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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 OSCAR NOGUERA, VALERIE CAMPOS
16 FLORES, DANIEL MARTINEZ, VERA,
17 HOWARD and EDMUNDO FLORES,
18 individuals, on behalf of themselves, and on
19 behalf of all persons similarly situated,

20 Plaintiff,

21 vs.

22 METAL CONTAINER CORPORATION, a
23 California Corporation; and Does 1 through
24 50, inclusive,

25 Defendants.

Case No. RIC2003235

consolidated with RIC2004156

**DECLARATION OF KYLE
NORDREHAUG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: March 30, 2022

Hearing Time: 8:30 a.m.

Reservation ID: 024028159622

Dept.: 6

Judge: Hon. Sunshine S. Sykes

Action Filed: August 17, 2020

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera,
4 Howard and Edmundo Flores (collectively “Plaintiffs”) in this matter. As such, I am fully familiar
5 with the facts, pleadings and history of this matter. The following facts are within my own personal
6 knowledge, and if called as a witness, I could testify competently to the matters stated herein.

7 2. This declaration is being submitted in support of the motion for preliminary approval
8 of the proposed class action settlement with Defendant Metal Container Corporation (“Defendant”),
9 and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class and
10 PAGA action with Defendant; (2) for settlement purposes only, conditionally certifying the Class,
11 which is comprised of “all individuals who are current or former non-exempt employees employed
12 by Defendant in California at any time during the Class Period ” of August 17, 2016 to September
13 1, 2021; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
14 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal
15 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and
16 method for providing class-wide notice; (6) directing that notice of the proposed settlement be
17 given to the class; (7) appointing CPT Group as Settlement Administrator, and (8) scheduling a
18 final approval hearing date to consider Plaintiffs’ motion for final approval of the settlement and
19 entry of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and expenses. Attached
20 hereto as Exhibit #1 is a copy of the fully executed Class and PAGA Settlement Agreement
21 (“Agreement”) along with exhibits thereto. This Declaration incorporates by reference the
22 definitions in the Agreement, and all terms defined therein shall have the same meaning as set forth
23 in the Agreement.

24 Fairness of Settlement

25 3. As consideration for this Settlement, the Gross Settlement Amount is One Million
26 One Hundred Fifty Thousand Dollars (\$1,150,000) to be paid by Defendant, as set forth in the
27 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
28 Parties and will be made in full and final settlement of the Released Class Claims. The Gross

1 Settlement Amount includes all payments of Class Settlement Shares to the Participating Class
2 Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment.
4 The Gross Settlement Amount does not include the employer's share of payroll taxes which will be
5 separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no need
6 to submit a claim form.

7 4. **H(3)(a)(iv) - Relief to the Class** - The relief provided in the Settlement will benefit
8 all members of the Class. The Settlement does not grant preferential treatment to Plaintiff or
9 segments of the Class in any way. Payments to the Class Members are all determined under a
10 neutral methodology. Each Participating Class Member will receive the same opportunity to
11 participate in and receive payment through a neutral formula that is based upon the weeks worked
12 by that individual. The Gross Settlement Amount provides an average value of \$3,795.38 per Class
13 Member and \$22 per workweek, and after deductions, the Net Settlement Amount provides an
14 average recovery of \$2,193.07 per Class Member and \$12 per work week. This means that a Class
15 Member who worked the entire Class Period (107 weeks) will have a net recovery of \$1,284, and a
16 Class Member who worked only a single week in the Class Period will have a new recovery of \$12.

17 5. On April 29, 2021, the Parties participated in an all-day mediation presided over by
18 Louis Marlin, a respected mediator of wage and hour representative and class actions. In
19 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
20 members of the Class, including time data, payroll data and data concerning the composition of the
21 Class. Class Counsel analyzed the data with the assistance of damages expert, Berger Consulting,
22 and prepared and submitted a mediation brief and damage valuation to the Mediator. At the
23 conclusion of the all-day mediation, the Parties agreed to this Settlement. The final settlement
24 terms were negotiated and set forth in the Agreement now presented for this Court's approval.
25 Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and
26 adequate.

27 6. **H(3)(a)(ii) - Estimated Maximum Recovery** - The calculations to compensate for
28 the amount due to the Class Members at the time this Settlement was negotiated were calculated by

1 Plaintiffs' expert, Berger Consulting, in advance of mediation. For the individuals whose claims are
2 at issue in this Actions, Plaintiffs analyzed the data for putative class members and determined the
3 potential maximum damages for the class claims. From the information obtained from the
4 Defendant, the following data points were used for the calculations: (1) 303 Class Members, (2)
5 29,518 pay period, (3) 51,774 work weeks, (4) 180,467 work shifts, and (5) \$30.62 as the average
6 hourly compensation. For the Class, Plaintiffs determined that the unpaid wages due to the alleged
7 failure to pay overtime wages based on regular rate violations to be \$409,866 based upon the
8 alleged failure to include the quarterly bonus entitled "Gain Share" in the calculation of overtime
9 payments. Plaintiffs determined that the maximum potential off-the-clock damages to be \$460,582
10 based upon 5 minutes of allegedly uncompensated donning and doffing per shift. Plaintiffs
11 determined that the maximum potential rest period damages were estimated to be \$1,103,267 based
12 upon a 20% violation rate. Plaintiffs determined that the maximum meal period damages were
13 estimated to be \$5,236,577 based upon the 95% violation rate observed in the time punch records.
14 Plaintiffs determined that the maximum damages for unreimbursed expenses were estimated to be
15 \$156,962 at a rate of \$10 of unreimbursed expenses for cell phone usage incurred each month. In
16 total, the damages for the Class were calculated to have a maximum total value of \$7,367,254.80.
17 In addition, Plaintiff calculated that the maximum value of the waiting time penalties were
18 \$742,682 for 30 days of pay for 60 terminated employees in the Class, and the maximum value of
19 the wage statement penalties to be \$1,020,000 for the 14,908 pay periods within the period
20 applicable to Labor Code §226. These wage statement and waiting time penalties claims potentially
21 have a much smaller value, even if damages were awarded, to the extent that they are only
22 derivative of the meal and rest break claims.¹ Consequently, the Gross Settlement Amount

23
24 ¹ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203
25 and 226, Plaintiffs recognized that these claims were subject to various defenses asserted by
26 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
27 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs
28 were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
to whether and when the wages were due."). Additionally, Courts have held that violations of the
meal and rest period regulations, which require payment of a "premium wage" for each improper

1 represents more than 16% of the value of the potential maximum damages at issue for the Class in
2 this case, assuming these amounts could all be proven in full at trial.² Given the amount of the
3 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
4 reasonable.

5 a. **H(3)(a)(iii) - Estimated Realistic Recovery** - The above provides the
6 estimate of the maximum recoveries on the class claims. The above maximum calculations should
7 then be adjusted in consideration for both the risk of certification and the risk of establishing class-
8 wide liability on all claims. The regular rate claim was the strongest claim both in terms of liability
9 and certification. I would expect a high likelihood of certification of this regular rate claim (75%),
10 and a similarly high likelihood of establishing liability on this claim (75%). Using these risk ratios,
11 the reasonable class recovery on this regular claim would be \$230,549. The expense reimbursement
12 claim presents a high likelihood of certification (75%), but a lower likelihood of liability (50%)
13 because of the Defendant's defense that personal cell phone usage was a required expense, as
14 opposed to merely convenient which is not recoverable. Using these risk ratios, the reasonable
15 class recovery on this reimbursement claim would be \$58,860. The off-the-clock claim presents a
16 high likelihood of certification (75%), but a lower likelihood of liability (50%) because of the
17 Defendant's defense that donning and doffing time was recorded and compensated. Using these
18 risk ratios, the reasonable class recovery on this off-the-clock claim would be \$172,718. The rest
19 period claim presents a medium likelihood of certification (50%) and a low likelihood of liability
20 (25%) because of the Defendant's defense that they have facially lawful policies that instruct
21 employees to take the required rest breaks, so Plaintiffs argument was the difficult argument that
22 despite the lawful policies, the requirements of the work environment cause them to miss timely rest
23 breaks. Using these risk ratios, the reasonable class recovery on this rest period claim would be

24 _____
25 meal period, do **not** give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China*
26 *Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
27 App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiffs' claims on these theories is
28 uncertain.

² Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
the PAGA claim in this discussion. The PAGA claim is addressed below at ¶ 33.

1 \$137,908. The rest period claim presents a low likelihood of certification (25%) because of the
2 potential for individual variances as to why an employee missed a timely meal period (i.e. was it
3 voluntary), and a low likelihood of liability (25%) because of the Defendant's defense that they
4 have facially lawful policies that instruct employees to take and record the required meal breaks, so
5 Plaintiffs argument was the difficult argument that despite the lawful policies, the requirements of
6 the work environment cause them to miss timely meal breaks. Using these risk ratios, the
7 reasonable class recovery on this meal period claim would be \$327,286. The waiting time claim is
8 entirely derivative of the above claims for failure to pay wages, and therefore bear the same risks,
9 and also have the additional risk of Defendant's "good faith defense, which I estimate would reduce
10 the likelihood further. Using the best possible predicate ratios from the regular rate claim, and then
11 apply a further reduction of 75% for the good faith defense, leads to a reasonable class recovery on
12 this waiting time claim of \$313,318. As to the wage statement claim, this claim is derivative and
13 perhaps could only be recovered based upon the off-the-clock claim based upon a theory that the
14 hours worked were not accurately stated. If we apply the risks from the off-the-clock claim, and
15 then an additional 50% risk for the unique defenses to this claim which are lack of wilfulness and
16 not intentional because of facially lawful policies, leads to a reasonable class recovery on this wage
17 statement claim of \$191,250. All combined, these realistic recoveries total \$1,431,889, which
18 compares favorable to the amount of the settlement in this case, which is guaranteed and without
19 delay and appeal.

20 21 Procedural History of the Litigation

22 7. On June 18, 2020, plaintiff Oscar Noguera sent a correspondence to the Labor and
23 Workforce Development Agency ("LWDA") providing notice of various wage-and-hour violations
24 under the California Labor Code, exhaust his administrative remedies under the California Labor
25 Code Private Attorneys General Act of 2004, Labor Code Section 2699, et seq. ("PAGA").

26 8. On August 17, 2020, Plaintiffs initiated a class action against Defendant, entitled
27 Oscar Noguera, et al. v. Metal Container Corporation, Riverside Superior Court, Case No. RIC
28 2003235 ("Class Action"). The complaint alleges various wage-and-hour violations and wrongful

1 termination and related claims, including without limitation: (i) unfair competition and business
2 practices, in violation of California Business and Professions Code § 17200 et seq.; (ii) failure to
3 pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (iii) failure to
4 pay overtime wages in violation of California Labor Code § 510, et seq.; (iv) failure to provide
5 required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable
6 IWC Wage Order; (v) failure to provide required rest periods in violation of California Labor Code
7 §§ 226.7 & 512 and the applicable IWC Wage Order; (vi) failure to reimburse employees for
8 required expenses in violation of California Labor Code § 2802; (vii) failure to provide accurate
9 itemized wage statements in violation of California Labor Code § 226; (viii) failure to provide
10 wages when due in violation of California Labor Code §§ 201, 202 and 203; (ix) wrongful
11 termination in violation of Public Policy; and, (x) violation of Govt. Code § 12940. On October 7,
12 2020, Defendant filed a general denial along with 25 affirmative defenses to the Complaint filed in
13 the Class Action.

14 9. On October 9, 2020, plaintiff Oscar Noguera filed a Complaint against Defendant
15 titled Oscar Noguera v. Metal Container Corporation, Riverside Superior Court, Case No. RIC
16 2004156 ("PAGA Action"). The PAGA Action asserted a single cause of action for violation of the
17 PAGA. On October 16, 2020, Plaintiffs sent an amended PAGA Notice to the LWDA which added
18 plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores and clarified
19 violations under California Labor Code Section 226(a), among things (together with the June 18,
20 2020 letter to the LWDA, the "PAGA Letters"). On December 29, 2020, Defendant filed a general
21 denial along with 16 affirmative defenses to the Complaint filed in the PAGA Action. On June 16,
22 2021, the Court ordered the PAGA Action consolidated under the Class Action (together, the
23 "Action").

24 10. **H(3)(a)(v) - Investigation** - Over the course of litigation, the Parties engaged in the
25 investigation of the claims, including production of documents, class data, and other information,
26 allowing for the full and complete analysis of liabilities and defenses to the claims in the Action.
27 While there was no formal discovery performed, Plaintiffs received the informal discovery that was
28 needed. The information for mediation obtained by Plaintiffs included: (1) Class and PAGA wide

1 data points through 3/22/21 including the number of employees in the class (303), the number of
2 workweeks (51,774), the number of terminated employees in the 3yr SOL (60), the number of PP's
3 in the 1yr SOL (14,908), the number of PP's in the PAGA period (10,265), and the number of
4 aggrieved employees in the PAGA period (255); (2) Payroll data for 56 employees in the Class; (3)
5 Defendant's employee wage and hour policies; (4) a sampling of time punch records showing hours
6 worked and meal periods for covering 43 employees over 2,311 shifts; (5) the employment files for
7 the Plaintiffs; and, (7) samples of wage statements provided by Defendant. Class Counsel analyzed
8 the data with the assistance of damages expert, Berger Consulting, and prepared and submitted a
9 mediation brief and damage valuation to the Mediator. Plaintiffs and Defendant agreed to discuss
10 resolution of the Action through a mediation.

11 11. Prior to mediation, the Parties engaged in the above investigation and the exchange
12 of documents and information in connection with the Action. On April 29, 2021, the Parties
13 participated in an all-day mediation presided over by Louis Marlin, a respected and experienced
14 mediator of wage and hour class actions. Following the mediation, each side, represented by its
15 respective counsel, were able to agree to settle the Action based on a mediator's proposal which
16 was memorialized in the form of a Memorandum of Understanding. At all times, the negotiations
17 were arm's length and contentious.

18 12. **H(3)(a)(i) - Class Size** - The Parties continued to negotiate the terms of the
19 settlement and prepared the final Agreement which was signed by the Parties and is now presented
20 to this Court for preliminary approval. Accordingly, for purposes of this Settlement, the "Class" is
21 defined as "all individuals who are current or former non-exempt employees employed by
22 Defendant in California at any time during the Class Period." (Agreement at ¶ I(3).) The Class
23 Period is from August 17, 2016 through September 1, 2021. (Agreement at ¶ I(10).) The Class
24 consists of an estimated total of 303 Class Members who worked approximately 52,000 workweeks
25 during the Class Period. (Agreement at ¶ III(43)(e).) If the total number of Class Members or
26 workweeks for the Class Period outlined above increases by more than ten percent (10%), the Gross
27 Settlement Amount will increase proportionally for all additional Class Members or workweeks
28 above the 10% allowance. (Agreement at ¶ III(43)(e).)

1 13. Although a settlement has been reached, Defendant denies any liability or
2 wrongdoing of any kind associated with the claims alleged in the Action and further denies that, for
3 any purpose other than settlement, the Action is appropriate for class treatment. Defendant
4 contends, among other things, that it has correctly compensated the Class Members and complied at
5 all times with the California Labor Code, applicable Wage Order, and all other laws and
6 regulations. Further, Defendant contends that class certification would be inappropriate for any
7 reason other than for settlement. Plaintiffs contend that Defendant violated California wage and
8 hour laws. Plaintiffs further contend that the Actions are appropriate for class certification on the
9 basis that the claims meet the requisites for class certification. Without admitting that class
10 certification is proper, Defendants have stipulated that the above Class may be certified for
11 settlement purposes only. (Agreement at ¶ II(40).) The Parties agree that certification for
12 settlement purposes is not an admission that class certification would be proper if the class
13 certification issue were litigated. Further, the Agreement is not admissible in this or any other
14 proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes of
15 settling the Actions, the Parties stipulate and agree that the requisites for establishing class
16 certification with respect to the Class are satisfied.

17 14. Class Counsel has conducted a thorough investigation into the facts of the class
18 action. Over the course of over two years, Class Counsel has diligently evaluated the Class
19 Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant
20 provided Class Counsel with access to necessary information for the Class. In addition, Class
21 Counsel previously negotiated settlements with other employers in actions involving nearly
22 identical issues and analogous defenses. Based on the foregoing data and their own independent
23 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant
24 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of
25 the Class in light of all known facts and circumstances, including the risk of significant delay,
26 defenses asserted by Defendant, and potential appellate issues.

1 Settlement Terms and Plan of Allocation

2 15. The Gross Settlement Amount is One Million One Hundred Fifty Thousand Dollars
3 (\$1,150,000.00). (Agreement at ¶ II(41).) Under the Settlement, the Gross Settlement Amount
4 consists of the following elements: (1) all payments of Class Settlement Shares to the Participating
5 Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment;
6 (3) Settlement Administration Expenses; (4) Class Representative Service Payments to the
7 Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ II(42).) The Gross Settlement Amount
8 does not include Defendant's share of payroll taxes. (Agreement at ¶ II(41).) The Gross Settlement
9 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ II(41).)

10 16. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
11 Defendant's share of payroll taxes within fifteen (15) business days of the Effective Date.
12 (Agreement at ¶ II(50).) Within fifteen (15) business days after Defendant funds the Gross
13 Settlement Amount, the Settlement Administrator will make payment of all Class Settlement Shares
14 to Participating Class Members . (Agreement at ¶ II(50).)

15 17. The Net Settlement Amount shall equal the Gross Settlement Amount less the Court
16 approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement
18 Administration Expenses. (Agreement at ¶ I(19).) The Net Settlement Amount will be distributed
19 as the Class Settlement Shares to the Class Members who do not timely request exclusion
20 ("Participating Class Member"). (Agreement at ¶¶ II(43).) The Settlement Share will be calculated
21 as follows: (i) Defendant shall provide the Settlement Administrator with the Class Data; (ii) the
22 Settlement Administrator shall then divide the Net Settlement Amount by the total number of weeks
23 worked by the Participating Class Members to determine a dollar amount per week ("Weekly
24 Rate"); and (iii) the Settlement Administrator shall then take the number of weeks worked by each
25 Participating Class Member and multiply it by the Weekly Rate to calculate their Class Settlement
26 Share. (Agreement at ¶ II(43)(b).) Workweeks will be based on Defendants' records, however
27 Class Members will have the right to challenge the number of workweeks.

28 18. **H(7) and H(8) - Exclusions and Objections** - Class Members may choose to

1 opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶
2 II(44)(c)(iii)), Ex. A.) An exclusion form will be included in the form attached as Exhibit A to the
3 Agreement. All Class Members who do not "opt out" will be deemed Participating Class Members
4 who will be bound by the Settlement and will be entitled to receive a Settlement Share. A PAGA
5 Member who opts out the Settlement will still be paid their allocation of the PAGA Payment,
6 respectively, and will remain bound by the release of the PAGA Released Claims, regardless of
7 their request for exclusion. (Agreement at ¶ II(44)(c)(iii).) Finally, the Class Notice will also
8 advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.
9 (Agreement at ¶ II(44)(c)(i)), Ex. A.) An objection form will be included in the form attached as
10 Exhibit A to the Agreement.

11 19. **H(3)(c)(i) - Uncashed Checks and Redistribution** - A Participating Class Member
12 must cash his or her Settlement Share check within 180 days after it is mailed. (Agreement at
13 ¶II(51).) The Settlement Administrator will send a reminder to Participating Class Members who
14 have not cashed their checks within 120 days after its last mailing to the affected individual.
15 (Agreement at ¶ II(51).) Any settlement checks not cashed within 180 days will be voided and any
16 funds from such uncashed checks will be redistributed to the Participating Class Members who
17 cashed their checks in proportion to their credited workweeks if the residue is above \$20,000; and,
18 if the residue is less than \$20,000, then the residue will be distributed by cy pres in accordance with
19 Code of Civil Procedure § 384. (Agreement at ¶ II(F)(51)(a)-(b).)

20 20. The Parties have agreed to use CPT Group as the Settlement Administrator.
21 (Agreement at ¶ I(29) & II(43(f).) From the Gross Settlement Amount, the Settlement
22 Administrator shall be paid for the expenses of administering the Settlement in an amount not to
23 exceed \$15,000. (Agreement at ¶ II(42)(d).) Paragraph 36 below addresses the issues in section
24 H(3)(d) of the CMO.

25 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
26 a sum not to exceed 33% of the Gross Settlement Amount, as the Class Counsel Fees Payment.
27 (Agreement at ¶ II(42)(b).) Class Counsel will also be allowed to apply separately for an award of
28 Class Counsel Litigation Expenses Payment in an amount not to exceed \$16,000. (Agreement at ¶

1 II(42)(b).) Subject to Court approval, the Agreement provides for a payment of no more than
2 \$10,000 to each of the Plaintiffs as the Class Representative Service Payment. (Agreement at ¶
3 II(42)(a).)

4 22. The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out
5 of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the
6 LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to
7 the PAGA Members based on their respective pay periods worked during the PAGA Period.
8 (Agreement at ¶ II(42)(c).) All PAGA Members will be sent their share of the PAGA Payment and
9 will be subject to the release of the PAGA Released Claims, whether or not they opt out of the
10 Settlement. (Agreement at ¶ II(42)(c).) As set forth in the accompany proof of service, the LWDA
11 has been served with this motion and the Agreement.

12
13 Risks of Continued Litigation and Standards for Approval

14 23. Plaintiffs and Class Counsel recognize the expense and length of continuing to
15 litigate and trying these Action against Defendant through possible appeals which could take
16 several years. Class Counsel has also taken into account the uncertain outcome and risk of
17 litigation, especially in complex class actions such as these Action. Class Counsel is also mindful
18 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted
19 in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the
20 Settlement set forth in the Agreement is in the best interest of the Class Members.

21 24. Here, a number of defenses asserted by Defendant present serious threats to the
22 claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices
23 complied with all applicable Labor laws. Defendant argued that all work time was paid for and that
24 the regular aret was properly calculated for purposes of overtime. Defendant contended that their
25 meal and rest period policies fully complied with California law and that although Defendant's
26 timekeeping system recorded meal periods, all meal periods were provided. Further, Defendant
27 argued that Defendant was not required to record rest periods. Finally, Defendant could argue that
28 the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened

1 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
2 Defendant also argues that based on their facially lawful practices, they acted in good faith and
3 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
4 inaccurate wage statements. In fact, under the current state of the law, it is questionable whether
5 these penalties could be awarded at all based upon the alleged meal and rest period violations. If
6 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
7 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
8 have merit and therefore present a serious risk to recovery by the Class.

9 25. There was also a significant risk that, if the Actions were not settled, Plaintiffs would
10 be unable to obtain class certification and thereby not recover on behalf of any employees other
11 than themselves. Defendant argued that the individual experience of each putative class member
12 varied with respect to the claims. Defendant could also contest class certification by arguing injury
13 and good faith were case by case determinations that precluded class certification. Plaintiffs are
14 aware of cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar,*
15 *Inc.*, 43 Cal. App. 5th 885, 256 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest
16 break claims). Defendant also contended that individual differences in work experiences not only
17 impacted damages but would also impact certification. Finally, even if class certification was
18 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
19 *National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide
20 recovery even where the class has been certified. While other cases have approved class
21 certification in wage and hour claims, class certification in this action would have been hotly
22 disputed and was by no means a foregone conclusion.

23 26. This settlement is therefore certainly entitled to preliminary approval. Were this
24 case to go to trial, the Plaintiffs and the other class members would need to prove, among other
25 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

26 27. Plaintiffs will apply to the Court for a Class Representative Service Payment in
27 consideration for the service and for the risks undertaken on behalf of the class. (Agreement at ¶
28 II(42)(a).) Plaintiffs performed their duty admirably by working with Class Counsel. At this stage,

1 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
2 preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
3 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*
4 *Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
5 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007
6 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class
7 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
8 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
9 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
10 (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in
11 enhancements). As explained in *Glass*, service awards are routinely awarded to class
12 representatives to compensate the employees for the time and effort expended on the case, for the
13 risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an
14 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

15 28. The stage of the proceedings at which this Settlement was reached also militates in
16 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
17 conducted a thorough investigation into the facts of the class action. Class Counsel began
18 investigating the Class Members' claims before the Action was filed. Class Counsel engaged in
19 formal discovery and conducted a review and analysis of the relevant documents and data. Class
20 Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated
21 and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until
22 Class Counsel possessed sufficient information to make an informed judgment regarding the
23 likelihood of success on the merits and the results that could be obtained through further litigation.

24 29. Based on the foregoing data and their own independent investigation and evaluation,
25 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the
26 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
27 Class in light of all known facts and circumstances, including the risk of significant delay, defenses
28 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that

1 Counsel for both parties possessed sufficient information to make an informed judgment regarding
2 the likelihood of success on the merits and the results that could be obtained through further
3 litigation.

4
5 Class Certification Issues

6 30. Plaintiffs contend that the proposed settlement meet all of the requirements for class
7 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
8 the Court may appropriately approve the Class as defined in the Agreement. This Court should
9 conditionally certify the Class for settlement purposes only, defined as follows:

10 All individuals who are current or former non-exempt employees employed by
11 Defendant in California at any time during the Class Period.

12 (Agreement at ¶ I(3).)

13 The “Class Period” is from August 17, 2016 through September 1, 2021. (Agreement at ¶ I(10).)

14 a. **Numerosity** - Here, Plaintiff asserts that the 303 current and former
15 employees that comprise the Class can be identified based on Defendant’s records and are
16 sufficiently numerous for class certification. .

17 b. **Common Issues Predominate** - Here, Plaintiffs contend that common
18 questions of law and fact are present, and specifically the common questions of whether Defendant
19 properly paid wages for all hours worked, whether the Defendant failed to provide meal and rest
20 periods, whether Defendant failed to provide required expense reimbursement, and whether Class
21 Members are entitled to damages and penalties as a result of these practices.

22 c. **Typicality** - In the instant case, Plaintiffs contend that there can be little
23 doubt that the typicality requirement is satisfied. The Plaintiffs, like every other member of the
24 Class, worked for Defendant as non-exempt employees during the Class Period. Plaintiffs contend
25 that, like every other member of the Class, they were subject to the same practices and policies of
26 Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims of the
27 Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve
28

1 the same employment policies and practices of Defendant, and are based on the same legal theories.

2
3 d. **Adequacy** - Plaintiffs contends that the Class Members are adequately
4 represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest
5 with other class members, and (b) will prosecute the case vigorously on behalf of the class. This
6 requirement is met here. First, Plaintiffs are well aware of their duties as the representatives and
7 have actively participated in the prosecution of this case to date. They effectively communicated
8 with counsel, provided documents to counsel and participated in the investigation and negotiations
9 in the Action. Second, Plaintiffs retained competent counsel who are experienced in employment
10 class actions and who have no conflicts. Third, there is no antagonism between the interests of the
11 Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief
12 under the same set of facts and legal theories.

13 31. Blumenthal Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting
14 class action lawsuits and can competently represent the Class. Other lawyers at my firm and I have
15 extensive class litigation experience. We have handled a number of class actions and complex
16 cases and have acted both as counsel and as lead and co-lead counsel in a variety of these matters.
17 We have successfully prosecuted and obtained significant recoveries in numerous class action
18 lawsuits and other lawsuits involving complex issues of law and fact. My firm is particularly
19 experienced in wage and hour employment law class actions, including claims for misclassification,
20 overtime, expense reimbursement, unlawful deduction of wages, and missed rest and meal periods.
21 Blumenthal Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over
22 hundreds of wage and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has
23 been found to be adequate counsel by the courts throughout California. We have been approved as
24 experienced class counsel by both state and federal courts in California in contested class
25 certification proceedings. A true and correct copy of the resume of my firm is attached hereto as
26 Exhibit #2. Thus, the adequacy requirement is satisfied.

27 32. **H(5) - Proposed Notice** - The Class Notice, drafted jointly and agreed upon by the
28

1 Parties through their respective counsel and to be approved by the Court, includes all relevant
2 information. (See Exhibit "A" to the Agreement.) The Class Notice will include, among other
3 information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members
4 if they do not opt out; (iii) information to the Class Members regarding how to opt out and how to
5 object to the Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the
6 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service
7 awards requests; and (vi) the anticipated expenses of the Settlement Administrator. The Parties
8 agree that the Class Notice Packet does not need a Spanish translation because Class Members were
9 required to read and speak English as part of their employment, which included employment
10 documents in English. The Class Notice will state that the Class Members shall have forty-five (45)
11 days from the date that the Notice is mailed to them to request exclusion (opt-out) or to submit an
12 objection. (Agreement at ¶ II(44)(c)(iii).) In the event of a re-mailing, the Response Deadline will
13 be extended by an additional 15 days. (Agreement at ¶ II(44)(c)(iii).) Class Members shall be given
14 the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to
15 appear at the Final Approval Hearing. (Agreement at ¶ II(44)(c)(i).) Class Members who do not
16 submit a timely and proper request to opt-out will automatically receive a payment of their
17 Settlement Share. This notice program was designed to meaningfully reach the Class Members and
18 it advises them of all pertinent information concerning the Settlement. The mailing and distribution
19 of the Class Notice satisfies the requirements of due process, and is the best notice practicable under
20 the circumstances and constitutes due and sufficient notice to all persons entitled thereto.

21
22 **33. H(9) - The PAGA Claim -**

23 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
24 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
25 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
26 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the
27 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
28 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on

1 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
2 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
3 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
4 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
5 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
6 class members." (LWDA Response at p.4).

7 b. **Valuation of the PAGA Claim.** For mediation, Plaintiffs' calculated the
8 value of the alleged PAGA claim as to Aggrieved Employees for civil penalties to be between
9 \$513,250 and \$1,026,500 for a single violation in every one of the 10,265 pay periods at issue in the
10 PAGA Period, depending on whether the violation was \$50 per pay period as in the case of Labor
11 Code § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor Code §
12 1198. This valuation assumed that PAGA civil penalties would be awarded at the maximum rate
13 per pay period but without stacking. Stacking is where more than one civil penalty is imposed in a
14 pay period for the same conduct. The valuation of \$513,250 to \$1,026,500 is the civil penalty
15 amount without stacking. If stacking is permitted, then the valuation increases with each additional
16 penalty added to each pay period.

17 c. **Stacking of Penalties** - The violations alleged for PAGA penalties are the
18 same as the grounds for the class claims, which are failure to pay overtime wages based on regular
19 rate violations (Labor Code §§ 510, 1194, 1198), off-the-clock violations (Labor Code §§ 1194,
20 1197, 1198); rest period violations (Labor Code §§ 226.7, 512, 1198), meal period violations (Labor
21 Code §§ 226.7, 512, 1198), expense reimbursement violations (Labor Code §§ 1198 and 2802),
22 waiting time violations (Labor Code §§ 203), and wage statement violations (Labor Code §§ 226
23 and 1198). While these are each individual grounds for the class recovery, it is not at all clear
24 whether PAGA penalties can be "stacked". This is because all but one of the listed violations
25 violated Labor Code §1198 as a predicate violation for the PAGA claim, as well as other Labor
26 Code sections. The exception would be PAGA penalties for waiting penalties under Labor code §
27 203 would only apply to 33 pay periods where there was a termination of employment, which totals
28 \$3,300. I am not aware of any Court that has awarded PAGA penalties through stacking of

1 penalties because the alleged conduct violated the same statute for multiple reasons or because the
2 same conduct violates multiple Labor Code sections. Here, if stacking were permitted, there is
3 alleged conduct that would violate two or three Labor Code statutes (i.e. a missed meal period could
4 violate Labor Code §§ 226.7, 512 and 1198), and there is conduct resulting in multiple violations of
5 the same Labor Code statute (i.e. failure to pay overtime, failure to provide meal period, failure to
6 provide rest periods failure of accurate pay records and failure to provide expense reimbursement
7 all could be in violation of Labor Code §1198), which if taken together could mean that PAGA
8 penalties could be calculated to be six times the unstacked value, which would be \$3 million to \$6
9 million in stacked PAGA penalties (plus the \$3,300 from Labor Code §203 violations) for the
10 10,265 pay periods at issue in this case. This stacking issue would implicate the requirement of
11 Section 2699(c)(2) that the court “the court “may award a lesser amount than the maximum civil
12 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
13 to do otherwise would result in an award that is **unjust, arbitrary and oppressive, or**
14 **confiscatory.**” It may be argued that awarding PAGA penalties multiple times because the alleged
15 conduct violated the same statute for multiple reasons or because the same conduct violates
16 multiple Labor Code sections is unjust, oppressive and confiscatory. For this reason, Plaintiffs
17 believe that a single un-stacked penalty per pay period is the more realistic valuation.

18 d. **Reasonableness of the PAGA Allocation.** The PAGA allocation in the
19 Settlement is the amount of \$25,000. This allocation is justified by several important
20 considerations. First, the PAGA claim was subject to the same risks as the underlying class claims.
21 Second, Defendant asserted additional defenses to the PAGA claim, not only as to liability but also
22 as to the amount of the penalties. Defendant could also argue that no penalties prior to the PAGA
23 notification should be awarded, and I am aware of one Court which has so ruled. These additional
24 defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties
25 sought may not be awarded. Third, civil penalties may not be awarded at the maximum rate. In
26 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court affirmed a judgment which
27 only provided for a PAGA penalty of \$5 per violation. Therefore, at trial, any PAGA penalties
28 awarded could be significantly less than Plaintiffs’ calculation even where Plaintiffs prevailed on

1 the PAGA claim. Even if we assume that violations for all 10,265 pay periods were established,
2 using the valuation from *Carrington* results in a more realistic recovery of \$51,325 under PAGA.
3 This means that the \$25,000 PAGA allocation is a reasonable percentage (48%) of this realistic
4 PAGA recovery. Fourth, the interests of PAGA are also served by the fair and reasonable Class
5 recovery as explained by the LWDA in *O'Connor v. Uber*.

6 e. **Similar PAGA Settlements.** In reaching the settlement of the PAGA claim,
7 Class Counsel was also aware of what allocations other Courts have approved for similar PAGA
8 settlements as compared to the total settlement amount. A class settlement that allocates
9 approximately 2% of the total settlement value to resolve the PAGA claims applicable to the class
10 is also supported by what has been approved in other wage-and-hour class settlements. Indeed,
11 Courts typically approve PAGA settlement amounts in the range of between .27 to 1.7 percent of
12 the total settlement. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015)
13 (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated*
14 *Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for
15 PAGA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637
16 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs,*
17 *Inc.*, 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA
18 for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
19 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9
20 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13
21 (E.D. Cal. 2012) (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million
22 common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009)
23 (approving PAGA allocation that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon*
24 *Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement
25 of \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*,
26 CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount
27 of \$8.25 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay,*
28 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000

1 allocated to PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted
2 as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive*
3 *Educational Services Inc.*, Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000
4 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell*
5 *Banker Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016)
6 (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los*
7 *Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or
8 0.40% of \$3,775,000 settlement amount); *Scott-George v. PVH Corporation*. No., 2:13CV00441
9 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
10 *Nehrlich v. RPM Mortgage Inc.*, Orange County Superior Court Case No.
11 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of
12 \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San Bernardino Superior Court Case
13 No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement
14 amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino Superior Court Case No.
15 CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000 settlement
16 amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino Superior Court Case
17 No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of \$900,000 settlement
18 amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No. BC471369 (2013)
19 (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount); *Mejia v. DHL*
20 *Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or
21 0.34% of \$1,450,000 settlement amount).

22 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
23 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
24 reasonable, and at the time of final approval, my firm will present lodestar to further support the
25 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
26 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
27 of the class action awards obtained by Class Counsel in similar employment actions throughout the
28 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total

1 settlement value: On June 14, 2017, in *Smith v. Space Exploration* (Los Angeles Superior Court
2 Case No. BC554258), Judge Elihu Berle awarded Class Counsel a 1/3 fee award in a wage and hour
3 class settlement. On March 23, 2018, in *Bailey v. Redfin*, (Los Angeles Superior Court, Case No.
4 BC512191, the Court awarded a 1/3 fee award in a wage and hour class settlement. On July 10,
5 2018, in *Zirpolo v. UAG Stevens Creek II* (Santa Clara Superior Court Case No. 17CV313457,
6 Judge Brian Walsh awarded Class Counsel a one-third fee award in a wage and hour class
7 settlement. On July 19, 2018, in *Metrow v. Liberty Mutual*, (U.S.D.C. Central District of California
8 Case No. EDCV 16-01133-JGB), the District Court awarded Class Counsel a one-third fee award in
9 a wage and hour class settlement. On December 4, 2018, in *Panda Express Wage and Hour Cases*
10 (Los Angeles Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a
11 one-third fee award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage*
12 *and Hour Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded
13 Class Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in
14 *Erickson v. John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge
15 Edward Weil awarded Class Counsel a one-third fee award in a wage and hour class settlement. On
16 December 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case
17 No. BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage
18 and hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
19 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-
20 third award in a wage and hour class settlement. On February 11, 2020, in *Singh v. Total Renal*
21 *Care* (San Francisco Superior Court Case No. CGC-16-550847) Judge Ethan Schulman awarded
22 Class Counsel a one-third award in a wage and hour class settlement. On October 23, 2020, in
23 *Ontiveros v. Baker Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian
24 Walsh awarded Class Counsel a one-third fee award in a wage and hour class settlement. On
25 December 3, 2020, in *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court
26 Case No. 34-2018-00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a
27 wage and hour class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles
28 Superior Court Case No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee

1 award in a wage and hour class settlement. On September 13, 2021, in *Smith v. California*
2 *Protection and Investigation Services* (Los Angeles Superior Court Case No. 19STCV14719),
3 Judge Daniel Buckley awarded a one-third fee award in a wage and hour class settlement. On
4 November 8, 2021, in *Securitas Wage and Hour Cases* (Los Angeles Superior Court Case No.
5 JCCP4837) Judge David Cunningham awarded a one-third fee award in a wage and hour class
6 settlement. On November 17, 2021, in *Leon v. Sierra Aluminum Company* (San Bernardino
7 Superior Court Case No. CIVDS2010856) Judge David Cohn awarded a one-third fee award in a
8 wage and hour class settlement. A fee award equal to one-third of the common fund is therefore
9 reasonable in light of the fees that have been awarded in other similar cases.

10 35. Class Representative Service Payments - The reasonableness of the requested service
11 award is also established by reference to the amounts that other California courts have found to be
12 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,
13 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service
14 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,
15 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.
16 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);
17 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
18 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,
19 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service
20 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.
21 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);
22 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,
23 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.
24 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);
25 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior
26 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*
27 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,
28 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los

1 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*
2 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,
3 2011)(awarding \$10,000 service award together with additional compensation for their general
4 release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court
5 (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
6 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award);
7 *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior
8 Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*,
9 Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000
10 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los
11 Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser*
12 *Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28,
13 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa
14 Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v.*
15 *Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22,
16 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS
17 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award);
18 *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding
19 \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside
20 County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security*
21 *Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000
22 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange
23 County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security*
24 *Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23,
25 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior
26 Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The*
27 *Inductrial Complany*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug.
28 1, 2018) (awarding \$10,000 service award).

1 Additional Issues From the CMO:

2 36. **H(3)(d)(i) - Settlement Administration** - After seeking bids from three qualified
3 administrators (ILYM, CPT and Simpluris), the estimate from CPT was selected, as it was the
4 lowest and provided for an estimate to be capped at a discounted flat fee of \$11,500 to perform the
5 settlement administration for a class of 350. ILYM's estimate was \$14,686 and Simpluris' estimate
6 was \$12,000. A true and correct copy of the estimate from CPT is attached hereto as Exhibit #3. I
7 have used CPT successfully as the administrator in more than twelve class settlements in the last
8 several years and know them to be competent and experienced.

9 a. **H(3)(d)(ii) - Declaration from CPT** - A declaration from CPT will be
10 submitted in advance of the hearing.

11 37. **H(3)(a)(vi) - Related Cases** - I am unaware of any class, representative or other
12 collective action in any court in this or any other jurisdiction that asserts claims similar to the
13 claims asserted in this Action on behalf of a class or any group of individuals that would also be
14 members of the Class defined in this Action. I have made inquiries of the other attorneys at my
15 firm, and they are similarly unaware of any such related action. In addition, on March 3, 2022, I
16 performed a search on the LWDA database for any PAGA notices submitted with respect to this
17 Defendant Metal Container Corporation, and this database search revealed that this Action is the
18 only one that appears on the database with respect to this Defendant. The Notice of Related Case
19 filed by Defendant only identified the instant actions by the Plaintiffs which have now been
20 consolidated.

21 38. **H(3)(b) - Defendant's Declaration** - The Declaration of Marlene Moffitt is
22 submitted herewith.

23 39. **H(3)(c)(iii) - Uncashed Checks and Cy Pres** - The Settlement provides for a
24 redistribution of uncashed check funds, and only provide for a cy pres distribution in the event that
25 the uncashed checks total less than \$20,000 (which makes redistribution uneconomical) and in the
26 event there are remaining funds after the redistribution. The Parties selected Chrysalis, which is a
27 not for profit charity which helps people in Southern California find jobs. A declaration from
28 Chrysalis will be submitted in advance of the hearing.

1 40. **H(3)(c)(iii) - Relationship with the Cy Pres** - Neither my firm nor the Plaintiffs
2 have any relationship with Chrysalis. I confirmed asked the attorneys at my firm and the Plaintiffs
3 that they have no relationship, and in fact, none had heard of Chrysalis until this Settlement. My
4 firm has no previously used Chrysalis as a cy pres beneficiary, and they were selected purely on the
5 basis that the charity aids workers and satisfies California Code of Civil Procedure §384.

6 41. **H(3)(e) - The Released Class Claims** - The release applicable to the Class is
7 tethered to allegations in the Action and the “Released Claims” are “any and all claims for wages,
8 damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees,
9 litigation costs, restitution, or equitable relief, that were pled or that could have been pled against
10 the Released Parties based on the factual allegations, circumstances, and/or primary rights set forth
11 in the Action and PAGA Letters, including all claims under the California Labor Code, Industrial
12 Welfare Commission Wage Orders and applicable law for: failure to pay wages (including
13 minimum, regular, and overtime wages); regular rate of pay violations; failure to pay reporting time
14 pay and/or split shift pay; failure to provide compliant meal and/or rest periods and associated
15 premium payments; failure to pay wages timely during employment and upon termination; failure to
16 maintain time and payroll records; failure to provide legally-compliant wage statements, failure to
17 reimburse business expenses; all claims for violation of California Business and Professions Code
18 §§ 17200, et seq., arising from the above-referenced claims; and all claims for penalties under
19 PAGA alleged in the PAGA Letters. Except it shall not include claims for wrongful termination in
20 violation of public policy or violation of the California Government Code § 12940.” (Agreement at
21 ¶ II(53)(a).) As of the Effective Date and funding, Participating Class Members shall be deemed to
22 have released and discharged the Released Parties of and from all Released Claims arising during
23 the Class Period, except those asserted under PAGA (“Released Class Claims”). (Agreement at
24 ¶(52)(b).)

25 42. **H(3)(f) - H(3)(i) - Proposed Order** - The [Proposed] Preliminary Approval Order
26 complies with the instructions in sections H(3)(f), H(3)(g), H(3)(h), and H(3)(i). The proposed
27 date for the Final Approval Hearing in the proposed order is August 3, 2022 at 8:30 a.m.
28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed this 3rd day of March, 2021, at La Jolla, California.

3
4 By: /s/ Kyle Nordrehaug
Kyle Nordrehaug
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CLASS AND PAGA SETTLEMENT AGREEMENT

This Class and PAGA Settlement Agreement (“Agreement” or “Settlement”) is made by and between plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera Howard, and Edmundo Flores (collectively, “Plaintiffs”), on one hand, and defendant Metal Container Corporation (“Defendant”), on the other hand. Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

1. “Action” means the consolidated cases titled *Oscar Noguera, et al. v. Metal Container Corporation*, Riverside Superior Court, Case No. RIC2003235, consolidated with *Oscar Noguera v. Metal Container Corporation*, Riverside Superior Court, Case No. RIC2004156.

2. “Claims” means all claims, causes of actions, and primary rights alleged in the Action and PAGA Letters.

3. “Class” means all individuals who are current or former non-exempt employees employed by Defendant in California at any time during the Class Period.

4. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

5. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Claims, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

6. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and his or her actual weeks worked during the Class Period as a Class Member and actual weeks worked during the PAGA Period, taking into account any gaps in employment and leaves of absence.

7. “Class Member” is a member of the Class.

8. “Class and PAGA Notice” means the Notice of Proposed Settlement of Class and PAGA Actions and Hearing Date for Final Court Approval substantively in the form attached as part of the Notice Packet hereto as **Exhibit A** to this Agreement and incorporated by reference into this Agreement (subject to modification by the Court and formatting changes to facilitate printing by the Settlement Administrator).

9. “Notice Packet” means the Class and PAGA Notice, Election Not to Participate in Settlement Form and Objection Form, to be provided to the Class and PAGA Members by the Settlement Administrator in substantively the same form set forth as **Exhibit A** to this Agreement (subject to modification by the Court and formatting changes to facilitate printing by the Settlement Administrator).

10. “Class Period” means the period of time from August 17, 2016 through September 1, 2021.

11. “Class Representative Service Payment” means the service payment made to each of the Plaintiffs in their capacity as Class Representative in order to compensate them for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiffs were unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiffs.

12. “Court” means the Superior Court of California, County of Riverside.

13. “Defendant” means Metal Container Corporation.

14. “Defendant’s Counsel” means Spencer C. Skeen and Marlene M. Moffitt of Ogletree, Deakins, Nash, Smoak & Stewart.

15. “Effective Date” means the date the Judgment becomes Final as defined herein.

16. “Election Not to Participate in Settlement” means the written request by a Class Member to exclude himself or herself from the class settlement submitted in accordance with the instructions in the Class and PAGA Notice.

17. “Final” means the last of the following dates, as applicable:

a) If no objection to the Settlement is made, the date the Judgment is entered.
b) If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.

c) If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.

16. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

17. “Gross Settlement Amount” means One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) to be paid by Defendant as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments of Class Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Class Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate obligation of

Defendant. Under no condition will Defendant be required to pay more than the Gross Settlement Amount and its employer-side payroll taxes for this Settlement.

18. “Judgment” means entry of the final approval order and judgment approving and incorporating by reference the terms and conditions of this Agreement in substantively the same form attached hereto as **Exhibit C**, subject to modification by the Court.

19. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.

20. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.

21. “PAGA Period” means the period of time from June 18, 2019 through September 1, 2021.

22. “PAGA Member” means all individuals who are current or former non-exempt employees employed by Defendant in California at any time during the PAGA Period.

23. “PAGA Payment” means Twenty-Five Thousand Dollars (\$25,000) which will be allocated from the Gross Settlement Amount for the payment of penalties under PAGA, 75% of which (\$18,750) will be paid to the LWDA and 15% of which (\$6,250) will be paid to PAGA Members, as required under PAGA.

24. “PAGA Settlement Share” means each PAGA Member’s share of the PAGA Payment, as provided by this Agreement.

25. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement. No claim form is required to participate in the Settlement.

26. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as **Exhibit B**, subject to modification by the Court.

27. “Released Parties” collectively means Defendant and Defendant’s officers, directors, employees and agents.

28. “Settlement” means the disposition of the Action and Claims effectuated by this Agreement.

29. “Settlement Administrator” means the third party settlement administrator CPT Group, Inc., as approved by the Court.

30. “Class Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

31. On June 18, 2020, plaintiff Oscar Noguera sent a correspondence to the Labor and Workforce Development Agency (“LWDA”) providing notice of various wage-and-hour violations under the California Labor Code, exhaust his administrative remedies under the California Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699, *et seq.* (“PAGA”).

32. On August 17, 2020, Plaintiffs initiated a class action against Defendant, entitled Oscar Noguera, et al. v. Metal Container Corporation, Riverside Superior Court, Case No. RIC 2003235 (“Class Action”). The complaint alleges various wage-and-hour violations and wrongful termination and related claims, including without limitation: (i) unfair competition and business practices, in violation of California Business and Professions Code § 17200 *et seq.*; (ii) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (iii) failure to pay overtime wages in violation of California Labor Code § 510, *et seq.*; (iv) failure to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (v) failure to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (vi) failure to reimburse employees for required expenses in violation of California Labor Code § 2802; (vii) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (viii) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; (ix) wrongful termination in violation of Public Policy; and, (x) violation of Govt. Code § 12940. On October 7, 2020, Defendant filed a general denial along with 25 affirmative defenses to the Complaint filed in the Class Action.

33. On October 9, 2020, plaintiff Oscar Noguera filed a Complaint against Defendant titled *Oscar Noguera v. Metal Container Corporation*, Riverside Superior Court, Case No. RIC 2004156 (“PAGA Action”). The PAGA Action asserted a single cause of action for violation of the PAGA.

34. On October 16, 2020, Plaintiffs sent an amended PAGA Notice to the LWDA which added plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores and clarified violations under California Labor Code Section 226(a), among things (together with the June 18, 2020 letter to the LWDA, the “PAGA Letters”).

35. On November 19, 2020, the Court granted Plaintiffs’ request to dismiss plaintiff Oscar Noguera’s individual claims and putative class claims without prejudice from the Class Action.

36. On December 29, 2020, Defendant filed a general denial along with 16 affirmative defenses to the Complaint filed in the PAGA Action.

37. On May 12, 2021, Plaintiff Noguera initiated an arbitration against Defendant with Judicial Arbitration and Mediation Services (“JAMS”), titled *Noguera v. Metal Container Corporation*, Reference Number 1230011686, alleging wrongful termination in violation of public policy and violation of California Government Code § 12940 (“Arbitration”).

38. On April 29, 2021, the Parties participated in an all-day mediation presided over by Louis Marlin, a respected mediator of wage and hour representative and class actions. During the mediation, each side, represented by its respective counsel, were able to agree to settle the Claims, which settlement was memorialized in a Memorandum of Understanding. The mediation also resolved Plaintiff Noguera's individual claims in the Arbitration, as memorialized in a separate, individual settlement agreement with Plaintiff Noguera ("Individual Settlement Agreement"). This Agreement replaces and supersedes the Memorandum of Understanding. This Agreement, together with the Individual Settlement Agreement, supersede any other agreements, understandings, or representations between the Parties.

39. On June 16, 2021, the Court ordered the PAGA Action consolidated under the Class Action (together, the "Action").

40. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant bears any liability on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Judgment does not become Final, the certification for purposes of this Settlement will have no force or effect and will be immediately revoked. Additionally, the fact the Parties were willing to stipulate to class certification for purposes of settlement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context. Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

II. SETTLEMENT TERMS AND CONDITIONS

41. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00). This amount is all-inclusive meaning it will cover all payments contemplated in this Settlement, excluding any employer-side payroll taxes on the portion of the Class Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator, as determined by the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to for Class Members or PAGA Members to submit a claim form, and none of the Gross Settlement Amount will revert to Defendant.

42. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and court approval, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

a. **To Plaintiffs as Class Representatives:** In addition to the Class and PAGA Settlement Shares to be paid to Plaintiffs, Plaintiffs will apply to the Court for an award of not more than \$10,000 each as Class Representative Service Payments, which is combined total of up to \$50,000 in Class Representative Service Payments. Defendant will not oppose Class Representative Service Payments of no more than \$10,000 for each of the Plaintiffs. The Settlement Administrator will pay the Class Representative Service Payments approved by the

Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payments of less than \$10,000, for each of the Plaintiffs, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payments and instead a Form 1099 will be issued to each of the Plaintiffs with respect to the payments who will assume full responsibility and liability for the taxes due on their Class Representative Service Payments. In addition, plaintiff Noguera is separately settling his claims for wrongful termination and violation of Government Code § 12940 as alleged in the Arbitration

b. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than Thirty-Three Percent (33%) of the Gross Settlement Amount, which is presently \$379,500, as their Class Counsel Fees Payment and an amount not more than \$16,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$379,500, and \$16,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.

c. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share of the settlement, and 25% (\$6,250) to the PAGA Members, as required under PAGA, which shall be allocated as PAGA Settlement Shares to the PAGA Members based upon their respective pay periods worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. If the Court requires a PAGA Payment larger than \$25,000, such additional amount will be paid from the Gross Settlement Amount. PAGA Members will not have the ability to opt-out of the PAGA portion of this Settlement. All PAGA Members will be sent their PAGA Settlement Share and be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the class portion of the Settlement. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

d. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$15,000 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$15,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

43. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

a. **Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Class Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.

b. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Class Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendant shall provide the Settlement Administrator with the Class Data; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of weeks worked by the Participating Class Members to determine a dollar amount per week (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Class Settlement Share.

c. **Withholding.**

i. Subject to approval by the Court, Twenty-Five Percent (25%) of each Participating Class Member’s Class Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities employees’ and employer’s share of all payroll taxes on the Wage Portion.

ii. Subject to approval by the Court, Seventy-Five Percent (75%) of each Participating Class Member’s Class Settlement Share is in settlement of claims for interest and penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

iii. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defendant’s Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members’ failure to pay taxes on any amounts paid pursuant to this Settlement.

d. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Class Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Class Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis relative to their Settlement Shares.

e. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 303 Class Members who worked approximately 52,000 workweeks during the Class Period. If the total number of Class Members or workweeks for the

Class Period outlined above increases by more than ten percent (10%), the Gross Settlement Amount will increase proportionally for all additional Class Members or workweeks above the 10% allowance. The Parties agree to use whatever percentage increase is higher, whether total number of Class Members or workweeks.

f. **Appointment of Settlement Administrator.** The Parties have mutually selected CPT Group to serve as the Settlement Administrator, subject to court approval. The Settlement Administrator's duties will include preparing, printing, and mailing the Notice Packet to all Class Members; translating the Notice Packet to Spanish, if necessary; conducting a National Change of Address search to update Class Member addresses before mailing the Notice Packets; re-mailing Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and responding to inquiries from Class Members about the Settlement; receiving and reviewing for validity completed Objection Forms and Exclusion Forms or other Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Notice Packets and receipt of Objection Forms and Exclusion Forms; calculating Class Settlement Shares and PAGA Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement and performing any duties requested by the Court in connection with this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Class Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

44. Procedure for Approving Settlement.

a. Motion for Preliminary Approval of Settlement by the Court.

i. After execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class and PAGA Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class and PAGA Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.

ii. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by **Exhibit B** to this Agreement and incorporated by reference into this Agreement.

iii. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

b. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Notice Packet (which will include the Class and PAGA Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Class and PAGA Settlement Shares) as follows:

i. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.

ii. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

iii. If a Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days, and the Settlement

Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

iv. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.

v. Not later than 10 days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and identifying the number of Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and detailing the objections received that have not been resolved as of that date. With respect to individuals opting out of the Settlement, the Settlement Administrator shall not disclose any personal information about these individuals, including the individual's name, mailing/home address, phone number or email address, and instead may only identify them (if at all) by employee number. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

c. **Objections to Settlement; Disputes as to Workweeks allocated to Class and PAGA Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the below procedures. PAGA Members may dispute the workweeks allocated to them for their PAGA Settlement Share.

i. **Objections to Settlement.** The Class and PAGA Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. The Objection Form shall be included in the Notice Packet in the form attached hereto as Exhibit A. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class and PAGA Notice. If a Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

ii. **Disputes as to Workweeks.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Notice Packets in which to dispute the number of workweeks the Class and PAGA Notice allocates to them during

the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. If a Notice Packet is re-mailed, the response date for disputes will be extended an additional 15 days. PAGA Members may also dispute the number of workweeks allocated to them for their PAGA Settlement Share, in accordance with this same procedure.

iii. **Election Not to Participate in Settlement.** The Class and PAGA Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Notice Packets, a signed Election Not to Participate in Settlement form (also known as Exclusion Form). If a Notice Packet is re-mailed, the response date for opt-outs will be extended an additional 15 days. The Exclusion Form shall be included in the Notice Packet in the form attached hereto as Exhibit A. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class and PAGA Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that PAGA Member will still be paid their PAGA Settlement Share and remain bound by the release of the Released PAGA Claims regardless of their request for exclusion. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class and PAGA Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Class Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

iv. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a complete and accurate list of the names of all Non-Participating Class Members.

45. **Right of Defendant to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds ten percent (10%) of the Class, Defendant, at its sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation rights, if at all, within fourteen (14) days of the deadline for submission of Elections Not to Participate in Settlement by providing written

notice to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Settlement Administration Expenses as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph will be paid by Defendant.

46. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.

47. **Additional Briefing and Final Approval.**

a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiffs file the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.

c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiffs and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.

d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

48. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment

proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

49. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

50. Timing of Settlement Funding and Provision of Class and PAGA Settlement Shares and Other Payments. Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) business days of the Effective Date. Within fifteen (15) business days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Class Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the PAGA Payment in accordance with this Agreement.

51. Uncashed Settlement Checks and Cy Pres Recipient. A Participating Class Member and/or PAGA Member must cash his or her settlement check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. Sixty (60) days before the check cashing deadline, The Settlement Administrator shall mail a reminder notice to any Participating Class Member and/or PAGA Member who has failed to cash their check. If the check remains uncashed by the expiration of the 180-day period, the check shall be deemed void and a stop payment order may be placed on the check. In such event, the Settlement nevertheless will be binding upon the Participating Class Member and PAGA Member. The funds represented by all uncashed settlement checks shall be deemed "Settlement Residues" and shall be treated as follows:

a. **Additional Distribution to Participating Class Members.**

- (i) If the total amount of the Settlement Residues equals or exceeds \$20,000, the Settlement Residues amount shall be redistributed to Participating Class Members who cashed their checks within the Check Cashing Period (the “Residues Distribution”) on a *pro rata* basis in the same manner described above in paragraph 43(b). Such Residues Distribution will occur within twenty (20) days following the expiration of the Check Cashing Period.
- (ii) For any Residues Distribution that takes place, the Parties agree that the Residues Distribution will be allocated as miscellaneous income, not subject to withholding, and will be reported on IRS Form 1099-MISC as needed.
- (iii) Any checks not cashed within ninety (90) days of the Residues Distribution shall be deemed void, and the unclaimed/uncashed amounts shall be transmitted in accordance with C.C.P. § 384 to Chrysalis is a 501(c)(3) non-profit corporation selected by the Parties and which describes itself as “a non-profit organization dedicated to creating a pathway to self-sufficiency for homeless and low-income individuals by providing the resources and support needed to find and retain employment” (www.changelives.org), subject to Court approval. The Parties and their counsel represent they have no financial interest in, or involvement with, the proposed cy pres beneficiary.

b. **Cy Pres.** If the total amount of the Settlement Residues is less than \$20,000, the Settlement Administrator shall transmit the remaining funds to Chrysalis in accordance with California Code of Civil Procedure section 384. Chrysalis is a 501(c)(3) non-profit corporation selected by the Parties and which describes itself as “a non-profit organization dedicated to creating a pathway to self-sufficiency for homeless and low-income individuals by providing the resources and support needed to find and retain employment” (www.changelives.org). The Parties and their counsel represent they have no financial interest in, or involvement with, the proposed cy pres beneficiary.

52. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

53. **Release of Claims.**

a. **Released Claims.** “Released Claims” shall mean any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, that were pled or that could have been pled

against the Released Parties based on the factual allegations, circumstances, and/or primary rights set forth in the Action and PAGA Letters, including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including minimum, regular, and overtime wages); regular rate of pay violations; failure to pay reporting time pay and/or split shift pay; failure to provide compliant meal and/or rest periods and associated premium payments; failure to pay wages timely during employment and upon termination; failure to maintain time and payroll records; failure to provide legally-compliant wage statements, failure to reimburse business expenses; all claims for violation of California Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims; and all claims for penalties under PAGA alleged in the PAGA Letters. Except it shall not include claims for wrongful termination in violation of public policy or violation of the California Government Code § 12940.

b. **Participating Class Members.** As of the Effective Date and funding, Participating Class Members shall be deemed to have released and discharged the Released Parties of and from all Released Claims arising during the Class Period, except those asserted under PAGA (“Released Class Claims”).

c. **PAGA Members.** As of the Effective Date and funding, PAGA Members shall be deemed to have released and discharged the Released Parties of and from all Released Claims arising under PAGA during the PAGA Period. (“Released PAGA Claims”). The release of the Released PAGA Claims shall be effective as to all PAGA Members, regardless of whether the individual submitted a request for exclusion from the Class.

d. **Plaintiffs.** As of the Effective Date and funding, Plaintiffs will be deemed to have released and discharged the Released Class Claims and Released PAGA Claims. Plaintiffs will also be deemed to have generally released and discharged the Released Parties from any and all claims, causes of action, and primary rights arising from transactions or occurrences between them that occurred during the Class Period (“Plaintiffs’ Released Claims”), including without limitation all claims arising from their employment with Defendant, separation of employment from Defendant, and any acts that have or could have been asserted in any legal action or proceeding against Defendant, whether known or unknown, arising under any federal, state or local law or statute, including, inter alia, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs.

Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits, claims outside the Class Period, and Plaintiff Noguera’s claims for wrongful termination and violation of Government Code § 12940 which are being separately settled under the Individual Settlement Agreement.

Plaintiffs acknowledge that they may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the claims and matters released by way of this Agreement and agree, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

e. **Plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard, and Edmundo Flores's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payments, the Plaintiffs' Released Claims relating to plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard, and Edmundo Flores includes a waiver and relinquishment of the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to 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.

f. **Plaintiff Noguera's Arbitration.** Plaintiff Noguera represents that he has additional claims against Defendant consisting of the claims for wrongful termination and violation of Government Code § 12940 alleged in the Arbitration. These claims are the subject of a separate Individual Settlement Agreement. Class Counsel shall file a declaration with the Court affirming that the consideration given under the Individual Settlement Agreement is unrelated to and separate from this Settlement.

g. **Class Counsel.** As of the date the Defendant fully funds the Gross Settlement Amount, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.

54. **Limitation on Public Statements About Settlement.** Neither Class Counsel nor Defendant's Counsel shall publicize the Settlement prior to the Court granting preliminary approval, other than filing documents with the Court. Plaintiffs and Class Counsel and Defendant and Defendant's Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiffs or Class Counsel or Defendant or Defendant's Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiffs from making any required disclosures.

55. **No Effect on Other Benefits.** The Class and PAGA Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement, and Plaintiffs, Participating Class Members and PAGA Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

IV. MISCELLANEOUS TERMS.

56. **No Admission of Liability or Class Certification for Other Purposes.**

a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiffs, Class Members, or any other person, and Defendant specifically disclaim any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiffs that Plaintiffs' claims do not have merit or that class action is inappropriate.

b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability,

fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

57. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.

58. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

59. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

60. **Modification of Agreement.** Except as set forth in section III.H.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.

61. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

62. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.

63. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

64. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

65. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.

66. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

67. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Spencer C. Skeen
Marlene M. Moffitt
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92112
Tel.: (858) 652-3110
Fax: (858) 652-3101
Email: spencer.skeen@ogletreedeakins.com
Marlene.moffitt@ogletree.com

68. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

69. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the

date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with the Louis Marlin on April 29, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.

70. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

EXECUTION BY PARTIES

Dated: Jan 5, 2022

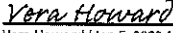
Oscar Noguera (Jan 5, 2022 16:28 PST)
Plaintiff Oscar Noguera

Dated: Jan 5, 2022

Valerie Campos Flores (Jan 5, 2022 20:25 PST)
Plaintiff Valerie Campos Flores

Dated: Jan 5, 2022

Daniel Martinez (Jan 5, 2022 20:21 PST)
Plaintiff Daniel Martinez

Dated: Jan 5, 2022

Vera Howard (Jan 5, 2022 17:17 PST)
Plaintiff Vera Howard

Dated: Jan 5, 2022

Edmundo Campos Flores (Jan 5, 2022 21:19 PST)
Plaintiff Edmundo Flores

Dated: _____

[name]
For Defendant Metal Container Corporation

APPROVED AS TO FORM:

Dated: 1/6/22

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: _____

Spencer C. Skeen
Marlene M. Moffitt
Ogletree, Deakins, Nash, Smoak & Stewart
Attorney for Defendant

date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with the Louis Marlin on April 29, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.

70. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

EXECUTION BY PARTIES

Dated: _____
Plaintiff Oscar Noguera

Dated: _____
Plaintiff Valerie Campos Flores

Dated: _____
Plaintiff Daniel Martinez

Dated: _____
Plaintiff Vera Howard

Dated: _____
Plaintiff Edmundo Flores

Dated: <u>1/19/2022</u>	DocuSigned by:  9E244132819544B...	DocuSigned by:  7657086627074EE...
	<u>Kevin Eggleston</u> [name] For Defendant Metal Container Corporation	<u>Lucas Pendry</u>

APPROVED AS TO FORM:

Dated: _____
 Norman Blumenthal
 Blumenthal Nordrehaug Bhowmik De Blouw LLP
 Attorney for Plaintiffs

Dated: Jan 20, 2022

 Spencer C. Skeen
 Marlene M. Moffitt
 Ogletree, Deakins, Nash, Smoak & Stewart
 Attorney for Defendant

EXHIBIT A
[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

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

***Noguera v. Metal Container Corporation*, Superior Court of the
State of California, County of Riverside, Case No. RIC2003235**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	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 this notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the class action portion of the Settlement and you will not be bound by the class action portion of the Settlement. Instructions are set forth in Section 7 below.
Object	Write to the Settlement Administrator about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided in Section 8 below.
Final Approval Hearing	The Court will hold a Final Approval Hearing at _____ on _____, 2022 at the Riverside County Superior Court, located at 400 Main Street, Riverside, California, in Department 6 before Judge Sunshine Sykes. The hearing may be rescheduled by the Court without further notice to you.

Your options are further explained in this Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class and PAGA action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Riverside (the "Court") has been reached between Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera Howard, and Edmundo Flores (collectively, "Plaintiffs") and Defendant Metal Container Corporation ("Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Notice because you have been identified as a member of the Class, which is defined as:

All individuals who are current or former non-exempt employees employed by Defendant in California at any time during the Class Period (“Class Members” or “Class”).

The “Class Period” is August 17, 2016 through September 1, 2021.

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is the lawsuit about?

On August 17, 2020, Plaintiffs initiated a class action against Defendant, entitled *Oscar Noguera, et al. v. Metal Container Corporation*, Riverside Superior Court, Case No. RIC 2003235 (“Class Action”). The Class Action asserted the following class claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide meal period, failure to provide rest periods, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to pay wages timely at termination.

On October 9, 2020, plaintiff Oscar Noguera filed a Complaint against Defendant titled *Oscar Noguera v. Metal Container Corporation*, Riverside Superior Court, Case No. RIC 2004156 (“PAGA Action”). The PAGA Action asserted a single cause of action for violation of the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). On October 16, 2020, Plaintiffs sent an amended PAGA Notice to the LWDA which added plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores and clarified violations under California Labor Code Section 226(a), among things (together with plaintiff Noguera’s prior letter to the LWDA dated June 18, 2020, the “PAGA Letters”).

On June 16, 2021, the Court ordered the PAGA Action consolidated under the Class Action (together, the “Action”). On [REDACTED], Plaintiffs filed a Consolidated Complaint in the Class Action which combined both the class claims and the PAGA claims against Defendant into a single action.

Defendant denies and disputes all such claims. Specifically, Defendant contends Plaintiffs and the Class Members were properly compensated for all wages under California law; Plaintiffs and the Class Members were provided with meal and rest periods in compliance with California law; Defendant did not fail to provide required reimbursement of expenses; Defendant did not fail to timely pay Plaintiffs or any Class Members any wages allegedly due at the time of their termination; Defendant complied with California wage statement requirements; Defendant did not engage in unlawful or unfair business practices; Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; and the Action cannot be maintained as a class action or PAGA action.

The Court granted preliminary approval of the Settlement on <<[REDACTED] APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) (the “Gross Settlement Amount”) to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Class Settlement Shares to Class Members, the Settlement Administration Expenses, the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Class Settlement Shares allocated to wages shall be separately paid by Defendant.

Within fifteen (15) business days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” means the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Fifteen business (15) days after the settlement is funded, the Settlement Administrator will mail checks for the Class Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Class Settlement Shares are made to Participating Class Members:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,000, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement funds and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed 33% of the Gross Settlement Amount, which is presently \$379,500, and an additional amount to reimburse actual litigation costs incurred by Class Counsel not to exceed \$16,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class and PAGA Members on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Class Representative Service Payments. Class Representative Service Payments in an amount not to exceed Ten Thousand Dollars (\$10,000.00) each to the Plaintiffs, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$25,000 to resolve the claim for penalties under PAGA, \$18,750 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$6,250 will be distributed to the PAGA Members based on their respective pay periods worked during the PAGA Period, which is June 18, 2019 through September 1, 2021. “PAGA Members” are all individuals who are current or former non-exempt employees employed by Defendant in California at any time during the PAGA Period. All PAGA Members will be sent their

PAGA Settlement Share and be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the class portion of the Settlement.

Calculation of Payments to Class Members. After all of the payments of the court-approved Class Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Class Settlement Shares to Participating Class Members (meaning those Class Members who do not opt out or exclude themselves from the Class). The Net Settlement Amount is estimated to be \$664,500. The Class Settlement Share for each Participating Class Member will be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the total number of weeks worked by the Participating Class Members to determine a dollar amount per week (“Weekly Rate”); and (b) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Class Settlement Share. The number of weeks worked will be based on Defendant’s records, however, Class Members have the right to challenge the number of weeks worked as explained below. Your estimated Class Settlement Share is set forth in Section 5 below.

Calculation of Payments to PAGA Members: The PAGA Settlement Share for each PAGA Member will be calculated as follows: (a) the Settlement Administrator shall divide the portion of the PAGA Payment being paid to PAGA Members (\$6,250) by the total number of weeks worked by the PAGA Members to determine a dollar amount per week (“PAGA Weekly Rate”); and (b) the Settlement Administrator shall then take the number of weeks worked by each PAGA Member and multiply it by the PAGA Weekly Rate to calculate their PAGA Settlement Share. The number of weeks worked will be based on Defendant’s records, however, PAGA Members have the right to challenge the number of weeks worked as explained below. Your estimated PAGA Settlement Share is set forth in Section 5 below. You will receive your PAGA Settlement Share (if any) even if you opt out or exclude yourself from the Class.

Tax Matters. Twenty-five percent (25%) of each Class Settlement Share is in settlement of wage claims which are subject to wage withholdings and will be reported on IRS Form W-2. Seventy-five percent (75%) of each Class Settlement Share is in settlement of claims for interest and penalties, which are not subject to wage withholdings and will be reported on IRS Form 1099. Your PAGA Settlement Share (if any) is also not subject to wage withholdings and will be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members and PAGA Members. Neither Class Counsel nor Defendant’s Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. Your tax issues are unique to you, and you may want to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Class and PAGA Settlement Shares to the same address as this Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

4. What Do I Release Under the Settlement?

Released Claims. “Released Claims” are defined as any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, that were pled or that could have been pled against the Released Parties based on the factual allegations, circumstances, and/or primary rights set forth in the Action and PAGA Letters, including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including minimum, regular, and overtime wages); regular rate of pay violations; failure to pay reporting time pay and/or split shift pay; failure to provide compliant meal and/or rest periods and associated premium payments; failure to pay wages timely during employment and upon termination; failure to maintain time and payroll records; failure to provide legally-compliant wage statements, failure to reimburse business expenses; all claims for violation of California Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims; and all claims for penalties under PAGA alleged in the PAGA Letters. Except it shall not include claims for wrongful termination in violation of public policy or violation of the California Government Code § 12940.

“Released Parties” is defined as Defendant and Defendant’s officers, directors, employees and agents

Class Release. As of the Effective Date and funding, Participating Class Members shall be deemed to have released and discharged the Released Parties of and from all Released Claims arising during the Class Period, except those asserted under PAGA (“Released Class Claims”).

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party for the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in this Action will apply to you and legally bind you.

PAGA Release. As of the Effective Date and funding, PAGA Members shall be deemed to have released and discharged the Released Parties of and from all Released Claims arising under PAGA during the PAGA Period. (“Released PAGA Claims”). The release of the Released PAGA Claims shall be effective as to all PAGA Members, regardless of whether the individual submitted a request for exclusion from the Class.

5. How much will my payment be?

Your Class Settlement Share: Defendant’s records reflect that you have <<____>> weeks worked during the Class Period (August 17, 2016 through September 1, 2021). **Based on this information, your estimated Class Settlement Share is <<____>>**, minus applicable withholdings and deductions.

Your PAGA Settlement Share: Defendant’s records reflect that you have <<____>> weeks worked during the PAGA Period (June 18, 2019 through September 1, 2021). **Based on this information, your estimated PAGA Settlement Share is <<____>>**.

Your Class and PAGA Settlement Shares may be paid together in a single check, at the discretion of the Settlement Administrator.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the mailing of the Notice or 60 days in the event of a re-mailing]. A Dispute form is included with this Notice.

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your share of the Settlement will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____ (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement. Please note the hearing could be rescheduled by the Court without further notice to you. If the Court approves the Settlement and there are no objections or appeals, the settlement payments will be mailed approximately two months after this hearing. If there are objections or appeals the payments will be delayed because resolving them can take time, usually more than a year. Please be patient.

Your settlement check must be cashed within 180 days after it is mailed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately by phone to request a replacement ((800) _____). If the total funds from uncashed checks equals or exceeds \$20,000, those funds will be distributed to Participating Class Members who cashed their first checks. If the total funds from uncashed checks is less than \$20,000, the funds will be paid *cy pres* in accordance with C.C.P. § 384 to Chrysalis, a non-profit employment organization. If there is a second distribution, any funds remaining after the second distribution will be paid *cy pres* in accordance with C.C.P. § 384 to Chrysalis.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class or “opt out.” **If you opt out, you will NOT receive your Class Settlement Share and you will not be bound by the release of Released Class Claims.** However, PAGA Members who opt out of the Class will still be paid their PAGA Settlement Share and will remain bound by the release of the Released PAGA Claims, regardless of their request for exclusion.

To opt out of the Class, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) days after the mailing of the Notice or 60 days in the event of a re-mailing]. A Request for Exclusion form is included with this Notice. The Request for Exclusion should state in substance: “I wish to be excluded from the Class in the *Noguera v. Metal Container Corporation* lawsuit.” The Request for Exclusion must state the Class Member’s full name, address, telephone number, last four digits of social security number for verification purposes, the approximate dates of employment in California by Defendant, and the name and number of the case, which is *Noguera v. Metal Container Corporation*, Case No. RIC2003235. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____.
Absent good cause found by the Court, written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing must should the Class Member's name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence should also state the name and number of the case, which is *Noguera v. Metal Container Corporation*, in the Superior Court of the State of California, County of Riverside, Case No. RIC2003235.

All written objections must be mailed to the Settlement Administrator at _____ with copies to the Parties' counsel, no later than _____ [forty-five (45) days after the mailing of the Notice or 60 days in the event of a re-mailing].

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. At this time, all hearings will be held remotely. The hearing may also be rescheduled by the Court without further notice to you. If you need assistance, you may contact Class Counsel. Please check the Court's tentative ruling website for current information concerning appearances and how to attend Court proceedings remotely:
<https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Class Settlement Share. Absent good cause found by the Court, any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Marlene M. Moffitt
Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92112
Tel: 858-652-3110 / Fax: 858-652-3101
Email: marlene.moffitt@ogletree.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, in Department 6 of the Superior Court of California, County of Riverside, 74050 Main Street, Riverside, CA 92501, before Judge Sunshine S. Sykes. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to approve the amount of attorneys' fees, costs and service awards to be awarded. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write *Noguera v. Metal Container Corporation* Settlement Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Noguera v. Metal Container Corporation*. You may also get more details by examining the Court's file via the Public Access site for the California Superior Court for the County of Riverside (<https://ecomm1.riverside.courts.ca.gov/>) and entering the Case No. RIC2003235.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

REQUEST FOR EXCLUSION FORM

Noguera v. Metal Container Corporation, Case No. RIC2003235
California Superior Court for the County of Riverside

To exclude yourself or “opt out” from the Class, complete, sign, and date this form, and then mail it on or before -----, 2022 to the Settlement Administrator at the following address:

CPT _____ _____, _____

INSTRUCTIONS

A. Only complete and return this form if you do **NOT** want to be included in the class action portion of the Settlement. You will **NOT** receive a Class Settlement Share if you return this form and you will not be bound by the release of Released Class Claims, as described in the settlement notice.. However, PAGA Members who opt-out of the Class will still be paid their PAGA Settlement Share and will remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.

B. To exclude yourself or “opt out”, complete, sign, date and return this form. To be effective, this form should be filled out completely and postmarked on or before -----, 2022.

C. You are responsible for maintaining a copy of the fully completed form and proof of mailing.

I want to **OPT-OUT** of the Class in the lawsuit entitled *Noguera v. Metal Container Corporation*, Superior Court of the State of California, County of Riverside, Case No. RIC2003235. I understand that by requesting to be excluded from the Class, I will not receive a Class Settlement Share, as described in the accompanying Notice.

Name: _____

Address: _____

Telephone Number: _____

Last 4 Digits of SSN: _____

Dates of Employment with Defendant Metal Container Corporation:

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

(Sign your name here)

Date

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiffs,

v.

METAL CONTAINER CORPORATION., a
California Corporation; and Does 1 through
50, Inclusive,

Defendants.

CASE NO.: **RIC2003235**
[Consolidated with RIC2004156]

OBJECTION FORM

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Sunshine S. Sykes
Dept.: 6

OBJECTION FORM

USE THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY, AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE _____.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection.

[] I OBJECT to the *Noguera v. Metal Container Corporation* Settlement on the following grounds:

[Form continues on reverse side]

[] I will attend the hearing on the motion for final approval of the settlement

[] I am or will be represented by an attorney (provide name and address of attorney on lines below)

(Your Signature)

(Date)

(Print Your Name)

(Your Address)

(Print Last Four Digits of Social Security Number)

(City/State/Zip Code)

Submit your fully completed and signed Objection Form as follows:

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NOT LATER THAN _____, 2022:

Noguera v. Metal Container Corporation Claims Administrator
c/o _____

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiffs,

v.

METAL CONTAINER CORPORATION., a
California Corporation; and Does 1 through
50, Inclusive,

Defendants.

CASE NO.: **RIC2003235**
[Consolidated with RIC2004156]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Sunshine S. Sykes
Dept.: 6

Action Filed: August 17, 2020
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter came on for a regularly-noticed hearing before the Honorable Sunshine Sykes
2 of the Superior Court of the State of California, in and for the County Riverside, on
3 _____[DATE], for the motion by Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel
4 Martinez, Vera Howard, and Edmundo Flores (collectively, “Plaintiffs”) for preliminary approval
5 of the Class and PAGA Settlement with Defendant Metal Container Corporation (“Defendant”).
6 The Court, having considered the briefs, argument of counsel and all matters presented to the
7 Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of
8 Class Action and PAGA Settlement.

9
10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Class and PAGA Settlement Agreement
12 (“Agreement”) submitted as Exhibit _____ to the Declaration of Kyle Nordrehaug in Support of
13 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement. This is based
14 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
15 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
16 Procedure and California Rules of Court, rule 3.769.

17 2. This Order incorporates by reference the definitions in the Agreement, and all
18 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

19 3. The Gross Settlement Amount is One Million One Hundred Fifty Thousand Dollars
20 (\$1,150,000.00). It appears to the Court on a preliminary basis that the settlement amount and
21 terms are fair, adequate and reasonable as to all potential Class Members and PAGA Members,
22 when balanced against the probable outcome of further litigation and the significant risks relating
23 to certification, liability and damages issues. It further appears that investigation and research
24 have been conducted such that counsel for the Parties are able to reasonably evaluate their
25 respective positions and that settlement at this time will avoid substantial additional costs by all
26 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
27 the Action. The Settlement appears to have been reached as the result of serious and non-

1 collusive, arms-length negotiations. The Court therefore preliminarily finds that the Settlement is
2 fair, adequate, and reasonable when balanced against the probable outcome of further litigation
3 and the significant risks relating to certification, liability, and damages issues.

4 4. The Agreement specifies for an attorneys' fees award not to exceed 33% of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$16,000, and
6 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
7 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
8 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
9 evidence supporting these requests, including lodestar, prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the following Class: "all individuals who are
14 current or former non-exempt employees employed by Defendant in California at any time during
15 the Class Period." The Class Period is August 17, 2016 through September 1, 2021.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
22 the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient resolution of this controversy; and (f)
24 counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
25 representatives of the Class.

26 7. The Court provisionally appoints Plaintiffs as the representatives of the Class,
27 California Labor and Workforce Development Agency ("LWDA") and PAGA Members. The
28

1 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
2 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Counsel for the Class, LWDA, and
3 PAGA Members.

4 8. The Court hereby approves, as to form and content, the Notice of Proposed
5 Settlement of Class and PAGA Actions and Hearing Date for Final Court Approval (“Class and
6 PAGA Notice”) along with the Objection Form and Exclusion Form, submitted as Exhibit A to the
7 Agreement. The Court finds that the Class and PAGA Notice appears to fully and accurately
8 inform the Class and PAGA Members of all material elements of the proposed Settlement, of the
9 Class Members’ right to be excluded from the Class by submitting a written opt-out request, and
10 of each member’s right and opportunity to object to the Settlement. The Court further finds that
11 the distribution of the Class and PAGA Notice substantially in the manner and form set forth in
12 the Agreement and this Order meets the requirements of due process, is the best notice practicable
13 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
14 thereto. The Court orders the mailing of the Notice Packet by first class mail pursuant to the terms
15 set forth in the Agreement. If a Notice Packet is returned because of an incorrect address, the
16 Settlement Administrator will promptly search for a more current address and re-mail the Notice
17 Packet no later than fourteen days after the receipt of the undelivered Notice Packet.

18 9. The Court hereby appoints CPT as Settlement Administrator. No later than
19 fourteen (14) calendar days after preliminary approval of the Settlement by the Court, Defendant
20 shall provide to the Settlement Administrator an electronic spreadsheet with the Class Data. The
21 Settlement Administrator will perform address updates and verifications as necessary prior to the
22 mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no event later
23 than 14 days after receiving the Class information spreadsheet, the Settlement Administrator will
24 mail the Class Notice to all Class Members via first-class U.S. Mail.

25 10. The Court hereby preliminarily approves the proposed procedure for exclusion
26 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
27 from the Class as provided in the Class and PAGA Notice by following the instructions for
28

1 requesting exclusion from the Class that are set forth in the Class and PAGA Notice. All requests
2 for exclusion must be postmarked by no later than forty-five (45) calendar days after the date of
3 the mailing of the Notice Packet and received by the Settlement Administrator. If the Notice
4 Packet is re-mailed, the response date for requests for exclusion will be extended an additional 15
5 days. Any such person who chooses to opt out of and be excluded from the Class will not be
6 entitled to any recovery under the Settlement and will not be bound by the Settlement or have any
7 right to object, appeal or comment thereon. Class Members who have not requested exclusion
8 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
9 exclusion may only opt out that particular individual, and any attempt to effect an opt out of a
10 group, class, or subclass of individuals is not permitted and will be deemed invalid.

11 11. Any Class Member who has not opted out may appear at the final approval hearing
12 and may object or express the Member's views regarding the Settlement, and may present
13 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
14 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
15 calendar days from the date of the mailing of the Notice Packets to submit their written objections
16 to the Settlement Administrator in accordance with the instructions in the Class and PAGA Notice.
17 If the Notice Packet is re-mailed, the response date for written objections will be extended an
18 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
19 make an oral objection.

20 12. A Final Approval Hearing shall be held before this Court on _____
21 _____ at _____ in Department 6 at the Riverside Historic Courthouse of the
22 Riverside County Superior Court located at 400 Main Street, Riverside, California, to determine
23 all necessary matters concerning the Settlement, including: whether the proposed settlement of the
24 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
25 and should be finally approved by the Court; whether the Final Approval Order and Judgment
26 should be entered herein; whether the plan of allocation contained in the Agreement should be
27 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'

1 fees and costs, the service award, and the expenses of the Settlement Administrator. All papers in
2 support of the motion for final approval and the motion for attorneys' fees, costs and service
3 awards shall be filed with the Court and served on all counsel no later than sixteen (16) court days
4 before the hearing.

5 13. Neither the Settlement nor any exhibit, document, or instrument delivered
6 thereunder shall be construed as a concession or admission by Defendant in any way that the
7 claims asserted have any merit or that this Action was properly brought as a class or representative
8 action, and shall not be used as evidence of, or used against Defendant as, an admission or
9 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
10 omission by Defendant or with respect to the truth of any allegation asserted by any person.
11 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
12 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
13 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
14 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
15 evidence of a presumption, concession, indication or admission by Defendant of any liability,
16 fault, wrongdoing, omission, concession or damage.

17 14. In the event the Settlement does not become effective in accordance with the terms
18 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the Parties shall revert to their respective positions as of before entering into the Agreement,
21 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that any claim in the
23 Action could not be certified as a class action and/or managed as a representative action. In such
24 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
25 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
26 the Agreement with respect to the effect of the Agreement if it is not approved.

1 15. The Court reserves the right to adjourn or continue the date of the final approval
2 hearing and all dates provided for in the Agreement without further notice to Class Members, and
3 retains jurisdiction to consider all further applications arising out of or connected with the
4 proposed Settlement.

5 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
6 further orders of the Court at the Final Approval Hearing.

7 **IT IS SO ORDERED.**

8
9 Dated: _____

HON. SUNSHINE S. SYKES
JUDGE, SUPERIOR COURT OF CALIFORNIA

11 49809748.1

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

49494780.1

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiffs,

v.

METAL CONTAINER CORPORATION., a
California Corporation; and Does 1 through
50, Inclusive,

Defendants.

CASE NO.: RIC2003235
[Consolidated with RIC2004156]

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Sunshine S. Sykes
Dept.: 6

Action Filed: August 17, 2020
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera
2 Howard, and Edmundo Flores (collectively, “Plaintiffs”) for an order finally approving the Class
3 and PAGA Settlement Agreement (“Agreement”) with Defendant Metal Container Corporation
4 (“Defendant”), attorneys’ fees and costs, service payments, and the fees and expenses of the
5 Settlement Administrator duly came on for hearing on _____ before the Honorable
6 Sunshine S. Sykes.

7
8 **I.**

9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

- 12 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 13 2. This Court has jurisdiction over the subject matter of this litigation pending before
14 the California Superior Court for the County of Riverside, and over all Parties to this litigation,
15 including the Class.
- 16 3. Based on a review of the papers submitted by Plaintiffs and a review of the
17 applicable law, the Court finds that the Gross Settlement Amount of Metal Container Corporation
18 and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On _____, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Court-approved Class and
4 PAGA Notice was mailed by first class mail to members of the Class at their last known addresses
5 on or about _____. Mailing of the Class and PAGA Notice to their last known
6 addresses was the best notice practicable under the circumstances and was reasonably calculated
7 to communicate actual notice of the litigation and the proposed settlement to the Class. The Class
8 and PAGA Notice fully and accurately informed the Class Members and PAGA Members of all
9 material elements of the proposed Settlement and of their opportunity to object to or comment
10 thereon or to seek exclusion from the Class; was valid, due, and sufficient notice to all Class
11 Members and PAGA Members; and complied fully with the laws of the State of California, the
12 United States Constitution, due process and other applicable law. The Class and PAGA Notice
13 fairly and adequately described the Settlement and provided adequate instructions and a variety of
14 means to obtain additional information.

15 7. The deadline for opting out of the Class or submitting written objections to the
16 Settlement was _____, which for re-mailings was extended by 15 days. There was an
17 adequate interval between notice and the deadline to permit Class Members and PAGA Members
18 to choose what to do and act on their decision. A full opportunity has been afforded to the Class
19 Members and PAGA Members to participate in this hearing, and all Class Members and other
20 persons wishing to be heard have been heard. Class Members also have had a full and fair
21 opportunity to exclude themselves from the Class. Accordingly, the Court determines that all
22 Class Members who did not timely and properly submit a request for exclusion are bound by the
23 Settlement and this Final Approval Order and Judgment.

24 **Fairness Of Settlement**

25 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
26 48 Cal.App.4th 1794, 1801 (1996).

27 a. The settlement was reached through arm's-length bargaining between the
28

1 parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
2 wage and hour class actions. There has been no collusion between the parties in reaching the
3 proposed settlement.

4 b. Plaintiffs' investigation and discovery have been sufficient to allow the
5 Court and counsel to act intelligently.

6 c. Counsel for both parties are experienced in similar employment class action
7 litigation. All counsel recommended approval of the Agreement.

8 d. The percentage of objectors and requests for exclusion is small. ____
9 objections were received. _____ requests for exclusion were received.

10 e. The participation rate was high. _____ Class Members will be mailed a
11 settlement payment, representing _____% of the overall Class.

12 9. The consideration to be given to the Class Members and PAGA Members under the
13 terms of the Agreement is fair, reasonable and adequate considering the strengths and weaknesses
14 of the claims asserted in this action and is fair, reasonable and adequate compensation for the
15 release of the Released Claims, given the uncertainties and significant risks of the litigation and
16 the delays which would ensue from continued prosecution of the Action.

17 10. The Agreement is approved as fair, adequate and reasonable and in the best
18 interests of the Class Members, LWDA, and PAGA Members.

19 **Attorneys' Fees and Costs**

20 11. An award of \$_____ for attorneys' fees, representing 33% of the Gross
21 Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable, in
22 light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the
23 results achieved by Class Counsel. The requested award has been supported by Class Counsel's
24 lodestar and billing statement.

25 **Class Representative Service Payments**

26 12. The Agreement provides for a Class Representative Service Payments of not more
27 than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that Class
28

1 Representative Service Payments in the amount of \$_____ to each of the Plaintiffs is reasonable
2 in light of the risks and burdens undertaken by the Plaintiffs in the litigation, for the time and
3 effort in bringing and prosecuting this matter on behalf of the Class, and for the execution of a
4 general release.

5 **Settlement Administration Expenses**

6 13. The Settlement Administrator shall calculate and administer the payment to be
7 made to the Class Members and PAGA Members, transmit payment for attorneys' fees and costs
8 to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs, distribute
9 the PAGA Payment, issue any required tax reporting forms, calculate withholdings and perform
10 the other remaining duties set forth in the Agreement. The Settlement Administrator has
11 documented \$_____ in fees and expenses, and this amount is reasonable in light of the work
12 performed by the Settlement Administrator.

13 **PAGA Payment**

14 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
15 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
16 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
17 PAGA Members based on their respective pay periods worked during the PAGA Period. The
18 Court finds this PAGA Payment to be reasonable. All PAGA Members will be sent their share of
19 the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth
20 below, whether or not they opt out of the Settlement. The LWDA was provided notice of the
21 Agreement and these settlement terms and has indicated no objection thereto. The Court finds this
22 PAGA Payment to be reasonable.

23
24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
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1 1. The certification of the Class for the purposes of settlement is confirmed. The
2 Class is defined as follows:

3 All individuals who are current or former non-exempt employees employed by
4 Defendant in California at any time during the Class Period (August 17, 2016
through September 1, 2021).

5 2. All persons who meet the foregoing definition are members of the Class, except for
6 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
7 REFERENCE TO IDENTIFY ANY OPT OUTS].

8 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
9 best interest of the Class.

10 4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
11 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
12 compensation or reimbursement from Defendant, Plaintiffs or members of the Class.

13 5. The payment of the Class Representative Service Payments in the amount of \$
14 _____ to each of the Plaintiffs is approved.

15 6. The payment of \$_____ to the Settlement Administrator for their fees and
16 expenses is approved.

17 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
18 with the Agreement.

19 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
20 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
21 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
22 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
23 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
24 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
25 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
26 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
27 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
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1 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
2 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
3 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
4 theory of claim or issue preclusion or similar defense as to the Released Claims.

5 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
6 Parties by Class Counsel on behalf of Plaintiffs and all Class Members and PAGA Members. The
7 Final Approval Order and Judgment shall be posted on Class Counsel's website as set forth in the
8 Class Notice to the Class. It shall not be necessary to send notice of entry of this Final Approval
9 Order and Judgment to individual Class Members and PAGA Members.

10 10. If the Agreement does not become final and effective in accordance with the terms
11 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
12 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
13 revert to their respective positions as of before entering into the Agreement, and expressly reserve
14 their respective rights regarding the prosecution and defense of this Action, including all available
15 defenses and affirmative defenses, and arguments that any claim in the Action could not be
16 certified as a class action and/or managed as a representative action.

17
18 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

19 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
20 Plaintiffs, Class Members, and PAGA Members, shall take nothing in the Action.

21 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
22 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
23 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
24 arising from or in connection with the distribution of settlement benefits.

25 3. Each party shall bear its own attorneys' fees and costs, except as otherwise
26 provided in the Agreement and in this Final Approval Order and Judgment.

1 4. As of the Effective Date and funding, Participating Class Members shall be deemed
2 to have released and discharged the Released Parties of and from all Released Claims arising
3 during the Class Period, except those asserted under PAGA (“Released Class Claims”).

4 5. As of the Effective Date and funding, PAGA Members shall be deemed to have
5 released and discharged the Released Parties of and from all Released Claims arising under PAGA
6 during the PAGA Period. (“Released PAGA Claims”). The release of the Released PAGA Claims
7 shall be effective as to all PAGA Members, regardless of whether the individual submitted a
8 request for exclusion from the Class.

9 6. As used in paragraphs 4 and 5 above, the quoted terms have the meanings set forth
10 below:

11 (a) “Released Claims” are defined as any and all claims for wages, damages,
12 unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation
13 costs, restitution, or equitable relief, that were pled or that could have been pled against the
14 Released Parties based on the factual allegations, circumstances, and/or primary rights set forth in
15 the Action and PAGA Letters, including all claims under the California Labor Code, Industrial
16 Welfare Commission Wage Orders and applicable law for: failure to pay wages (including
17 minimum, regular, and overtime wages); regular rate of pay violations; failure to pay reporting
18 time pay and/or split shift pay; failure to provide compliant meal and/or rest periods and
19 associated premium payments; failure to pay wages timely during employment and upon
20 termination; failure to maintain time and payroll records; failure to provide legally-compliant
21 wage statements, failure to reimburse business expenses; all claims for violation of California
22 Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims; and
23 all claims for penalties under PAGA alleged in the PAGA Letters. Except it shall not include
24 claims for wrongful termination in violation of public policy or violation of the California
25 Government Code § 12940.

26 (b) "Released Parties" collectively means Defendant and Defendant’s officers,
27 directors, employees and agents.

1 7. As of the Effective Date and funding, Plaintiffs will be deemed to have released
2 and discharged the Released Class Claims and Released PAGA Claims. Plaintiffs will also be
3 deemed to have generally released and discharged the Released Parties from any and all claims,
4 causes of action, and primary rights arising from transactions or occurrences between them that
5 occurred during the Class Period (“Plaintiffs’ Released Claims”) as set forth fully in the
6 Agreement.

7 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

8
9 Dated: _____

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11 _____
12 HON. SUNSHINE S. SYKES
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
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FIRM RESUME

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ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

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Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

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Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

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Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

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Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

4G Wireless Wage Cases, Orange County Superior Court, JCCP No. 4736; Classic Party Rentals Wage & Hour Cases, Los Angeles Superior Court, Case No. JCCP No. 4672; Abu-Arafeh v. Norco Delivery Service, Inc., San Francisco County Superior Court, Case No. CGC-14-540601; Aburto v. Verizon, U.S. District Court, Southern District California, Case No. 11-cv-0088; Adkins v. Washington Mutual Bank, Class Certification Granted, San Diego County Superior Court, Case No. GIC819546; Agah v. CompUSA, U.S. District Court, Central District of California, Case No. SA CV05-1087 DOC (Anx); Akers v. The San Diego Union Tribune, San Diego County Superior Court, Case No 37-2010-00088571; Altman v. SolarCity Corporation, San Diego County Superior Court, Case No. 37-2014-00023450-CU-OE-CTL; Aquino v. Macy's West Stores, Orange County Superior Court, Case No. 30-2010-00395420; Baker v. Advanced Disability Management, Inc., Sacramento County Superior Court, Case No. 34-2014-00160711; Barcia v. Contain-A-Way, U.S. District Court, Southern District California, Case No. 07 cv 0938; Bates v. Verengo, Inc., Orange County Superior Court, Case No. 30-2012-00619985-CU-OE-CXC; Battle v. Charming Charlie Inc., San Diego

County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Diary, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

District of California, Case No. 09-cv-1736; Francisco v. Diebold, U.S. District Court, Southern District of California, Case No. 09-cv-1889; Friend v. Wellpoint, Los Angeles Superior Court, Case No. BC345147; Frudakis v. Merck Sharp & Dohme, U.S. District Court, Central District California, Case No. SACV 11-00146; Fulcher v. Olan Mills, Inc., U.S. District Court, Northern District of California, Case No. 11-cv-1821; Gabisan v. Pelican Products, U.S. District Court, Southern District California, Case No. 08 cv 1361; Galindo v. Sunrun Installation Services Inc., San Diego County Superior Court, Case No. 37-2015-00008350-CU-OE-CTL; Gallagher v. Legacy Partners Commercial, Santa Clara County Superior Court, Case No. 112-cv-221688; Ghattas v. Footlocker Retail, Inc., U.S. District Court Central District of California, Case No. CV 13-0001678 PA; Gibson v. World Savings, Orange County Superior Court, Case No. 762321; Goerzen v. Interstate Realty Management, Co., Stanislaus County Superior Court, Case No. 679545; Gomez v. Enterprise Rent-A-Car, U.S. District Court, Southern District of California, Case No. 3:10-cv-02373; Gordon v. Wells Fargo Bank, U.S. District Court, Southern District of California, Case No. 3:11-cv-00090; Grabowski v. CH Robinson, U.S. District Court, Southern District of California, Case No. 10-cv-1658; Gross v. ACS Compiq Corporation, Orange County Superior Court, Case No. 30-2012-00587846-CU-OE-CXC; Gripenstraw v. Buffalo Wild Wings, U.S. District Court, Eastern District of California, Case No. 12-CV-00233; Gruender v. First American Title, Orange County Superior Court, Case No. 06 CC 00197; Guillen v. Univision Television Group, Inc. & Univision Management Co., San Francisco County Superior Court, Case No. CGC-12-526445; Gujjar v. Consultancy Services Limited, Orange County Superior Court, Case No. 30-2010-00365905; Gutierrez v. Five Guys Operations, LLC, San Diego County Superior Court, Case No. 37-2012-00086185-CU-OE-CTL; Handler v. Oppenheimer, Los Angeles Superior Court, Civil Action No. BC343542; Harley v. Tavistock Freebirds, LLC, Sacramento County Superior Court, Case No. 34-2014-00173010; Harrington v. Corinthian Colleges – Class Certification Granted, Orange Superior Court; United States Bankruptcy Court District of Delaware; Harvey v. PQ Operations, Inc., Los Angeles County Superior Court, Case No. BC497964; Henshaw v. Home Depot U.S.A., United States District Court, Central District of California, Case No. SACV10-01392; Heithold v. United Education Institute, Orange County Superior Court, Case No. 30-2013-00623416-CU-OE-CXC; Hibler v. Coca Cola Bottling, Settled U.S. District Court, Southern District of California, Case No. 11cv0298; Hildebrandt v. TWC Administration LLC & Time Warner NY Cable, LLC, U.S. District Court, Central District of California, Case No. ED-cv-13-02276-JGB; Hopkins v. BCI Coca-Cola Bottling Company of Los Angeles, United states District Court, Central District of California; U.S. Court of Appeals 9th Circuit; Howard v. Southern California Permanente Medical Group, Los Angeles Superior Court, Case No. BC586369; Hughes v. Parexel International, Los Angeles County Superior Court, Case No. BC485950; Hurley v. Comcast of California/Colorado/Texas/Washington, Inc., Sonoma County Superior Court, Case No. SCV-253801; Irving v. Solarcity Corporation, San Mateo County Superior Court, Case No. CIV525975; Jacobs v. Nu Horizons - Settled Santa Clara County Superior Court, Case No. 111cv194797; Jefferson v. Bottling Group LLC (Pepsi) - Class Certification Granted, Orange County Superior Court, Case No. 30-2009-0018010; Jones v. E*Trade Mortgage, U.S. District Court, Southern District California Case No. 02-CV-1123 L (JAH); Kennedy v. Natural Balance - Dismissal Reversed on Appeal, San Diego Superior Court, Case No. 37-2007-00066201; Keshishzadeh v. Arthur J. Gallagher Service Co., U.S. District Court, Southern District of California, Case No. 09-cv-0168; Kinney v. AIG Domestic Claims / Chartis, U.S. District Court, Central District of California, Case No. 8:10-cv-00399; Kizer v. Tristar Risk Management, Orange County Superior Court, Case No. 30-2014-00707394-CU-OE-CXC; Kleinberg v. Reeve Trucking Company, Inc., San Diego County Superior Court, Case No. 37-2015-00001601-CU-OE-CTL; Kove v. Old Republic Title, Alameda County Superior Court, Case No. RG09477437; Krellcom v. Medley Communications, Inc., San Diego County Superior Court, Case No. 37-2013-00050245-CU-OE-CTL; Ladd v. Extreme Recovery, LP, Contra Costa County Superior Court, Case No. MSC11-02790; Langille v. EMC, U.S. District Court, Southern District of California, Case No. 09-cv-0168; Lawson v. Marquee Staffing, Los Angeles County Superior Court, Case No. 37-2012-00103717-

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Navajo Express, Inc. – San Bernardino County Superior Court, Case No. CIVDS1613846; Lara v. Commercial Protective Service, Inc. – Los Angeles County Superior Court, Case No. BC648921; Picos v. Culinart of California, Inc. – San Diego County Superior Court, Case No. JCCP 4892; Samaniego v. A&I Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV01894; Bailey v. Romanoff Floor Covering, Inc. – U.S. District Court, Eastern District of California, Case No. 17-CV-00685-TLN-CMK; Aguirre v. Bitech, Inc. – Sacramento County Superior Court, Case No. 34-2016-002022; Phillips v. DI Overnite LLC – San Diego County Superior Court, Case No. 37-2016-00016800-CU-OE-CTL; Jacob v. Pride Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV1337; Bennett v. Heartland Express, Inc. of Iowa – San Diego County Superior Court, Case No. 37-2016-00015056-CU-OE-CTL; Stapf v. Mercer Health & Benefits Administration LLC – Los Angeles County Superior Court, Case No. BC643007; Armstrong v. Ruan Transport Corporation – San Bernardino County Superior Court, Case No. CIVDS1605897; Geiger v. Floyd’s 99-California LLC – Orange County Superior Court, Case No. 30-2016-00874943-CU-OE-CXC; Mondrian v. Trius Trucking, Inc. – Fresno County Superior Court, Case No. 16CECG01501; Johnson v. Fedex Office and Print Services, Inc. – Alameda County Superior Court, Case No. RG17856291; Rios v. Pacific Western Bank – San Diego County Superior Court, Case No. 37-2016-00038083; Sanders v. Old Dominion Freight Lines, Inc. – San Diego County Superior Court, Case No. 37-2016-00030725-CU-OE-CTL; Taylor v. Gardner Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1614280; Couture v. Wal-Mart Associates, Inc. – U.S. District Court, Eastern District of California, case No. 16-CV-02202-VC; Bertuol v. AHMC Anaheim Regional Medical Center LP – Orange County Superior Court, Case No. 30-2017-00899024-CO-OE-CXC; Espinoza v. Prime Communications of California, LLC – San Mateo County Superior Court, Case No. 16CIV01563; Archuletta v. Tidy Services, Inc. – Orange County Superior court, Case No. 30-2016-008611892-CU-OE-CXC; Puccini v. Earthbound Farm, LLC – Santa Clara County Superior Court, Case No. 17CV308643; Vikram v. First Student Management, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-04656-KAW; Blair v. Ashley Distribution Services, LTD. – U.S. District Court, Central District of California, Case No. 17-CV-01427-JAK-SP; Richardson v. Service Staffing, LLC – Orange County Superior Court, Case No. 30-2017-00899039-CU-OE-CXC; Coffin v. Certified Freight Logistics, Inc. – San Diego County Superior Court, Case No. 37-2016-00036523-CU-OE-CTL; Encarnacion v. S.A.S. Services Group, Inc. – San Diego County Superior Court, Case No. 37-2017-00026726-CU-OE-CTL; Vasquez v. Golden State Overnight Delivery Service, Inc. – Alameda County Superior Court, Case No. RG17862924; Karr v. Tristar Managed Care, Inc. – Contra Costa Superior Court, case No. MSC17-00650; Gouveia v. Central Cal Transportation – San Joaquin County Superior Court, Case No. STK-CV-UOE-2017-0001765; Miranda v. Genex Services, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-01438-JD; Spears v. Health Net of California, Inc. – Sacramento County Superior Court, Case No. 34-2017-00210560; Martinez v. Geil Enterprises, Inc. – Fresno County Superior Court, Case No. 17CECG01879; McComack v. Marriott Ownership Resorts, Inc. – U.S. District Court, Southern District of California, Case No. 17CV1663 BEN WVG; Velasco v. Lemonade Restaurant Group, LLC – Los Angeles County Superior Court, Case No. BC672235; Smith v. Personnel Services, Inc. – U.S. District Court, Northern District of California, Case NO. 17-CV-03594-SK; Gabriel v. Kuni SDA, LLC – San Diego County Superior Court, Case No. 37-2017-000251191-CU-OE-CTL; Miller v. Mattress Firm, Inc. – Santa Clara County Superior Court, Case No. 17CV313148; Provost v. Yourmechanic, Inc. – San Diego County Superior Court, Case No. 37-2017-00024056-CU-OE-CTL; Zirpolo v. UAG Stevens Creek II, Inc. – Santa Clara County Superior Court, Case No. 17CV313457; Salazar v. Aids Healthcare Foundation – San Diego County Superior Court, Case No. 37-2017-00033482-CU-OE-CTL; Knipe v. Amazon.com, Inc. – San Diego County Superior Court, Case No. 37-2017-00029426-CU-OE-CTL; Erwin v. Caremeridian, LLC – Fresno County Superior Court, Case No. 17CECG03048; Davis v. Cox Communications California, LLC – U.S. District Court, Southern District of California, Case No. 16-CV-00989-BAS-BLM; Lara v. RMI International, Inc. – Los Angeles County Superior Court, Case No. BC597695; Harper v. C.R. England, Inc. – U.S. District Court, Utah Central

Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC



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Case Name: Metal Container

Date: **June 17, 2021**

All-In Settlement

Requesting Attorney: **Kyle Nordrehaug**

* Class Members: **350**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **Blumenthal, Nordrehaug, et al.**

Opt-Outs Received: **5**

Telephone: **(858) 367-9913**

Postage Total: **\$709.14**

Email: kyle@bamlawca.com

Grand Total: **\$14,061.19**

***** DISCOUNTED FLAT FEE: \$11,500.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 5 opt-out's filed. Any additional opt-out's filed above 5 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	3	\$285.00
System Programming/Data Base Setup	\$150.00	3	\$450.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Total			\$1,035.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form / Postage (up to 1 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.35	350	\$122.50
Mailing of Notice Pack	\$1.00	350	\$350.00
Estimated Postage (up to 1 oz.)*	\$0.51	350	\$178.50
Total			\$991.00

*Additional charges will apply if the postage exceeds 1 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	35	\$17.50
Skip Traces	\$1.25	30	\$37.50
Remail Packs	\$1.35	26	\$35.10
Estimated Postage (up to 1 oz.)	\$0.51	26	\$13.26
Clerical Staff	\$60.00	1	\$60.00
Total			\$163.36

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$5.00	5	\$25.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.51	1	\$0.51
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	70	\$210.00
Total			\$1,010.51

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	345	\$69.00
Total			\$504.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	345	\$862.50
Estimated Postage (up to 1 oz.)	\$0.51	345	\$175.95
Reminder Postcard	\$0.35	224	\$78.40
Postage for Postcard	\$0.36	224	\$80.64
Total			\$3,187.49

Re-Distribution

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	328	\$820.00
Estimated Postage (up to 1 oz.)	\$0.51	328	\$167.28
Reminder Postcard	\$0.35	213	\$74.55
Postage for Postcard	\$0.36	213	\$76.68
Total			\$2,678.51

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	4	\$20.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.25	28	\$35.00
Remail Undeliverable Checks	\$2.50	28	\$70.00
Estimated Postage (up to 1 oz.)	\$0.51	32	\$16.32
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$4,491.32

**CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.*

Grand Total: \$14,061.19

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **"Term"** means the term of the Agreement, as set forth in the Order.
- y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

- 2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

- 3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

- 4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.