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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: March 30, 2022 _____
Hearing Time: 8:30 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 March 30,
3 2022, 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.

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10 **IT IS HEREBY ORDERED:**

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

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

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

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

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

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

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

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

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

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

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

20 12. A Final Approval Hearing shall be held before this Court on August 3, 2022 at 8:30
21 a.m. in Department 6 at the Riverside Historic Courthouse of the Riverside County Superior Court
22 located at 400 Main Street, Riverside, California, to determine all necessary matters concerning
23 the Settlement, including: whether the proposed settlement of the Action on the terms and
24 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
25 approved by the Court; whether the Final Approval Order and Judgment should be entered herein;
26 whether the plan of allocation contained in the Agreement should be approved as fair, adequate
27 and reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service
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1 award, and the expenses of the Settlement Administrator. All papers in support of the motion for
2 final approval and the motion for attorneys' fees, costs and service awards shall be filed with the
3 Court and served on all counsel no later than sixteen (16) court days before the hearing. Class
4 Counsel shall provide service of these motions on any objecting party and notice to any objecting
5 party of any continuance of the hearing on the motion for final approval.

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

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

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

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

7 **IT IS SO ORDERED.**

8
9 Dated: _____

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