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

MARIA DEL CARMEN ESPINOZA, an
individual,

Plaintiff,

vs.

GUTIERREZ FLC, INC., a California corporation;
WESPAK, INC., a California corporation; and
DOES 1 through 100,
Defendants.

Case No.: VCU286325

[Assigned for all purposes to Dept. 07]

**[PROPOSED] FINAL ORDER OF
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT**

Date: April 4, 2023
Time: 8:30 a.m.
Dept.: 07

Complaint Filed: March 3, 2021
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on April 4, 2023, at 8:30 a.m.
2 pursuant to California Rule of Court 3.769 and this Court's October 4, 2022 Order Granting
3 Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"). Having
4 considered the Parties' Stipulation of Class Action Settlement (the "Settlement" or "Settlement
5 Agreement") attached as Exhibit A to the Declaration of Daniel J. Brown in Support of Plaintiff's
6 Motion for Preliminary Approval of Class Action Settlement, filed on September 19, 2022, and
7 the submissions of counsel, and recognizing the sharply disputed factual and legal issues involved
8 in this case, the risks of further prosecution and the benefits to be received by the Class pursuant
9 to the Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair,
10 reasonable, and adequate, and is the product of good faith, arm's-length negotiations between the
11 Parties.

12 Unless otherwise indicated, all terms used in this Order shall have the same meaning as
13 that assigned to them in the Settlement.

14 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
15 Approval of Class Action Settlement and ORDERS as follows:

16 1. The conditional class certification contained in the Preliminary Approval Order is
17 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
18 Class consisting of:

19 All current and former non-exempt employees of Defendant Gutierrez FLC, Inc. in
20 California who worked at least one shift performing work for Defendant WesPak, Inc. at
any time during the period of January 1, 2019 to September 2, 2022.

21 2. Plaintiff Maria Del Carmen Espinoza is hereby confirmed as Class Representative,
22 and Daniel J. Brown of Stansbury Brown Law, PC is hereby confirmed as Class Counsel.

23 3. Notice was provided to the Settlement Class as set forth in the Settlement which
24 was preliminarily approved by the Court on October 4, 2022, and the notice process has been
25 completed in conformity with the Court's Order. The Court finds that said notice was the best
26 notice practicable under the circumstances. The Class Notice provided due and adequate notice
27 of the proceedings and matters set forth herein, informed Class Members of their rights, and fully
28

1 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
2 Court 3,769, and due process.

3 4. The Court finds that no Class Member who received the Class Notice objected to
4 the Settlement and only seven individual opt-ed out of the settlement, and that the 98.58%
5 participation rate in the Settlement supports final approval.

6 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
7 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
8 terms.

9 6. For purposes of settlement only, the Court finds that (a) the members of the
10 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
11 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
12 community of interest among members of the Settlement Class with respect to the subject matter
13 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
14 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
15 interests of the Class Members; (e) a class action is superior to other available methods for an
16 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
17 for the Class Representative and the Settlement Class.

18 7. The Court finds that given the absence of objections, and objections being a
19 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
20 notice of entry.

21 8. The Court orders that all portions of the Maximum Settlement Amount of Two
22 Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) shall be deposited with the
23 Settlement Administrator, ILYM Group, Inc. (“ILYM”), as provided in the Settlement.

24 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
25 shall not be reissued and shall be distributed to the Controller of the State of California to be held
26 pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of
27 those Class Members who did not cash their checks until such time that they claim their property.
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1 10. The Court finds that the Individual Settlement Awards, as provided for in the
2 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
3 distribute the Individual Settlement Awards in conformity with the terms of the Settlement. The
4 Court further orders that any envelope transmitting a Settlement Award to a Settlement Class
5 Member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS
6 ENCLOSED."

7 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
8 Plaintiff Maria Del Carmen Espinoza is appropriate for her risks undertaken and service to the
9 Settlement Class. The Court finds that this payment is fair, reasonable, and adequate, and orders
10 that the Settlement Administrator make this payment in conformity with the terms of the
11 Settlement.

12 12. The Court finds that attorneys' fees in the amount of \$83,333.00 and actual
13 litigation costs of \$15,730.48 are fair, reasonable, and adequate, and orders that the Settlement
14 Administrator distribute these payments in conformity with the terms of the Settlement.

15 13. The Court finds that a payment to the Labor & Workforce Development Agency
16 ("LWDA") in the amount of \$3,750.00 for the LWDA's share of civil penalties under the Labor
17 Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the
18 Settlement Administrator make this payment in conformity with the terms of the Settlement.

19 14. The Court orders that the Settlement Administrator shall be paid \$12,900.00 from
20 the Maximum Settlement Amount for all of its work done and to be done until the completion of
21 this matter, and finds that sum appropriate.

22 15. Pursuant to the terms of Settlement, the employer's share of payroll taxes for the
23 portion of the Net Settlement Fund allocated to wages shall be paid by Defendants separately, and
24 in addition to, the Maximum Settlement Amount.

25 16. The Court finds and determines that upon satisfaction of all obligations under the
26 Settlement and this Order, all Settlement Class Members, except those who have validly opted-
27 out of the Settlement, will be bound by the Settlement and will have released the Released Claims
28

as set forth in the Settlement.

17. Settlement is not an admission by Defendants, nor is this Order and Final Judgment a finding of the validity of any allegations or of any wrongdoing by Defendants. Neither this Order and Final Judgment, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendants.

18. As of the date of this Order and Final Judgment and the full funding of the Maximum Settlement Amount as called for in the Settlement, Plaintiff and every member of the Settlement Class (except those who have validly opt-out of the class portion of the settlement) shall be deemed to fully release and discharge Defendants, their past or present officers, directors, shareholders, and their respective successors and predecessors in interest, for all claims based on the facts pled in the operative Second Amended Class and Representative Action Complaint (“SAC”) that arose during the Class Period (“Released Claims”), including: (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.* that were premised on the claims that were pled in the SAC. The release period shall run from January 1, 2019 to September 2, 2022 (the “Class Period”). This Release is expressly limited only to shifts worked by Gutierrez FLC, Inc. employees’ for WesPak, Inc.

19. Plaintiff and all Class Members who were employed by Defendant Gutierrez FLC, Inc. in California who worked at least one shift performing work for Defendant WesPak, Inc. at any time from March 23, 2020 through September 2, 2022 (“PAGA Period”) (“Aggrieved Employees”), will fully release and discharge the Released Parties from all claims for civil penalties under the PAGA that were pled in the SAC, which arose during the PAGA Period. This Release is expressly limited only to shifts worked by Gutierrez FLC, Inc. employees’ for WesPak, Inc.

20. Notwithstanding the paragraphs above nor anything else in the Settlement,

1 Plaintiff's waiver and release in the Settlement does not apply to (i) those rights that as a matter
2 of law cannot be waived, including, but not limited to, workers' compensation claims, pending
3 or otherwise; and (ii) rights or claims arising out of this Settlement.

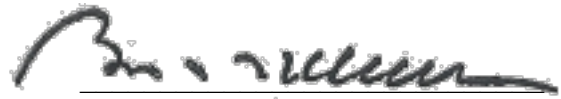
4 21. The releases identified herein shall be null and void should the Settlement not be
5 fully funded.

6 22. This document shall constitute a final judgment pursuant to California Rule of
7 Court 3.769(h) which provides, "If the court approves the settlement agreement after the final
8 approval hearing, the court must make and enter judgment. The judgment must include a
9 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
10 judgment. The court may not enter an order dismissing the action at the same time as, or after,
11 entry of judgment." Pursuant to section 664.6 of the California Code of Civil Procedure, the
12 Court will retain jurisdiction to enforce the Settlement, this Final Order and Judgment.

13 23. The Settlement Administrator shall file a declaration regarding the disbursement
14 of Settlement funds on or before December 7, 2023, and the date for the Final Report Hearing
15 shall be set for December 12¹², 2023. The declaration shall state the date the checks were mailed,
16 the total number of checks mailed to Settlement Class Members, the total value of those uncashed
17 checks, and the nature and date of the disposition of those unclaimed funds.

18 **IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.**

19 Dated: April 4, 2023


Judge of the Superior Court