

AMENDED PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by Plaintiff Gabriel Guijosa Infante ("Plaintiff"), individually and on behalf all Aggrieved Employees (as hereinafter defined) and the Labor Workforce Development Agency ("LWDA") pursuant to the Private Attorneys General Act ("PAGA") on the one hand, and Defendant Altium Packaging, LP (formerly known as Consolidated Container Company, LP) ("Defendant") on the other hand. This Agreement is subject to the approval of the Court pursuant to Labor Code section 2699(l)(2).

I. NATURE OF THE CASE AND THE PARTIES' SETTLEMENT

1. The Parties and Class Counsel. Plaintiff and Defendant are collectively referred to as "the Parties." "PAGA Counsel" refers to Marcus Bradley and Kiley Grombacher of Bradley Grombacher, LLP.

2. The Action. On August 11, 2020, Plaintiff submitted a claim notice to the LWDA asserting various violations of the Labor Code against Defendant. On August 11, 2020, Plaintiff filed a class and representative PAGA action against Defendant in the Riverside Superior Court, Case No. RIC2003115 ("Action"). Because Plaintiff signed an arbitration agreement with a class waiver, Plaintiff thereafter filed the operative Second Amended Complaint ("SAC") on May 26, 2021, limited to claims under PAGA. The SAC asserts claims under PAGA against Defendant on behalf of Plaintiff, the LWDA, and all persons who have been, or currently are, employed by Defendant in California as non-exempt employees ("Aggrieved Employees") during the period beginning August 11, 2019 to the date the Court grants approval of this settlement, or ninety (90) days from the date Plaintiff signs this Agreement, whichever is earlier ("PAGA Period").

3. Plaintiff's Contentions. As alleged in the SAC, Plaintiff contends that Defendant: (1) did not pay Plaintiff and Aggrieved Employees all wages, minimum wages and overtime; (2) did not timely pay Plaintiff and Aggrieved Employees during employment and at termination; (3) did not provide Plaintiff and Aggrieved Employees with compliant meal and rest periods; (4) did not issue Plaintiff and Aggrieved Employees accurate wage statements; and (5) failed to comply with indoor heat standards for Plaintiff and Aggrieved Employees. Plaintiff further contends that

Defendant violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698-2699, 2802, 6720. Plaintiff sought to recover civil penalties under PAGA on behalf of himself, Aggrieved Employees and the LWDA for Defendant's alleged violations of the Labor Code.

4. Defendant's Contentions. Defendant denies any liability or wrongdoing as alleged by Plaintiff. Defendant contends that it timely paid Plaintiff and Aggrieved Employees all wages owing; provided Plaintiff and Aggrieved Employees with compliant meal and rest periods or paid the one-hour premium; issued Plaintiff and Aggrieved Employees with accurate and complete wage statements; and complied with all applicable heat standards.

5. Investigation. PAGA Counsel has diligently investigated the facts and claims alleged in the Action. The Parties participated in a full-day mediation with JAMS mediator Joel Grossman, Esq. on April 8, 2021. At the conclusion of the mediation, the mediator issued a mediator's proposal to resolve Plaintiff's PAGA claims. The Parties accepted the mediator's proposal on April 8, 2021. Plaintiff and PAGA Counsel believe this settlement is in the best interests of the LWDA and Aggrieved Employees based on all known facts and circumstances, including the risks of significant delay, the defenses asserted by Defendant, and potential appellate issues.

6. Cooperation. The Parties agree to cooperate and take all steps necessary and appropriate to effectuate the terms of this Settlement Agreement.

II. TERMS OF SETTLEMENT

7. Purpose of the Parties. The Parties agree that the Action be settled on the following terms subject to the approval of the Court.

8. Settlement "Effective Date." The settlement embodied in this Agreement shall become effective on the later of:

- (a) The Court's approval of the settlement, and the sixty (60) day time period to appeal the Judgment entered by the Court incorporating the terms of the settlement has expired, or

(b) Fourteen (14) days after the final resolution of any appeal that has been filed.

9. Gross Settlement Fund. In consideration for the release of the claims against Defendant, Defendant agrees to create a “Gross Settlement Fund” of Eighty Seven Thousand Five Hundred Dollars (\$87,500.00), as a full and complete settlement of all claims for civil penalties under PAGA that were or could have been asserted based on the facts alleged in the Action. This Gross Settlement Fund constitutes a common fund for the payment of all claims hereunder, including attorney’s fees and litigation costs to PAGA Counsel, and settlement administration costs. The settlement is non-reversionary, and the entire Gross Settlement Fund will be paid by Defendant.

10. Net Settlement Fund. The “Net Settlement Fund” is the balance of the Gross Settlement Fund after payments have been made for attorney’s fees and litigation costs to PAGA Counsel, and costs of settlement administration.

11. LWDA Payment. Seventy five percent (75 %) of the Net Settlement Fund will be paid to the LWDA pursuant to PAGA. The remaining twenty five percent (25 %) of the Net Settlement Fund will be paid to Aggrieved Employees.

12. Payments to Aggrieved Employees from Net Settlement Fund. The twenty five percent (25 %) of the Net Settlement Fund will be paid to Aggrieved Employees calculated by a pro rata formula based on the number of pay periods during the PAGA Period that Aggrieved Employees worked for Defendant. To determine an Aggrieved Employee’s settlement amount, the twenty five percent (25 %) Net Settlement Fund will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, multiplied by the number of pay periods worked by that Aggrieved Employee during the PAGA Period.

13. Attorneys’ Fees and Costs. PAGA Counsel will apply to the Court for, and Defendant will not oppose, payment of PAGA Counsel’s attorney’s fees of Twenty-Nine Thousand One Hundred Sixty Six Dollars and Sixty Seven Cents (\$29,166.67), and litigation costs up to Twelve Thousand Dollars (\$12,000.00), to be paid from the Gross Settlement Fund. If the Court

approves less than the amount requested by PAGA Counsel, the difference between the requested and awarded amounts will be included in the Net Settlement Fund and distributed pro rata to Aggrieved Employees as set forth in Paragraph 12.

14. Settlement Administration Costs. The reasonable costs of settlement administration through and beyond approval of the settlement, are estimated not to exceed \$4,000 and shall be paid from the Gross Settlement Fund. If the Settlement Administrator's costs are less than that amount, the difference will be included in the Net Settlement Fund and distributed pro rata to Aggrieved Employees as set forth in Paragraph 12. If the Settlement Administrator's fees and costs are more than that amount, the additional fees and costs will be paid from the Gross Settlement Fund.

15. Taxes. Because the entire amount paid to Aggrieved Employees constitutes penalties under PAGA and not wages, no withholding will be made from the settlement payment to Aggrieved Employees. The Settlement Administrator will report the settlement payments to Aggrieved Employees on a 1099. The Parties agree that it is the obligation of the Aggrieved Employees to pay any appropriate federal, state, and local income taxes on all payments they receive under this Settlement Agreement. Neither PAGA Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall anything in this Settlement be relied upon as such.

Circular 230 Disclaimer: Each Party to this Agreement acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR part 10, as amended); (2) each Party (a) has relied exclusively upon his, her or its own independent legal and tax counsel for advice (including tax advice) in connection with this Agreement; (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party; and (c) is not entitled to rely upon any communication or disclosure by any attorney

or adviser to any other Party to avoid any tax penalty that may be imposed; and (3) no attorney or adviser to any Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by any other Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

16. Service Award. In lieu of a service award for prosecuting the Action, Plaintiff will be relieved of any obligation to re-pay Defendant an overpayment he received on his final wages.

III. SETTLEMENT ADMINISTRATOR

17. Appointment. The Parties have agreed to the appointment of Phoenix Settlement Administrators to perform the duties of Settlement Administrator for the purpose of issuing and mailing settlement checks, providing status reports, resolving disputes regarding the amount of the settlement payments to Aggrieved Employees, issuing and mailing 1099's, and reporting the payments to the appropriate taxing agencies. Within thirty (30) days from the mailing of the settlement payments to Aggrieved Employees and the LWDA, and the attorney's fees and litigation costs to PAGA Counsel, the Settlement Administrator shall prepare a declaration for the Court certifying that all settlement payments have been made. The Settlement Administrator shall provide such other reports as requested by counsel for the Parties or the Court.

IV. NOTICE TO THE LWDA

18. Notice of Settlement. Plaintiff and PAGA Counsel shall provide notice of the settlement to the LWDA pursuant to PAGA.

V. FUNDING OF SETTLEMENT

19. Funding of Settlement. The Gross Settlement Fund will be wired by Defendant to the Settlement Administrator within fifteen (15) days of the Effective Date. Settlement payments and the Notice of PAGA Settlement (attached hereto as Exhibit A) shall be mailed by regular First-Class U.S. Mail to the LWDA and to Aggrieved Employees at their last known mailing address. To provide the best notice practicable, any Individual Payment returned to the Settlement

Administrator as non-delivered shall be sent by post-marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method.

Settlement checks which are uncashed after One Hundred Twenty (120) days of issuance of the check shall be tendered to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member and the amount of the check was cancelled.

IV. RELEASE BY THE NAMED PLAINTIFFS AND THE CLASS

20. Scope of Release. Upon the approval by the Court of this Agreement, and except as to such rights or claims as may be created by this Agreement, the LWDA and Plaintiff fully releases and discharges Defendant, and all of its officers, directors, employees and agents (collectively "Released Parties"), from and all claims for civil penalties under PAGA that were or could have been asserted based on the facts alleged in the Action, including but not limited to Defendant's alleged: (1) failure to pay Plaintiff and Aggrieved Employees all wages, minimum wages and overtime; (2) failure to timely pay Plaintiff and Aggrieved Employees during employment and at termination; (3) failure to provide Plaintiff and Aggrieved Employees with compliant meal and rest periods; (4) failure to issue accurate wage statements to Plaintiff and Aggrieved Employees; (5) failure to maintain proper indoor heat standards; and (6) alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698-2699, 2802, 6720 ("Released Claims"). It is the intention of the Parties that this Settlement, when approved by the Court, will bar the Released Claims of Aggrieved Employees under PAGA pursuant to the doctrine of res judicata. (See, e.g., *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App5th, 476.) The Settlement does not release any Aggrieved Employee's claim for wages or damages.

VII. JUDICIAL APPROVAL

21. Judicial Approval of the Settlement. This settlement is subject to approval by the Riverside Superior Court. As soon as practicable after execution of this Agreement, Plaintiff shall file a motion with the Court for an Order approving this settlement pursuant to PAGA, Labor Code section 2699(1)(2).

22. Voiding Settlement. If the Court does not approve any material term or condition of this Agreement, then this entire Agreement shall be void and unenforceable as to all Parties herein at the option of any Party, within thirty (30) days of receiving notice of the Court's action.

VIII. MISCELLANEOUS PROVISIONS

23. Voluntary Nature. The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Agreement. Each of the Parties expressly waives any right to claim that this Settlement Agreement was in any way induced by fraud.

24. Informed Consent. Prior to execution of this Agreement, each Party has read this entire Agreement and been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Agreement and its legal effect.

25. Authority. The signatories hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

26. Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties shall use their reasonable best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein.

27. No Admissions. Nothing contained herein is to be construed or deemed an admission of liability by Defendant. Each Party hereto has entered into this Agreement with the intention to avoid further disputes and the expense and inconvenience of litigation.

28. Enforcement. If a Party to this Agreement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights or obligations under this Agreement, then the prevailing Party shall recover from the unsuccessful Party, reasonable attorneys' fees and costs.

29. Employee Benefits. The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan or policy sponsored by Defendant or Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, any benefit plans, policies or programs. Any payments made under the terms of this Agreement shall not be applied retroactively, currently or on a going-forward basis as salary, earnings, wages or any other form of compensation for the purposes of any sponsored benefit plan, policy or bonus program, including, but not limited to, vacation, leave, and sick policies. Defendant and Released Parties retain the right to modify the language of any benefit plans, policies and programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for any measuring term as defined by applicable plans, policies, and programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement.

30. Construction. The Parties agree that this Agreement is the result of lengthy, intensive arms-length negotiations between the parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Agreement.

31. Captions and Interpretations. Paragraph titles or captions contained herein appear as a matter of convenience and for reference, and in no way define the scope of this Agreement or any provision hereof.

32. Modifications. This Agreement may not be changed, altered, or modified, except in writing and signed by the parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

33. Waiver. No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by the party to this Agreement against whom such waiver is sought to be enforced. The waiver by any Party to any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party, nor shall any waiver operate or be construed as a rescission of this Agreement.

34. Integration. This Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

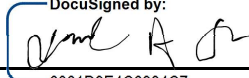
35. No Prior Assignments. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

36. Governing Law. This Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Riverside, State of California.

37. Execution. This Agreement may be executed via facsimile or email, in multiple counterpart copies, each of which shall be deemed an original.

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:

Dated: 11/12/2021

By: 

Gabriel Guijosa Infante
Plaintiff and on behalf of Aggrieved
Employees and the LWDA

Dated: _____

By: _____
Defendant Altium Packaging, LP

Dated: 11/15/2021

By: 

Kiley Grombacher
Attorneys for Plaintiff, Aggrieved
Employees and the LWDA

Dated: _____

By: _____
Jeffrey Fuchsman
Attorneys for Defendant

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:

Dated: _____

By: _____
Gabriel Guijosa Infante
Plaintiff and on behalf of Aggrieved
Employees and the LWDA

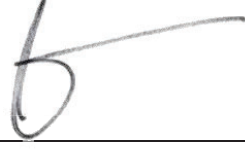
Dated: 11/11/2021

By: Amy Gibbs
Defendant Altium Packaging, LP

Dated: _____

By: _____
Kiley Grombacher
Attorneys for Plaintiff, Aggrieved
Employees and the LWDA

Dated: 11/11/2021

By: 
Jeffrey Fuchsman
Attorneys for Defendant