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**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]

**[PROPOSED] ORDER GRANTING
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

1 Plaintiff Carl Haney's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on March 7, 2022, and a hearing
3 was held before this Court on March 29, 2022. Appearances by counsel for Plaintiff and
4 Defendant Peninsula Packaging, LLC ("Defendant") (together, the "Parties") were noted on
5 the record.

6 Having considered Stipulation of Settlement ("Settlement Agreement") and all other
7 papers filed in this action, the Court HEREBY FINDS AND ORDERS as follows:

8 1. This Court grants preliminary approval of the Settlement Agreement between
9 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair,
10 adequate, and reasonable to the Settlement Class.

11 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
12 their counsel of record, have reached an agreement to settle the class and PAGA claims in the
13 case as set forth in the Settlement Agreement, on behalf of the Settlement Class (as defined
14 below and in the Settlement Agreement).

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

19 3. Should for whatever reason the Settlement Agreement not become Final, the fact
20 that the Parties were willing to stipulate to certification of a class as part of the Settlement
21 Agreement shall have no bearing on, or be admissible in connection with, the case or the issue
22 of whether a class should be certified in a non-settlement context.

23 4. The Court appoints and designates: (a) Plaintiff Carl Haney as the Class
24 Representative and (b) Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. as
25 Class Counsel for the Settlement Class. Class Counsel is authorized to act on behalf of the
26 Settlement Class with respect to all acts or consents required by, or which may be given,
27 pursuant to the Settlement Agreement, and such other acts reasonably necessary to finalize the
28 Settlement Agreement and its terms. Any Settlement Class Member may enter an appearance

1 through his or her own counsel at such Settlement Class Member's own expense. Any
2 Settlement Class Member who does not enter an appearance or appear on his or her own behalf
3 will be represented by Class Counsel.

4 5. The Court hereby approves the terms and conditions provided for in the
5 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
6 falls within the range of reasonableness of a settlement and appears to be presumptively valid,
7 subject only to any objections that may be raised at the final fairness hearing and final approval
8 by the Court. It appears to the Court on a preliminary basis that the settlement is fair,
9 adequate, and reasonable as to all potential Settlement Class Members when balanced against
10 the probable outcome of further litigation relating to liability, class certification, and damages
11 issues. It also appears that investigation and research into the claims, liability, and damages
12 have been conducted so that counsel for the Settling Parties are able to reasonably evaluate
13 their respective positions. It appears to the Court that settlement at this time will avoid
14 substantial additional costs by all Settling Parties, as well as avoid the delay and risks that
15 would be presented by the further prosecution of the Litigation. It also appears that settlement
16 has been reached as a result of intensive, serious, and non-collusive arm's length negotiations.

17 6. The Court hereby approves the following dates:

Description	Date
Class Data to Settlement Administrator	10 business days after the Court enters the Order granting preliminary approval
Class Notice Distribution	10 business days after receiving Class Data
Opt Out / Objection Deadline	45 calendar days after initial Class Notice distribution
Opt Out / Objection Deadline (for re-mailed notices)	14 calendar days extension from date of re-mailing
Final Approval Filing Deadline	16 court days before the Final Approval Hearing

1 **Final Approval Hearing**

2 _____, 2022, at _____

3 A final fairness hearing on the question of whether the proposed Settlement
4 Agreement, the allocation of payments to Settlement Class Members, attorneys' fees and costs
5 to Class Counsel, the payment to the Settlement Administrator, the payment to the Labor
6 Workforce & Development Agency, and the enhancement payment to the Class Representative
7 should be finally approved as fair, reasonable, and adequate as to the members of the Class is
8 hereby set for _____, 2022, at _____. in this Court. The Motion for Final
9 Approval shall be filed by the Class Representative no later than sixteen (16) court days before
10 the final fairness hearing.

11 7. The Court hereby approves, as to form and content, the Notice of Class Action
12 Settlement ("Class Notice") to be sent to Settlement Class Members, which is attached herein
13 as **Exhibit A**. The Court finds that distribution of the Class Notice to Settlement Class
14 Members substantially in the manner and form set forth in the Settlement Agreement and this
15 Order meets the requirements of due process and shall constitute due and sufficient notice to
16 all parties entitled thereto.

17 8. The Court appoints and designates Phoenix Settlement Administrators as the
18 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide
19 the approved Class Notice to Settlement Class Members using the procedures set forth in the
20 Settlement Agreement.

21 9. Any Settlement Class Member may choose to opt out of and be excluded from
22 the Settlement as provided in the Settlement Agreement and Class Notice, and by following
23 the instructions for requesting exclusion. Any person who timely and properly opts out of the
24 Settlement will not be bound by the Settlement Agreement or have any right to object, appeal,
25 or comment thereon. Any requests for exclusion must be in writing and signed by each such
26 Settlement Class Member opting out and must otherwise comply with the requirements
27 delineated in the Class Notice. Settlement Class Members who have not requested exclusion
28 by submitting a valid and timely request by the deadline shall be bound by all determinations

1 of the Court, the Settlement Agreement, and Judgment.

2 10. Any Settlement Class Member may object to the Settlement Agreement or
3 express his or her views regarding the Settlement Agreement, and may present evidence and
4 file briefs or other papers that may be proper and relevant to the issues to be heard and
5 determined by the Court as provided in the Notice.

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

10 IT IS SO ORDERED.

11
12 DATED: _____

13 HON. BRET D. HILLMAN
14 SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

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
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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**