

1 Matthew R. Eason (SBN 160148)  
2 Kyle K. Tambornini (SBN 160538)  
3 Erin M. Scharg (SBN 285311)  
4 **EASON & TAMBORNINI, ALC**  
5 1234 H Street, Suite 200  
6 Sacramento, CA 95814  
7 Telephone: (916) 438-1819  
8 Facsimile: (916) 438-1820

9 Timothy B. Del Castillo (SBN: 277296)  
10 tdc@castleemploymentlaw.com  
11 Bryce Q. Fick (SBN: 322951)  
12 bf@castleemploymentlaw.com  
13 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**  
14 2999 Douglas Blvd., Suite 180  
15 Roseville, CA 95661  
16 Telephone: (916) 245-0122

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

20  
21 **UNITED STATES DISTRICT COURT**  
22  
23 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**  
24

25 ROBERT WESTFALL; DAVID ANDERSON;  
26 LYNN BOBBY; DAVID ELLINGER,  
27 individually and on behalf of all others similarly  
28 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

**DECLARATION OF MATTHEW R.  
EASON IN SUPPORT OF PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF  
CLASS AND PAGA SETTLEMENT**

Date: May 4, 2026

Time: 1:30 p.m.

Courtroom: 4

Judge: Hon. Dale A. Drozd

[Originally Solano Superior Court  
Action No. FCS047654]

State Action Filed: 9-7-2016

FAC Filed: 4-6-2017

SAC Filed: 5-30-2024

Trial Date: None Set

1 I, MATTHEW R. EASON, declare:

2 1. I am an attorney duly licensed to practice law in the State of California before the  
3 Eastern District of California. I am a shareholder in the law office of Eason & Tambornini,  
4 ALC (“E&T”), counsel for Plaintiffs ROBERT WESTFALL, DAVID ANDERSON, LYNN  
5 BOBBY, DAVID ELLINGER and the certified class. I make this declaration of my personal  
6 knowledge and could testify thereto if called as a witness.

7 2. I have been one of the lawyers primarily responsible for the prosecution of  
8 claims on behalf of Plaintiffs and the class. I was fully involved in the litigation on this matter.  
9 I also served as the principal negotiator on behalf of the classes during all four mediations. I  
10 attended four full day mediations and participated in numerous telephone calls, letter exchanges,  
11 and e-mail exchanges that the mediation process entailed. The fourth mediation went well into  
12 the night.

13 3. This Declaration is submitted in support of Plaintiffs’ Motion for Preliminary  
14 Approval of Class Action and PAGA Settlement.

15 **EDUCATION AND EXPERIENCE**

16 4. I graduated with a Bachelors of Science from California State University,  
17 Sacramento in 1988 with a degree in Business/Accountancy.

18 5. I earned my Juris Doctorate Degree from UOP/McGeorge School of Law in  
19 1992. I graduated number nine in my class, and was awarded Order of the Coif, and Order of  
20 the Barristers for my academic and advocacy skills.

21 6. I am admitted to practice law before the following courts: United States District  
22 Courts in the Eastern District and Northern District of California, and all of California’s state  
23 courts.

24 7. I have been practicing law full time since my admission to the California Bar in  
25 1992. In the 32 years since I haven a member of the bar, I have litigated numerous cases in both  
26 state and federal court.

27 8. During law school, and upon graduation, I worked for the very prestigious  
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1 Sacramento law firm of Hefner, Stark & Marois. I was assigned to the Senior Employment  
2 Litigation Partner and worked with him on various Federal and State employment litigation  
3 cases both at the trial level and appellate level.

4 9. I left that firm in approximately 1994 to start my own practice, and continued to  
5 handle significant employment related cases in multiple forums. Currently, well over 30% of  
6 our firms' practice is employment related, and almost exclusively representing employees.

7 10. I have represented well over dozens of successful employee rights matters before  
8 California Courts, including class action matters. These matters include class actions such as  
9 *Stocker v. Community Integrated Work Program* (Contra Costa County Superior Court) resulted  
10 in \$300,000 settlement of a lawsuit brought under state wage and labor laws; *Ames et al. v.*  
11 *Vision Precision Holdings LLC* (Sacramento County Superior Court) resulted in a \$480,000  
12 settlement brought understate age and labor laws.

13 11. Erin Scharg received her Bachelor of Arts degree from the University of  
14 California, Santa Barbara and received her law degree from McGeorge School of Law in 2012.  
15 She has been employed by Eason & Tambornini ALC since January 2013, and has primarily  
16 handled litigation on behalf of employees.

17 12. I have no personal affiliation or family relationship with the Plaintiffs identified  
18 above. My only relationship with these individuals is the attorney-client relationship existing in  
19 the current litigation.

20 13. I am unaware of any legal differences or conflicts between the Plaintiff and the  
21 Class Members or any unique factual issues relative to the proposed settlement pertaining to the  
22 Class Representatives.

23 **THE PRESENT LITIGATION**

24 14. On September 6, 2016, my office filed a Class Action Complaint on behalf of  
25 Plaintiff Robert Westfall and those similarly situated in California Superior Court in and for the  
26 County of Solano, thereby initiating civil action *Robert Westfall v. Ball Metal Beverage*  
27 *Container Corporation* (Case No. FCS047654). The Class Action Complaint alleged causes of  
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1 action for (1) California Wages and Overtime Violations under Labor Code §§510, 1194, 1199;  
2 (2) Failure to Provide Meal Breaks Under Labor Code §§226.7 and 512; (3) Failure to Provide  
3 Rest Breaks Under Labor Code §226.7; (4) Violations of Labor Code §226(a); (5) Penalties  
4 Pursuant to Labor Code §203; (6) Violation of Business & Professions Code §17200; (7)  
5 Penalties Pursuant to Labor Code §2699, et seq.. On September 29, 2016, Plaintiff Robert  
6 Westfall submitted his PAGA Notice to the LWDA for the purpose of complying with  
7 California Labor Code § 2699.3's notice requirement. At that time, we submitted the \$75.00  
8 filing fee on behalf of Plaintiff, and the PAGA Notice was sent to Defendant via certified mail.

9 15. The theory of the case was premised on a reading of the Industrial Welfare  
10 Commission Wage Order Sections 3(G), 11(E), and 13(B) regarding suitable resting facilities.  
11 The theory is that by having a paging system in the suitable resting facility, Defendant did not  
12 provide meal and rest breaks free from duty and breaks were on-call. To my knowledge there is  
13 no published decision on point that addresses these sections for suitable resting facilities in  
14 relation to meal and rest break violations.

15 16. Defendant Ball filed a Notice of Removal on November 3, 2016, and the case  
16 was removed to this Court.

17 17. The Parties participated in all-day mediation early in the litigation with Alan  
18 Berkowitz on February 7, 2017. However, since the Class had not yet been certified, the parties  
19 were too far apart and were not able to reach a resolution. The mediation was, however, still  
20 productive as its facilities an exchange of information and arguments that clarified the parties'  
21 positions.

22 18. Following mediation, the parties exchanged initial disclosures and Defendant  
23 produced *thousands* of pages of documents. Plaintiffs served written discovery on Defendant  
24 including Requests for Admission, Interrogatories and Request for Production of Documents on  
25 March 10, 2017. The discovery included covering wage and hour policies, timekeeping and pay  
26 data, personnel files, and other documentation necessary for Plaintiffs to evaluate both liability  
27 and damages Plaintiffs also participated in deposition discovery by taking the deposition of  
28

1 Ball's former plant manager, David Trujillo on June 20, 2017. My office also took the  
2 depositions of Joseph Esquer and Chad Gish on June 23, 2017, who worked as superintendent  
3 and engineering manager for Ball's Fairfield facility.

4 19. In May 2017 Defendant took the depositions of Plaintiffs Robert Westfall, David  
5 Anderson, Lynn Bobby and David Ellinger which spanned over four days.

6 20. Plaintiffs filed their Motion to Certify the Class on July 28, 2017. (ECF Nos. 27-  
7 30). Plaintiffs' motion was granted in part/denied in part in an order dated February 5, 2018  
8 (ECF NO. 54). Plaintiffs filed a motion for reconsideration to expand on the class certification  
9 order, which was also granted (ECF NO. 85).

10 21. Following class certification, the Parties participated in a second meditation with  
11 Alan Berkowitz on August 1, 2018. The parties were able to close the gap in their settlement  
12 numbers from the prior mediation but not enough to reach a resolution. The mediation was also  
13 productive because it further facilitated an exchange of information and arguments that clarified  
14 the parties' updated positions after substantial discovery and certification.

15 22. The depositions of approximately 24 class members were taken between June  
16 2019 and October 2019.

17 23. The Parties participated in a third mediation with the Honorable Raul Ramirez  
18 (Retired) on December 11, 2019. Through further exchanges of information and arguments,  
19 having conducted more discovery, the Parties were able to finally reach a resolution at this  
20 mediation.

21 24. After the parties reached the December 11, 2019, agreement, Counsel for  
22 Plaintiffs and Defendants engaged in several conversations and negotiations on further details  
23 concerning settlement administration over approximately four months. This process resulted in  
24 the Settlement Agreement signed by the parties on July 13, 2020.

25 25. A motion for Preliminary Approval of that settlement was filed on August 5,  
26 2020. The Court preliminarily approved the motion and Settlement on September 16, 2021.

27 26. A motion for final approval was filed in April 2022. On May 25, 2022, two days  
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1 before the hearing for final approval, Objectors Bernstein and Martin (“Objectors”) filed their  
2 objection to the final approval. The court did not grant final approval.

3 27. The Parties participated in a global mediation on August 30, 2023, with mediator  
4 Jeffrey Ross that lasted well into the evening. During the full day mediation, there were further  
5 exchanges of information and arguments facilitated by the mediator. The full-day mediation that  
6 extended into the late evening hours. Fortunately, mediation served to bring the parties together  
7 and they were successful in negotiating a resolution based upon a mediator’s proposal.  
8 Thereafter the parties negotiated more specific terms of their resolution which were  
9 memorialized in a Memorandum of Understanding executed in February 2024.

10 28. Following the execution of the Memorandum of Understanding and per its terms,  
11 Plaintiffs submitted an updated PAGA Notice. After the period for the Labor Workforce  
12 Development Agency to respond expired, a Second Amended Complaint was filed on May 30,  
13 2024. Thereafter, a Long Form Agreement was drafted and circulated for review by the Parties.  
14 A true and correct copy is submitted herewith as **Exhibit A**.

15 29. Plaintiffs submitted their Motion for Preliminary Approval of Class and PAGA  
16 Settlement on January 21, 2025. The Court issued its Order Granting Preliminary Approval of  
17 Class and PAGA Settlement on September 26, 2025.

18 30. Plaintiffs uploaded the Court’s Order Granting Preliminary Approval of Class  
19 and PAGA Settlement to the LWDA website on November 4, 2025.

20 **THE SETTLEMENT IS FAIR AND REASONABLE**

21 31. Throughout the litigation, I worked closely with Robert Westfall, David  
22 Anderson, Lynn Bobby and David Ellinger to gather data about BALL and its employment  
23 practices, participate in discovery and inform the litigation strategy. Plaintiff Robert Westfall  
24 participated in four mediations while the other named Plaintiffs participated in the third  
25 mediation, and all were available for the fourth mediation. These efforts helped result in the  
26 settlement agreement that I understand will result in an approximately \$2,810,000 net settlement  
27 amount.

1           32. All the negotiations to reach this final settlement, including with regard to  
2 attorney's fees, were reached in arm's length negotiations. I am unaware of any special  
3 relationship or connection among any of the Plaintiffs and Defendant or the Objectors and  
4 Defendant. The fee split between Plaintiffs' Counsel and Objectors' Counsel was negotiated at  
5 arm-length as well, with those negotiations eventually leading to an agreement that included  
6 joint prosecution against Defendant. The negotiations were at all times contentions and  
7 adversarial, though still professional in nature. The Joint Prosecution Agreement was entered  
8 into for the purpose of cooperating to complete the Settlement.

9           33. Based on my experience in wage and hour actions along with class action  
10 litigation, the settlement provides a high recovery in light of the risk to class members,  
11 especially considering the number of Class Members, which was determined to be  
12 approximately 327 current and former employees. In my professional opinion, the Class's  
13 claims are meritorious. However, I understand that the outcome of a trial, or the outcome any  
14 appeals that would inevitably follow, are inherently uncertain. Defendants' law firm Fisher  
15 Phillips is a well-respected law firm with substantial experience litigating class action wage and  
16 hour disputes. These risks must be considered in assessing the fairness of the Settlement, which  
17 guarantees against a result that could leave the Class without any recovery. Because the  
18 Settlement provides immediate and substantial relief, without the attendant risks of continued  
19 litigation, I believe it warrants this Court's preliminary approval.

20           34. In my professional opinion, the Settlement is fair, adequate and in the best  
21 interests of the Class Members. I believe this Settlement to be an excellent result for the Class.  
22 The Settlement provides all Class Members, regardless of their means, substantial relief in a  
23 prompt and efficient manner. The Settlement in this case is consistent with the public interest in  
24 settling litigation.

25           35. The key provisions regarding the fund allocation provide:

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

5 b. Maximum Allocation for the Waiting Time Penalty Enhancement. No more than  
6 \$1,500,000 of the Gross Settlement Amount shall be allocated to the Waiting Time  
7 Penalty Enhancement. The Settlement Administrator shall determine the percentage  
8 value for the Net Settlement Amount as a percentage of the Gross Settlement Amount,  
9 and shall multiply that percentage value against \$1,500,000 to arrive at the  
10 “Maximum Allocation for the Waiting Time Penalty Enhancement.” If necessary,  
11 each Waiting Time Penalty Enhancement shall be decreased pro-rata until the  
12 combined total Waiting Time Penalty Enhancements for all Class Members is equal  
13 to, (or, if necessary to round individual allocations to the nearest penny, marginally  
14 less than), the Maximum Allocation for Waiting Time Penalty Enhancement.

15 c. Allocation for Paging-Practices Period. The Settlement Administrator shall subtract  
16 from the Net Settlement Amount the: (i) Waiting Time Penalty Enhancement; (ii)  
17 Allocation for Post-Filing Period; and (iii) The LWDA Fund Remainder to arrive at  
18 the “Allocation for the Paging-Practices Period.” This amount shall be allocated to  
19 the settlement of the Class Members’ claims relating to alleged meal-period  
20 violations, as well as alleged rest-period violations, as well as other alleged violations  
21 occurring prior to Defendant’s changing of its policies and procedures relating to  
22 paging announcements (“Paging-Practices Period”). For ease of Settlement  
23 Administration, the Paging-Practices Period shall be defined as the period between  
24 September 6, 2012, and December 31, 2019.

25 d. Engineering Class Member Work Weeks during the Paging-Practices Period shall be  
26 paid at 1.5 times the rate of Class Member Work Weeks. The Settlement  
27 Administrator shall then allocate the Allocation for Paging-Practices Period pro-rata  
28

1 between the Class Member Work Weeks for the Paging-Practices Period, except that  
2 the Settlement Administrator shall treat every Engineering Class Member Work  
3 Week in the Paging-Practices Period as equivalent to 1.5 workweeks.

4 e. Allocation for Post-Filing Period. 9% of the Net Settlement Amount shall be allocated  
5 to the settlement of the Class Members' claims relating to alleged violations (other  
6 than waiting time penalties) occurring on January 1, 2020, through April 20, 2024.  
7 The Settlement Administrator shall determine the percentage value for the Net  
8 Settlement Amount as a percentage of the Gross Settlement Amount, and shall  
9 multiply that percentage value against the Allocation for Post-Filing Period, and that  
10 sum shall be distributed pro-rata between all workweeks between January 1, 2020,  
11 through April 20, 2024.

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

15 g. The Parties acknowledge that such allocation formula constitutes the best judgment  
16 of Plaintiffs' Counsel, and Objectors-Defendants' Counsel in balancing the  
17 competing concerns of: (1) fairness of allocation; (2) allocating the settlement in  
18 accordance with the estimate value of the various claims; (3) reducing Class Member  
19 confusion; (4) reducing the risk of Administrator error; and (5) minimizing  
20 administration burdens and costs.

21 36. Regarding the engineering position, the minor differential helps to ensure that they  
22 are being treated with the other class by recognizing that, although they faced the same violations  
23 as other members, the nature of their duties resulted in a higher rate of violations and the special  
24 circumstances faced by those in the Engineering position. These employees job duties required  
25 them to be more attentive to the announcements, then the production-based employees. The  
26 production employees were generally had a chance to check-in and check-out of breaks with  
27 another employee to update them on announcements, whereas the engineering employees tended  
28

1 to operate more in a vacuum and thus had to carefully monitor all pages. The fact that if these  
2 employees did not listen to the paging announcements throughout their whole shift, including  
3 breaks, no one would be aware of the announcement, which placed a considerable additional  
4 burden on those in this position and effectively eliminated all breaks from their workdays. The  
5 minor differential helps to ensure these members are treated equally among the rest of the  
6 member. Similarly, the waiting-time penalty carve out helps to ensure that those employees are  
7 also related equal relative to the rest of the class. Employees who have since left their employment  
8 with Defendant, while subject to the same violations as the rest of the members, are due additional  
9 funds based upon these waiting time penalties deriving from the violations common among the  
10 class members. The additional payment ensures that these class members are not releasing  
11 Defendant for these claims without adequate compensation specific to their situations

12 **THE STRENGTH OF PLAINTIFFS' CASE**

13 37. Plaintiffs allege that they were not provided lawful meal and rest breaks as a result  
14 of Defendant's Fairfield plant utilizing a paging system as the primary method of communication  
15 including in the Suitable Resting Facilities. Defendant, from the outset, denies liability. It asserts  
16 that it provided lawful meal and rest breaks.

17 38. The use of a paging system at Defendant's Fairfield plant as a form of  
18 communication made it amenable to class treatment. While I believe Plaintiffs and the Class had  
19 a good chance of succeeding on the merits, I recognized that there were facts that might cause a  
20 trier of fact to not adopt Plaintiff's theory of the case. For example, employees were permitted to  
21 leave Defendant's facility for breaks, and many in fact did leave. Under Plaintiffs' theory  
22 Defendant did not provide any lawful meal and rest breaks when using the paging system, which  
23 a trier of fact may have difficulty accepting. Had the case not settled at mediation I anticipate that  
24 Defendant would have filed a Motion for Summary Judgment and/or Adjudication.

25 39. It is Plaintiffs' position that the testimony of Plaintiffs and the Class members  
26 shows that employees were required to be vigilant in monitoring pages in the suitable resting  
27 facilities. However, the testimony from the Class depositions which occurred after class  
28

1 certification showed that there were variances in the frequency of pages directed to employees of  
2 in different positions. In addition, there were variations between the shifts. Had the case not settled  
3 at mediation I anticipate that Defendant would have filed a motion to decertify the class and/or  
4 modify the class, which could have reduced the class size, if granted.

5 40. It is Plaintiffs' position that employees were on-call during meal and rest breaks at  
6 Defendant's Fairfield plant thereby entitling them to additional wages. While I believe that  
7 Plaintiffs had a good chance of succeeding on this claim, it is possible that a trier of fact could  
8 find liability in favor of Plaintiffs and the Class on the meal and rest break claims but not on the  
9 wage claims, which would extinguish the derivative claims for waiting times penalties, wage  
10 statement violations and unpaid wages. Even if the trier of fact found liability for unpaid wages,  
11 there was some risk that the trier of fact might not find that mistakes on the wages statements by  
12 Defendant were knowing and intentional as required by Lab. Code §226(e)(1). Similarly, there  
13 was risk in proving that Defendant's conduct in relation to Plaintiffs' claim for waiting time  
14 penalties was willful under Lab. Code §203.

15 41. Utilizing data provided by Defendant ahead of the first mediation, I calculated  
16 Defendant's exposure to be substantial.

17 42. Based on Defendant's defenses, I determined that a discount was appropriate.

18 **THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**  
19 **LITIGATION**

20 43. Given the risks outlined above, the issues in this case were complex and the right  
21 for Plaintiffs and the Class Members associated with this litigation were substantial.

22 44. If the case did not settle at mediation, I believe Defendant had plans to take  
23 additional Class Member depositions which would have extended the litigation and added costs.

24 45. Had litigation continued Class Counsel would have needed to engage damages  
25 experts. Thus, the costs required to prepare this case for trial would have greatly reduced the  
26 recovery for the Class.

27 46. Given the complexity and unsettled nature of the issues in this case it is likely that  
28

1 any outcome at trial would have resulted in a lengthy and costly appeal.

2 **THE AMOUNT OFFERED IN SETTLEMENT**

3 47. It was very difficult for the Parties to reach the first settlement. It an additional  
4 challenge to reach the second settlement with the objector.

5 48. The Parties reached a settlement only after years of investigation, discovery, class  
6 certification, and multiple mediations.

7 49. I calculated the maximum potential value of all the claims and penalties in this  
8 matter to be approximately \$7,500,000, assuming Plaintiffs could certify the class and prevail on  
9 all their claims.

10 50. Once Class Counsel was able to determine the maximum potential damages, we  
11 decided on a fair and reasonable settlement for the Class considering the risks outlined above and  
12 the likelihood of success on the merits.

13 51. Nevertheless, after an objection by the Objectors, we went back to the negotiating  
14 table, prepared for and participated in a *fourth* and final mediation, which only resulted in a  
15 settlement with a mediator proposal. Fortunately, with the addition of the Objectors and  
16 Objectors' Counsel to the negotiating table, we nearly doubled the gross settlement amount for  
17 the Class Members.

18 **PLAINTIFFS' CLASS COUNSEL ATTORNEY FEES**

19 52. I believe the attorney's fees of 33% are fair and reasonable given the  
20 circumstances of this case.

21 53. Based on the efforts of Plaintiff's Counsel and the subsequent, combined efforts  
22 with Objector's Counsel, the class will be receiving the benefit of an agreement where, among  
23 other things, the average net settlement amount per class member is approximately \$8,593.27;  
24 where there is a Substantial Waiting Time Penalty Recovery that is resulting in recovery of  
25 significant amount of maximum penalties that the applicable class members would have been able  
26 to recover on their own individually; where the additional violations suffered by the Engineering  
27 positions are acknowledged and adequately compensated; and where a substantial number of  
28

1 Class Members are compensated who would have likely not recovered nothing outside of this  
2 Class Action for the violations that they suffered from at least September 7, 2012 to April 20,  
3 2020.

4 54. Furthermore, I understand that the litigation resulted in Defendant changing the  
5 paging-announcement policy that underlie Plaintiffs' claims thereby preventing further violations  
6 of Defendant's employees' rights. Both the first and second settlement agreement require  
7 Defendant to make policy and practice changes. The second settlement agreement now provides  
8 that Defendant must also modify its policies and procedures related to new hazardous materials.  
9 The present settlement agreement that the parties no seek approval provides as follows at page 32

10 ¶ 20:

11  
12 Defendant's Policy and Practice Changes. Defendant shall continue to remove,  
13 disable and/or de-activate any speakers connected to the paging system at its  
14 Fairfield, California facility, to the extent such speakers are located within the  
15 break room or other designated break areas at the Fairfield, California facility. As  
16 consideration for Objector Martin's release of his Labor Code section 6300 PAGA  
17 claim, Defendant Ball has modified its policies and procedures to provide that  
18 whenever a new hazardous material is introduced into the work area at the Fairfield  
19 Plant, Defendant will conduct an assessment to evaluate which employees will be  
20 reasonably anticipated to be exposed to such materials, and those employees will  
21 be trained, to the extent appropriate, on reasonably foreseeable exposures on the  
22 job and general classes of hazardous chemicals. These policy changes reflect no  
23 admission of liability or wrongdoing by any Party.

24 Although the parties have not agreed to a value for these changes, they nevertheless  
25 represent a significant non-monetary benefit to the Class and Defendant's other employees.

26 55. Plaintiffs' Class Counsel has spent a significant amount of hours investigating,  
27 researching, and litigating this matter, including but not limited to the following: interviewing  
28 Plaintiffs and flushing out facts and issues; researching various cases on the subject matter;  
researching and analyzing relevant claims; investigating and discussing job functions, duties,  
compensation, policies and procedures; regularly meeting and/or communicating with our  
clients, Robert Westfall, in particular; drafting and reviewing pleadings; drafting discovery;  
reviewing documents produced in formal and informal discovery; preparing and analyzing

1 damage models; preparing for an attending three day long mediations; negotiating terms of the  
2 Settlement; and reviewing and making changes to the Settlement Agreement.

3 56. Moreover, my firm took this matter on contingency, and we have represented  
4 Plaintiff Westfall and have litigated this case since the first complaint was filed in September  
5 2016.

6 57. Furthermore, the resolution of the matter became even more complex when  
7 Objector-Intervenor Richard Martin alleged a California Labor Code Private Attorneys General  
8 Act Labor Code section 6300 claim against Defendant. Thankfully, the participation of the  
9 Objector-Intervenor resulted in nearly doubling the gross settlement amount.

10 58. My firm reviewed the work performed by Erin Scharg and me to estimate the  
11 amount of time we have spent on this matter. Based upon our review, we estimate the following  
12 hours as of approximately April 2022:

13 ERIN M. SCHARG (Approximately 265 total hours)

14 a. Depositions & Discovery (Approximately 95 hours), including

15 i. Preparing for and attending numerous depositions

16 ii. Drafting and reviewing discovery requests/responses

17 iii. Document review and analysis

18 iv. Reviewing and managing discovery disputes.

19 b. Class Certification Work (Approximately 55 hours), including

20 i. Drafting class certification motion and supporting documents

21 ii. Working on motion for reconsideration

22 iii. Research, analysis, and drafting for class certification issues

23 c. Mediation & Settlement (Approximately 45 hours), including

24 i. Preparing mediation briefs

25 ii. Attending mediation sessions

26 iii. Settlement negotiations

27 iv. Drafting and revising of settlement agreements

28

1 d. Communication & Case Management (Approximately 40 hours), including

2 i. Client communications

3 ii. Correspondence with opposing counsel

4 iii. Internal strategy meetings and communications

5 e. Court Appearances & Orders (Approximately 30 hours), including

6 i. Attending hearings

7 ii. Reviewing court orders

8 iii. Preparing court documents such as status documents

9 iv. Reviewing and analyzing court orders

10 MATTHEW EASON (Approximately 244 total hours)

11 a. Case Strategy & Legal Research (Approximately 75 hours), including

12 i. Initial case analysis

13 ii. Legal research on Key issues, including wage orders, prior decisions  
14 regarding class actions, and research into suitable facilities

15 b. Mediation & Settlement (Approximately 65 hours), including

16 i. Mediation preparation and attendance

17 ii. Settlement calculations and analysis

18 iii. Settlement negotiations

19 iv. Settlement agreement review and negotiating specific terms

20 v. Reviewing and revising moving papers for settlement approvals

21 c. Discovery & Depositions (Approximately 45 hours), including

22 i. Supporting deposition preparation, including outlining questions and  
23 answers

24 ii. Document and evidence review

25 iii. Discovery strategizing and analysis

26 d. Class Certification Work (Approximately 35 hours), including

27 i. Drafting and revision of class certification motion

28

- 1                   ii. Research for class issues
- 2           e. Client Communication & Case Management (Approximately 24 hours), including
- 3                   i. Client meetings and communications
- 4                   ii. Case administration
- 5                   iii. Analysis and case strategizing

6           59. From April 2022 to the time of submission of Plaintiffs Motion for Preliminary  
7 Approval of Class Action and PAGA Settlement in January 2025, I estimate that my firm has  
8 expended an additional 150 attorney hours, which has included that substantial work addressing  
9 the Objectors' objections, renegotiating a new settlement with Defendant and the Objectors,  
10 engaging in additional discovery, renegotiation a finalized settlement agreement, a notice to the  
11 class, and moving for approval.

12           60. I estimate that of the 150 additional hours that my firm has worked from April  
13 2022 to January 2025 that Ms. Scharg worked an additional approximate 78 hours, and I worked  
14 an additional approximate 72 hours.

15           61. From the time of submission of Plaintiffs' Motion for Preliminary Approval of  
16 Class Action and PAGA Settlement to now I estimated that an additional 41 hours that my firm  
17 m has worked, which includes communicating with the Claims Administrator, communicating  
18 with the Class and Named Plaintiffs and preparing motions for final approval and for attorney's  
19 fees.

20           62. I estimate that of the additional 41 hours that my firm has worked from January  
21 2025 to the present that Ms. Scharg worked an additional approximate 37 hours, and I worked  
22 an additional approximate 4 hours.

23           63. I believe that results in a total for Erin M. Scharg of 365 hours and for me 305  
24 hours in this matter.

25           64. The Laffey Matrix is a pre-fixed formula used by federal courts to determine  
26 reasonable hourly rates. *See* Rubenstein, 5 Newberg on Class Actions, §15:43, p. 148 (5<sup>th</sup> Ed.  
27 2015). *See* <http://www.laffeymatrix.com/see.html>.

28

1 65. The Matrix for the dates of June 1, 2024, to May 31, 2025, reflects attorneys'  
2 rates with experience commiserate to my years of experience as billing upwards of \$1,141 per  
3 hour; attorneys with Ms. Scharg's experience, who was admitted to the bar in 2012, of \$948.

4 66. By my calculations a lodestar amount for Ms. Scharg's fees would be  $\$948 \times$   
5  $365 \text{ hours} = \$346,020$  in total fees for her work on this matter and for my fees would be  $\$1,141$   
6  $\times 305 \text{ hours} = \$348,005$ .

7 67. By my calculations a reasonable lodestar valuation of my firm's fees would be  
8  $\$346,020 + \$348,005 = \$694,025$ .

9 68. Combining the \$694,025 with my Plaintiffs' Co-Counsel, Castle Law, calculated  
10 lodestar estimate of \$137,022.25 provides a total estimated lodestar of \$831,047.25.

11 69. Under the proposed settlement agreement, the total fees my firm and my Co-  
12 Counsel, Castle Law, will take is \$1,090,000.00.

13 70. This means that lodestar multiplier for the agreed upon fee amount is a reasonable  
14  $1.465$  based upon the calculation of  $\$1,090,000 / \$831,047.25 = 1312$ .  
15 My firm's current estimated costs are \$30,368.97.

16 71. I understand that ILYM will administer this settlement for an estimated amount  
17 not to exceed \$10,000. Should any actual Class Administration Costs turn out to be less than the  
18 projected amount, the Parties agree that the savings will be allocated to the Net Settlement  
19 Amount, to be distributed to Eligible Class Members in proportion to their respective numbers of  
20 Eligible Class Member Workweeks. Should any actual reasonable and necessary Class  
21 Administration Costs be more than the above estimated amount, and the Parties stipulate that the  
22 Class Administrator should be paid such amounts, the Parties will apply to the Court for an  
23 adjustment, with any additional Class Administration Costs to be paid from the Gross Settlement  
24 Amount, which shall be accompanied by a corresponding reduction of one or more specified  
25 elements of the Gross Settlement Amount as determined by the Court as part of Final Approval.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of March, 2026, at Sacramento, California.

/s/ Matthew R. Eason  
MATTHEW R. EASON

**EXHIBIT A**

1 MATTHEW R. EASON, Esq., Cal. Bar No. 160148  
2 KYLE K. TABORNINI, Esq., Cal. Bar No. 160538  
3 **EASON & TAMBORNINI, ALC**  
4 1819 K Street, Suite 200  
5 Sacramento, CA 95811  
6 (916) 438-1819  
7 Facsimile (916) 438-1820  
8 [Matthew@capcityLaw.com](mailto:Matthew@capcityLaw.com)  
9 <http://www.capcitylaw.com>

10 TIMOTHY B. DEL CASTILLO

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

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

19 **BLADY WORKFORCE LAW GROUP LLP**  
20 I. BENJAMIN BLADY — Cal. Bar No. 162470  
21 5757 Wilshire Boulevard, Suite 535  
22 Los Angeles, CA 90036  
23 Phone: (323) 933-1352  
24 Email: [bblady@bwlawgroup.com](mailto:bblady@bwlawgroup.com)

25 **LESCHES LAW**  
26 LEVI LESCHES — Cal. Bar No. 305173  
27 5757 Wilshire Boulevard, Suite 535  
28 Los Angeles, CA 90036  
Phone: (323) 900-0580  
Email: [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

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

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

24  
25  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

1 ROBERT WESTFALL, individually and on  
2 behalf of all others similarly situated,

3 Plaintiff,

4 v.

5 BALL METAL BEVERAGE CONTAINER  
6 CORPORATION, a Colorado Corporation,  
7 Does 1-20 inclusive,

8 Defendants.

Case No: 2:16-CV-02632-KJM-CKD

**JOINT STIPULATION OF CLASS ACTION  
AND PAGA SETTLEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **1. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (a) To Plaintiff's Counsel:

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

15 (b) To Objectors-Intervenors' Counsel:

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

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

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

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

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

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

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

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

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

1 Procedures – Notice to Class, below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 not an Opt-Out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9 2. TERMS AND CONDITIONS OF SETTLEMENT

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

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

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

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

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

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

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

1 Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (i) Named Plaintiffs hereby agree that they will not submit a Class Member  
17 Objection or an Opt-Out Request. Any submissions by Named Plaintiffs  
18 purporting to be a Class Member Objection or an Opt-Out Request shall  
19 be null and void. Objectors-Intervenors also hereby agree that they will  
20 not submit a Class Member Objection or an Opt-Out Request. Any  
21 submissions by Objectors-Intervenors purporting to be a Class Member  
22 Objection or an Opt-Out Request shall be null and void.

23 (j) No determinations by Defendant, the Class Administrator, the Court, or  
24 any other person or entity pursuant to this Section 2.7 – Class  
25 Administration Procedures – Notice to Class, shall have the effect of  
26 increasing the amount of the Gross Settlement Amount. Rather, any  
27 additional amounts to be distributed to any Class Member as a result of  
28 the resolution of such disputes shall be made in conjunction with and

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

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

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

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

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

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

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

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

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

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

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

9 17. Taxation and Withholding; Settlement Checks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

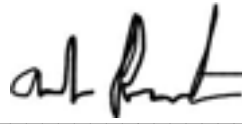
20 DATE: \_\_\_\_\_  
21 \_\_\_\_\_  
22 DAVID ELLINGER  
23 PLAINTIFF AND CLASS REPRESENTATIVE

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

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

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DATE: 01 / 09 / 2025



ANDRE BERNSTEIN  
OBJECTOR

APPROVED AS TO FORM AND CONTENT:

EASON & TAMBORNINI, ALC

DATE: \_\_\_\_\_

By: \_\_\_\_\_

MATTHEW R. EASON  
Attorneys for Plaintiff  
ROBERT WESTFALL

DATE: 01 / 09 / 2025

LESCHES LAW

By:  \_\_\_\_\_

LEV LESCHES  
Attorney for Objectors-Intervenors  
RICHARD MARTIN  
ANDRE BERNSTEIN

DATE: January 14, 2025

FISHER & PHILLIPS LLP

By:  \_\_\_\_\_

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

# EXHIBIT 1-A

**ENDORSED FILED**  
Clerk of the Superior Court

SEP -7 2016

By J. WOOD  
DEPUTY CLERK

1 MATTHEW R. EASON, Esq., Cal. Bar No. 160148  
2 KYLE K. TABORNINI, Esq., Cal. Bar No. 160538  
3 EASON & TAMBORNINI, ALC  
4 1819 K Street, Suite 200  
5 Sacramento, CA 95811  
6 (916) 438-1819  
7 Facsimile (916) 438-1820  
8 [Matthew@capcityLaw.com](mailto:Matthew@capcityLaw.com)  
9 <http://www.capcitylaw.com>

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

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SOLANO**

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

16 Plaintiff,

17 v.

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

22 Defendants.

Case No.: **FCS047654**

**CLASS ACTION COMPLAINT**

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

**ASSIGNED TO**  
**JUDGE Heenan**  
**FOR ALL PURPOSES**

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

**I**

**INTRODUCTION**

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

Complaint

By Fax

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27  
28

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

4 **II**

5 **JURISDICTION AND VENUE**

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

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

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

20 **III**

21 **PARTIES**

22 **A. PLAINTIFF**

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

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

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

**B. DEFENDANTS**

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

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

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

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

**IV**

**CLASS ACTION ALLEGATIONS**

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

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

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

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

10 **A. Numerosity**

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

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

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

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

21 **B. Commonality**

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

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

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

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

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

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

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

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

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

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

22 **C. Typicality**

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

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

1 **D. Adequacy of Representation**

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

5 **E. Superiority of Class Action**

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

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

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

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

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

20 **VI**

21 **FIRST CAUSE OF ACTION**

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

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

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

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

28

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

5 **VII**

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

8 **LABOR CODE § 226.7 AND LABOR CODE § 512**

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

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

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

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

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

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

23 **VIII**

24 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

11 IX

12 FOURTH CAUSE OF ACTION

13 VIOLATION OF LABOR CODE § 226(a)

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

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

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

28

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

7 X

8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

23 XI

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION PURSUANT TO**

26 **BUSINESS & PROFESSIONS CODE § 17200**

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

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

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

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

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

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

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

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

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

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

13 **RELIEF REQUESTED**

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

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

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

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

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

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

28

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

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

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

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

- 16 10. Prejudgment interest;
- 17 11. An award providing for payment of costs of suit;
- 18 12. An award of attorneys' fees; and
- 19 13. Such other and further relief as this Court may deem proper and just.

20 **DEMAND FOR JURY TRIAL**

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

23 Dated: September 6, 2016

Eason & Tambornini, ALC

25 By: 

26 Matthew R. Eason  
27 Attorneys for Plaintiff and the Proposed Class

# EXHIBIT 1-B

MATTHEW R. EASON, Esq., Cal. Bar No. 160148  
KYLE K. TABORNINI, Esq., Cal. Bar No. 160538  
EASON & TAMBORNINI, ALC  
1819 K Street, Suite 200  
Sacramento, CA 95811  
(916) 438-1819  
Facsimile (916) 438-1820  
Matthew@capcityLaw.com  
<http://www.capcitylaw.com>

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(Sacramento Division)

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

Plaintiff,

v.

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

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

FIRST AMENDED CLASS ACTION  
COMPLAINT

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

*JURY TRIAL IS DEMANDED*

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

//

//

I

INTRODUCTION

1  
2  
3 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of  
4 Plaintiffs and all individuals who hold or held the position of “Electronic Technician”,  
5 “Machinist/Mechanic”, and/or Maintenance” currently employed by or formerly employed by  
6 Defendant and any subsidiaries or affiliated companies within the State of California.

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

12 3. Plaintiffs and the aggrieved employees are persons employed in the  
13 Manufacturing Industry as that term is defined in Industrial Welfare Commission Order No. 1-  
14 2001 (hereinafter Wage Order #1).

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

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

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

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

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

26 9. Wage Order #1 provides that all work performed in excess of 12 hours per day  
27 and any work in excess of eight (8) hours on those days worked beyond the regularly schedule  
28

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

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

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

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

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

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

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

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

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

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

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

7 **II**

8 **PARTIES**

9 **A. PLAINTIFFS**

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

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

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

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

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

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

8 **B. DEFENDANTS**

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

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

12 **III**

13 **CLASS ACTION ALLEGATIONS**

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

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

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

24 **A. Numerosity**

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

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

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

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

8           **B. Commonality**

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

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

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

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

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

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

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

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

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

10 **C. Typicality**

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

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

17 **D. Adequacy of Representation**

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

21 **E. Superiority of Class Action**

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

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

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

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

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

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

9 **IV**

10 **FIRST CAUSE OF ACTION**

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

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

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

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

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

21 **V**

22 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

12 VI

13 THIRD CAUSE OF ACTION

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

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

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

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

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

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

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**VII**

**FOURTH CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 226(a)**

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

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

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

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

**VIII**

**FIFTH CAUSE OF ACTION**

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

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

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

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

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

12 IX

13 SIXTH CAUSE OF ACTION

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

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

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

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

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



**SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

12  
13 **XI**

14 **RELIEF REQUESTED**

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

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

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

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

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

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

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

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

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

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

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

20 11. Prejudgment interest;

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

22 13. An award of attorneys' fees; and

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

24  
25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial of his claims by jury to the extent authorized by law.  
27  
28

1 Dated: April 6, 2017

Eason & Tamborini, ALC

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By: 

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

**PROOF OF SERVICE**

I, Angelica Saechao, hereby declare and state that:

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

On April 6, 2017, I served the following:

**FIRST AMENDED CLASS ACTION COMPLAINT**

on the parties in said action addressed as follows:

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

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

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

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

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

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

On April 6, 2017, at Sacramento, California.

  
\_\_\_\_\_  
ANGELICA SAECHAO

# EXHIBIT 1-C

MATTHEW R. EASON, Esq., Cal. Bar No. 160148  
KYLE K. TABORNINI, Esq., Cal. Bar No. 160538  
EASON & TAMBORNINI, ALC  
1819 K Street, Suite 200  
Sacramento, CA 95811  
(916) 438-1819  
Facsimile (916) 438-1820  
Matthew@capcityLaw.com  
<http://www.capcitylaw.com>

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(Sacramento Division)

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

Plaintiff,

v.

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

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

FIRST AMENDED CLASS ACTION  
COMPLAINT

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

*JURY TRIAL IS DEMANDED*

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

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I

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **II**

8 **PARTIES**

9 **A. PLAINTIFFS**

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

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

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

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

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

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

8 **B. DEFENDANTS**

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

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

12 **III**

13 **CLASS ACTION ALLEGATIONS**

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

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

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

24 **A. Numerosity**

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

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

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

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

8 **B. Commonality**

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

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

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

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

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

28

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

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

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

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

10 **C. Typicality**

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

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

17 **D. Adequacy of Representation**

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

21 **E. Superiority of Class Action**

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

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

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

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

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

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

9 IV

10 FIRST CAUSE OF ACTION

11 FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

12 LABOR CODE §§ 510, 1194, and 1199

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

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

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

21 V

22 SECOND CAUSE OF ACTION

23 FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO

24 LABOR CODE § 226.7 AND LABOR CODE § 512

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

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

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

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

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

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

12 VI

13 THIRD CAUSE OF ACTION

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

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

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

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

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

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

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**VII**

**FOURTH CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 226(a)**

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

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

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

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

**VIII**

**FIFTH CAUSE OF ACTION**

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

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

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

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

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

12 IX

13 SIXTH CAUSE OF ACTION

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

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

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

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

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



**SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

12  
13 **XI**

14 **RELIEF REQUESTED**

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

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

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

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

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

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

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

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

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

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

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

20 11. Prejudgment interest;

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

22 13. An award of attorneys' fees; and

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

24  
25 **DEMAND FOR JURY TRIAL**

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

Eason & Tamborini, ALC

By: 

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

**PROOF OF SERVICE**

I, Angelica Saechao, hereby declare and state that:

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

On April 6, 2017, I served the following:

**FIRST AMENDED CLASS ACTION COMPLAINT**

on the parties in said action addressed as follows:

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

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

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

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

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

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

On April 6, 2017, at Sacramento, California.

  
\_\_\_\_\_  
ANGELICA SAECHAO

# EXHIBIT 1-D

# EXHIBIT 1-E



☎ 323.900.0580  
✉ [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

5757 Wilshire Boulevard, Ste 535  
Los Angeles, CA 90036

November 22, 2019

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

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

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

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

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

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

Dear Sir or Madam:

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

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

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

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*Summary of PAGA Claims*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further, Ball failed to furnish accurate itemized wage statements.

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*Applicable Labor Code Sections and Specific Violations*

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

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

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

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

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

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

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

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

*Sincerely*

**LEVI LESCHES**

**Attorney for Richard Martin**



☎ 323.900.0580  
✉ [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

5757 Wilshire Boulevard, Ste 535  
Los Angeles, CA 90036

November 22, 2019

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

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

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

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

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

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

Dear Sir or Madam:

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

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

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

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

**SUMMARY OF WORKPLACE HAZARDS**

**a. *Violations of Ergonomic Standards***

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

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

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

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

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

### ***b. Violations of Control of Hazardous Substances***

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

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

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

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

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

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

**Sincerely**

**LEVI LESCHES**

**Attorney for Richard Martin**



☎ 323.900.0580  
✉ [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

5757 Wilshire Boulevard, Ste 535  
Los Angeles, CA 90036

November 27, 2019

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

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

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

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

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

Dear Sir or Madam:

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

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

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

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

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

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

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

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

*Sincerely*

**LEVI LESCHES**  
**Attorney for Richard Martin**



☎ 323.900.0580  
✉ [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

5757 Wilshire Boulevard, Ste 535  
Los Angeles, CA 90036

November 23, 2020

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

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

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

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

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

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

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

Dear Sir or Madam:

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

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

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

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

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

**Sincerely**

**LEVI LESCHES**  
**Attorney for Richard Martin**



☎ 323.900.0580  
✉ [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

5757 Wilshire Boulevard, Ste 535  
Los Angeles, CA 90036

March 5, 2024

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

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

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

Aaron M. Cargain  
[acargain@fisherphillips.com](mailto:acargain@fisherphillips.com)  
Fisher & Phillips LLP  
1 Montgomery Street | Suite 3400  
San Francisco, CA 94104  
**Via E-Mail**

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

Erin M. Scharg  
[erin@capcitylaw.com](mailto:erin@capcitylaw.com)  
Eason & Tambornini, A Law Corporation  
1234 H Street, Suite 200  
Sacramento, California 95814  
**Via E-Mail**

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

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

**THIRD AMENDED PRIVATE ATTORNEY GENERAL ACT  
LETTER**

Dear Sir or Madam:

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

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

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

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

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

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

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

**Sincerely**

**LEVI LESCHES**

**Attorney for Richard Martin**

# EXHIBIT 1-F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

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

Plaintiff-Intervenor,

v.

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

Defendants.

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

CLASS ACTION

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

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

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

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

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

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

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

**I. BACKGROUND OF THE CASE**

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

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

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

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

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

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

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

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

## II. SUMMARY OF THE PROPOSED SETTLEMENT

### A. The Amount of the Settlement

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

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

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

### B. Settlement Formula, and Your Settlement Award

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

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

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

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

**Based on Defendants' records your estimated Settlement Share is <<\_\_\_\_\_>>.**

**D. Resolution of Settlement Award Disputes**

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

**E. Release of Claims**

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

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

**F. Enhancement Award for the Class Representative**

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

**G. Attorneys’ Fees and Costs**

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

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participate in the Settlement**

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

**B. Excluding Yourself from the Settlement**

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

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

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

excluding Class Member may have against the Released Parties.

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

**C. Objection to Settlement**

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you must timely submit a written objection to the Settlement Administrator. The Settlement Administrator’s contact information is listed below in Section III.D.

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates you were employed in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be sent to the Claims Administrator and must be postmarked or received via facsimile or email no later than \_\_\_\_\_, 2025. If you submit the objection via email, the email must be addressed to \_\_\_\_\_, must be sent no later than 11:59 p.m. on \_\_\_\_\_, 2025, and, in addition to including all the information required for submitting an objection, the email must also include the words “objection” in the subject line. **DO NOT TELEPHONE THE COURT.**

If you choose to submit an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the United States District Court Eastern District of California and deliver copies to the Claims Administrator and each of the attorneys listed below. Such Entry of Appearance must be filed with the Court and delivered to the above Claims Administrator no later than 45 days after the Claims Administrator mails the Notice to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. Additionally, you will be required to certify whether the objection is being made in the interest of the class and/or the identity of any interests being represented by the objection.

**D. How to Contact the Settlement Administrator**

The Settlement Administrator’s contact information is as follows:

[Settlement Administrator]  
 [Address Line 1]  
 Address Line 2]  
 Telephone: 1 (800) XXX-XXXX  
 Facsimile: 1 (800) XXX-XXXX  
 Email: XXXXXXXXXXX

**IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Claims as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue as though the Settlement never occurred and without prejudice to any Party.

**V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final hearing in the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814, on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in Department\_\_\_\_\_, to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for Attorneys' Fees and Costs and the Enhancement Awards to be paid to the Class Representatives.

The Final Approval Hearing may be continued without further notice to the Class. It is not necessary for you to appear at this hearing unless you wish to object to the Settlement.

**VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Joint Stipulation of Class and PAGA Settlement" which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Joint Stipulation of Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court Eastern District of California, located at 501 I St # 4200, Sacramento, CA 95814.

If you want additional information about this lawsuit and its proceedings, you can also contact Class Counsel in this matter:

Matthew R. Eason, Esq.  
EASON & TAMBORNINI, ALC  
1234 H Street  
Sacramento, CA 95814  
(916) 438-1819  
[Matthew@capcityLaw.com](mailto:Matthew@capcityLaw.com)

Timothy B. Del Castillo, Esq.  
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC  
2999 Douglas Blvd., Suite 180  
Roseville, CA 95661  
(916) 245-0122  
[tdc@castleemploymentlaw.com](mailto:tdc@castleemploymentlaw.com)

If you want additional information about the bonus-related overtime claims and Cal-OSHA claims, and the prior objection to the initial settlement, you can contact counsel for Objectors-Intervenors:

BLADY WORKFORCE LAW GROUP LLP  
I. Benjamin Blady  
5757 Wilshire Boulevard, Suite 535  
Los Angeles, CA 90036  
Phone: (323) 933-1352  
Email: [bblady@bwlawgroup.com](mailto:bblady@bwlawgroup.com)

LESCHES LAW  
Levi Lesches  
5757 Wilshire Boulevard, Suite 535  
Los Angeles, CA 90036  
Phone: (323) 900-0580  
Email: [levi@lescheslaw.com](mailto:levi@lescheslaw.com)

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**BY ORDER OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA**

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**EXHIBIT 2**

**RELEASE OF CLAIMS BY CLASS**

A. In exchange for the consideration recited in this Settlement, Named Plaintiffs, Objectors-Intervenors, and all Eligible Class Members on behalf of themselves and on behalf of all who claim by or through them or in their stead, for the period from September 7, 2012 to the April 20, 2024 do hereby and forever release, acquit and discharge and covenant not to sue Defendant, and each of its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-employers, payroll service providers, staffing agencies, Professional Employer Organizations (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations, and/or privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant (referred to as the “Released Parties”) for any and all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties, interest, demands, damages, controversies, attorneys’ fees, costs of suit, losses, expenses, and liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory, federal, state or otherwise), arising from or that could have reasonably been asserted based on the allegations in the Complaint (Exhibits 1-A, 1-B, and 1-C hereto), for:

- (1) Failure to pay wages owed, including claims for: the failure to properly pay all minimum wages (including any and all theories as alleged, or that could have been alleged by Plaintiffs or Objectors-Intervenors related to “off the clock work” or incorrect calculation of the “regular rate of pay”); failure to pay all overtime wages (including any and all theories as alleged, or that could have been alleged, by Plaintiffs and Objectors-Intervenors related to the failure to pay overtime at the “regular rate of pay”); and the failure to pay vested vacation or sick pay wages (including at the regular rate of pay);

- 1 (2) Failure to provide meal periods;
- 2 (3) Failure to authorize and/or permit rest periods;
- 3 (4) Failure to pay “premiums” related to meal and/or rest periods pursuant to
- 4 Cal. Lab. Code § 226.7 at the regular rate of pay;
- 5 (5) Failure to furnish accurate, itemized wage statements in compliance with
- 6 California Labor Code § 226(a);
- 7 (6) Failure to pay all wages upon separation of employment;
- 8 (7) Alleged violation of and/or based on California Labor Code §§ 200, 201-
- 9 203, 204, 210, 218, 218.5, 218.6, 221, 223, 226, 226(a), 226.3, 226.7,
- 10 227.3, failure to pay sick time, including at the regular rate of pay, and any
- 11 claim for PAGA penalties predicated thereon under § 246 *et seq.*, 500, 510,
- 12 511, 512, 515, 558, 1174, 1174.5, 1175, 1182.11, 1182.12, 1185, 1193.6
- 13 1194, 1194.2, 1197, 1197.1, 1198, 1199, 3289, 3751, as well as, to the
- 14 extent predicated on “regulatory violations,” “general violations,” or
- 15 “repeat violations” associated with “IC spray” practices and procedures,
- 16 Labor Code §§ 6300, *et seq.* (OSHA Standards), and Sections 3, 4, 5, 7,
- 17 11, and 12 of the IWC Wage Orders;
- 18 (7) Alleged violations of the California Unfair Competition Law (Business
- 19 and Professions Code sections 17200 *et seq.*); and
- 20 (8) Violation of any provision of the California Labor Code that are subject
- 21 to penalties pursuant to the California Labor Code Private Attorneys
- 22 General Act of 2004 that were or could have been asserted based on the
- 23 allegations in the Complaint, as well as PAGA penalties that were or could
- 24 have been sought in relation to violation of such provisions. This includes
- 25 the §§ 6300 PAGA claims alleged by Objector Martin in the *Martin*
- 26 Action.

Such claims shall be known herein as the “Released Claims.” This Release by Plaintiffs,

1 Objectors-Intervenors, and the Eligible Class Members is intended to settle any and all of the  
2 above Released Claims that any of them may have against the Released Parties as of the Effective  
3 Date of the Settlement. Such release of Released Claims is also intended to apply regardless of  
4 whether such claims are known or unknown, and the release in this Exhibit 2 shall be deemed to  
5 include a waiver and relinquishment of the provisions of Section 1542 of the California Civil  
6 Code, which provides as follows:

7 **SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO**  
8 **CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT**  
9 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**  
10 **OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**  
11 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**  
12 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

13 Such waiver and relinquishment of Section 1542 *shall only apply to claims meeting the*  
14 *limited definition of “Released Claims” as defined above.*

15 Upon the Effective Date of this Settlement, this waiver and release of claims shall be  
16 binding on Named Plaintiffs, Objectors-Intervenors, and all Eligible Class Members, including  
17 each of their respective attorneys, agents, spouses, executors, representatives, guardians *ad litem*,  
18 heirs, successors, and assigns, and shall inure to the benefit of Defendant. Unless they are Opt-  
19 Outs, the members of the Settlement Class are deemed to have specifically and knowingly agreed  
20 to the waiver and release of claims set forth above.

21 Furthermore, upon occurrence of the Effective Date of the Settlement, Named Plaintiffs  
22 and each and every Eligible Class Member and all successors in interest shall be permanently  
23 enjoined and forever barred from prosecuting any and all Released Claims against the Released  
24 Parties, and each of them.  
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**EXHIBIT 3**

**GENERAL RELEASE BY NAMED PLAINTIFFS AND OBJECTORS-INTERVENORS**

THIS GENERAL RELEASE AGREEMENT (hereinafter, the “General Release”) is made and entered into by and between Defendant, Named Plaintiffs, and Objectors-Intervenors. In consideration of and exchange for the promises, covenants, and releases contained herein, the Parties agree as follows:

1. No Admission of Liability. It is understood and agreed by the Parties that this Agreement shall not be construed to be an admission of any liability or obligation owed by Defendant, Named Plaintiffs, Objectors-Intervenors, and each of them and/or any other person.

2. Consideration. In consideration of, and exchange for the promises, covenants, and releases contained herein and in the Joint Stipulation, including Named Plaintiffs’ and Objectors-Intervenors respective roles as class and PAGA representatives in the Action, and subject to the Effective Date of the Joint Stipulation, Defendant, Named Plaintiffs, and Objectors-Intervenors agree to the terms set forth herein. Named Plaintiffs and Objectors-Intervenors hereby acknowledge and agree that the Named Plaintiff Enhancements and Objectors-Intervenors Enhancements, along with the other terms agreed to by Defendant in the Joint Stipulation, shall serve as consideration for this General Release, regardless of whether the Court awards the Named Plaintiff Enhancements and/or Objectors-Intervenors Enhancements, or awards it in the amount set forth in the Joint Stipulation. Named Plaintiffs, Objectors-Intervenors, and Class Counsel further acknowledge and agree that they are not owed any additional consideration pursuant to this General Release, including for attorneys’ fees and costs, interest, penalties, or any other amounts, other than as provided in the Joint Stipulation. Named Plaintiffs and Objectors-Intervenors further acknowledge and agree that the amount of consideration provided in this section is not otherwise owed by the Defendant and that Named Plaintiffs and Objectors-Intervenors would not otherwise be entitled to the amounts set forth in this section were it not for their covenants, promises, and releases set forth hereunder. The consideration provided herein shall not prevent Named Plaintiffs and Objectors-Intervenors from receiving their respective Eligible Class Member Shares. Named Plaintiffs and Objectors-Intervenors further acknowledge

1 and agree that they have received all compensation due and payable from Defendant and that  
2 nothing further is owed by Defendant, once Named Plaintiffs and Objectors-Intervenors receive  
3 the consideration set forth herein.

4       3.     Release by Named Plaintiffs and Objectors-Intervenors. Named Plaintiffs and  
5 Objectors-Intervenors agree on behalf of themselves, and their respective heirs, executors,  
6 administrators, successors, assigns, and lawyers, to release and discharge Defendant and each of  
7 its respective attorneys, past, present and future divisions, affiliates, predecessors, successors,  
8 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,  
9 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, co-  
10 employers, payroll service providers, staffing agencies, Professional Employer Organizations  
11 (“PEO’s”), Administrative Service Organizations (“ASO’s”), insurers, related corporations,  
12 and/or privies, both individually and collectively, and any individual or entity which could be  
13 jointly liable with Defendant or any of them (referred to as the “Released Parties”) from any and  
14 all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties,  
15 interest, demands, damages, controversies, attorneys’ fees, costs of suit, losses, expenses, and  
16 liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory,  
17 federal, state or otherwise) of every nature whatsoever, whether known or unknown, suspected  
18 or unsuspected, anticipated or unanticipated, filed or unfiled, arising out of or in connection with  
19 Named Plaintiffs’ and Objectors-Intervenors’ employment with the Defendant. Such released  
20 claims shall be known as the “Released Claims.” The Released Claims include, but are not  
21 limited to, all claims arising directly or indirectly from Named Plaintiffs’ and Objectors-  
22 Intervenors’ employment; or claims or demands related to Named Plaintiffs’ and Objectors-  
23 Intervenors’ performance of services, including but not limited to claims arising under federal,  
24 state or local law or cause of action, including, but not limited to, unpaid wages (straight time,  
25 overtime, bonuses, vacation, wage premiums; other wages); breach of contract; breach of the  
26 implied covenant of good faith and fair dealing; infliction of emotional harm; wrongful or  
27 retaliatory discharge; harassment, discrimination, or other violation of public policy; defamation  
28 and impairment of economic opportunity; violation of the California Fair Employment and

1 Housing Act, the California Labor Code, the California Business and Professions Code, the  
 2 California Constitution; and any claims for violation of the Civil Rights Act of 1866, Title VII  
 3 of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990.  
 4 Notwithstanding the foregoing, the Released Claims shall not include any claims that cannot be  
 5 released as a matter of law, including without limitation, any workers’ compensation claims by  
 6 Named Plaintiffs and Objectors-Intervenors against the Defendant. This release contemplated by  
 7 this Section includes Objector-Intervenor Martin’s individual-wage-and-hour, PAGA, and Class  
 8 Action claims as alleged in the *Martin* Action.

9 4. No Release of Martin’s Individual Claims. Nothing in this Release, in the General  
 10 Release, in the Joint Stipulation of Class and PAGA Settlement, the Memorandum of  
 11 Understanding, or any other document executed as part of the *Westfall* action, resolves, releases,  
 12 waives, limits, or otherwise affects the Causes of Action, allegations, theories, or claims asserted  
 13 in Martin’s Third Amended Complaint, filed August 29, 2024. Martin acknowledges that his  
 14 wage-and-hour, PAGA, and Class Claims as alleged in his Original Complaint, First Amended  
 15 Complaint, and Second Amended Complaint are otherwise subsumed by the Settlement, and  
 16 subject to the Releases contemplated herein. Martin further acknowledges that all other claims  
 17 that are not specifically alleged in his Third Amended Complaint in his lawsuit are subject to the  
 18 General Release and Civil Code section 1542 waiver contemplated herein. Similarly, this Release  
 19 shall not affect or dispose of Martin’s California Labor Code § 132a Workers’ Compensation  
 20 Petition.

21 5. Waiver of Section 1542. Subject to the preceding Section, Named Plaintiffs and  
 22 Objectors-Intervenors hereby state that it is their intention in executing the above Joint  
 23 Stipulation that the same shall be effective as a bar to each and every claim, demand, causes of  
 24 action, obligation, damage, liability, charge, attorneys’ fees and costs hereinabove released.  
 25 Named Plaintiffs and Objectors-Intervenors hereby expressly waive and relinquish all rights and  
 26 benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of  
 27 California which provides:

28 **SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO**

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**CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

6. Older Workers’ Benefit Protection Act. Named Plaintiffs and Objectors-Intervenors, and each of them, acknowledge that they are knowingly and voluntarily waiving and releasing any rights each of them may have under the Age Discrimination in Employment Act (“ADEA”). Named Plaintiffs and Objectors-Intervenors also acknowledge that the consideration given them for the waivers and releases in this Agreement is in addition to anything of value to which he was already entitled. Named Plaintiffs and Objectors-Intervenors further acknowledge that they have been advised by this writing, as required by the Older Workers’ Benefit Protection Act, that: (a) their waivers and releases do not apply to any rights or claims that may arise after their respective executions of this agreement; (b) they should each consult with an attorney prior to executing this Agreement; (c) they each have at least twenty-one (21) days to consider this Agreement (although Named Plaintiffs and Objectors-Intervenors may by their own respective individual choice execute this Agreement earlier); (d) they each have seven (7) days following their respective executions of this Agreement to revoke the Agreement; and (e) this Agreement shall not be effective until the date upon which such revocation period has expired. Named Plaintiffs and Objectors-Intervenors may revoke this Agreement only by effecting the delivery of written notice of such revocation to Jason Geller and Aaron Cargain of Fisher & Phillips LLP, located at One Montgomery Street, Suite 3400, San Francisco, CA 94104; email: jgeller@fisherphillips.com and acargain@fisherphillips.com; fax: 415-490-9001, to be received by the close of business on the seventh (7th) day following Named Plaintiffs’ and Objectors-Intervenors’ execution of this Agreement.

7. Agreement to Dismiss All Claims. Because the intent of this Agreement is to bring to an end all claims, controversies, and causes of action Named Plaintiffs and Objectors-Intervenors may have or claim to have against the Released Parties, Named Plaintiffs and Objectors-Intervenors agree, as part of, and consistent with, the Joint Stipulation set forth above, to abandon and/or dismiss with prejudice any claim, proceeding, or cause of action that may be

1 contemplated, filed, or pending in any forum, against the any of the Released Parties; provided  
2 however, that Named Plaintiffs and Objectors-Intervenors will be permitted to participate in the  
3 Action for which they are appointed class representatives for purposes of effecting the  
4 aforementioned Joint Stipulation.

5 8. Binding Nature. This General Release, and all the terms and provisions contained  
6 herein, shall bind the heirs, personal representatives, successors and assigns of each Party, and  
7 inure to the benefit of each Party, its agents, directors, officers, employees, servants, successors,  
8 and assigns.

9 9. Construction. This Agreement shall not be construed in favor of one party or  
10 against the other.

11 10. Partial Invalidity. Should any portion, word, clause, phrase, sentence, section, or  
12 paragraph of this General Release be declared void or unenforceable, such portion shall be  
13 considered independent and severable from the remainder, the validity of which shall remain  
14 unaffected.

15 11. Compliance with Terms. The failure to insist upon compliance with any term,  
16 covenant or condition contained in this General Release shall not be deemed a waiver of that  
17 term, covenant or condition, nor shall any waiver or relinquishment of any right or power  
18 contained in this Agreement at any one time or more times be deemed a waiver or relinquishment  
19 of any right or power at any other time or times.

20 12. Costs. The Parties agree that in the event any party breaches any provision of this  
21 General Release, the breaching party shall pay all costs and attorney's fees incurred in  
22 conjunction with enforcement of this General Release.

23 13. Governing Law and Jurisdiction. This General Release shall be interpreted under  
24 the law of the State of California, both as to interpretation and performance.

25 14. Section Headings. The section and paragraph headings contained in this General  
26 Release are for reference purposes only and shall not affect in any way the meaning or  
27 interpretation of this General Release.

28

# EXHIBIT 5

1 Matthew R. Eason (SBN 160148)  
 2 Kyle K. Tambornini (SBN 160538)  
 Erin M. Scharg (SBN 285311)  
 3 **EASON & TAMBORNINI, ALC**  
 1234 H Street, Suite 200  
 4 Sacramento, CA 95814  
 Telephone: (916) 438-1819  
 5 Facsimile: (916) 438-1820

6 Timothy B. Del Castillo (SBN: 277296)  
 tdc@castleemploymentlaw.com  
 7 Spencer S. Turpen (SBN: 296483)  
 st@castleemploymentlaw.com  
 8 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**  
 2999 Douglas Blvd., Suite 180  
 9 Roseville, CA 95661  
 Telephone: (916) 245-0122

10 Attorneys for Plaintiffs,  
 11 Robert Westfall, individually and  
 on behalf of all others similarly situated  
 12

13 **UNITED STATES DISTRICT COURT**  
 14 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**  
 15

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

18 Plaintiff,

19 v.

20 BALL METAL BEVERAGE CONTAINER  
 CORPORATION, a Colorado Corporation, Does  
 21 1-20 inclusive,

22 Defendants.  
 23

CASE NO. 2:16-CV-02632-DAD-CKD

CLASS ACTION

**[PROPOSED] ORDER GRANTING  
 PRELIMINARY APPROVAL OF CLASS  
 ACTION SETTLEMENT**

Date:  
 Time:  
 Dept.:  
 Judge:

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

24 PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS  
 25 ACTION AND PAGA SETTLEMENT  
 26

1 BLADY WORKFORCE LAW GROUP LLP  
I. BENJAMIN BLADY — Cal. Bar No. 162470  
2 5757 Wilshire Boulevard, Suite 535  
Los Angeles, CA 90036  
3 Phone: (323) 933-1352  
Email: bblady@bwlawgroup.com  
4

5 LESCHES LAW  
LEVI LESCHES — Cal. Bar No. 305173  
6 5757 Wilshire Boulevard, Suite 535  
Los Angeles, CA 90036  
7 Phone: (323) 900-0580  
Email: levi@lescheslaw.com  
8

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

11 Jason A. Geller  
jgeller@fisherphillips.com  
12 Aaron Cargain  
acargain@fisherphillips.com  
13 John K. Skousen  
jskousen@fisherphillips.com  
14 FISHER & PHILLIPS LLP  
15 One Montgomery Street, Ste. 3400  
San Francisco, CA 94104  
16 Telephone: (415)490-9000

17 Attorneys for Defendant BALL METAL BEVERAGE CONTAINER CORP.  
18 (ERRONEOUSLY SUED AS “BALL METAL BEVERAGE CONTAINER CORPORATION”)  
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**TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

The Motion for Preliminary Approval of a Class Action Settlement came before this Court, on \_\_\_\_\_, in Courtroom 3, before the Honorable Dale A Drozd, presiding. The Court having considered the papers submitted in support of the application of the parties, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Stipulation of Settlement”). All terms used herein shall have the same meaning as defined in the Stipulation of Settlement. The settlement set forth in the Stipulation of Settlement (“Settlement”) appears to be fair, adequate and reasonable to the Class.

2. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court.

3. A final fairness hearing on the question of whether the proposed Settlement, attorneys’ fees to Class Counsel, and the Class Representative’s Enhancement Award should be finally approved as fair, reasonable and adequate as to the members of the Class is scheduled in Department \_\_\_\_\_ on the date and time set forth in the implementation schedule below.

4. This Court approves, as to form and content, the Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement (“Notice”) in substantially the form attached to the Joint Stipulation of Class Action and PAGA Settlement Between Plaintiffs and Defendant as **Exhibit A**. The Court approves the procedure for Class Members to participate in, to opt out of, and to object to, the Settlement as set forth in the Joint Stipulation of Class Action and PAGA Settlement Between Plaintiffs and Defendant, and the Notice.

5. The Court directs the mailing of the Notice by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the

1 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

2 6. It is ordered that the Settlement Class is preliminarily certified for settlement  
3 purposes only.

4 7. The Court confirms Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby,  
5 and David Ellinger, and Objectors Richard Martin and Andre Bernstein as the Class  
6 Representatives, and Timothy B. Del Castillo and Spencer S. Turpen of Castle Law: California  
7 Employment Counsel, PC; Matthew R. Eason and Erin Scharg of Eason & Tamborini, ALC; Levi  
8 Lesches of Lesches Law; and I. Benjamin Blady of Blady Workforce Law Group LLP as Class  
9 Counsel.

10 8. The Court confirms ILYM as the Settlement Administrator.

11 9. To facilitate administration of the Settlement pending final approval, the Court  
12 hereby enjoins Plaintiffs and all Class Members from filing or prosecuting any claims, suits or  
13 administrative proceedings (including filing claims with the Division of Labor Standards  
14 Enforcement of the California Department of Industrial Relations) regarding claims released by  
15 the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with  
16 the Settlement Administrator.

17 10. The Court orders the following **Implementation Schedule** for further proceedings:

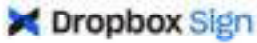
	Event	Date
a.	Deadline for Defendant to Submit Class Member Information to Settlement Administrator	[45 days after Defendant receives Notice of Entry of Preliminary Approval]
b.	Deadline for Settlement Administrator to Mail Notice	[30 days after Defendant submits the Class Member Information to Settlement Administrator]

	Event	Date
c.	Deadline for Class Members to Postmark Requests for Exclusion	[45 calendar days after mailing of the Notice]
d.	Deadline for Receipt by Court and Settlement Administrator of any Objections to Settlement	[45 calendar days after mailing of the Notice and Claim Form]
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days before Final Approval Hearing]
f.	Deadline for Settlement Administrator to file Declaration of Due Diligence and Proof of Mailing	[30 days after expiration of all time periods provided for in sections 10(a) through 10(d) above]
g.	Final Fairness Hearing and Final Approval	Date: _____ Time: _____
h.	Deadline for Settlement Administrator to mail the Settlement Awards, the Enhancement Award, and the Attorneys' Fees and Costs (if Settlement is Effective)	[60 calendar days after Effective Date] (if Settlement is Effective)
i.	Deadline for Settlement Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs (if Settlement is Effective)	[120 calendar days after Effective Date] (if Settlement is Effective)

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
 HON. DALE A. DROZD  
 UNITED STATES DISTRICT JUDGE



Audit trail

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Title	For Signature
File name	Final_Settlement.pdf
Document ID	41f674240f7c7c802af131cbf8fc8bd1d0841eea
Audit trail date format	MM / DD / YYYY
Status	■ Signed

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### Document History



**01 / 10 / 2025**  
05:01:00 UTC

Sent for signature to Andre Bernstein (19andre.bernstein69@gmail.com) and Richard Martin (remcycle8308@gmail.com) from levi@lescheslaw.com  
IP: 172.113.227.179



**01 / 10 / 2025**  
05:01:17 UTC

Viewed by Andre Bernstein (19andre.bernstein69@gmail.com)  
IP: 71.145.203.164



**01 / 10 / 2025**  
05:03:56 UTC

Signed by Andre Bernstein (19andre.bernstein69@gmail.com)  
IP: 71.145.203.164



**01 / 10 / 2025**  
05:11:40 UTC

Viewed by Richard Martin (remcycle8308@gmail.com)  
IP: 71.202.222.36



**01 / 10 / 2025**  
05:21:42 UTC

Signed by Richard Martin (remcycle8308@gmail.com)  
IP: 71.202.222.36



**01 / 10 / 2025**  
05:21:42 UTC

The document has been completed.