

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

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

DEWEY ANDERSON, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

GRAHAM PACKAGING PET
TECHNOLOGIES, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: CV-21-005550

(Assigned to the Hon. Sonny S. Sandhu, Dept. 24)

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT AND
JUDGMENT**

Date: August 15, 2023

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: October 8, 2021

FAC Filed: February 8, 2022

Trial Date: Not Set

1 WHEREAS, Plaintiff Dewey Anderson (“Plaintiff” or “Anderson”) filed a complaint on
2 October 8, 2021, against Defendant Graham Packaging Pet Technologies, Inc. (“Defendant”) in
3 the Superior Court of the State of California for the County of Stanislaus that alleged, *inter alia*,
4 class and individual claims for purported violations of the California Labor Code.¹

5 WHEREAS, the Court entered an order (the “Preliminary Approval Order”) on April 6,
6 2023, that conditionally certified the Class² and granted preliminary approval to the Parties’ Joint
7 Stipulation of Class Action Settlement and Release of Claims (“Stipulation” or “Settlement
8 Agreement”).

9 WHEREAS, the Court also approved the proposed form of notice submitted by the
10 Parties (the “Class Notice”) and the Parties’ notice plan.

11 WHEREAS, Plaintiff filed a Motion for Final Approval (“the Motion”) of Class Action
12 Settlement on July 24, 2023.

13 WHEREAS, the Court held a hearing on the Motion on August 15, 2023, during which
14 appearances for Plaintiff and Defendant Graham Packaging PET Technologies, Inc.

15
16 ¹ Plaintiff amended his complaint on February 8, 2022, to add a cause of action under California’s Private Attorneys
17 General Act (“PAGA”). The Court granted Plaintiff’s motion to approve a separate settlement of Plaintiff’s PAGA
claim on March 29, 2023.

18 ² The “Class Members” are defined as:

- 19
- 20 a. all current and former non-exempt employees of Defendant in the State of
21 California who earned non-discretionary incentive wages, including but not
22 limited to, wellness pay and referral bonuses, and overtime wages during the
same workweek, at any time from October 8, 2017, through August 31, 2022
(the “Regular Rate Class” or “Regular Rate Class Members”);
 - 23 b. all current and former non-exempt employees of Defendant in the State of
24 California who earned non-discretionary incentive wages, including but not
25 limited to, shift premiums and wellness pay, and sick pay during the same
workweek, end whose employment ended at any time from October 8, 2018,
through August 31, 2022 (the “Sick Pay Class” or “Sick Pay Class
Members”); and
 - 26 c. all current and former non-exempt employees of Defendant in the State of
27 California who earned shift premium wages at any time from October 8,
2020, through August 31, 2022 (the “Wage Statement Class” or “Wage
Statement Class Members”).
- 28

1 (“Defendant”) (collectively, with Plaintiff, the “Parties”) were noted on the record.

2 WHEREAS, the Court has read the Motion and all papers filed in conjunction with the
3 motion, and entertained argument from both Parties at the Hearing.

4 WHEREAS, the Court finds that, in compliance with the Preliminary Approval Order,
5 the Class Notice was sent to all Class Members via U.S. first class mail, and the notice process
6 was timely completed.

7 WHEREAS, the Court finds that the Settlement Agreement appears to be the product of
8 serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not
9 improperly grant preferential treatment to any individuals.

10 WHEREAS, the Court finds that the Settlement was entered into in good faith pursuant to
11 California Code of Civil Procedure § 877.6.

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

13 1. The Court, for purposes of this Order, adopts all defined terms and conditions as
14 set forth in the Settlement Agreement attached as Exhibit A to the Declaration of Nicholas
15 Rosenthal in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement,
16 and filed in this case on March 7, 2023.

17 2. The Court has jurisdiction over the subject matter of this litigation; and the
18 Plaintiff the other members of the Class, and Defendant.

19 3. The Court finds that the Notice of Pendency of Class Action and Proposed
20 Settlement fully and accurately informed the Class Members of all material elements of the
21 Settlement and of their opportunity to participate in, object to or comment thereon, or to seek
22 exclusion from, the Settlement; constituted the best notice practicable under the circumstances to
23 all persons within the definition of the Class, and fully met the requirements of California law
24 and due process under the United States Constitution.

25 4. The Court approves the settlement of the above-captioned action, as set forth in
26 the Settlement Agreement, as fair, just, reasonable, and adequate. The Parties are directed to
27 perform in accordance with the terms set forth in the Settlement Agreement.

28 5. A full opportunity has been afforded to the Class Members to participate in the

1 Final Approval Hearing, and all Class Members and other persons wishing to be heard have been
2 heard. The Class Members also have had a full and fair opportunity to exclude themselves from
3 the Settlement. Accordingly, the Court determines that all Class Members who did not submit a
4 timely and validly Request for Exclusion (“Settlement Class Members”) are bound by this Final
5 Approval Order and Judgment.

6 6. Except as otherwise provided in the Settlement Agreement, the Parties are to bear
7 their own costs and attorneys’ fees.

8 7. The Court finds that the applicable requirements of California Code of Civil
9 Procedure section 382 and California Rule of Court 3.769, et seq. have been satisfied with
10 respect to the Class and the Settlement. The Court hereby makes final its earlier provisional
11 certification of the Class for settlement purposes, as set forth in the Preliminary Approval Order.
12 The Court hereby certifies the following Classes for settlement purposes only: (1) “all current
13 and former non-exempt employees of Defendant in the State of California who earned non-
14 discretionary incentive wages, including but not limited to, wellness pay and referral bonuses,
15 and overtime wages during the same workweek, at any time from October 8, 2017, through
16 August 31, 2022” (the “Regular Rate Class” or “Regular Rate Class Members”); (2) “all current
17 and former non-exempt employees of Defendant in the State of California who earned non-
18 discretionary incentive wages, including but not limited to, shift premiums and wellness pay, and
19 sick pay during the same workweek, end whose employment ended at any time from October 8,
20 2018, through August 31, 2022” (the “Sick Pay Class” or “Sick Pay Class Members”); and (3)
21 “all current and former non-exempt employees of Defendant in the State of California who
22 earned shift premium wages at any time from October 8, 2020, through August 31, 2022” (the
23 “Wage Statement Class” or “Wage Statement Class Members”).

24 8. With respect to the Class and for purposes of approving the settlement only and
25 for no other purpose, this Court finds and concludes that: (a) the members of the Class are
26 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
27 questions of law or fact common to the Class, and there is a well-defined community of interest
28 among members of the Class with respect to the subject matter of the claims in this litigation; (c)

1 the claims of Class Representative are typical of the claims of the members of the Class; (d) the
2 Class Representative has fairly and adequately protected the interests of the members of the
3 Class; (e) a class action is superior to other available methods for an efficient adjudication of this
4 controversy; and (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel, are
5 qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for
6 the Class.

7 9. Defendant shall fund \$513,919.71 of the total Gross Settlement Fund pursuant to
8 the terms of the Settlement Agreement.

9 10. The Court approves the Individual Settlement Payment amounts, which shall be
10 distributed pursuant to the terms of the Settlement Agreement. Any envelope transmitting
11 Individual Settlement Payment amounts shall bear the notation, "YOUR CLASS ACTION
12 SETTLEMENT CHECK IS ENCLOSED." Individual Settlement Payment checks shall be
13 negotiable for 180 days from the date of mailing.

14 11. Phoenix Settlement Administrators shall mail a reminder postcard to any class
15 member whose settlement distribution check has not been negotiated within 60 days after the
16 date of mailing. If any of the class members are current employees of the defendant, the
17 distribution mailed to those employees is returned to the administrator as being undeliverable,
18 and the administrator is unable to locate a valid mailing address, the administrator shall arrange
19 with the defendant to have those distributions delivered to the employees at their place of
20 employment.

21 12. After the 180-day period, uncashed checks (upon the expiration date) shall be sent
22 to the California State Controller's Office's Unclaimed Property Fund in the names of the
23 applicable Settlement Class Members.

24 13. Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of
25 \$171,306.57, and reimbursement of costs in the amount of \$9,591.65; (b) enhancement payment
26 to the Class Representative Dewey Anderson in the amount of \$10,000.00; and (c) \$8,500.00 to
27 the Settlement Administrator, Phoenix Settlement Administrators, for the costs relating to the
28 claims administration process in this matter. The Court finds that these amounts are fair and

reasonable. Defendant is directed to make such payments from the Gross Settlement Fund and in accordance with the terms of the Settlement Agreement.

14. A Final Report (Non-Appearance) Hearing is set for _____, 2023, at _____ a.m./p.m. A Report concerning the amount of money distributed shall be filed by _____, 2023.

15. The Court hereby enters Judgment by which Settlement Class Members shall be conclusively determined to have given a release of any and all Released Claims against the Released Parties, as set forth in the Settlement Agreement. This Final Approval Order and Judgment shall have res judicata effect.

16. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement Agreement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order and the Settlement.

17. The Settlement Agreement and this Settlement are not an admission by Defendant, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant, or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant and/or any of the Released Parties may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Settlement Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

1 18. If the Settlement Agreement does not become final and effective in accordance
2 with the terms of the Settlement Agreement, then this Final Approval Order and Judgment, and
3 all orders entered in connection herewith, shall be rendered null and void and shall be vacated,
4 and the Parties shall revert to their respective positions as of before entering into the Settlement
5 Agreement, and expressly reserve their respective rights regarding the prosecution and defense
6 of this Action, including all available defenses and affirmative defenses, and arguments that any
7 claim in the Action could not be certified as a class action and/or managed as a representative
8 action.

9 IT IS SO ORDERED AND ADJUDGED.

10
11 DATED: _____

HON. SONNY S. SANDHU
SUPERIOR COURT OF CALIFORNIA