

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: September 22, 2022 Hearing
Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 10

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

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 September 22, 2022
6 before the Honorable Harold W. Hopp.

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 May 24, 2022, 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 June 21, 2022. Mailing of the Class and PAGA Notice to their last known addresses
6 was the best notice practicable under the circumstances and was reasonably calculated to
7 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 August 5, 2022, which for re-mailings was extended by 15 days. There was an
17 adequate interval between notice and the deadline to permit Class Members and PAGA Members
18 to choose what to do and act on their decision. A full opportunity has been afforded to the Class
19 Members and PAGA Members to participate in this hearing, and all Class Members and other
20 persons wishing to be heard have been heard. Class Members also have had a full and fair
21 opportunity to exclude themselves from the Class. Accordingly, the Court determines that all
22 Class Members who did not timely and properly submit a request for exclusion are bound by the
23 Settlement and this Final Approval Order and Judgment.

24 **Fairness Of Settlement**

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

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

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

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

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

8 d. The percentage of objectors and requests for exclusion is small. No
9 objections were received. One (1) request for exclusion was received.

10 e. The participation rate was high. 316 Class Members will be mailed a
11 settlement payment, representing 99.68% 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 \$379,500 for attorneys' fees, representing 33% of the Gross
21 Settlement Amount, and \$13,501.72 for litigation costs and expenses, is reasonable, in light of the
22 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
23 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
24 and billing statement.

25 **Class Representative Service Payments**

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

1 Representative Service Payments in the amount of \$10,000 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 \$11,500 in fees and expenses, and this amount is reasonable in light of the work
12 performed by the Settlement Administrator.

13 **PAGA Payment**

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

23
24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
27
28

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. There was
7 one (1) request for exclusion received from Cary Stark.

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 \$379,500 and costs in
11 the amount of \$13,501.72. Class Counsel shall not seek or obtain any other compensation or
12 reimbursement from Defendant, Plaintiffs or members of the Class.

13 5. The payment of the Class Representative Service Payments in the amount of
14 \$10,000 to each of the Plaintiffs is approved.

15 6. The payment of \$11,500 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
28

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.**

10
11 Dated: _____

12 _____
13 HON. HAROLD W. HOPP
14 JUDGE, SUPERIOR COURT OF CALIFORNIA
15
16
17
18
19
20
21
22
23
24
25
26
27
28