member has incurred. The instant Settlement, on the other hand, provides to all Eligible Class Members, regardless of their means, substantial relief in a prompt and efficient manner. The Settlement in this case is consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see, also Potter v. Pacific Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951).

F. In Plaintiffs' Counsel's View, Final Approval is Favorable

Based on Class Counsel's knowledge and experience, the settlement is fair, reasonable and adequate, and in the best interest of the Class as a whole. Decl. of Eason at ¶34; Decl. of Del Castillo at ¶34. Plaintiffs' counsel believes this Settlement to be an excellent result for the Class. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight. *See, Dunk,* supra, 48 Cal.App.4th at 1802; *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980); *Boyd, supra,* 485 F. Supp. At 616-17.

G. Class Members Have Reacted Favorably to the Settlement

A court may infer that a class action settlement is fair, adequate, and reasonable when few class members object to it. *Lealao v. Beneficial California, Inc.*, 82 cal.App.4th 19, 51 (2000). Here, no class members have objected to or opted out of the settlement. This shows a favorable reaction to the settlement by members of the class. Accordingly, this Court should grant full approval of this settlement.

VI. CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court grant the motion and enter an order granting final approval to the settlement.

Dated: March 30, 2026

EASON & TAMBORNINI ALC

/s/ Erin M. Scharg

Erin M. Scharg