

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Firmsite: www.bamlawca.com

11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF RIVERSIDE**

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

20 Plaintiff,

21 vs.

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

25 Defendants.

CASE No. **RIC2003235**
consolidated with RIC2004156

**DECLARATION OF NORMAN BLUMENTHAL
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: September 22, 2022

Hearing Time: 8:30 a.m.

[Hearing scheduled by Order dated May 24, 2022]

Judge: Hon. Harold W. Hopp
Dept: 10

Action Filed: August 17, 2020

Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez,
4 Vera, Howard and Edmundo Flores ("Plaintiffs") in this matter. As such, I am fully familiar with the
5 facts, pleadings and history of this matter. The following facts are within my own personal knowledge,
6 and if called as a witness, I could testify competently to the matters stated herein. This declaration is
7 being submitted in support to the Plaintiffs' motion for final approval of the class settlement.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter at
12 Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience in the
13 areas of employment class actions, unfair business practices and other complex litigation. The attorneys
14 at my firm have extensive experience in cases involving labor code violations and overtime claims. Class
15 Counsel has litigated similar overtime cases against other employers on behalf of employees, including
16 cases against Securitas, Okta, HealthNet, See's Candoes, El Pollo Loco, Total Renal, Panda Express,
17 Walt Disney Resorts, Pharmaca, Nortek Security, California Fine Wine, Solarcity, Space Exploration,
18 Union Bank, Verizon, Apple, Wells Fargo, Kaiser, Universal Protection Services, and California State
19 Automobile Association. Class Counsel have been approved as experienced class counsel during
20 contested motions in state and federal courts throughout California. It is this level of experience which
21 enabled the firm to undertake the instant matter and to successfully combat the resources of the
22 defendants and their capable and experienced counsel. Class Counsel have participated in every aspect
23 of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and in
24 the best interests of the Class.

25
26 3. Summary of the Proposed Settlement.

27 (a) A true and correct copy of the First Amended Class and PAGA Settlement Agreement (the
28

1 “Agreement”) between the parties is attached hereto as Exhibit #2.¹ Plaintiffs and Defendant Metal
2 Container Corporation ("Defendant") reached a full and final settlement of the above-captioned action,
3 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
4 Settlement, the Gross Settlement Amount to be paid by Defendant is One Million One Hundred Fifty
5 Thousand Dollars (\$1,150,000). (Agreement at ¶¶ II(41).) Under the Settlement, the Gross Settlement
6 Amount consists of the following elements: (1) all payments of Class Settlement Shares to the
7 Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses
8 Payment; (3) Settlement Administration Expenses; (4) Class Representative Service Payments to the
9 Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ II(42).)

10 (b) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
11 (Agreement at ¶ II(41).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
12 (Agreement at ¶ II(41).)

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

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

28 ¹ Capitalized terms are defined in the Agreement.

1 take the number of weeks worked by each Participating Class Member and multiply it by the Weekly
2 Rate to calculate their Class Settlement Share. (Agreement at ¶ II(43)(b).)

3 (e) Class Members were sent the Court approved Class Notice using the procedure approved by
4 the Court by mailing the notice packets after updating class members' addresses using the National
5 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
6 notices to any forwarding address provided or updated address located. Declaration of Tim Cunningham
7 ("Cunningham Decl.") ¶ 6. Class Members were provided with the opportunity to exclude themselves
8 or "opt out" if they did not want to participate in the settlement. (Agreement at ¶ II(44)(c)(iii)), Ex. A.)
9 Cunningham Decl. ¶ 7, Exh. A. One (1) Class Member submitted a valid request for exclusion.
10 Cunningham Decl. ¶ 9. The remaining Class Members are deemed Participating Class Members who are
11 bound by the Settlement and will be entitled to receive a Settlement Share. (Agreement at ¶
12 II(44)(c)(iii)).) All PAGA Members will be paid their allocation of the PAGA Payment and will remain
13 bound by the release of the PAGA Released Claims regardless of their request for exclusion. (Agreement
14 at ¶ II(44)(c)(iii).) The Class Notice also advised Class Members of their right to object to the Settlement
15 and/or dispute their workweeks. (Agreement at ¶ ¶ II(44)(c)(i); Cunningham Decl. ¶ 7, Exh. A.)

16 (f) A Participating Class Member must cash his or her Settlement Share check within 180 days
17 after it is mailed. (Agreement at ¶ II(51).) The Settlement Administrator will send a reminder to
18 Participating Class Members who have not cashed their checks within 120 days after its last mailing to
19 the affected individual. (Agreement at ¶ II(51).) Any settlement checks not cashed within 180 days will
20 be voided and any funds from such uncashed checks will be redistributed to the Participating Class
21 Members who cashed their checks in proportion to their credited workweeks if the residue is above
22 \$20,000; and, if the residue is less than \$20,000, then the residue will be distributed by cy pres in
23 accordance with Code of Civil Procedure § 384. (Agreement at ¶ II(F)(51)(a)-(b).)

24 (g) CPT Group was appointed by the Court as the Settlement Administrator for the Settlement.
25 (Agreement at ¶ I(29) & II(43)(f)). From the Gross Settlement Amount, the Settlement Administrator
26 shall be paid for the expenses of administering the Settlement in an amount not to exceed \$15,000.
27 (Agreement at ¶ II(42)(d).) As set forth in the Cunningham Decl. at ¶ 15, the Settlement Administration
28 Expenses, including fees and costs incurred to-date, as well as anticipated fees and costs for completion

1 of the settlement administration, are \$11,500.

2 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
3 not to exceed 33% of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
4 at ¶ II(42)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
5 Litigation Expenses Payment in an amount not to exceed \$16,000. (Agreement at ¶ II(42)(b).) Subject
6 to Court approval, the Agreement provides for a payment of no more than \$10,000 to each of the
7 Plaintiffs as the Class Representative Service Payment. (Agreement at ¶ II(42)(a).) In support of this
8 separate motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is
9 providing evidentiary support, for these requests, including lodestar.

10 (i) Subject to Court approval, Twenty Five Thousand Dollars (\$25,000) will be paid from the
11 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
12 Labor Code Section 2698, et seq. ("PAGA"). Pursuant to the express requirements of Labor Code §
13 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$18,750) to the LWDA as the LWDA's
14 share of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to the PAGA
15 Members based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
16 II(42)(c).) As set forth in the accompanying proof of service, the LWDA has been served with this
17 motion and the Agreement.

18 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
19 for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the
20 settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the
21 Settlement valued at \$1,150,000 is an excellent result for the Class. This result is particularly favorable
22 in light of the fact that liability and class certification in this case were far from certain in light of the
23 defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the
24 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
25 settlement is fair, reasonable and adequate, and should be finally approved.

26
27 4. Procedural status of the settlement - In accordance with the Preliminary Approval Order
28 dated May 24, 2022 ("Preliminary Approval Order"), the approved Class Notice has been disseminated

1 to the Class. The reaction of the Class unequivocally supports approval of the Settlement. On June 21,
2 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
3 provided each class member with the terms of the Settlement, including notice of the claims at issue and
4 the financial terms of the settlement, including the attorneys' fees, costs, and service award that were
5 being sought, how individual settlement awards would be calculated, and the specific, estimated payment
6 amount to that individual. See Cunningham Decl. ¶ 7, Exh. A. In disseminating the notice, the Settlement
7 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order.
8 Significantly, there have been no objections and only one (1) request for exclusion. Cunningham Decl.
9 ¶¶ 9-10. As such, nearly the entire Class will participate in the Settlement and will be sent a settlement
10 check. See Cunningham Decl. at ¶ 11

11
12 5. Description of Plaintiffs' claims - The Action generally alleges that Plaintiffs and other
13 Class Members were not properly paid all overtime wages for hours worked, were not provided meal and
14 rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses,
15 were not provided accurate itemized wage statements, were not paid all wages at the time of termination.
16 The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
17 relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing
18 claims.

19
20 6. Procedural History of the Litigation

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

25 (b) On August 17, 2020, Plaintiffs initiated a class action against Defendant, entitled Oscar
26 Noguera, et al. v. Metal Container Corporation, Riverside Superior Court, Case No. RIC 2003235 ("Class
27 Action"). The complaint alleges various wage-and-hour violations and wrongful termination and related
28 claims, including without limitation: (i) unfair competition and business practices, in violation of

1 California Business and Professions Code § 17200 et seq.; (ii) failure to pay minimum wages in violation
2 of California Labor Code §§ 1194, 1197 & 1197.1; (iii) failure to pay overtime wages in violation of
3 California Labor Code § 510, et seq.; (iv) failure to provide required meal periods in violation of
4 California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (v) failure to provide
5 required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage
6 Order; (vi) failure to reimburse employees for required expenses in violation of California Labor Code
7 § 2802; (vii) failure to provide accurate itemized wage statements in violation of California Labor Code
8 § 226; (viii) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and
9 203; (ix) wrongful termination in violation of Public Policy; and, (x) violation of Govt. Code § 12940.
10 On October 7, 2020, Defendant filed a general denial along with 25 affirmative defenses to the Complaint
11 filed in the Class Action.

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

21 (d) Over the course of litigation, the Parties engaged in the investigation of the claims, including
22 production of documents, class data, and other information, allowing for the full and complete analysis
23 of liabilities and defenses to the claims in the Action. While there was no formal discovery performed,
24 Plaintiffs received the informal discovery that was needed. The information for mediation obtained by
25 Plaintiffs included: (1) Class and PAGA wide data points through 3/22/21 including the number of
26 employees in the class (303), the number of workweeks (51,774), the number of terminated employees
27 in the 3yr SOL (60), the number of PP's in the 1yr SOL (14,908), the number of PP's in the PAGA period
28 (10,265), and the number of aggrieved employees in the PAGA period (255); (2) Payroll data for 56

1 employees in the Class; (3) Defendant's employee wage and hour policies; (4) a sampling of time punch
2 records showing hours worked and meal periods for covering 43 employees over 2,311 shifts; (5) the
3 employment files for the Plaintiffs; and, (7) samples of wage statements provided by Defendant. Class
4 Counsel analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
5 submitted a mediation brief and damage valuation to the Mediator. Plaintiffs and Defendant agreed to
6 discuss resolution of the Action through a mediation.

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

13 (f) The Parties continued to negotiate the terms of the settlement and prepared the final
14 Agreement which was signed by the Parties and is now presented to this Court for preliminary approval.
15 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who are current
16 or former non-exempt employees employed by Defendant in California at any time during the Class
17 Period." (Agreement at ¶ I(3).) The Class Period is from August 17, 2016 through September 1, 2021.
18 (Agreement at ¶ I(10).)

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

1 7. History of Settlement Discussions

2 (a) This settlement is the result of extensive and hard-fought litigation as well as negotiations
3 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
4 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
5 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
6 Class Claims of the Class in accordance with this Settlement upon full funding of the Settlement Class
7 Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks
8 and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour
9 employment class actions, as Class Counsel has previously litigated and certified similar claims against
10 other employers.

11 (b) The Parties attended an arms-length mediation session with Louis Marlin, a respected and
12 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
13 for the mediation, Defendant provided Class Counsel with necessary information for the members of the
14 Class, including time data, payroll data and data concerning the composition of the Class. Class Counsel
15 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
16 a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day mediation, the
17 Parties agreed to this Settlement.

18 (c) From November 2021 to January 2022, the settlement agreement and exhibits thereto were
19 finalized and executed and then presented by motion to this Court for preliminary approval. In an Order
20 dated March 30, 2022, the Court issued a tentative ruling identifying issues to be addressed by the
21 Parties. The Parties corrected the issues and finalized and executed the First Amended Class and PAGA
22 Settlement Agreement. On May 24, 2022, the Court issued its Order granting preliminary approval of
23 the settlement as fair and reasonable to the Class.

24 (d) Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and adequate. In
25 my judgment as experienced Class Counsel, this Settlement should be finally approved.

26
27 8. The outcome of this case would have been uncertain and fraught with risks.

28 (a) Here, a number of defenses asserted by Defendant present serious threats to the claims of the

1 Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied with all
2 applicable Labor laws. Defendant argued that all work time was paid for and that the regular was
3 properly calculated for purposes of overtime. Defendant contended that their meal and rest period
4 policies fully complied with California law and that Defendant's timekeeping system recorded meal
5 periods and all meal periods were provided. Further, Defendant argued that Defendant was not required
6 to record rest periods. Finally, Defendant could argue that the Supreme Court decision in *Brinker v.*
7 *Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class
8 certifiability as to the meal and rest period claims. Defendant also argues that based on their facially
9 lawful practices, they acted in good faith and without willfulness, which if accepted would negate the
10 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of
11 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
12 and rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce
13 any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
14 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

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

28 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further litigation

1 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of
2 an adverse judgment. A post-judgment appeal by Defendant would have required many more years to
3 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
4 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
5 an uncertain result three or more years in the future. Plaintiffs and Class Counsel recognize the expense
6 and length of a trial against Defendant through possible appeals which could take at least another two
7 or three years. Class Counsel also have taken into account the uncertain outcome, the risk of litigation,
8 especially in complex actions such as this one. Class Counsel are also mindful of and recognize the
9 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Moreover,
10 post-trial motions and appeals would have been inevitable. Costs would have mounted and recovery
11 would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiffs
12 and Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
13 their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the
14 Agreement is in the best interest of the Class.

15 (d) The calculations to compensate for the amount due to the Class Members at the time this
16 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
17 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for
18 putative class members and determined the potential maximum damages for the class claims. For the
19 Class, Plaintiffs determined that the unpaid wages due to the alleged failure to pay overtime wages based
20 on regular rate violations to be \$409,866, maximum potential off-the-clock damages to be \$460,582,
21 maximum potential rest period damages at a 20% violation rate were estimated to be \$1,103,267.80,
22 maximum meal period damages at a 95% violation rate were estimated to be \$5,236,577, and the
23 maximum damages for unreimbursed expenses were estimated to be \$156,962 at a rate of \$5 of
24 unreimbursed expenses incurred each month. In total, the damages for the Class were calculated to have
25 a maximum total value of \$7,367,254.80. In addition, Plaintiff calculated that the maximum value of the
26 waiting time penalties were \$742,682 and the maximum value of the wage statement penalties to be
27 \$1,020,000, however, these wage statement and waiting time penalties claims potentially have a much
28 smaller value, even if damages were awarded, to the extent that they are only derivative of the meal and

1 rest break claims.² Consequently, the Gross Settlement Amount represents more than 16% of the value
2 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
3 be proven in full at trial. The above maximum calculations should then be adjusted in consideration for
4 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
5 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
6 certainly fair and reasonable. Even greater detail as to the valuation of the class claims was presented
7 in the Declaration of Kyle Nordrehaug submitted in support of preliminary approval.

8 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
9 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial
10 defenses both to liability and to class certification. Currently, the maximum and average class member
11 allocation are \$3,097.06 and \$2,113.92, respectively. See Cunningham Decl. ¶12. Given the complexities
12 of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is
13 fair, reasonable and adequate, and should be finally approved

14 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiffs would
15 prevail against the Defendant's factual and legal defenses. While Plaintiffs and Class Counsel believe
16 in the merits of the claims, Defendant has asserted real and substantial defenses to these claims and to
17 class certification. Settlement in this case clearly benefits the Class when measuring the strengths of
18 Plaintiffs' case and the risk of establishing class wide liability and damages.

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23 ² As to the alleged claims for penalties pursuant to Labor Code §§ 203 and 226, Plaintiffs
24 recognized that these claims were subject to various defenses asserted by Defendant, including a good
25 faith dispute defense as to whether any wages for meal or rest periods or given Defendant's position that
26 employees were properly compensated. See e.g. *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
27 4384147, at *9 (C.D. Cal. 2008); *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010).
28 Additionally, there is doubt as to whether violations of the meal and rest period regulations, which
require payment of a "premium wage" for each improper meal period, give rise to claims under sections
203 and 226. See *Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and
Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308, 1336 (2018). As a result, the viability of
Plaintiff's claims on these theories is uncertain.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 26th day of August 2022, at San Diego, California.

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4 /s/ Norman Blumenthal
5 NORMAN B. BLUMENTHAL
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Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

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

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

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

Aparajit Bhowmik

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)

Victoria Rivapalacio

Associate Attorney

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)

Ricardo Ehmann

Associate Attorney

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)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

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

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

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

Andrew Ronan

Associate Attorney

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)

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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

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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

CLASS AND PAGA SETTLEMENT AGREEMENT

This First Amended 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, Request for Exclusion 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. “Request for Exclusion” 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 Request for Exclusion.

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 Request for Exclusion. 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 Request for Exclusion 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. **Request for Exclusion.** 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 Request for Exclusion 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 Request for Exclusion 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 Request for Exclusion, 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 Request for Exclusion 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 Request for Exclusion 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 Request for Exclusion 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, Plaintiffs and the State of California shall be deemed to have released and discharged the Released Parties of and from all Released PAGA Claims. “Released PAGA Claims” shall mean all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s PAGA Letters. Plaintiff does not release any aggrieved employee’s individual claim

for wages or damages. The release of the Released PAGA Claims shall be effective regardless of whether an 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: Apr 22, 2022 *Oscar Noguera*
Oscar Noguera (Apr 22, 2022 22:55 PDT)
Plaintiff Oscar Noguera

Dated: Apr 22, 2022 *Valerie Campos Flores*
Valerie Campos Flores (Apr 22, 2022 15:21 PDT)
Plaintiff Valerie Campos Flores

Dated: Apr 26, 2022 *Daniel Martinez*
Daniel Martinez (Apr 26, 2022 10:52 PDT)
Plaintiff Daniel Martinez

Dated: Apr 22, 2022 *Vera Howard*
Vera Howard (Apr 22, 2022 15:06 PDT)
Plaintiff Vera Howard

Dated: Apr 22, 2022 *Edmundo Campos Flores*
Edmundo Campos Flores (Apr 22, 2022 15:26 PDT)
Plaintiff Edmundo Flores

Dated: _____

[name]
For Defendant Metal Container Corporation

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

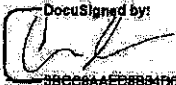
Dated: _____
Plaintiff Oscar Noguera

Dated: _____
Plaintiff Valerie Campos Flores

Dated: _____
Plaintiff Daniel Martinez

Dated: _____
Plaintiff Vera Howard

Dated: _____
Plaintiff Edmundo Flores

Dated: 04/22/2022

DocuSigned by:
38EC8AAE8B34D6...
Chase Shumate [name]
For Defendant Metal Container Corporation

APPROVED AS TO FORM:

Dated: 4/26/22

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: 4/26/2022

Spencer C. Skeen
Marlene M. Moffitt

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 to be combined 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>> and determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final approval hearing. 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 by the Court, or if there are objections or any appeal of the Judgment, the date when any appeal of the Judgment has been resolved (i.e. when 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. A Class Member who worked only one week is estimated to recover approximately \$11.62 for that single week, minus applicable withholdings and deductions. A Class Member who worked every week during the Class Period (263 weeks) could recover \$3,056.06, minus applicable withholdings and deductions. The average Class Settlement Share is estimated to be \$2,193. These amounts are subject to change, however, depending on the number of Class Members and workweeks involved, among other factors. 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 including those in sections 17200 and 17203, 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 section 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, Plaintiffs and the State of California shall be deemed to have released and discharged the Released Parties of and from all Released PAGA Claims. “Released PAGA Claims” shall mean all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s PAGA Letters. Plaintiff does not release any aggrieved employee’s individual claim for wages or damages.. The release of the Released PAGA Claims shall be effective regardless of whether an 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].

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 are less than \$20,000, the funds will be paid by charitable donation in accordance with California law to Chrysalis, a non-profit employment organization. If there is a second distribution, any funds remaining after the second distribution will be paid by charitable donation in accordance with California law 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 subject to the release of the Released PAGA Claims, regardless of their request for exclusion from the Class.

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. While the Court determined at preliminary approval that there is sufficient evidence to suggest the proposed settlement is fair, adequate, and reasonable, the Court will make a final determination on these issues at the Final Approval Hearing. 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://ecomml.riverside.courts.ca.gov/>) and entering the Case No. RIC2003235. The Settlement Agreement can be found in the Court file as Exhibit #1 to the Second Supplemental Declaration of Kyle Nordrehaug, filed on _____,

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.

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 (CPT GROUP)_AT THE ADDRESS BELOW 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 Settlement Administrator
c/o CPT Group, Inc.

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

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

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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: May 5, 2022
Hearing Time: 9:00 a.m.

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 May 5, 2022,
3 for the motion by Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera
4 Howard, and Edmundo Flores (collectively, "Plaintiffs") for preliminary approval of the Class and
5 PAGA Settlement with Defendant Metal Container Corporation ("Defendant"). The Court, having
6 considered the briefs, argument of counsel and all matters presented to the Court and good cause
7 appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action and
8 PAGA Settlement.

9
10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the First Amended Class and PAGA Settlement
12 Agreement ("Agreement") submitted as Exhibit #1 to the Second Supplemental Declaration of
13 Kyle Nordrehaug in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and
14 PAGA Settlement. This is based on the Court's determination that the Settlement set forth in the
15 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382
16 of the California Code of Civil 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
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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 1. The Court hereby approves, as to form and content, the revised 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 Request for Exclusion Form, submitted as
7 Exhibit A to the Agreement, and attached to this Order as Exhibit #1. The Court finds that the
8 Class and PAGA Notice appears to fully and accurately inform the Class and PAGA Members of
9 all material elements of the proposed Settlement, of the Class Members’ right to be excluded from
10 the Class by submitting a written opt-out request, and of each member’s right and opportunity to
11 object to the Settlement. The Court further finds that the distribution of the Class and PAGA
12 Notice substantially in the manner and form set forth in the Agreement and this Order meets the
13 requirements of due process, is the best notice practicable under the circumstances, and shall
14 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
15 the Notice Packet by first class mail pursuant to the terms set forth in the Agreement. If a Notice
16 Packet is returned because of an incorrect address, the Settlement Administrator will promptly
17 search for a more current address and re-mail the Notice Packet no later than fourteen days after
18 the receipt of the undelivered Notice Packet. The Settlement Administrator shall provide a
19 declaration detailing the notice process and authenticating a copy of every exclusion form received
20 by the administrator. Class Counsel shall file this declaration of the Settlement Administrator
21 concurrently with the filing of any motion for final approval.

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

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

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

25 5. A Final Approval Hearing shall be held before this Court on September 22, 2022 at
26 9:00 a.m. in Department 6 at the Riverside Historic Courthouse of the Riverside County Superior
27 Court located at 400 Main Street, Riverside, California, to determine all necessary matters

1 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
2 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
3 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
4 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
5 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
6 the service award, and the expenses of the Settlement Administrator. All papers in support of the
7 motion for final approval and the motion for attorneys' fees, costs and service awards shall be
8 filed with the Court and served on all counsel no later than sixteen (16) court days before the
9 hearing. Class Counsel shall provide service of these motions on any objecting party and notice to
10 any objecting party of any continuance of the hearing on the motion for final approval.

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

23 7. In the event the Settlement does not become effective in accordance with the terms
24 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
25 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
26 and the Parties shall revert to their respective positions as of before entering into the Agreement,
27 and expressly reserve their respective rights regarding the prosecution and defense of this Action,

1 including all available defenses and affirmative defenses, and arguments that any claim in the
2 Action could not be certified as a class action and/or managed as a representative action. In such
3 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
4 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
5 the Agreement with respect to the effect of the Agreement if it is not approved.

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

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

12 **IT IS SO ORDERED.**

13
14 Dated: _____

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

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

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 First
3 Amended Class and PAGA Settlement Agreement (“Agreement”) with Defendant Metal
4 Container Corporation (“Defendant”), attorneys’ fees and costs, service payments, and the fees
5 and expenses of the Settlement Administrator duly came on for hearing on _____
6 before the Honorable 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
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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
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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.

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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, Plaintiffs and the State of California shall be
5 deemed to have released and discharged the Released Parties of and from all Released PAGA
6 Claims. “Released PAGA Claims” shall mean all claims for statutory penalties that could have
7 been sought by the Labor Commissioner for the violations identified in Plaintiff’s PAGA Letters.
8 Plaintiff does not release any aggrieved employee’s individual claim for wages or damages. The
9 release of the Released PAGA Claims shall be effective regardless of whether an individual
10 submitted a request for exclusion from the Class.

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

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

1 (b) "Released Parties" collectively means Defendant and Defendant's officers,
2 directors, employees and agents.

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

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

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11 Dated: _____

12 _____
13 HON. SUNSHINE S. SYKES
14 JUDGE, SUPERIOR COURT OF CALIFORNIA
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