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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF RIVERSIDE**

10
11 OSCAR NOGUERA, VALERIE CAMPOS
12 FLORES, DANIEL MARTINEZ, VERA,
HOWARD and EDMUNDO FLORES,
13 individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

14 Plaintiff,

15 vs.

16 METAL CONTAINER CORPORATION, a
17 California Corporation; and Does 1 through 50,
18 inclusive,

19 Defendants.

) CASE No. **RIC2003235**
) *consolidated with RIC2004156*

) **DECLARATION OF DANIEL**
) **MARTINEZ IN SUPPORT OF**
) **MOTION FOR FINAL APPROVAL OF**
) **CLASS SETTLEMENT**

) Hearing Date: September 22, 2022

) Hearing Time: 8:30 a.m.

) [Hearing scheduled by Order dated May
24, 2022]

) Judge: Hon. Harold W. Hopp

) Dept: 10

) Action Filed: August 17, 2020

) Trial Date: Not Set

1 I, Daniel Martinez, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Final Approval of
4 Class Settlement and in support of my application for a Class Representative Service Payment.
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6 2. I have personal knowledge of all the facts stated herein. I could and would competently
7 testify under oath to these facts in court if requested to do so.

8 3. I have worked for Defendant Metal Container Corporation ("Metal Container") in
9 California since 1990 and have been classified by Metal Container as a non-exempt employee
10 during that time period.

11 4. I retained the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP, who are
12 experienced in both class action litigation and claims against employers for violations of the
13 California Labor Code. I have no personal relationship or family ties to my attorneys or any
14 officer of the Court. I am not involved in any litigation against another member of the class in
15 this case and my attorneys are not working on my behalf in another capacity other than
16 representing me in this lawsuit.
17

18 5. I decided to file this class action lawsuit for the benefit of myself and other current
19 and former non-exempt employees who worked for Metal Container and be a class
20 representative because I felt that my legal rights as an employee and others like me were
21 violated. For example, Metal Container paid me non-discretionary bonus wages but did not
22 include these bonus payments into my regular rate for purposes of calculating my overtime rate
23 and as a result I was underpaid overtime. Also, my meal periods should have been duty-free and
24 uninterrupted by work issues. However, from time to time I was required to clock out and
25 continue to work. Not only did I not receive the meal break premium payments for these meal
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1 break violations, I was also not paid any minimum or overtime wages for this off the clock work.
2 In addition, I was required to use my personal cell phone for work-related issues such as
3 scheduling. Metal Container did not, however, reimburse me for the cost associated with using
4 my personal cell phone for work-related issues.

5
6 6. This class action case was filed on August 17, 2020. Before the complaint was filed I
7 spoke to my attorneys several times and discussed how Metal Container implemented its
8 company policies and procedures. I also assisted my attorneys in their investigation into my
9 claims by providing them documents and answering their questions. I reviewed the complaint
10 before it was filed and after it was filed I was given access to an electronic file sharing program
11 that alerted me via email when important documents were filed so that I could review them and
12 keep up with the developments in the case which I understood was one of my duties as a class
13 representative. I would also contact my attorneys from time to time if I had any questions about
14 the case. My attorneys were regularly available when I contacted them.

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16 7. Even though this action is in the process of settling, I was and remain prepared to
17 perform all the duties of a class representative. I understand that as a class representative I have
18 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
19 exempt employees who worked for Metal Container during the class period. I have understood
20 that as a fiduciary, I have a duty to prosecute this action for the benefit of the members of the
21 class and surrender any right to compromise the group action for an individual gain.

22
23 8. I understood that being a plaintiff/class representative in this case meant that I
24 was seeking damages not only for myself but also other current and/or former non-exempt
25 employees working for Metal Container in California. I felt that this group of current and former
26 employees were not aware of their labor law rights and even if they were they would probably be

1 apprehensive about speaking up or even simply because of the time, effort and risk involved in
2 filing a class action lawsuit.

3 9. I understood that being a part of this lawsuit involved risks. For example, my
4 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
5 pay for all or part of the attorney fees and costs paid by Metal Container to defend this lawsuit.
6 Also, since I sued my current employer there was a risk I could be treated differently at work
7 because I'm a part of this lawsuit. If I ever work for another company I also knew there was a
8 risk that any future employers, if they ever find out about this lawsuit, could hold it against me or
9 downgrade me as a potential hire. As one of the five named Plaintiffs in this case it would not be
10 difficult for a future employer to become aware that I sued my employer for labor law violations.
11 Ultimately I decided these risks were worth it and decided to fight for my rights and the rights of
12 others regardless of the risks, time and effort I spent on this case.
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15 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
16 kept up to date on important developments by reviewing court filings that were made available to
17 me electronically as I described above.

18 11. A mediation took place on April 29, 2021 with Louis Marlin, an experienced
19 mediator of wage and hour class actions. Following the all-day mediation session, the parties
20 agreed to settle the action. I communicated with my attorneys regarding the terms of the
21 settlement which was reached between the parties and understood that I was representing absent
22 class members and therefore wanted the best possible result to be obtained for the class and I
23 believe a very positive result was in fact achieved via settlement. I reviewed and signed the
24 Memorandum of Understanding on April 29, 2021 and when the final settlement papers were
25 ready, I closely reviewed the Settlement Agreement which I signed on April 26, 2022.
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1 12. I have been actively involved with this class action lawsuit performing the duties
2 described above. Although I did not keep time records, I was in regular contact with my
3 attorneys, reviewed important court filings and spent a significant amount of time on the issues
4 presented during the lawsuit and in the settlement process. I estimate that I spent approximately
5 50-60 hours working on this case. I believe I have been diligent and have done what is expected
6 of a named plaintiff and class representative to date, and will continue to do so. I have and
7 always will maintain the best interest of the class.
8

9 13. My attorneys explained to me that the settlement process involves a two-step
10 review by the Court to determine whether the settlement is fair before approving the settlement.
11 I know this process also involves notifying all class members of the settlement terms and of their
12 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
13 settlement.
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15 14. It gives me great personal satisfaction to know that my efforts in this case have
16 contributed to each class member being in line to receive an average gross payment of just over
17 two thousand dollars. My share as a class member is \$3,097.06.
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19 15. I believe I did the right thing by filing this case on behalf of the class who are in
20 line to receive significant monetary payments as a result of this case and settlement. I also
21 believe that the requested Class Representative Service Payment of \$10,000 from the settlement
22 is fair compensation for the work I performed and the risks I undertook.

23 16. As part of the settlement it was necessary for me to sign a general release of all
24 claims I may have against the Metal Container. I believe the Class Representative Service
25 Payment I have requested provides me with some compensation for this agreed release.
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27 17. In light of all the time and effort I have spent on this case, the risk I undertook by
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1 suing my employer, the exposure to being responsible for paying Metal Container's costs in the
2 event we did not win the case, the reputational risk that future employers may hold this lawsuit
3 against me, the general release, and in light of the size of the settlement, I believe the request for
4 \$10,000 as a Class Representative service payment is fair and reasonable.

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

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8 Executed on Aug 24, 2022, at Riverside, California.
(city, state)

9 *Daniel Martinez*

10 Daniel Martinez (Aug 24, 2022 20:16 PDT)

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