

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 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

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

27 Plaintiff,

28 v.

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

Defendants.

CASE NO: 2:16-cv-02632-DAD-CKD

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 3, 2025
Time: 1:30 p.m.
Crtn.: 4, 15th Floor
Judge: 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

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CASES

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Ingram v. The Coca Cola Co.,

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 This Motion is brought seeking preliminary approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the total gross amount of \$4,500,000.00.
4 *See generally Exhibit A* (Joint Stipulation of Class Action and PAGA Settlement) (“Settlement
5 Agreement”). Plaintiffs Robert Westfall, David E. Anderson, Lynn Bobby, and David Ellinger
6 (“Plaintiffs”) bring this class and PAGA action on behalf of themselves and other similarly situated
7 individuals employed by Defendant BALL METAL BEVERAGE CONTAINER
8 CORPORATION, and all subsidiary, affiliated, or related persons or entities (collectively referred
9 to as “Defendants”). Exhibit B; ECF 195 (Plaintiffs’ Second Amended Consolidated Class Action
10 & Representative Action Complaint).

11 Plaintiffs’ SAC alleges California Wages and Overtime violations under Labor Code §§ 510,
12 1194, 1199, failure to provide meal breaks under Labor Code §§ 226.7 and 512, failure to provide
13 rest breaks under Labor Code § 226.7, violation of Labor Code § 226(a), penalties pursuant to Labor
14 Code §§ 203 and § 2699 et seq., violation of Business & Professions Code § 17200, et seq., and
15 violation of Cal. Lab. Code §§ 2698, et seq. (California Labor Code Private Attorneys General Act
16 of 2004 “PAGA”), on behalf of Class Members, as alleged in the complaint, from September 7,
17 2012 through trial. Plaintiffs also seek recovery of alleged damages, penalties, interest, and
18 attorneys’ fees.

19 Defendant has denied all of Plaintiffs’ allegations and any liability or wrongdoing of any
20 kind. Declaration Of Matthew R. Eason In Support Of Plaintiffs’ Motion For Order Preliminary
21 Approval Of Class Action And PAGA Settlement (“Eason Decl.”) ¶ 35; *See* Declaration of Timothy
22 B. Del Castillo ISO Plaintiff’s Motion for Preliminary Approval (“Del Castillo Decl.”) ¶ 20.

23 However, subject to final approval by the Court, Plaintiffs and Defendant have been able to
24 compromise and settle all claims for monetary compensation as a result of extensive discovery
25 relating to the factual bases for all of Plaintiffs’ claims, considerable litigation and negotiation, and
26 four different mediations (presided over by Alan Berkowitz on February 7, 2017 and August 1,
27 2018, Raul Ramirez on December 11, 2019 and Jeffrey Ross on August 30, 2023). Eason Decl. ¶¶
28 14-28.

1 Plaintiffs' counsel and Objectors' Counsel are convinced that the proposed settlement is in
2 the best interest of the proposed class based on the informal discovery, investigations, negotiations,
3 and a detailed knowledge of the issues in this case. *See* Eason Decl. ¶¶ 29-49; Del Castillo Decl.,
4 ¶¶ 30-46; Declaration Of Levi Lesches ("Lesches Decl.") ¶¶ 60-133; Declaration of I. Benjamin J.
5 Blady ("Blady Decl.") ¶¶ 5-12. The benefits of the settlement were weighed against the prospect
6 of a potential adverse rulings, difficulties of the litigation, and lengthy process of further litigation,
7 court discretion to reduce civil penalties, and various possible delays and appeals were carefully
8 considered before agreeing to the proposed settlement. *See* Eason Decl. ¶¶ 29-49; Del Castillo
9 Decl., ¶¶ 30-35; Lesches Decl. ¶¶ 60-133.

10 It is well within the discretion of this Court to grant preliminary and conditional approval of
11 the proposed settlement, which satisfies all of the criteria for preliminary settlement approval.
12 Accordingly, Plaintiffs request that the Court grant the motion.

13 **II. PROCEDURAL AND LITIGATION HISTORY**

14 On September 7, 2016, Plaintiff Robert Westfall filed his action, titled *Robert Westfall v.*
15 *Ball Metal Beverage Container Corporation, et al.*, currently pending in Solano County Superior
16 Court, Case No. FCS047654. Defendant subsequently removed the State Court Action to the
17 United States District Court for the Eastern District of California, thereby initiating the civil
18 action entitled *Westfall v. Ball Metal Beverage Container Corporation*, Case No. 2:16-cv-02632
19 ("the Federal Action"). Eason Decl. ¶ 14; Del Castillo Decl. ¶ 22. On September 29, 2016,
20 Plaintiff Robert Westfall submitted his PAGA Notice to the LWDA for the purpose of complying
21 with California Labor Code § 2699.3's notice requirement. At that time, Plaintiff's counsel
22 submitted the \$75.00 filing fee on behalf of Plaintiff. The PAGA Notice was sent to Defendant
23 via certified mail. Eason Decl. ¶ 14; Del Castillo Decl. ¶ 23.

24 On April 6, 2017, Plaintiffs filed the First Amended Complaint ("FAC") in the Federal
25 Action following the filing of a stipulation by the parties. Eason Decl. ¶ 14; Del Castillo Decl. ¶
26 24. On February 5, 2018, the Court granted Class Certification and amended Class Certification
27 on January 15, 2019. Eason Decl. ¶ 20. On May 18, 2018. Plaintiff's counsel uploaded a copy of
28 the filed FAC to the LWDA website. Del Castillo Decl. ¶ 25.

1 On December 11, 2019, Plaintiffs and Defendant reached a resolution of this matter and
2 submitted a Motion for Final Approval on April 15, 2022. Eason Decl. ¶¶ 23, 26; Del Castillo
3 Decl. ¶26.

4 Richard Martin and Andre Bernstein (collectively “Objectors”) filed objections to the
5 settlement reached by Plaintiffs and Defendant before the date of final approval and final
6 approval was denied. Eason Decl. ¶ 26; Del Castillo Decl. ¶ 26; Lesches Decl. ¶¶ 25, 30.

7 The Parties participated in a global mediation on August 30, 2023, with mediator Jeffrey
8 Ross that lasted well into the evening. Eason Decl. ¶ 27; Del Castillo Decl. ¶ 31; Lesches Decl.
9 ¶¶ 33-34. During the full day mediation, there were further exchanges of information and
10 arguments facilitated by the mediator. Eason Decl. ¶ 27; Del Castillo Decl. ¶ 31; Lesches Decl.
11 ¶¶ 35-37. The full-day mediation that extended into the late evening hours. Eason Decl. ¶ 27.
12 Fortunately, mediation served to bring the parties together and they were successful in
13 negotiating a resolution based upon a mediator’s proposal. Eason Decl. ¶ 27; Del Castillo Decl.
14 ¶ 31; Lesches Decl. 37-38. Thereafter the parties negotiated more specific terms of their
15 resolution which were memorialized in a Memorandum of Understanding executed in February
16 2024. Eason Decl. ¶ 27; Lesches Decl. ¶¶ 38-46.

17 On March 6, 2024, Plaintiffs submitted an Amended PAGA Notice to the LWDA. Del
18 Castillo Decl. ¶ 27. At that time, Plaintiff’s counsel submitted the \$75.00 filing fee on behalf of
19 Plaintiff. The Amended PAGA Notice was sent to Defendant via certified mail. Del Castillo
20 Decl. ¶ 27.

21 On May 30, 2024, Plaintiffs filed the Second Amended Complaint (“SAC”) in the Federal
22 Action following the filing of a stipulation by the parties. Eason Decl. ¶ 28; Del Castillo Decl. ¶
23 28; Lesches Decl. ¶ 47. On November 26, 2024, Plaintiff’s counsel uploaded a copy of the filed
24 SAC on the LWDA website. On January 21, 2025, our firm uploaded a copy of the Settlement
25 Agreement to the LWDA website.

26 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

27 Plaintiffs thoroughly investigated the merits of the class claims and potential damages for
28 such claims, including exchanges in hopes of settling at multiple mediations. See Eason Decl. ¶¶

1 16-29; Del Castillo Decl., ¶¶ 24-25, 30-31; Lesches Decl. ¶¶ 27-29, 32, 65-66.

2 Plaintiffs engaged in both formal and informal discovery with Defendant, including
3 extensive written discovery requests, document production, and depositions. The discovery
4 included exchange of various documents covering all aspects of the class claims to ensure Plaintiffs
5 and Objectors could determine both liability and create an accurate damages model. See Eason Decl.
6 ¶¶ 17-18; Lesches Decl. ¶¶ 27-29. The parties exchanged initial disclosures and Defendant produced
7 thousands of pages of documents. Eason Decl. ¶ 18. The discovery included multiple depositions,
8 including those of Ball's former plant manager David Trujillo as well as Joseph Esquer and Chad
9 Gish who worked as superintendent and engineering manager. Eason Decl. ¶ 18. In addition,
10 approximately 24 class member depositions were taken over the span of four months in 2019. See
11 Eason Decl. ¶ 22. Plaintiffs Robert Westfall, David Anderson, Lynn Bobby and David Ellinger were
12 deposed by Defendant and these depositions spanned over four days. Eason Decl. ¶ 19.

13 Further, the parties participated in four separate full-day mediations, with the fourth
14 mediation extending into the late evening hours. During these mediations, the parties discussed the
15 relative strengths and weaknesses of their positions and worked toward finalizing settlement
16 negotiations. See Eason Decl. ¶¶ 2, 17, 21, 23, 27. The fourth mediation with Jeffrey Ross lasted
17 well into the evening hours and resulted in a resolution based on a mediator's proposal. Eason Decl.
18 ¶ 27; Del Castillo Decl. ¶ 31; Lesches Decl. ¶¶ 33-34, 37.

19 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

20 **A. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

21 The final settlement occurred after extended arm's length negotiations during the fourth
22 mediation session on August 30, 2023. *See* Eason Decl. ¶ 27; Del Castillo Decl. ¶ 31; Lesches
23 Decl. ¶¶ 33-37. At all times the discussions and negotiations were adversarial in nature, although
24 still conducted in a professional manner. *See* Eason Decl. ¶ 27; Del Castillo Decl. ¶ 31; Lesches
25 Decl. ¶¶ 35-37, 61-63.

26 **B. The Terms of the Settlement**

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

- 28 1. The scope of the settlement class:

1 (1) “Class,” “Class Members,” “Settlement Class,” or “Settlement
2 Class Members,” shall mean all persons employed by Defendant Ball
3 in a Class Position, at any time during the Class Period.

4 *See* Settlement Agreement ¶ 1(2). The class period is from September 7, 2012 through
5 April 20, 2024, Settlement Agreement ¶ 1(20). The agreement then breaks down the
6 payments between the general class and the “Engineering Class Member Workweeks”,
7 and provides payments as discussed further below. *See* Settlement Agreement ¶¶ 1(18)-
8 (19), 1(21).

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

11 3. The parties agree the cost of administering this class action settlement shall be paid
12 from the settlement proceeds. Subject to Court approval, the parties selected ILYM to act as the
13 class action administrator to administer the class settlement. ILYM has provided a quote to
14 administer the class settlement for a capped fee of \$10,000. Settlement Agreement ¶ 1(5).

15 4. The parties agree that \$100,000.00 of the settlement proceeds will be allocated to
16 PAGA claims, which shall be allocated \$75,000.00 to the State of California and \$25,000.00 shall
17 be added to the Net Settlement Amount. *See* Settlement Agreement ¶ 1(34).

18 5. The parties agree that up to One Third (1/3) of the total gross settlement,
19 \$1,500,000.00, will be paid for Plaintiffs’ attorneys’ fees incurred in the litigation of this case.
20 Settlement Agreement at ¶ 1(11). Additionally, the parties agree that Plaintiffs will also be
21 entitled to the actual litigation costs as demonstrated to, and approved by, the Court in an amount
22 not to exceed \$45,000.00. Settlement Agreement at ¶ 1(11). The difference between any actual
23 costs and the \$45,000.00 will be added to the Net Settlement Amount. Settlement Agreement at ¶
24 1(11).

25 6. The parties agree that \$10,000.00 of the total gross settlement will be paid to each
26 Plaintiff as a Representative Enhancement Award. Settlement Agreement ¶ 1(36). Objectors-
27 Intervenor (Andre Bernstein and Richard Martin) will also receive \$10,000 each as Objector
28 Enhancement awards. Settlement Agreement ¶ 1(36).

1 7. The settlement administrator will send notice to Class members based on the last
2 contact information in Defendant's possession. Settlement Agreement ¶ 2(7). The timelines for
3 notice to class members and the submission of any request to opt out, object, or dispute the allocation
4 of money are outlined in the settlement. Settlement Agreement ¶ 2(8)(b-e). Class members will
5 receive notice of their total number of weeks worked during the class period, the estimated amount
6 of settlement monies payable to them, information on how to opt-out of this class action,
7 information on how to object to settlement terms, and information on how to dispute their total
8 number of workweeks. Settlement Agreement ¶ 2(7); Exhibit C (Proposed Class Notice). Pertinent
9 case documents will also be available to class members to download. Settlement Agreement ¶
10 2(8)(a).

11 8. For any portion of the Net Settlement Amount allocated to class members that is
12 not claimed by class members by cashing their respective settlement checks within 180 days, the
13 remaining amount shall be paid to a *cy pres* recipient as agreed upon by the parties, subject to
14 Court approval, or to the California State Controller Unclaimed Property Division in the name of
15 the Qualified Claimant. Settlement Agreement ¶ 2(11).

16 **C. Allocation of Settlement Funds**

17 Settlement Awards to Class Members will be determined based on the number of
18 workweeks worked in California in a non-exempt position by the Class Members during the Class
19 Period based on information to be provided by Defendant. In addition, consideration is given to
20 whether the Eligible Class Member is entitled to a Waiting Time Penalty Enhancement. Further
21 consideration is given to those working in the “Engineering” position. Lastly, consideration is
22 given to the time period that Eligible Class Members were employed with Defendant Ball. After
23 deduction for requested attorney’s fees and costs, representative enhancement, settlement
24 administrator fees, and the LWDA’s portion of the PAGA penalty allocations, the Class will have
25 a net settlement amount of approximately \$2,810,000.00. Eason Decl. ¶ 29; Del Castillo Decl. ¶
26 35. The amount to be paid to Participating Class Members will be calculated by the Settlement
27 Administrator as follows:

28 (a) Waiting Time Penalty Enhancement: Class members that separated from

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

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

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

27 (d) Engineering Class Member Work Weeks during the Paging-Practices Period shall
28 be paid at 1.5 times the rate of Class Member Work Weeks. The Settlement

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

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

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

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

23 Settlement Agreement ¶ 1(27); Decl. Eason ¶ 34; *see* Del. Castillo Decl. ¶¶ 36-46.

24 **V. ARGUMENT**

25
26 **A. Class Action Settlements are Subject to Court Review and Approval Under**
27 **the Federal Rules of Civil Procedure and Ninth Circuit Precedent.**

28 A class action may not be dismissed, compromised, or settled without Court approval and

1 the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Fed.
2 R. Civ. Proc., Rule 23(e). “Approval under 23(e) involves a two-step process in which the Court
3 first determines whether a proposed class action settlement deserves preliminary approval and then,
4 after notice is given to class members, whether final approval is warranted.” *Nat’l Rural*
5 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

6 “The governing principles [of approving class action settlements] are clear, but their
7 application is painstakingly fact-specific and hampered by the much greater knowledge of the
8 parties as to the give-and-take of the bargaining process.” *Staton v. Boeing Co.*, 327 F.3d 938, 952
9 (9th Cir. 2003). “Judicial review also takes place in the shadow of the reality that rejection of a
10 settlement creates not only delay but also a state of uncertainty on all sides, with whatever gains
11 were potentially achieved for the putative class put at risk.” *Id.*

12 Generally, it is appropriate for Courts to “proper deference to the private consensual decision
13 of the parties,” and “the court’s intrusion upon what is otherwise a private consensual agreement
14 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
15 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
16 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
17 adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). So,
18 where a settlement is reached on terms agreeable to all parties, a court should disapprove of the
19 settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D.
20 479, 481 (E.D. Pa. 1975).

21 Further, given that these are state-law claims, consideration of California authority may also
22 be appropriate. In California, the law favors settlement of lawsuits, particularly class actions and
23 other complex cases where substantial resources can be conserved by avoiding the time, expense,
24 and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277–81 (1992).

25 But, nevertheless, the court should ensure that “the inherent tensions among class
26 representation, defendant’s interests in minimizing the cost of the total settlement package, and class
27 counsel’s interest in fees” are well policed. *Staton v. Boeing Co.*, 327 F.3d at 972 fn. 22.

1 **B. The Terms of The Settlement Are Fair and Within the Range of**
2 **Reasonableness, so It Will Likely be Finally Approved**

3 Because the class has been certified, and the court need only address whether the settlement
4 is “fair, reasonable, and adequate” and that the notice satisfies Rule 23(c)(2)(B). *See* Order ECF
5 104 (Sept. 16, 2021) (noting the same in the order granting preliminary approval of previous
6 settlement in this action); Order ECF 54 (Feb 05, 2018) (certifying the class on part of the claims)
7 Order ECF 85 (certifying the class on the remainder of the claims).

8 To evaluate whether a settlement is fair, reasonable, and adequate, the court needs to
9 consider whether:

10 (A) the class representatives and class counsel have adequately represented the class;

11 (B) the proposal was negotiated at arm's length;

12 (C) the relief provided for the class is adequate, taking into account:

13 (i) the costs, risks, and delay of trial and appeal;

14 (ii) the effectiveness of any proposed method of distributing relief to the class,
15 including the method of processing class-member claims;

16 (iii) the terms of any proposed award of attorney's fees, including timing of payment;
17 and

18 (iv) any agreement required to be identified under Rule 23(e)(3); and

19 (D) the proposal treats class members equitably relative to each other.

20 Fed. R. Civ. P. 23(e)(2).

21 Taking into consideration that the claims exclusively California state-law claims, California
22 authority provides that to make the fairness determination, the Court considers several factors,
23 including:

24 the strength of the Plaintiff’s case, the risk, expense, complexity and
25 likely duration of further litigation, the risk of maintaining class action
26 status through trial, the amount offered in settlement, the extent of
27 discovery completed and the stage of the proceedings, the experience
28 and views of counsel, the presence of a governmental participant, and
 the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). Under California law, there is

1 presumption that the proposed settlement is fair “where: (1) the settlement is reached through arm’s
2 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
3 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
4 is small.” *Id.* at 1802.

5 **1. Plaintiffs’ Class Counsel and the Objector’s Counsel have adequately
6 represented the Class.**

7 A review of the proposed settlement agreement’s terms does not give rise to any doubts
8 about its fairness. Based on the records and facts of this case, Plaintiffs have secured a gross
9 recovery for the Settlement Class of approximately 20% of the maximum exposure for this class,
10 excluding interest. *See* Del Castillo Decl. at ¶ 33.

11 In light of the foregoing, Plaintiffs believe this settlement to be a reasonable compromise
12 of the class claims and accords with damages that have been approved in other class settlements.
13 *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117,
14 1139 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see*
15 *also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that the
16 median percentage for recoveries in shareholder class action settlements averaged 2.2% to 3%
17 from 2000 through 2002).

18 The extent of investigation and discovery completed provided ample information to enter
19 into an informed and reasonable settlement. *See* Eason Decl. ¶¶ 18-19. The parties engaged in
20 substantial discovery that provided the necessary information for negotiations. *See* Eason Decl. ¶
21 18; Del Castillo Decl. ¶ 31. Following mediation, the parties exchanged initial disclosures and
22 Defendant produced thousands of pages of documents, including documentation covering wage and
23 hour policies, timekeeping and pay data, personnel files, and other documentation necessary for
24 evaluating liability and damages. *Eason Decl.* ¶ 18. Plaintiffs served written discovery on Defendant
25 including Requests for Admission, Interrogatories and Request for Production of Documents on
26 March 10, 2017. *Eason Decl.* ¶ 18. Extensive deposition discovery was conducted, including the
27 depositions of Ball's former plant manager David Trujillo, superintendent Joseph Esquer, and
28 engineering manager Chad Gish. *Eason Decl.* ¶ 18. The depositions of Plaintiffs Robert Westfall,

1 David Anderson, Lynn Bobby and David Ellinger spanned over four days in May 2017. Eason Decl.
2 ¶ 19. Additionally, approximately 24 class member depositions were taken between June 2019 and
3 October 2019. Eason Decl. ¶ 22..

4 In addition, the parties participated in four separate mediations - two with Alan Berkowitz
5 on February 7, 2017 and August 1, 2018, one with the Honorable Raul Ramirez (Retired) on
6 December 11, 2019, and one with Jeffrey Ross on August 30, 2023. Eason Decl. ¶¶ 17, 21, 23, 27;
7 Del Castillo Decl. ¶ 31. The mediations helped to facilitate the exchange of information and
8 arguments that clarified the parties' respective positions. Eason Decl. ¶¶ 17, 21, 23, 27. The final
9 mediation with Jeffrey Ross lasted well into the evening. Eason Decl. ¶ 27; Del Castillo Decl. ¶
10 31.

11 Plaintiffs retained an independent economic data analyst, Nick Briscoe of Briscoe
12 Economics Group, to assist with creation of potential damages analyses in anticipation of the
13 fourth and final mediation. Del Castillo Decl. ¶ 32. Based on this thorough investigation and
14 analysis, Plaintiffs determined the generous likely total exposure for all claims, including statutory
15 and civil penalties, was approximately \$22,545,996, not including interest. Del Castillo Decl. ¶ 32.
16 Objectors Counsel, who negotiated at the mediation independently from Plaintiff, also performed
17 substantial analysis of the claims that also support the reasonableness of the proposed settlement.
18 *See* Lesches Decl. ¶¶ 60-133. For these reasons, the settlement was reached at a stage where "the
19 parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to
20 support the settlement. *Cf Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

21 Further, Plaintiffs' Counsel is experienced in similar litigation, including considerable
22 experience in class actions and wage and hour litigation. Matthew Eason has been practicing law
23 since 1992 and has extensive experience in employment litigation, including handling significant
24 employment-related cases in multiple forums. Currently, well over 30% of his firm's practice is
25 employment related, almost exclusively representing employees. See Eason Decl. ¶¶ 7-9. Timothy
26 Del Castillo has practiced virtually exclusively California employment law since being admitted
27 to practice, including both individual and representative actions. He has worked on numerous
28 class action cases in California since 2011, representing both employers and employees. In

1 addition, he previously worked at prestigious international law firms including Akin Gump
2 Strauss Hauer & Feld LLP and Orrick Herrington & Sutcliffe LLP, where he handled numerous
3 complex wage-and-hour class actions. See Del Castillo Decl. ¶¶ 3-6. Both firms have successfully
4 represented numerous clients in class and PAGA actions that have received court approval. See
5 Eason Decl. ¶ 10; Del Castillo Decl. ¶ 10. Timothy Del Castillo’s firm also has numerous class
6 and representative actions pending. Del Castillo Decl. ¶ 11. Using this extensive experience, Class
7 Counsel was able to adequately represent the class.

8 Similarly, Objectors' Counsel brings significant experience to this matter. Levi Lesches has
9 been practicing law since 2015 and has served as lead or co-counsel in various significant cases. He
10 has extensive experience in employment litigation and has recovered millions of dollars for single-
11 plaintiff and class members during his career. See Lesches Decl. ¶ 8. Mr. Lesches graduated cum
12 laude from Pepperdine University School of Law, where he served as an associate editor for the
13 Pepperdine University Law Review. His experience includes work at firms focused on plaintiff-side
14 employment cases and serving as lead associate at Arendsen Cane Molnar LLP. See Lesches Decl.
15 ¶¶ 9-10. He has successfully litigated numerous cases, including obtaining significant recoveries in
16 plaintiff-side employment cases. See Lesches Decl. ¶ 11. I. Benjamin Blady brings over 30 years of
17 experience, having graduated from UCLA in 1989 and Loyola Law School in 1992. He has focused
18 his practice primarily on employment litigation since 1994, representing clients in class action,
19 representative, and individual litigation. See Blady Decl. ¶ 13. He has served as plaintiffs and/or
20 defense counsel on numerous significant class action suits involving wage and hour violations,
21 misclassification claims, and other employment matters. See Blady Decl. ¶ 14. This extensive
22 experience in employment litigation and class actions has enabled Objectors' Counsel to effectively
23 evaluate and contribute to achieving a fair settlement for the Class.

24 **2. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
25 **Negotiations Between the Parties.**

26 Settlement in this case was reached only after years of intensive litigation beginning in
27 September 2016, extensive discovery, and four separate mediations spanning from 2017 to 2023.
28 Eason Decl. ¶¶ 14, 17, 21, 23, 27; Del Castillo Decl. ¶¶ 22, 31, 69. The parties engaged in substantial

1 discovery, including taking approximately 24 class member depositions between June and October
2 2019. Eason Decl. ¶¶ 18-19, 22. The information exchanged included thousands of pages of
3 documents covering wage and hour policies, timekeeping and pay data, personnel files, and other
4 documentation necessary for Plaintiffs to evaluate both liability and damages. Eason Decl. ¶ 18; Del
5 Castillo Decl. ¶ 31.

6 The parties participated in full-day mediations with Alan Berkowitz on February 7, 2017
7 and August 1, 2018, with the Honorable Raul Ramirez (Retired) on December 11, 2019, and with
8 Jeffrey Ross on August 30, 2023. The final mediation in August 2023 extended well into the evening
9 before reaching a resolution based upon a mediator's proposal. Eason Decl. ¶ 27; Del Castillo Decl.
10 ¶ 31; Lesches Decl. ¶¶ 33-34. At all times, the negotiations were adversarial, though still
11 professional in nature. Eason Decl. ¶ 31; Del Castillo Decl. ¶ 31; Lesches Decl. ¶¶ 35-37. The
12 negotiations of attorney's fees were also conducted at arm's length, with no special relationship or
13 connection between any of the parties. Eason Decl. ¶ 31; Del Castillo Decl. ¶ 77; Lesches Decl. ¶¶
14 36-37, 39. The fee split between Plaintiffs' Counsel and Objectors' Counsel was also negotiated at
15 arm's length among the parties, although Plaintiffs' Counsel and Objectors' Counsel have
16 subsequently entered into joint prosecution agreement for the purposes of completing the settlement.
17 Eason Decl. ¶ 32; Del Castillo Decl. ¶ 77-78; Lesches Decl. ¶¶ 39.

18 **3. The relief provided for the class is more than adequate.**

19 The settlement provides substantial benefits to the class members. Eason Decl. ¶¶ 31-54;
20 Del Castillo Decl. ¶¶ 30-46. At the time of the mediation, the estimated number of class members
21 was 327 and average net settlement per member was approximately \$8,593.27 based on that
22 estimate, though individual payments will vary based on workweeks and agreed-upon settlement
23 rates. Eason Decl. ¶¶ 33, 51; Del Castillo Decl. ¶¶ 37-38. At the more recent estimate of 389
24 members as of October 2024, the average net settlement per member is still approximately
25 \$7,223.65 *See* Leches Decl. ¶ 13 fn.1. The settlement makes sure to accommodate former
26 employees, who will receive enhanced payments of up to 33% of their final wage multiplied by
27 360 hours (equivalent to 30 12-hour work days or 45 eight-hour workdays), representing up to 33%
28 that they could have recovered individually for those who worked 12-hour shifts. Eason Decl. ¶¶

1 33, 51; Del Castillo Decl. ¶¶ 38-39; Lesches Decl. ¶¶ 101-108. This is especially significant
2 because waiting time penalty claims do not provide for attorney's fees, meaning class members
3 would likely have had to pay 25-50% in fees to pursue these claims individually. Del Castillo Decl.
4 ¶ 39; Lesches Decl. ¶ 105.

5 The agreement also acknowledges and provides adequate compensation for engineering
6 positions that suffered additional violations due to their requirement to monitor intercom
7 announcements constantly, which completely prevented them from having breaks free from job
8 responsibilities. Eason Decl. ¶ 34; Del Castillo Decl. ¶ 40.

9 The settlement also provides additional benefits beyond monetary compensation. The
10 settlement has resulted in significant policy changes at Defendant's facility, including the removal
11 of paging systems from break areas and new procedures regarding hazardous materials training.
12 Eason Decl. ¶ 52; Del Castillo Decl. ¶ 83; Lesches Decl. ¶ 15. These policy changes represent a
13 significant non-monetary benefit to both current and future employees.

14 Importantly, this class action likely represents the only opportunity for recovery for
15 employees who suffered violations between September 7, 2012, and April 20, 2020, as the statute
16 of limitations has now passed for individual claims from this period. Del Castillo Decl. ¶¶ 43-45;
17 *see* Lesches Decl. ¶¶ 105-106.

18 **a) *The Costs, Risks, and Delay of Trial and Appeal***

19 The case presented substantial litigation risks and potential delays. Eason Decl. ¶ 35-49;
20 Decl. Del Castillo ¶ 30; Lesches Decl. ¶¶ 76-87. Among the risks included: (1) employees were
21 permitted to leave Defendant's facility for breaks; (2) class certification challenges due to
22 variations in paging frequency between different positions and shifts, which could lead to
23 decertification; (3) possible failure to prove liability even if the court found meal/rest break
24 violations, which would have also eliminated derivative claims for waiting time penalties and
25 wage statement violations; (4) risk that wage statement errors would not be found "knowing and
26 intentional" under Labor Code §226(e)(1); and (5) risk of failing to prove willfulness for waiting
27 time penalties under Labor Code §203. Moreover, given the complexity and unsettled nature of
28

1 the issues in the case, it is likely any outcome of trial would have resulted in a lengthy and costly
2 appeal.

3 **b) *The Effectiveness of Proposed Distribution Method***

4 The proposal provides payment based upon how many workweeks class members worked.
5 Since the class claims are largely based upon the number of days worked by the class members,
6 this formula helps to ensure that class members are paid in proportion to the amount they worked
7 during the class period, thereby approximating the number of violations they allegedly suffered.
8 As discussed further below, the variations provided for those who have separated their employment
9 and those in the Engineering position help to ensure proper and effective distribution. The
10 distribution will be handled by a professional settlement administrator based upon the procedures
11 outlined in Section 5-11, pages 20-27 of the Settlement agreement.

12 **c) *Terms of Proposed Attorney's Fees***

13 The terms of the proposed attorney's fees evidence adequate representation of the class
14 members' interests. Class Counsel's and Objectors-Intervenors' attorneys' fees are capped at one-
15 third of the Maximum Settlement Amount (\$1,500,000) plus costs not exceeding \$45,000,
16 subject to court approval. The fees will be allocated with approximately 72.7% (\$1,090,000) to
17 Plaintiffs' Counsel and 27.3% (\$410,000) to Objectors-Intervenors' Counsel. These fees will be
18 paid from the Qualified Settlement Fund by the Class Administrator. If the amount is reduced by
19 the court, it does not constitute a basis for voiding the agreement and any remaining funds that
20 were allocated for the fees will revert to the Net Settlement amount. Exhibit A, Sections 11-12, at
21 p. 4-6.

22 **d) *Agreements Required to be Identified Under Rule 23(e)(3)***

23 In addition to the settlement agreement, Plaintiffs; Counsel and Objectors' Counsel
24 entered into a Joint Prosecution Agreement for the purpose of working cooperatively for
25 completely the settlement. Eason Decl. ¶ 30; Del Castillo Decl. ¶ 77; Lesches Decl. ¶¶ 36, 61.

26 **4. The proposal treats class members equitable relative to each other.**

27 The proposal provides payment based upon how many workweeks class members worked.
28 Since the class claims are connected with the number of days worked by the members, this formula

1 helps to ensure that class members are paid in proportion to the amount they worked during the
2 class period, thereby approximating the number of violations they allegedly suffered.

3 Regarding the engineering position, the minor differential helps to ensure that these
4 member are being treated equally relative with the other class. The differential recognizes that,
5 although they faced the same violations as other members, the nature of their duties resulted in a
6 higher rate of violations and the special circumstances faced by those in the Engineering position.
7 Specifically, the fact that if these employees did not listen to the paging announcements throughout
8 their whole shift, including breaks, no one would be aware of the announcement, which placed a
9 considerable additional burden on those in this position and effectively eliminated all breaks from
10 their workdays. Eason Decl. ¶ 34. The minor differential helps to ensure these members are treated
11 equally among the rest of the members. Eason Decl. ¶ 34.

12 Similarly, the waiting-time penalty carve out helps to ensure that those members who have
13 separated from Defendant's employment are also related equal relative to the rest of the class.
14 While employees who have since left their employment with Defendant are subject to the same
15 violations as the rest of the members, they are also due additional funds based upon these waiting
16 time penalties deriving from the violations common among the class members. The additional
17 payment ensures that these class members are not releasing Defendant for these claims without
18 adequate compensation.

19 The proposed enhancement for the Plaintiffs and Objectors of \$10,000 each is also equitable
20 given the additional work they did and when compared with the average amount of the award per
21 expected class member. The service payment to the named Plaintiffs is intended to recognize their
22 time and effort on behalf of the class. Indeed, courts routinely approve incentive awards to
23 compensate named plaintiffs for the services they provide and the risks they incurred during the
24 course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D.
25 Ga. 2001). In *Ingram*, the Court approved incentive awards of \$300,000.00 to each named plaintiff
26 in recognition of the services they provided to the class by responding to discovery, participating in
27 the mediation process, and taking the risk of stepping forward on behalf of the class. *See id.* at 694;
28 *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a

1 \$50,000.00 participation award).

2 Throughout the litigation, Plaintiffs’ Counsel worked closely with the named Plaintiffs
3 Robert Westfall, David Anderson, Lynn Bobby and David Ellinger to gather data about Defendant
4 and its employment practices, participate in discovery and inform the litigation strategy. Eason
5 Decl. ¶ 29. Furthermore, the Objectors’ Participation resulted in nearly doubling the settlement
6 amount. Eason Decl. ¶ 49; Del. Castillo Decl. ¶¶ 79-82; Lesches Decl. ¶¶ 25-37. Plaintiff Robert
7 Westfall participated in four mediations while the other named Plaintiffs participated in the third
8 mediation, and all were available for the fourth mediation. Eason Decl. ¶ 29. Likewise, Objectors
9 Martin and Bernstein also attended the entire mediation and participated in the litigation. Lesches
10 Decl. ¶¶ 34, 150-153; Blady Decl. ¶ 16. Moreover, the \$10,000 is very close to the average net
11 settlement per class member (as of the mediation) of \$8,593.27 and the more recent average of
12 \$7,223.65. *See generally* Eason Decl. ¶ 51; Del Castillo ¶ 37; Lesches ¶ 13 fn.1.

13 **C. California Authority Supports the Reasonableness of the Compromise of the**
14 **Action for Exclusively California-law Based Claims**

15 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008), requires
16 additional information be presented to the Court “to ensure that the recovery represents a reasonable
17 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
18 risks and expenses of attempting to establish and collect on those claims by pursuing the litigation .
19 . . .” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010),
20 clarified that *Kullar* does not require the parties to submit an illusory prediction of the outer reaches
21 of exposure without taking into account the actual risks of certification, decertification, dispositive
22 motions, and trial. *Kullar* also does not require an explicit statement of the maximum amount the
23 class could recover if it prevailed on all its claims, provided there is a record that allows “an
24 understanding of the amount that is in controversy and the realistic range of outcomes of the
25 litigation.” *Id.* at 409.

26 In this case, Plaintiffs relied on payroll data, including paystubs, timecards, and a sample of
27 employees’ information to calculate damages. Ultimately, Plaintiffs secured a percentage of the total
28 demand for the class that is well within the range of what has been found to be sufficient in other

1 cases. *See, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts,*
 2 *Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where
 3 the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful
 4 recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
 5 approximately \$800 per class member). This settlement represents a reasonable compromise given
 6 the facts of the case, potential defenses, and potential likely recoverable damages.

7 **D. The Requested Attorneys' Fees are Reasonable.**

8 California state and federal courts have recognized that when a litigant's efforts create or
 9 preserve a fund from which others derive benefits, the Court may spread litigation costs
 10 proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing*
 11 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund for the
 12 benefit of persons other than . . . his client is entitled to a reasonable attorney’s fee from the fund
 13 as a whole.”); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v.*
 14 *Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35
 15 (1977). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to
 16 “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
 17 does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe*
 18 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). California state courts have approved
 19 use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of
 20 the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal. App. 4th at
 21 1808.

22 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class
 23 of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee
 24 can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
 25 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member
 26 of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-
 27 sum [settlement] recovered on his behalf.” *Id.* at 271 (citations omitted).

28 Under the three factors set forth in *Paul, Johnson, Alston & Hunt*, the common fund

1 doctrine applies in this case because there is a sufficiently identifiable class of beneficiaries (e.g.
2 the settlement class), the benefits can be accurately traced to the settlement Plaintiffs and
3 Objectors and Plaintiffs' Counsel and Objectors' Counsel were able to negotiate on behalf of the
4 class, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,
5 lump-sum percentage of the common fund. It is an accepted practice in wage and hour class
6 action settlements to award attorneys' fees based on a percentage of the common fund. *See, e.g.,*
7 *Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City of Los Angeles*, 3
8 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins. Exchange*,
9 115 Cal. App. 4th 715, 726, 765 (2004).

10 Historically, attorneys' fee awards in common fund cases in general range from 20% to
11 50% of the fund, depending on the circumstances of the case. *See* Newberg on Class Actions,
12 (3rd Ed.), 1992, §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and
13 40% of the fund are generally approved as reasonable in wage and hour settlements below \$10
14 million:

15 More particularly, courts may award attorneys fees in the 30-40% range in wage and
16 hour class actions that result in recovery of a common fund under \$10 million. *See*
17 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010)
18 (citing to five recent wage and hour class actions where federal district courts
19 approved attorney fee awards ranging from 30 to 33%); *Singer v. Becton Dickenson*
20 *and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1,
21 2010) (approving attorney fee award of 33.33% of the common fund and holding
22 that award was similar to awards in three other wage and hour class action cases
23 where fees ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.*,
24 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007).

25 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011).

26 Plaintiffs' request of 33.33% of the settlement sum for attorneys' fees is within established
27 rates for fee awards in class settlements pursuant to the common fund doctrine. *See In re*
28 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon*
Company, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*,
USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*,
USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern
District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case

1 No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No.
2 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the
3 percentage that would likely be negotiated between parties in a similar case; (2) the percentage
4 applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5)
5 whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
6 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000);

7 The agreement to provide one-third (approx. 33%) of the gross settlement as attorney fees
8 is reasonable and fair. Reasonable fees likely should be calculated in this action using state law
9 since the claims revolve around state law claims and it is effectively a diversity action, even
10 though it was removed under the Class Action Fairness Act. *Cf. Vizcaino v. Microsoft Corp.*, 290
11 F.3d 1043, 1047 (9th Cir. 2002) (“Because Washington law governed the claim, it also governs
12 the award of fees.”); *Rodriguez v. Penske Logistics, LLC*, No. 214CV02061KJMCKD, 2019 WL
13 246652, at *10 (E.D. Cal. Jan. 17, 2019). California courts allow awards of 33% and higher. Del
14 Castillo Decl. ¶ 10.

15 Moreover, the circumstances of this case also justify deviating from the Ninth Circuit’s typical
16 25% attorney-fee benchmark. “The 25% benchmark rate, although a starting point for analysis, may
17 be inappropriate in some cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1048. The court should
18 take into consideration all of the circumstances of the case. *Id.* Considerations of exceptional results,
19 risks for the Class Counsel, benefits beyond the fund, whether Counsel represented the class on
20 contingency are among the relevant considerations. *See generally Id.* at 1048-50.

21 This case involved complex and lengthy litigation spanning nearly nine years, with counsel
22 conducting extensive discovery including 24 class member depositions, and the matter becoming
23 even more complex when the Objector-Intervenor raised additional claims. Eason Decl. ¶¶ 41-44,
24 53; Del Castillo Decl. ¶¶ 69-71, 75; Lesches Decl. ¶¶ 27-29. The risks and complexity were
25 substantial - continuing litigation would have required additional depositions and expert testimony,
26 with any trial outcome likely leading to lengthy appeals. Eason Decl. ¶¶ 42-44; Lesches Decl. ¶¶
27 76-87.

28 Moreover, the combined efforts of Plaintiffs' Counsel and Objectors' Counsel proved highly

1 effective - while Plaintiffs' Counsel initially secured a substantial \$2.45 million settlement through
2 years of litigation, the addition of Objectors' Counsel helped nearly double the gross settlement
3 amount to \$4.5 million. Eason Decl. ¶¶ 47-49, 55; Del Castillo Decl. ¶¶ 79-81; Lesches Decl. ¶¶ 22,
4 25, 30, 37. And counsel obtained significant non-monetary benefits through policy changes
5 regarding both paging systems and hazardous materials procedures that will help prevent future
6 violations. Eason Decl. ¶53; Del Castillo Decl. ¶83; Lesches Decl. ¶ 15.

7 Finally, the settlement provides exceptional net monetary recovery for the class members, with
8 the average amount of the net settlement amount per class member being \$8,593.27 as for the
9 meditation settlement and more recent estimate of \$7,223.65, waiting time penalties at 33% of the
10 maximum the relevant class members could have recovered on their own for 12-hour shifts,
11 enhanced compensation for Engineering positions, and recovery for employees whose individual
12 claims would otherwise likely be time-barred. Eason Decl. ¶ 51; Del Castillo Decl. ¶ 84; Lesches
13 Decl. ¶¶ 101-102. These substantial results, achieved through persistent litigation efforts over many
14 years on a contingency basis, demonstrate that the requested fees are warranted.

15 Moreover, a lodestar cross check also reflects the reasonableness of the fee provision. Using the
16 Laffey Matrix as a basis for calculating a lodestar with the hours reported by Plaintiffs' counsel,
17 their portion of the fee award will amount to only a modest 1.465 modifier. Eason Decl. ¶¶ 56-66;
18 Del Castillo Decl. ¶¶ 55-67. This modest modifier reflects the reasonableness of the fees given the
19 considerable complexity, substantial efforts, and glowing results in the class action.

20 Similarly, the Objectors Counsel will also receive reasonable attorney's fees. Under the
21 agreement, they will receive \$410,000.00. But based upon the number of hours worked and the
22 Laffey Matrix, they will actually be receiving less than the lodestar would provide. Lesches Decl.
23 ¶¶ 142-147; Blady Decl. ¶ 24. Further demonstrating the reasonableness of the 33% collective fee
24 award for Plaintiffs' and Objectors' Counsel.

25 **VI. CONCLUSION**

26 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant the
27 motion.

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Respectfully submitted,

Dated: January 21, 2025

Castle Law: California Employment Counsel, PC

By:  _____

Timothy B. Del Castillo

Bryce Q. Fick

Attorneys for Plaintiff ROBERT WESTFALL, DAVID E. ANDERSON, LYNN BOBBY, and DAVID ELLINGER and the Class