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ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
03/07/2022
By: Mark Dimas, Deputy Clerk

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

CARL HANEY, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

PENINSULA PACKAGING, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: VCU285695

[Assigned for all purposes to the Hon. Bret
D. Hillman, Dept. 7]

**DECLARATION OF MAI TULYATHAN
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 29, 2022
Time: 8:30 A.M.
Dept.: 7

Complaint Filed: January 25, 2021
FAC Filed: January 6, 2022
Trial Date: None Set

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Carl Haney (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

FACTUAL AND PROCEDURAL BACKGROUND OF THE MATTER

2. On December 16, 2020, Plaintiff filed his written notice with the California Labor & Workforce Development Agency (“LWDA”), alleging that Defendant Peninsula Packaging, LLC (“Defendant”) violated Labor Code §§ 201-204, 226(a), 226.7, and 246, pursuant to the PAGA, Labor Code § 2699.

3. On January 25, 2021, Plaintiff filed his class and PAGA action complaint against Defendant in the Superior Court of California, County of Tulare. The complaint alleges the following causes of action: (1) violation of Labor Code §§ 201-203, (2) violation of Labor Code § 226.7, (3) violation of Labor Code § 226(a), (4) violation of Business & Professions Code § 17200, *et seq.*, and (5) violation of Labor Code § 2698, *et seq.*

4. In connection with this settlement, on January 5, 2022, the Parties filed a stipulation to allow Plaintiff leave to file a First Amended Complaint to remove Plaintiff's rest break claim and unfair business practice claim. The Court entered its order granting leave to file the First Amended Complaint on January 6, 2022. The First Amended Complaint was filed on January 6, 2022, and alleges causes of action for (1) violation of Labor Code §§ 201-203, (2) violation of Labor Code § 226(a), and (3) violation of Labor Code § 2698, *et seq.*

5. Plaintiff's class and PAGA claims as pled in the operative First Amended Complaint are predicated upon the following allegations. Plaintiff contends that Defendant failed to pay paid sick leave to its employees at the regular rate of pay, and thus underpaid sick pay to employees, in violation of Labor Code §§ 201-203 and 246. More specifically, paid sick leave was paid at an hourly rate that was lower than the regular rate of pay. As the underpaid paid sick leave has yet to be paid to Plaintiff and other separated employees,

1 Plaintiff alleges that Defendant owes waiting time penalties under Labor Code § 203. As a
2 result of the sick pay regular rate violations, Plaintiff also alleges derivative wage statement
3 violations under Labor Code § 226(a). Based on these allegations, Plaintiff seeks statutory and
4 civil penalties under the California Labor Code and the PAGA, as well as attorneys' fees and
5 costs.

6 6. After the filing of the complaint, counsel for the Parties met and conferred
7 regarding participating in early mediation. The Parties subsequently agreed to mediate this
8 matter with Louis Marlin, Esq.

9 7. In connection with mediation, the Parties engaged in informal discovery to allow
10 Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of
11 damages and penalties. Defendant provided Plaintiff's counsel with informal data and
12 information pertaining to the number of class members, the number of former employees,
13 payroll data with the hourly rates of pay for the entire class, as well as documents and
14 information pertaining to Defendant's policies and practices regarding payment of paid sick
15 leave. Based on the data provided by Defendant, Plaintiff's counsel conducted an analysis of
16 liability and potential maximum exposure for the class and PAGA penalties.

17 **MEDIATION AND SETTLEMENT NEGOTIATIONS**

18 8. On October 28, 2021, the Parties engaged in a full-day mediation with neutral
19 Louis Marlin, Esq. After thorough investigation and evaluation of the facts and claims, and as
20 a result of the arm's-length negotiations facilitated by Mr. Marlin, the Parties and their counsel
21 reached a settlement of the class and PAGA claims. The Parties formalized their agreement in
22 a memorandum of understanding.

23 9. The Parties subsequently finalized their agreement and entered into the
24 Stipulation of Settlement ("Settlement Agreement"), a true and correct copy of which is
25 attached hereto as **Exhibit A**.

26 10. The Parties recognize the risk, expense, and delay in continuing litigation with
27 the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

28 11. Each side has apprised the other of their respective factual contentions, legal

1 theories and defenses, resulting in negotiations taking place between the Parties.

2 **STATUTORY AND CIVIL PENALTIES EXPOSURE ANALYSIS**

3 12. Based on the class data provided by Defendant, Plaintiff estimated that
4 Defendant would face potential liability of up to approximately \$413,640.00 for Plaintiff's sick
5 pay regular rate class claims if Plaintiff succeeded at trial. Specifically, Plaintiff was able to
6 estimate the potential class penalties based on data provided by Defendant, including the
7 number of former employees and the average hourly rates of pay applicable to the class
8 members.

9 13. Specifically, the amount of potential class waiting time penalties under Labor
10 Code § 203 is \$408,240.00. Plaintiff calculated said waiting time penalties based on the
11 number of former employees (108 employees), multiplied by their daily wage based on the
12 average hourly rates of pay calculated from Defendant's payroll data (\$15.75 x 8), and
13 multiplied by 30 days.

14 14. The amount of class Labor Code § 226(e) penalties amounted to \$5,400.00,
15 which is calculated based on 108 former employees multiplied by the initial pay period
16 violation of \$50 pursuant to Labor Code § 226(e).

17 15. With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated
18 that Defendant could face civil penalties of up to a maximum of \$37,800.00 if Plaintiff were to
19 succeed at trial.

20 16. Plaintiff calculated PAGA penalties for sick pay violations at \$10,800.00. This
21 is based on 108 former employees, multiplied by PAGA's penalty provision providing for
22 \$100 per each aggrieved employee per pay period for the initial violation.

23 17. With respect to PAGA for derivative 226 violations, Plaintiff calculated PAGA
24 penalties at \$27,000.00, based on \$250 per pay period pursuant to *Raines v. Coastal Pacific*
25 *Food Distributors* (2018) 23 Cal. App. 5th 667.

26 18. Based on the above, the maximum exposure for both the class and PAGA
27 claims total approximately **\$451,440.00**, without discounting for potentially losing on any of
28 the causes of action.

1 19. Although Plaintiff believes in the merits of the alleged claims and maintains that
2 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise
3 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
4 could be persuasive to the Court. Thus, even if Plaintiff were to successfully prove his claims
5 at trial, there is a possibility that the Court may only award a small percentage of PAGA
6 penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised
7 with this risk in mind, associated with the possibility of the Court significantly reducing
8 Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at
9 trial.

10 20. Defendant raised several defenses that presented risk on the sick pay regular rate
11 theory of liability. Defendant particularly disputes the "willfulness" requirement under Labor
12 Code § 203 and thus it contends that it is not liable for waiting time penalties altogether. In
13 this regard, Defendant has indicated that it has retroactively paid all class members the
14 underpaid amounts of paid sick leave after the filing of the lawsuit. In light of this, there is a
15 chance that the waiting time penalties will be significantly discounted by the Court, should it
16 find that there was no willful failure on Defendant's part to correctly pay paid sick leave.
17 Should the Court find in favor of Defendant on that defense, the total waiting time penalties
18 recoverable by Plaintiff and class members will be \$0.

19 21. As another risk to prevailing on class certification, there is essentially no
20 precedent from any California courts granting class certification of a sick pay regular rate
21 claim. Thus, while Plaintiff believes that a class can be certified, there is a possibility that the
22 Court will also not grant class certification on Plaintiff's sick pay regular rate claim here.

23 22. Although Plaintiff believes that a class can be certified, Plaintiff also believes in
24 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
25 involved in not prevailing on one or more of the causes of action or theories alleged in the
26 operative First Amended Complaint, the possibility of non-certification, and the potential for
27 appeals.

28 23. The Gross Settlement Amount is \$350,000.00, which is approximately **77.5%** of

1 the maximum class and PAGA penalties.

2 24. Pursuant to the Settlement Agreement, the Net Settlement Amount will be
3 equally apportioned among the Settlement Class Members on a per capita basis. On a raw
4 average, each Settlement Class Member may potentially recover approximately **\$1,593.36**.
5 The amount actually paid to each Settlement Class Member may increase or decrease
6 depending on the number of opt-outs received.

7 25. Attached as **Exhibit B** is a true and correct copy of the proposed “Notice of
8 Class Action Settlement” (“Class Notice”) to be sent to Settlement Class Members.

9 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

10 26. From the inception of the case, Class Counsel have zealously represented the
11 interests of the Settlement Class. Class Counsel have engaged in significant meet and confer
12 discussions with opposing counsel to obtain informal data and documents on behalf of the
13 Settlement Class. This settlement was obtained for the benefit of the Settlement Class, as
14 opposed to the individual Class Representative.

15 27. I have spent significant time researching and pursuing the claims that have been
16 alleged in this action. The Parties engaged in informal discovery in connection with
17 mediation, and participated in the exchange of class data and Defendant’s pertinent policies
18 and practices. Based on my review of all the documents and information, and based on my
19 experience in class action litigation, I believe this settlement to be fair, adequate, and
20 reasonable.

21 28. I was retained based upon a contingency fee arrangement wherein Plaintiff’s
22 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
23 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a
24 significant amount of time, money and other resources without any benefit or return. In
25 addition, had Plaintiff also failed to prevail in the present case, Defendant would have been
26 able to seek costs in connection with their defense of the case.

27 **ATTORNEY EXPERIENCE AND TIME SPENT ON THE MATTER**

28 29. I am one of the primary attorneys on this matter. My qualifications are as

1 follows: I received my JD from Loyola Law School in 2017. I received the First Honors
2 Award in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First
3 Honors Award in Civil Litigation Practicum I for achieving the highest grade in those classes.
4 During law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the
5 U.S. District Court, Central District of California, for the Honorable Christina A. Snyder, and a
6 certified law clerk at the San Diego County District Attorney's Office, Collaborative Courts
7 Division, and the Los Angeles County District Attorney's Office, Consumer Protection and
8 Environmental Crimes Division. In 2016, I participated in Loyola Law School's Scott Moot
9 Court Competition, where I placed Top 16 and was awarded the Top Ten Brief Award. In
10 2017, I participated in the Employment Rights Clinic, an extension of the Division of Labor
11 Standards Enforcement created to investigate retaliation complaints. Upon graduation from
12 law school, I was admitted to the California Bar in December 2017.

13 30. I am currently an associate at the law firm Diversity Law Group, P.C., an
14 employment law firm that has handled numerous wage and hour class and individual actions,
15 on both plaintiff and defense sides. The firm currently has cases in numerous state courts,
16 including the Santa Clara Superior Court, Los Angeles Superior Court, Orange County
17 Superior Court, San Diego County Superior Court, Monterey County Superior Court, as well
18 as the United States District Courts for the Central, Northern, Southern, and Eastern Districts
19 of California.

20 31. I am currently handling and/or have handled numerous wage and hour class
21 action and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case
22 Number 5:17-cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-
23 cv-00500-L-MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao*
24 *v. H & M Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper*
25 *Company* (Case Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group,*
26 *Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723);
27 and *Garcia v. Apex Systems, LLC, et al.* (Case Number RG19014709).

28 32. In 2018, I argued before the California Court of Appeal, Second Appellate

District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.* (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In that same year, I also assisted the firm in successfully obtaining class certification and partial summary judgment by the United States District Court, Central District of California in the case of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the bench trial in that same case in December 2018.

33. I have also been approved as class counsel in numerous other wage/hour class actions. Most recently, I was approved as class counsel in the cases *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS (DFM)), and *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319). Moreover, I was granted final approval as class counsel in *California Forensic Medical Group Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319), *Mendez v. Falcon Trading Company* (Case No. 19CV004512), and *Truong v. DS Services of America, Inc.* (Case No. FCS054399). I acted as lead counsel in these cases listed above.

34. To date, I have incurred approximately 93.2 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit C** is a chart summarizing the amount of work I have incurred to date on this matter.

35. In addition to the hours above, I also anticipate spending an additional 25 hours through the completion of this case to handle notice distribution and settlement administration issues, preparing for, drafting and filing for final approval of the settlement, and handling any post-final approval and settlement issues that may arise.

36. Thus, I anticipate the total amount of my fees incurred in this case to be approximately \$59,100.00 based on 118.2 total hours, at any hourly rate of \$500.00 per hour.

1 In 2019 and 2020, I have been approved at an hourly rate of \$450.00 per hour by various
2 Courts in California, including but not limited to, *Lao v. H & M Hennes & Mauritz, L.P.* (Case
3 No. 5:16:cv-333 EJD); *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-
4 CV-299319); and *Abarca v. El Estero Car Wash, Inc. et al* (Case No. 18CV003398). As of
5 January 1, 2021, I increased my hourly rate of \$500.00 per hour. I have been approved at the
6 hourly rate of \$500.00 in other cases in 2021, including *Baker v. California Forensic Medical*
7 *Group, Inc.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No.
8 17CV003723); *Mendez v. Falcon Trading Company* (Case No. 19CV004512), and *Truong v.*
9 *DS Services of America, Inc.* (Case No. FCS054399).

10 37. My co-counsel and I will adequately represent the Settlement Class Members in
11 this action. Plaintiff's Counsel have and will zealously represent Plaintiff and the Settlement
12 Class and pursue this lawsuit to its conclusion. I have no conflicts with the Settlement Class
13 and will adequately represent the Settlement Class.

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

16 Executed on this 7th day of March 2022, at Los Angeles, California.

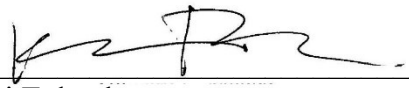
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EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Carl Haney (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Peninsula Packaging, LLC (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class is represented by Larry W. Lee and Mai Tulyathan of Diversity Law Group, APC (“Class Counsel”). Defendant is represented by Michael D. Thomas and Jeffrey A. Brand of Jackson Lewis.

On January 25, 2021, Plaintiff filed a class and representative action lawsuit against Defendant, asserting the following causes of action: (1) failure to pay all wages due upon termination (Labor Code §§ 201-203); (2) failure to authorize rest periods (Labor Code § 226.7); (3) failure to provide accurate itemized wage statements (Labor Code § 226(a)); (4) violation of Business & Professions Code § 17200, *Et Seq.*; and (5) violation of California’s Private Attorneys General Act (Labor Code § 2698, *Et Seq.*).

On January 6, 2022, Plaintiff filed his First Amended Complaint (“The Action”) to remove his Second Cause of Action for failure to authorize rest periods, Plaintiff’s Fourth Cause of Action for violations of California’s Business & Professions Code § 17200, *Et Seq.*, and Plaintiff’s Fifth Cause of Action for violations of California’s Private Attorneys General Act, with respect to Plaintiff’s rest period allegations. As a result, Plaintiff’s First cause of action, Third cause of action, and Fifth cause of action with respect to Plaintiff’s paid sick leave allegations still remain. Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All non-exempt employees of Defendant in the state of California who were allegedly underpaid sick pay while working on Shifts B or C,¹ and whose employment ended (either voluntarily or involuntarily) at any time from January 25, 2018 to October 27, 2021 (the “Class Period”).

Defendant represents that the number of Settlement Class Members do not exceed 108 during the Class Period. The Parties agree that certification of the Settlement Class for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no

¹ Employees in Defendant’s Labeling & Application, Warehouse, and Shipping Departments, who worked the B Shift, worked an 8-hour shift starting at 3:00 p.m., and received a shift differential of 35 cents per hour in addition to their base hourly wage. Employees in Defendant’s Labeling & Application, Warehouse, and Shipping Departments, who worked the C Shift, worked an 8-hour shift starting at 11:00 p.m., and received a shift differential of 75 cents per hour in addition to their base hourly wage. Employees in Defendant’s Thermoforming and Extrusion Departments, who worked the A2 and C2 shifts (“C Shift”) worked an Alternative Workweek Schedule of 12 hours per day, and received a shift differential of 75 cents per hour in addition to their base hourly wage.

effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Plaintiff.** Upon the complete funding of the Gross Settlement Amount, Plaintiff, individually and on behalf of Plaintiff's heirs, executors, administrators, representatives, attorneys, successors, and assigns knowingly and voluntarily releases and forever discharges discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the "Released Parties"), as follows:

- A. Plaintiff will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative Class and Representative Action Complaint ("Complaint"), including: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to authorize and permit all rest periods in accordance with California law; (d) failure to provide all meal periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; (g) expense reimbursement; (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the Complaint; (i) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pled in the Complaint; and (j) all damages, penalties, interest, costs (including attorney's fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the Complaint (collectively, the "Released Claims").
- B. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff

has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

C. The period of the Release shall extend to the limits of the Class Period.

3. **Release by Settlement Class Members.** Upon the complete funding of the Gross Settlement Amount, every member of the Settlement Class (except those who validly opt out from the Settlement) will fully release and discharge the Released Parties, as follows:

A. Settlement Class members will release all claims under state, federal or local law, whether statutory, common law or administrative that were or could have been alleged based on the facts alleged in the First Amended Complaint predicated on claims for failure to pay sick pay wages upon termination of employment, pursuant to Labor Code §§ 201-203, 226(a), 246, and for claims for civil penalties under the PAGA, Labor Code § 2698, *et seq.*, predicated on failure to pay sick pay wages upon termination of employment, that occurred during the Class Period.. The period of the Release shall extend to the limits of the Class Period.

4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Gross Settlement Amount" of Three Hundred, Fifty Thousand Dollars and Zero Cents (\$350,000.00) in full and complete settlement of the Action, as follows:

A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.

B. The term "Final" and "Final Effective Date" means: (i) the date that the Settlement Agreement has received Final Approval by the Court and there were no timely objections or intervener requests filed, or that any timely objections and/or interveners have been withdrawn; or, (ii) in the event that one or more timely objections or interventions has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector or intervener to seek appellate review of the Court's order of Final Approval, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court's order of Final Approval has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court's Final Approval without material modification, and the applicable date for seeking further

appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

C. The Gross Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) calendar days of the Final Effective Date.

D. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Five Thousand Dollars and Zero Cents (\$5,000.00);
- (3) Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff's Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class, and for providing a general release of all claims and waiver under Civil Code § 1542. If Plaintiff's request for his enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;
- (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, or \$116,666.67, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). If Class Counsel's request for attorneys' fees and/or reimbursement of litigation costs is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and
- (5) Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$26,250.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Eight Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$8,750.00) shall become part of the Net Settlement Amount payable to the Settlement Class.

E. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative enhancement payment, the LWDA's share of the PAGA payment, and the Settlement Administrator's fees and expenses for administration. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
 - i. Each participating Settlement Class member whose employment with Defendant ended at any time from January 25, 2018 to October 27, 2021, shall receive an equal share of the Net Settlement Amount on a per capita basis. In other words, the Net Settlement Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from January 25, 2018 to October 27, 2021.
 - ii. Payments to Settlement Class Members shall be allocated as follows for tax purposes: Ninety percent (90%) as penalties, and ten percent (10%) as interest. IRS Forms 1099 will be issued for the individual settlement payments to Settlement Class Members.
- C. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members.
- D. The entire Settlement Award for each Class Member will be allocated as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms 1099. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be distributed to the following *cy pres* beneficiary: Legal Aid At Work.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is to be One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$116,666.67). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff for his time and risk in prosecuting this case, his service to the Settlement Class, and for providing a general release of all claims and waiver under Civil Code § 1542. This payment will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to Five Thousand Dollars and Zero Cents (\$5,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Larry W. Lee and Mai Tulyathan of Diversity Law Group, APC as Class Counsel;
- C. Appointing Carl Haney as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice, and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the full names, last known addresses, phone numbers, social security numbers, and the dates of employment by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Except with respect to the settlement of the PAGA claim, any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the Settlement must prepare and submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name and address of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt out of the

Settlement Class or encourage any Settlement Class member to appeal from the final judgment.

- D. Objections. Except with respect to the settlement of the PAGA claim, settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including whether the Settlement Class member's employment with Defendant ended during the time period of January 25, 2018 to October 27, 2021. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the

current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative enhancement payment, LWDA payment, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

11. **No Right to Object to or Request Exclusion from the PAGA Settlement.** The Parties agree that there is no statutory right for any Settlement Class Members to object to, opt out of, or otherwise exclude himself or herself from the settlement of the Released PAGA Claims. To the extent that any Settlement Class Members opts out of the Settlement, the Settlement Class Member will still be deemed to have released their claims under PAGA, Labor Code § 2698, *et seq.*, premised on failure to pay sick pay wages upon termination of employment under Labor Code §§ 201-203, 226(a), and 246 that accrued during the period of December 16, 2019 to October 27, 2021.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement and to post the Court's judgment on the Settlement Administrator's website as set forth herein. Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Settlement Class, or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Michael D. Thomas, Jackson Lewis, 725 South Figueroa Street,
Suite 2500, Los Angeles, California 90017;
Michael.Thomas@jacksonlewis.com

if to Plaintiff: Larry W. Lee, Diversity Law Group, APC, 515 S. Figueroa St., Suite
1250 Los Angeles, California 90071; lwlee@diversitylaw.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, including electronic scan, pdf, or DocuSign, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or

Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

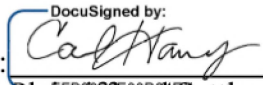
DATED: January __, 2022

Peninsula Packaging, LLC

By: _____

DATED: January ¹² __, 2022

Carl Haney

By:  _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

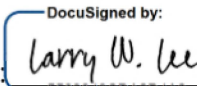
DATED: January __, 2022

JACKSON LEWIS

By: _____
Michael D. Thomas
Jeffrey A. Brand
ATTORNEYS FOR DEFENDANT

DATED: 1/12/2022

DIVERSITY LAW GROUP, APC

By:  _____
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff

Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: January 18, 2022

Peninsula Packaging, LLC

By: 

Marcia Tuten
Staff VP, Legal Operations, Chief IP Counsel,
and Assistant General Counsel

DATED: January __, 2022

Carl Haney

By: _____

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: January __, 2022

JACKSON LEWIS

By: _____

Michael D. Thomas
Jeffrey A. Brand
ATTORNEYS FOR DEFENDANT

DATED:

DIVERSITY LAW GROUP, APC

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff

Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: January __, 2022

Peninsula Packaging, LLC

By: _____
Marcia Tuten
Staff VP, Legal Operations, Chief IP Counsel,
and Assistant General Counsel

DATED: January __, 2022

Carl Haney

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: January 20, 2022

JACKSON LEWIS

By: Michael D. Thomas
Michael D. Thomas
Jeffrey A. Brand
ATTORNEYS FOR DEFENDANT

DATED:

DIVERSITY LAW GROUP, APC

By: _____
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff

EXHIBIT B

Carl Haney v. Peninsula Packaging, LLC
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
(CASE NO. VCU285695)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A FORMER CALIFORNIA NON-EXEMPT HOURLY EMPLOYEE OF PENINSULA PACKAGING, LLC (“PENINSULA”) AND YOU WERE PAID SICK LEAVE AND WORKED ON SHIFTS B OR C AT ANY TIME FROM JANUARY 25, 2018, TO OCTOBER 27, 2021,

YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A SETTLEMENT.

*The Tulare County Superior Court (“Court”) authorized this Notice to be sent by **Phoenix Settlement Administrators** (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.*

**YOUR ESTIMATED TOTAL INDIVIDUAL PAYMENT AMOUNT FROM THIS
CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

**According to Peninsula’s records, you are eligible for a settlement payment as a
member of the Settlement Class. Your Individual Payment Amount as a member of
the Settlement Class is estimated to be [\$ [REDACTED]].**

- A settlement will provide \$350,000.00 to pay claims to certain former non-exempt employees, as described below, who have been employed in California by Peninsula Packaging, LLC (“Peninsula”) between January 25, 2018, to October 27, 2021.
- The settlement resolves a lawsuit in which it is alleged that Peninsula failed to properly calculate and pay sick leave pay at the regular rate of pay to certain former employees in California and failed to provide accurate itemized wage statements under the California Labor Code. The settlement avoids the costs and risks from continuing the lawsuit, pays money to employees, and releases Peninsula from liability for the alleged violations.
- Lawyers for the employees will ask the Court to award them up to \$116,666.67 as attorneys’ fees and up to \$20,000 as costs and expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Peninsula expressly denies all of the claims in the lawsuit and denies any wrongdoing or liability. The two sides disagree on how much money – if any – could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You need not take any action if you wish to receive your settlement payment. If the settlement is approved by the Court and you do nothing, you will automatically be mailed a settlement check for your share of the settlement at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue Peninsula separate for the same legal claims that are part of this lawsuit (see page 4 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue Peninsula for the same legal claims that are part of this lawsuit, except for the PAGA claim which is released upon approval of the Settlement. This is the only option that allows you to be part of any other lawsuit against Peninsula asserting the legal claims that were settled in this case. You cannot ask to be excluded <u>and</u> still get a settlement payment for the claims aside from the PAGA claim. If you ask to be excluded from the settlement, you cannot object to the settlement.
You Can Object To The Settlement	If you do not agree with the settlement, you can object to the settlement according to the procedures described below on page 6. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because, according to Peninsula's records, you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On January 25, 2021, Plaintiff Carl Haney filed this class and representative Private Attorney General Action ("PAGA") lawsuit against Peninsula in Tulare County Superior Court, alleging violations of California Labor Code §§ 201-203, 226(a), 246, and 2698, *et seq.* Specifically, the lawsuit alleges that Peninsula failed to pay sick leave at the correct regular rate of pay. Rather, Plaintiff alleges that Peninsula paid sick leave at rates that were

lower than the employees' regular hourly rates of pay for regular hours worked. Plaintiff also alleges that Peninsula failed to provide accurate itemized wage statements to its employees as a result of the sick pay violations. Based on these allegations, Plaintiff seeks to recover statutory penalties, civil penalties, attorneys' fees and costs on behalf of himself and other employees affected by these alleged violations (the "Settlement Class"). Peninsula denies all of the material allegations in the lawsuit and denies that it did anything wrong.

The Parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminary approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims or Peninsula's defenses in the lawsuit.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Peninsula. Plaintiff believes he would have prevailed on his claims at a trial. Peninsula does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, after thorough investigation into the facts and claims, both sides agreed to a settlement. That way, they each avoid the costs, risks, and uncertainty of a trial, and the employees allegedly affected will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, and adequate and is in the best interests of all Settlement Class Members.

B. Who is in the Settlement Class?

The settlement encompasses a Settlement Class consisting of: All non-exempt employees of Peninsula in the state of California who were allegedly underpaid sick pay while working on Shifts B or C, and whose employment ended (either voluntarily or involuntarily) at any time from January 25, 2018 to October 27, 2021.

The Class Period is defined as any time from January 25, 2018 to October 27, 2021.

The employees who worked the B and C Shifts are defined as: Employees in Peninsula's Labeling & Application, Warehouse, and Shipping Departments, who worked the B Shift, worked an 8-hour shift starting at 3:00 p.m., and received a shift differential of 35 cents per hour in addition to their base hourly wage. Employees in Peninsula's Labeling & Application, Warehouse, and Shipping Departments, who worked the C Shift, worked an 8-hour shift starting at 11:00 p.m., and received a shift differential of 75 cents per hour in addition to their base hourly wage. Employees in Peninsula's Thermoforming and Extrusion Departments, who worked the A2 and C2 shifts ("C Shift") worked an Alternative Workweek Schedule of 12 hours per day, and received a shift differential of 75 cents per hour in addition to their base hourly wage.

If you received this notice, you are a member of the Settlement Class.

C. What has Peninsula agreed to do?

Peninsula will pay \$350,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$26,250 to the California Labor and Workforce Development Agency ("LWDA") as its share of the settlement payment being made under the California Private Attorneys General Act ("PAGA"); (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$116,666.67, and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$20,000; (3) a service payment to the Plaintiff in an amount set by the Court, not to exceed \$10,000 for his service

and efforts in prosecuting the lawsuit; and (4) no more than \$5,000 to the settlement administrator for administering the settlement. The portion of the Maximum Settlement Amount remaining after these payments is the “Net Settlement Amount,” which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below.

D. What are you giving up to get a payment and stay in the Class?

Subject to the Court’s approval of the Settlement, Plaintiff and all Settlement Class Members who do not opt out of the Settlement will release Peninsula, and any of its former and present officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (the “Released Parties”), as follows:

Settlement Class Members will release all claims under state, federal, or local law, whether statutory, common law or administrative that were or could have been alleged based on the facts alleged in the First Amended Complaint predicated on claims for failure to pay sick leave upon termination of employment, pursuant to Labor Code §§ 201-203, 226(a), 246, and for claims for civil penalties under the PAGA, Labor Code § 2698, *et seq.*, predicated on failure to pay sick leave upon termination of employment, that occurred during the Class Period. The Period of the Release shall extend to the limits of the Class Period.

The claims being released above (“the Released Claims”) do not include a release of *all* legal claims you may have as an employee or former employee of Peninsula. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each Participating Class Member will receive an individual settlement payment amount, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by deducting attorneys’ fees and costs, settlement administration costs, any service payment to the Plaintiff, and the LWDA’s share of the PAGA penalty payment from the Maximum Settlement Amount. Each Participating Class Member whose employment with Peninsula ended at any time from January 25, 2018 to October 27, 2021, shall receive an equal share of the Net Settlement Amount on a per capita basis. In other words, the Net Settlement Amount will be divided equally among all Participating Settlement Class Members whose employment with Peninsula ended at any time from January 25, 2018 to October 27, 2021.

According to Peninsula’s records, you are eligible for an individual settlement payment amount as a member of the Settlement Class. Your individual settlement payment amount is estimated to be \$ [REDACTED].

The actual amount that you receive as a member of the Settlement Class could end up being more or less than this amount, depending on the final settlement terms approved by the Court.

Information regarding your eligibility as a member of either of the Settlement Class, is presumed to be correct unless you submit documents proving otherwise. If you disagree with the information listed above, please submit document and/or an explanation and supporting evidence to the Settlement Administrator no later than [45 days after mailing]. Any disputes regarding the information above must be postmarked by the [RESPONSE DEADLINE]. In the event of a dispute about the correctness of this information or your eligibility, the Settlement Administrator will resolve the challenge with input from Peninsula and Class Counsel.

F. Will any taxes be taken out of the individual settlement payment amounts?

No. There will be no payroll withholding from your payment, because the entirety of your Individual Payment Amount will be reported as non-wage income on an IRS Form 1099. Ninety percent (90%) will be allocated as penalties, and ten percent (10%) will be allocated as interest. The Settlement Administrator will issue 1099 Forms to all Settlement Class Members who cash their checks.

The fact that payroll withholdings will not be made does not mean that the payments are not taxable income to you. Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the settlement payments they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2022, at [REDACTED], in Department 7 of the Tulare County Superior Court, located at [INSERT COURT ADDRESS]. The Court will then determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s attorneys; (v) the amount that should be awarded to Plaintiff as a service payment for prosecuting this lawsuit on behalf of other Peninsula employees; and (vi) the amount that should be approved for settlement administration costs.

You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, if you wish to enter an appearance at the hearing. The Final Approval Hearing may be continued to another date without further notice.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

If you want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your individual settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court. If you move, you must update your address with the Settlement Administrator. The Settlement Administrator’s address is [Settlement Administrator address].

• **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from (“opt out” of) the Settlement Class, but if you choose to do so, you will not receive any benefits or a monetary payment from the proposed settlement. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against Peninsula for the same claims in this lawsuit in your own separate lawsuit if you wish.

To exclude yourself from the Settlement, you can exclude yourself by writing to the Settlement Administrator stating that you want to be excluded from the *Carl Haney v. Peninsula Packaging, LLC* settlement.

You must include the following: (a) your name; (b) your address; (c) a statement that you wish to be excluded from the *Carl Haney v. Peninsula Packaging, LLC* settlement; and (d) your signature. Your letter must be postmarked no later than [45 days after mailing] and mailed to the Settlement Administrator at [Settlement Administrator address]. If your written request does not contain information listed in (a) to (d), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on your request will be the exclusive means to determine whether your request has been timely submitted.

- If you submit a valid and timely request for exclusion, you will no longer be part of the Settlement. You may not object to the Settlement, and will not receive an individual settlement payment amount from the Settlement. However, you will retain all rights you may have against Peninsula for the same legal claims made in this lawsuit with the exception of the PAGA claim, which will be released upon court approval of the Settlement.
- There is no statutory right for Settlement Class Members to opt out or exclude himself or herself from the PAGA claim. To the extent that any Settlement Class Member opts out of the Settlement, the Settlement Class Member will still be deemed to have released their claims under PAGA, Labor Code § 2698, *et seq.*, premised on failure to pay sick leave upon termination of employment under Labor Code §§ 201-203, 226(a), and 246, that accrued during the period of December 16, 2019 to October 27, 2021.
- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you believe the proposed settlement is unfair or unreasonable, you can object to the proposed Settlement stating why you object to the Settlement. You can object to the proposed settlement by writing to the Settlement Administrator.

In order to be valid, your written objection must include: (a) your full name; (b) your address (or to the extent you have an attorney representing you for purposes of the objection, their contact information); (c) all factual and legal grounds for your objection to the Settlement; and (d) any and all supporting papers, briefs, written evidence, declarations, and/or evidence for which your objection is based on, to the extent you have any. All written objections and supporting papers must be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [45 days after mailing].

If you submit an objection, you will remain eligible for a monetary payment under the Settlement if the Court approves the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement. You cannot exclude yourself from the Settlement **and** submit an objection to the Settlement.

WHO ARE THE ATTORNEYS

Attorneys for Plaintiff / the Settlement Class:	Attorneys for Defendant
DIVERSITY LAW GROUP P.C. Larry W. Lee lwlee@diversitylaw.com Mai Tulyathan ktulyathan@diversitylaw.com 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Tel: (213) 488-6555 Fax: (213) 488-6554	JACKSON LEWIS, P.C. Michael D. Thomas michael.thomas@jacksonlewis.com Jeffrey A. Brand Jeffrey.brand@jacksonlewis.com 725 South Figueroa Street, Suite 2500 Los Angeles, California 90017 Tel.: (213) 689-0404 Fax: (213) 689-0430

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the pleadings and filings in this case, and the detailed Settlement Agreement, which may be inspected at the Tulare County Superior Court, **[INSERT COURT ADDRESS]**, during regular business hours of each court day, or at **[Settlement Administrator's website]**.

DO NOT CALL THE COURT.

**BY ORDER OF THE TULARE COUNTY SUPERIOR
COURT OF THE STATE OF CALIFORNIA**

EXHIBIT C

Haney v. Peninsula Packaging LLC
Time and Task Chart for Mai Tulyathan

Hours	Description of Work
5.5	Factual investigation, review of file and client documents, review PAGA letter upon assignment to case.
4.6	Draft complaint; further review and revise complaint
2.0	Meet and confer with opposing counsel regarding Defendant's demurrer and motion to strike
13.7	Review Defendant's demurrer and motion to strike; draft opposition to same; conduct legal research in connection with same; further review and revise opposition
1.0	Review Defendant's reply in support of its demurrer and motion to strike
3.8	Review the Court's tentative ruling on Defendant's demurrer and motion to strike; prepare for oral argument and attend hearing re same
2.5	Meet and confer with opposing counsel regarding mediation; draft and prepare informal discovery request in connection with mediation
9.2	Review and analyze production of informal discovery for mediation, including class data, spreadsheets, and documents re: Defendant's various policies; numerous meet and confer communications with opposing counsel regarding data and documents
2.7	Prepare and review damages analysis for mediation
9.5	Attend mediation; preparation for same
3.9	Review and revise Memorandum of Understanding; further meet and confer with opposing counsel regarding MOU; further review and revise same; confer with client regarding settlement terms
2.0	Prepare First Amended Complaint and stipulation; meet and confer regarding same
10.6	Review and revise long-form settlement agreement; confer with opposing counsel regarding terms therein; confer with client regarding same
3.8	Review and revise class notice to be sent to class members; confer with opposing counsel regarding same
1.0	Confer with settlement administrator regarding administration and admin expenses
2.8	Meet and confer with opposing counsel for case management conferences, draft CMC statements and updated statements in connection therewith
14.6	Draft motion for preliminary approval of settlement, proposed order, and supporting documents; legal research in connection therewith; further revise same

<u>93.2</u>	<u>TOTAL HOURS</u>
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