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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)

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT**

Date: March 29, 2023

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: October 8, 2021

FAC Filed: February 8, 2022

Trial Date: Not Set

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I, Nicholas Rosenthal, 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, P.C., counsel of record for Plaintiff Dewey Anderson (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiff's Counsel has zealously represented the interests of the Aggrieved Employees.

3. On September 27, 2021, Plaintiff filed a written notice pursuant to Labor Code § 2699 with the California Labor and Workforce Development Agency (“LWDA”), alleging that Defendant failed to provide accurate itemized wage statements and pay sick pay and overtime wages at the regular rate of pay (“PAGA Notice”).

4. On October 8, 2021, Plaintiff filed a complaint against Defendant in the Superior Court of the State of California, County of Stanislaus. The initial complaint alleges class action claims for: (1) violation of Labor Code §§ 510, 558, and 1194; (2) violation of Labor Code §§ 201-203; (3) violation of Labor Code § 226(a); and (4) violation of Business and Professions Code § 17200, *et seq.*

5. On February 8, 2022, Plaintiff filed a first amended complaint adding a cause of action for violation of California Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). The first amended complaint is the operative Complaint (“Complaint”).

6. As alleged in the operative Complaint, Plaintiff's class and representative action claims arise from Defendant's failure to pay all overtime and sick pay wages owed and provide compliant wage statements. Specifically, Plaintiff contends that while employees regularly earned non-discretionary incentive wages, Defendant failed to calculate such wages into the regular rate of pay for the purposes of paying overtime wages and sick pay. Thus, employees were underpaid and are owed additional overtime wages and sick pay. As a result of the underpayment of wages, Plaintiff contends that the wage statements issued to employees

1 identified inaccurate rates of pay for overtime wages and sick pay, and gross and net wages
2 earned. In addition, Plaintiff alleges that whenever shift premium wages were paid, the wage
3 statements failed to identify the applicable rates of pay and number of hours worked. As a result
4 of the alleged violations, Plaintiff seeks statutory and civil penalties under the California Labor
5 Code and the PAGA, as well as attorneys' fees, and costs.

6 7. Defendant disputes and denies Plaintiff's allegations and claims asserted in the
7 operative Complaint.

8 **SETTLEMENT NEGOTIATIONS**

9 8. In about April 2022, the Parties agreed to explore the possibility of settlement.
10 The Parties subsequently engaged in informal discovery in order for Plaintiff to assess the
11 claims, as well as the maximum exposure of damages and penalties. Defendant provided
12 Plaintiff's counsel with sample class payroll and timekeeping data, as well as information
13 pertaining to Defendant's payroll policies and procedures.

14 9. On June 30, 2022, the Parties participated in an all-day mediation session with
15 mediator Michael J. Loeb, Esq. While a settlement was not reached at mediation, the Parties
16 continued settlement discussions facilitated by Mr. Loeb. After thorough investigation and
17 evaluation of the facts and claims, including further formal written discovery, and as a result of
18 arm's-length negotiation, the Parties and their counsel ultimately reached the current settlement.

19 10. In resolution of Plaintiff's representative action claims, the Parties entered into the
20 PAGA Settlement Agreement.

21 11. Plaintiff's class action claims were resolved in the earlier-filed Joint Stipulation of
22 Class Action Settlement and Release of Claims.

23 **MONETARY TERMS OF SETTLEMENT**

24 12. A true and correct copy of the PAGA Settlement Agreement (the "Settlement
25 Agreement" or "Agreement") is attached hereto as **Exhibit A**.

26 13. The settlement includes: (a) all current and former non-exempt employees of
27 Defendant in the State of California who earned non-discretionary incentive wages, including but
28 not limited to wellness pay and referral bonuses, and overtime wages during the same workweek,

1 at any time from September 24, 2020, through August 31, 2022; (b) all current and former non-
2 exempt employees of Defendant in the State of California who earned non-discretionary
3 incentive wages, including but not limited to, shift premiums and wellness pay, and sick pay
4 during the same workweek, and whose employment ended at any time from September 24, 2020,
5 through August 31, 2022; and/or (c) all current and former non-exempt employees of Defendant
6 in the State of California who earned shift premium wages at any time from September 24, 2020,
7 through August 31, 2022 (“Aggrieved Employees”). Agreement ¶ 2.

8 14. Based upon Defendant’s records, Defendant represented that there are 10,770
9 pay periods worked from September 24, 2020, through August 31, 2022 (“PAGA Period”).

10 15. The Settlement Agreement requires Defendant to pay the gross amount of Fifty-
11 One Thousand Dollars (\$51,000.00) (the “Maximum Settlement Amount”). Agreement ¶ 17. The
12 balance of the Maximum Settlement Amount remaining after deduction of the approved Fee and
13 Expense Award to Plaintiff’s counsel and Settlement Administration Costs (the “Net Settlement
14 Amount”), will be available for distribution to the LWDA and Aggrieved Employees. *Id.* ¶ 18.

15 16. As part of the Settlement, Defendant does not object to Plaintiff’s Counsel’s
16 request for attorneys’ fees of approximately one-third of the Maximum Settlement Amount, *i.e.*,
17 Seventeen Thousand Dollars (\$17,000.00) (“Fee and Expense Award”), subject to the Court
18 finally approving this Settlement. Agreement ¶ 13.

19 17. The Settlement Agreement also provides for the payment of the fees and expenses
20 reasonably incurred by the Settlement Administrator. Agreement ¶ 28. The Parties have agreed
21 to utilize Phoenix Settlement Administrators to administer the settlement, with the administration
22 costs estimated to be Four Thousand Five Hundred Dollars (\$4,500.00). *Id.* ¶¶ 28, 29.

23 18. Any portion of the Fee and Expense Award and/or Settlement Administration
24 Costs not used or approved by the Court shall be added to the Net Settlement Amount.

25 19. Individual Settlement Payments to Aggrieved Employees shall be categorized as
26 penalties and interest for tax purposes and the Settlement Administrator shall provide IRS Form
27 1099-MISC, as required by law. Agreement ¶ 42.b. If any checks from the Settlement remain
28 uncashed after 180 days, the Settlement Administrator will remit the checks to the California

Department of Industrial Relations' Unpaid Wage Fund. *Id.* ¶ 44.f.

PAYMENTS TO AGGRIEVED EMPLOYEES AND THE LWDA

20. Assuming that the Court approves the Fee and Expense Award (\$17,000.00) and Settlement Administration Costs (\$4,500.00), I estimate that the Net Settlement Amount will total \$29,500.00. Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$22,125.00, will be paid to the LWDA for PAGA penalties. Agreement ¶ 16. The remaining twenty-five percent (25%), or approximately \$7,375.00, will be distributed to Aggrieved Employees ("Aggrieved Employees Payment"). *Id.* ¶ 3. The amounts are as follows:

Maximum Settlement Amount	\$51,000.00
Fee and Expense Award	\$17,000.00
Settlement Administration Costs	\$4,500.00
Net Settlement Amount	\$29,500.00
PAGA 75% to LWDA	\$22,125.00
PAGA 25% to Agg. Employees	\$7,375.00

21. Based on the number of pay periods encompassed by the Settlement, the Maximum Settlement Amounts to an award of approximately \$4.74 per pay period (\$51,000.00 ÷ 10,770 pay periods). The Aggrieved Employees will receive 25% of the Net Settlement Amount and each employee's portion will be allocated based on the number of pay periods in which he or she worked during the PAGA Period, with some entitled to receive more, and others less. Agreement ¶ 44.b.ii. This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who have allegedly suffered greater harm.

FAIRNESS OF THE SETTLEMENT AMOUNT

22. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. Here, Plaintiff would need to prove that each aggrieved employee suffered a violation for each period the employee worked in relation to

1 failure to pay overtime wages and sick pay at the regular rate of pay and failure to provide
2 accurate itemized wage statements. Defendant, however, disputes and denies Plaintiff's
3 allegations and claims asserted in the operative Complaint.

4 23. Defendant responded to the complaint alleging various defenses. For one,
5 Defendant argued that any of the alleged non-discretionary bonuses that formed the basis for
6 Plaintiff's overtime and sick pay claims were actually not non-discretionary bonuses and
7 therefore did not need to be factored into overtime or sick pay. Further, case law is ambiguous at
8 best that an employee could collect waiting time penalties under Labor Code § 203 based on
9 unpaid sick pay. Moreover, Plaintiff would have a difficult time establishing that any failure to
10 pay wages was "willful" as required by § 203. As for Plaintiff's wage statement claim,
11 Defendant argued that a total wages was included for shift premiums and that employees knew
12 the applicable rate, so determining the hours was just a matter of "simple math."

13 24. Indeed, Plaintiff estimates that the maximum amount of PAGA civil penalties is
14 approximately \$1,770,000.00 based on 10,770 pay periods (10,770 pay periods x \$100 per pay
15 period).

16 25. Thus, assuming the Court were to award \$100 penalty for every pay period, the
17 penalties are being assessed at a rate equivalent to just under 5% of the potential value of the
18 claims in the case.

19 26. Settlement for this reduced value allows for the distribution of penalties in an
20 amount which accounts for the risk of continued litigation, and Defendant's likely arguments that
21 higher penalties would have been confiscatory.

22 27. Given Defendant's potential defenses to the alleged violations at issue, the risks
23 and costs of continued litigation, Plaintiff and his attorneys believe that the Settlement is fair and
24 reasonable.

25 28. I strongly believe that Plaintiff can prevail at trial. However, after taking into
26 account sharply disputed factual and legal issues involved in this litigation, the difficulty of
27 proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and
28 the significant delay and potential appellate issues inherent to litigation, I have concluded that

1 settlement on the terms set forth in the Settlement Agreement is appropriate and in the best
2 interests of Plaintiff and the Aggrieved Employees.

3 **ATTORNEY EXPERIENCE**

4 29. Plaintiff's Counsel have a great deal of experience in wage and hour class action
5 litigation and have been approved as class counsel in a number of class actions.

6 30. I am one of the primary attorneys on this matter. My qualifications are as follows:
7 I received my JD from University of Southern California Gould School of Law in 2009. Upon
8 graduation, I practiced law as an associate at Seyfarth Shaw LLP, representing corporate clients
9 in both single-plaintiff and wage hour class actions. In 2014, I began as an associate at Diversity
10 Law Group.

11 31. I have handled a number of wage and hour matters including class actions and
12 multiple-plaintiff actions. I have been named as class counsel in a number of class actions that
13 have been granted certification or preliminary or final approval by the Superior Courts of Los
14 Angeles County, Orange County, Alameda County, and Monterey County, the United States
15 District Court for the Central District of California, and the United States District Court for the
16 Northern District of California. These cases include, but are not limited to: *Pittman v. Martinez*
17 *Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della*
18 *Maggiore v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No.
19 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No.
20 RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case
21 No. 34-2018-00245481-CU-OE-GDS *Foaad Hanna v. Equinix, LLC*, Santa Clara County
22 Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County
23 Superior Court Case No. BC720144; *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior
24 Court Case No. 19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No. 56-2019-
25 005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior Court Case
26 No. CIVDS1828867; *Pascual v. Satellite Healthcare, Inc.*, Santa Clara County Superior Court
27 Case No. 19CV345211; *Carrillo v. New Balance Athletics, Inc.*, Santa Clara County Superior
28 Court Case No. 19CV352469; *Vogel v. Veolia North America, LLC*, Monterey County Superior

1 Court Case No. 19CV001443; *Holman v. American Sugar Refining, Inc.*, Contra Costa County
2 Superior Court Case No. MSC18-00415; and *Chavez v. Converse, Inc.*, United States District
3 Court, Northern District of California Case No. 15-cv-03746-NC; *Gutierrez v. Spa Havens, LP*,
4 San Diego Superior Court Case No. 37-2019-00057065-CU-OE-NC; *Cruzado v. Ontario T, Inc.*,
5 San Bernardino Superior Court Case No. CIVSB2027249; *Ray v. C&W Facility Services, Inc.*,
6 San Bernardino Superior Court Case No. CIVSB2101321; *Alvarez v. Forterra Building*
7 *Products*, San Diego Superior Court Case No. 37-2020-00018179-CU-OE-CTL; *Dunn v.*
8 *Universal Plant Services of California, Inc.*, Solano County Superior Court Case No.
9 FCS056134, *Pulido v. Georgia-Pacific Corrugated III LLC*, Fresno Superior Court Case No.
10 18CECG00265; and *In re: FPI Management Wage and Hour Cases*, Los Angeles Superior Court
11 Case No. JCCP5050.

12 **NOTICE TO LWDA**

13 32. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
14 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website. In
15 addition, my office shall submit to the LWDA a copy of the Court's judgment and order
16 approving the Settlement Agreement within ten (10) days after entry of judgment or order.

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

19 Executed on this 7th day of March 2023, at Los Angeles, California.

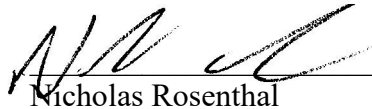
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EXHIBIT A

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Kristen M. Agnew (State Bar No. 247656)
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Attorney for Defendant
Graham Packaging PET Technologies, Inc.

**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

PAGA SETTLEMENT AGREEMENT

Complaint Filed: October 8, 2021
FAC Filed: February 8, 2022
Trial Date: Not Yet Assigned

1. “Action” means Dewey Anderson, as an individual and on behalf of all others similarly situated, vs. Graham Packaging PET Technologies, Inc., a Delaware corporation, filed on or about October 8, 2021, in the Superior Court for the State of California, County of Stanislaus, and assigned Case Number CV-21-00555.

a. All current and former non-exempt employees of Defendant in the State of California who earned non-discretionary incentive wages, including but not limited to wellness pay and referral bonuses, and overtime wages during the same workweek, at any time from September 24, 2020, through August 31, 2022;

b. All current and former non-exempt employees of Defendant in the State of California who earned non-discretionary incentive wages, including but not limited to, shift premiums and wellness pay, and sick pay during the same workweek, and whose employment ended at any time from September 24, 2020, through August 31, 2022; and/or

c. All current and former non-exempt employees of Defendant in the State of California who earned shift premium wages at any time from September 24, 2020, through August 31, 2022.

3. "Aggrieved Employees Payment" means the aggregate sum of all Individual Settlement Payments that the Settlement Administrator determines are owed to Aggrieved Employees under this Agreement, which shall equal twenty-five percent (25%) of the Net

1 Settlement Amount.

2 4. "Agreement" or "Settlement Agreement" means this PAGA Settlement
3 Agreement.

4 5. "Approval Date" means the date on which the Court enters a Final Order
5 Approving Settlement and Judgment Thereon.

6 6. "Approval Order" or "Judgment" means a Formal Order Approving Settlement
7 and Judgment Thereon approving the Settlement and this Agreement.

8 7. "Complaint" means the operative First Amended Complaint filed by Plaintiff on
9 February 8, 2022, in this Action.

10 8. "Court" means the Superior Court for the State of California, County of
11 Stanislaus.

12 9. "Defendant" means Graham Packaging PET Technologies, Inc.

13 10. "Defendant's Counsel" means Buchanan Ingersoll & Rooney LLP.

14 11. "Effective Date" means: (a) the date when the Final Approval Order is signed, if
15 there are no objectors; or (b) in the event there are objectors, sixty (60) days after service of
16 notice of entry of the Final Approval Order and Judgment on the Parties and all objectors to the
17 Settlement, provided no timely appeals or requests for review are being taken; or (c) if timely
18 appeals or requests for review have been taken, the date on which all appeals and requests for
19 review (including any requests for rehearing and/or petitions for certiorari) have been resolved
20 and/or all appellate remedies have been exhausted.

21 12. "Employee Data" means information regarding Aggrieved Employees that
22 Defendant will compile from its records in good faith and provide to the Settlement
23 Administrator. It shall be formatted as a Microsoft Excel spreadsheet (formatted as a xlsx, xlsm, xltm,
24 xlsb, etc, et, ett, xls, xlsx, xlt, xlsx, or csv file type) or such other form as reasonably usable and
25 shall include: each Aggrieved Employee's full name, last known address, Social Security
26 number, and the number of pay periods worked during the PAGA Period.

27 13. "Fee and Expense Award" means such award of fees and costs and expenses as
28 the Court may authorize to be paid to Plaintiff's Counsel for the services they have rendered and

1 will render to Plaintiff and the Aggrieved Employees in the Action. Plaintiff's Counsel will
2 request attorneys' fees not to exceed approximately one-third (1/3) of the Maximum Settlement
3 Amount of Fifty-One Thousand Dollars (\$51,000.00), i.e., the sum of Seventeen Thousand
4 Dollars (\$17,000.00) subject to the Court finally approving this Settlement. Any portion of the
5 Fee and Expense Award not awarded to Plaintiff's Counsel shall be added to the Net Settlement
6 Amount.

7 14. "Individual Settlement Payment" means the amount payable from the Net
8 Settlement Amount to each Aggrieved Employee.

9 15. "LWDA" means the California Labor and Workforce Development Agency.

10 16. "LWDA Payment" means the portion of the Maximum Settlement Amount to be
11 paid to the LWDA under this Agreement, which shall equal seventy-five percent (75%) of the
12 Net Settlement Amount.

13 17. "Maximum Settlement Amount" means the maximum amount of Fifty-One
14 Thousand Dollars (\$51,000.00) that Defendant will pay as a result of this Settlement Agreement.

15 18. "Net Settlement Amount" or "NSA" means the Maximum Settlement Amount,
16 less the Fee and Expense Award and Settlement Administration Costs.

17 19. "PAGA" means the Labor Code Private Attorneys General Act of 2004 (Lab.
18 Code, § 2698, et seq.).

19 20. "PAGA Letter" means Plaintiff's letter dated September 24, 2021, to the LWDA
20 and Defendant providing notice of claims asserted on behalf of himself and similarly aggrieved
21 employees pursuant to Labor Code § 2699.3.

22 21. "PAGA Period" means the period from September 24, 2020, through August 31,
23 2022.

24 22. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean
25 either Plaintiff or Defendant, individually.

26 23. "Plaintiff" means Dewy Anderson.

27 24. "Plaintiff's Counsel" means Larry W. Lee, Kristen M. Agnew, and Nicholas
28 Rosenthal of Diversity Law Group, P.C.; and William L. Marder of Polaris Law Group.

26. "Released Parties" means Defendant and its affiliates, parents, subsidiaries, joint ventures, owners, partnerships, and any and all affiliated, related organizations, and each of their company-sponsored benefit plans, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past, present, and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, attorneys, accountants, auditors, consultants, attorneys, vendors, contractors, insurers, and reinsurers.

28. "Settlement Administration Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly provided for by this Agreement, which are not to exceed \$4,500.

RECITALS

30. Procedural History. On October 8, 2021, Plaintiff initiated an action in the Stanislaus County Superior Court, alleging individual and class claims for Defendant's failure to pay overtime and sick pay wages at the regular rate of pay, provide accurate wage statements, and pay all wages owed upon separation of employment; claims for unfair and unlawful business practices in violation of Business and Professions Code § 17200, et seq.; and claims for attorneys' fees and costs.

31. On February 8, 2022, Plaintiff filed a First Amended Complaint, adding a cause of action for civil penalties under the Labor Code § 2698, et seq., Private Attorneys General Act ("PAGA").

32. In about April 2022, the Parties agreed to explore the possibility of settlement. A mediation session was scheduled for June 30, 2022, to be held via Zoom conference before

1 Michael J. Loeb, Esq.

2 33. In connection with the mediation, Defendant produced employee payroll and
3 time-keeping data as well as relevant company policies that allowed Plaintiff's Counsel to
4 conduct a damages analysis. After extended negotiations, conducted at arm's length, and
5 continuing beyond the mediation, the Parties reached a settlement of all class and representative
6 action claims in the Action.

7 34. Plaintiff's class action claims were settled in the separately filed Joint Stipulation
8 of Class Action Settlement and Release of Claims. The present PAGA Settlement Agreement
9 pertains to Plaintiff's representative action claims only.

10 35. Plaintiff believes he has meritorious claims based on alleged violations of the
11 California Labor Code.

12 36. Defendant denies any liability or wrongdoing of any kind associated with the
13 claims alleged in the Action. Defendant contends, among other things, that it has at all times
14 complied with the California Labor Code.

15 37. Plaintiff's Counsel conducted an investigation into the facts relevant to the
16 Action, including reviewing certain information and data concerning Plaintiff and the Aggrieved
17 Employees provided by Defendant in response to informal requests for information to prepare
18 for mediation. Based on their own independent investigation and evaluation, Plaintiff's Counsel
19 is of the opinion that the Settlement with Defendant is fair, reasonable, and adequate, and in the
20 best interest of the Aggrieved Employees in light of all known facts and circumstances, including
21 the risks of significant delay, defenses asserted by Defendant, and potential appellate issues.
22 Although Defendant denies any liability, Defendant agreed to this Settlement in order to avoid
23 the cost of further litigation. The Parties and their counsel have agreed to settle the claims on the
24 terms set forth herein.

25 38. The Parties believe that the Settlement is fair, reasonable, and adequate. The
26 Settlement was arrived at through arm's-length negotiations, taking into account all relevant
27 factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing
28 the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and

forever settle, compromise, and discharge all disputes and claims arising from or relating to the Action.

TERMS OF AGREEMENT

39. Settlement Consideration. Defendant shall pay an amount not to exceed the Maximum Settlement Amount from which will be paid the LWDA Payment, Aggrieved Employees Payments, the Fee and Expense Award, and the Settlement Administration Costs, as specified in this Agreement. The Parties agree that this is a non-reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to Defendant.

40. Release by Plaintiff, the State of California, and Aggrieved Employees. As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff, the State of California, and Aggrieved Employees, and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, hereby release and discharge the Released Parties from the Released Claims for the PAGA Period and will be bound by the Approval Order and Judgment.

41. Settlement Administrator. The Settlement Administrator will be responsible for performing the duties specified in this Agreement and any other duties incidental to such obligations. These duties shall include, without limitation: (1) establishing and maintaining a Qualified Settlement Fund account; (2) preparing, printing, and distributing the Notice of Settlement to Aggrieved Employees as directed by the Court; (3) processing and distributing payments to the Aggrieved Employees, LWDA, and Plaintiff's Counsel; (4) distributing tax forms; processing and mailing tax payments, if any, to the appropriate state and federal taxing authorities; (5) printing and providing Aggrieved Employees with 1099 forms as required under this Agreement and applicable law; (6) arranging for and remitting funds from any uncashed settlement payment to the designated recipient, as determined by the Court; (7) preparing and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency; (8) providing declaration(s) as necessary in support of approval of this Settlement; and (9) other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep

1 the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

2 a. The Qualified Settlement Fund ("QSF") shall be an interest-bearing
3 account at a federally insured bank that is mutually acceptable to the Parties and the Settlement
4 Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury
5 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered
6 money market fund investing exclusively in U.S. Treasury securities with average maturities of
7 less than 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is
8 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
9 and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq., and will be administered by the
10 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:
11 (1) open and administer the Settlement Account in such a manner as to qualify and maintain the
12 qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal
13 Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local and income
14 and other tax reporting, return, and filing requirements with respect to the QSF and any interest
15 or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any
16 estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the
17 QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
18 administration of the QSF and the performance of its duties and functions as described in this
19 Agreement. The afore-mentioned taxes, fees, costs, and expenses shall be treated as and
20 included in the costs of administering the QSF and as Settlement Administration Expenses. The
21 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
22 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
23 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
24 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
25 and one another to the extent reasonably necessary to carry out the provisions of this Section.

26 42. Funding and Allocation of the Maximum Settlement Amount. Defendant is
27 required to pay the sum of the LWDA Payment, Aggrieved Employees Payment, Fee and
28 Expense Award, and Settlement Administration Costs, as specified in this Agreement and as

1 approved by the Court, up to the Maximum Settlement Amount.

2 a. Funding Due Date. No later than thirty (30) business days after the
3 Approval Date, Defendant shall provide the Maximum Settlement Amount to the Settlement
4 Administrator to fund the Settlement, as set forth in this Agreement.

5 b. Taxes. For tax purposes, Individual Settlement Payments shall be
6 allocated and treated as one hundred percent (100%) penalties and interest. Such amounts shall
7 be reported on 1099 forms, to be prepared by the Settlement Administrator as specified herein.
8 Aggrieved Employees will be responsible for correctly characterizing this compensation for tax
9 purposes and for paying any taxes on the amounts received.

10 c. No Employment Relationship or Benefits. Aggrieved Employees' receipt
11 of Individual Settlement Payments, or any parts thereof, shall not, and does not, by itself
12 establish any general, special, or joint employment relationship between and among the
13 Aggrieved Employee(s) and Defendant. Additionally, and despite any contrary language in any
14 benefit or compensation plan document or other writing that might have been in effect during
15 any Aggrieved Employee's period of employment, receipt of any Individual Settlement Payment
16 shall not entitle any Aggrieved Employee to additional compensation or benefits under any
17 bonus, contest, or other compensation or benefit plan or agreement, nor shall it entitle any
18 Aggrieved Employee to any increased pension and/or retirement, 401(k) benefits or matching
19 benefits, other deferred compensation benefits or any benefit under any "Employee Benefit Plan"
20 as defined by section 3(3) of ERISA maintained or sponsored by Defendant based on any
21 amount paid under this Settlement Agreement.

22 d. Fee and Expense Award. Class Counsel will apply for attorneys' fees not
23 to exceed one third (1/3) of the Maximum Settlement Amount (\$17,000.00 of \$51,000.00), from
24 the Maximum Settlement Amount. Any portion of the requested Fee and Expense Award that is
25 not awarded to Plaintiff's Counsel shall become part of the Net Settlement Amount and shall be
26 distributed to the LWDA and Aggrieved Employees as provided in this Agreement. The
27 Settlement Administrator shall pay the Fee and Expense Award to Plaintiff's Counsel from the
28 Maximum Settlement Amount no later than fourteen (14) calendar days after the Approval Date.

1 Plaintiff's Counsel shall be solely and legally responsible to pay all applicable taxes on the
2 payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS
3 Form 1099-MISC to Plaintiff's Counsel for the payments made pursuant to this paragraph. In
4 the event that the Court reduces or does not approve the requested Fee and Expense Award,
5 Plaintiff and Plaintiff's Counsel shall not have the right to revoke the Settlement, but do retain
6 the right to appeal such order.

7 e. Settlement Administration Costs. The Settlement Administrator shall be
8 paid for the costs of administration of the Settlement from the Maximum Settlement Amount, not
9 to exceed Four Thousand Five Hundred Dollars (\$4,500.00). The Settlement Administrator shall
10 be paid the Settlement Administration Costs no later than fourteen (14) calendar days after
11 Defendant provide funds to the Settlement Administrator for disbursement under this Agreement.

12 43. Notification to the LWDA. Plaintiff shall submit to the LWDA a copy of the
13 Judgment within ten (10) calendar days after its entry, in accordance with Labor Code §
14 2699(1)(3).

15 44. Notice Procedure and Allocation of Settlement Payments.

16 a. Employee Data. No later than fourteen (14) business days after the
17 Approval Date, Defendant shall provide the Settlement Administrator with the Employee Data
18 for purposes of preparing and mailing the Notice of Settlement and Individual Settlement
19 Payments to Aggrieved Employees. The Employee Data shall be confidential. The Settlement
20 Administrator shall not provide the Employee Data to Plaintiff's Counsel or Plaintiff or any third
21 party, or use the Employee Data or any information contained therein for any purpose other than
22 to administer this Settlement.

23 b. Calculation of Settlement Payments. The Settlement Administrator shall
24 be responsible for the calculation of payments to the LWDA and Aggrieved Employees. The
25 Settlement Administrator shall deduct from the Maximum Settlement Amount the (i) Fee and
26 Expense Award to Plaintiff's Counsel and (ii) Settlement Administration Fees to obtain the Net
27 Settlement Amount.

28 i. LWDA Payment. Seventy-five percent (75%) of the Net

1 Settlement Amount shall be disbursed to the LWDA by the Settlement Administrator.

2 ii. Aggrieved Employees Payment. The remaining twenty-five
3 percent (25%) of the Net Settlement Amount shall be paid to Aggrieved Employees on a pro rata
4 basis. The Settlement Administrator shall calculate the total number of pay periods worked by
5 all Aggrieved Employees during the PAGA Period. The Settlement Administrator shall then
6 divide the Aggrieved Employees Payment by the total number of pay periods, resulting in a pay-
7 per-period value for each Aggrieved Employee. The Settlement Administrator will then multiply
8 the per-pay-period value by the number of pay periods worked by each Aggrieved Employee
9 during the PAGA Period to obtain the Aggrieved Employee's Individual Settlement Payment
10 amount.

11 c. Notice of Settlement. The Notice of Settlement shall be disseminated in a
12 form substantially similar to the form attached hereto as **Exhibit A**. The Notice of Settlement
13 shall include the Aggrieved Employee's the number of pay periods worked by the Aggrieved
14 Employee during the PAGA Period, and the amount of their Individual Settlement Payment. The
15 Notice of Settlement shall set forth the Released Claims released by all Aggrieved Employees in
16 exchange for an Individual Settlement Payment.

17 d. Mailing of Individual Settlement Payments. Upon receipt of the
18 Employee Data, the Settlement Administrator will perform a search based on the National
19 Change of Address Database to update and correct any known or identifiable address changes.
20 No later than fourteen (14) calendar days after receiving the Employee Data from Defendant as
21 provided herein, the Settlement Administrator shall mail the Notice of Settlement and Individual
22 Settlement Payment to all Aggrieved Employees via regular first-class U.S. Mail. The
23 Settlement Administrator shall exercise its best judgment to determine the current mailing
24 address for each Aggrieved Employee. The address identified by the Settlement Administrator
25 as the current mailing address shall be presumed to be the best mailing address for each
26 Aggrieved Employee.

27 e. Undeliverable Notices. Any Notice Packets returned to the Settlement
28 Administrator as non-delivered shall be re-mailed to the forwarding address affixed thereto. If

no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing or other search using the name, address, and/or Social Security number of the Aggrieved employee involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator.

f. Expiration. Any checks issued to Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks shall be tendered to the California Department of Industrial Relations' Unpaid Wage Fund.

45. Motion to Approve PAGA Settlement. At the earliest practicable time, but no earlier than January 1, 2023, Plaintiff shall file with the Court a motion for an order granting approval of the Settlement and supporting papers, which shall include this Settlement Agreement.

46. Defendant's Review of the Motion for Settlement Approval. Plaintiff's Counsel will provide an opportunity for Counsel for Defendant to review the motions for settlement approval prior to filing with the Court. Plaintiff's Counsel shall provide a draft of the motion to Defendant's counsel for review at least ten (10) business days before filing them with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to effect the Court's approval of the motion.

47. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

48. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the approval hearing to be conducted by the Court.

49. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

50. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, withdrawn, or

1 modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete
2 resolution of the claims as described herein:

3 a. This Settlement Agreement shall be void ab initio and of no force or
4 effect, and shall not be admissible in any judicial, administrative, or arbitral proceeding for any
5 purpose or with respect to any issue, substantive or procedural; and

6 b. None of the Parties to this Settlement will be deemed to have waived any
7 claims, objections, defenses, or arguments in the Action.

8 51. Tax Liability. The Parties make no representations as to the tax treatment or legal
9 effect of the payments called for hereunder, and Aggrieved Employees are not relying on any
10 statement or representation by the Parties in this regard. Aggrieved Employees understand and
11 agree that they will be responsible for the payment of any taxes and penalties assessed on the
12 Individual Settlement Payments described herein, and will hold the Parties free and harmless
13 from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in
14 any way from personal tax treatment of the payments made pursuant to this Agreement.

15 52. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
16 section, the "acknowledging party" and each Party to this Agreement other than the
17 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
18 Agreement, and no written communication or disclosure between or among the Parties or their
19 attorneys and other advisers, is or was intended to be, nor shall any such communication or
20 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
21 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
22 acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and
23 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
24 entered into this Agreement based upon the recommendation of any other Party or any attorney
25 or advisor to any other Party, and (c) is not entitled to rely upon any communication or
26 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be
27 imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has
28 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax

1 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
2 acknowledging party of the tax treatment or tax structure of any transaction, including any
3 transaction contemplated by this Agreement.

4 53. Entire Agreement. This Agreement and any attached Exhibits constitute the
5 entire Agreement among these Parties, and no oral or written representations, warranties, or
6 inducements have been made to any Party concerning this Agreement or its Exhibits other than
7 the representations, warranties, and covenants contained and memorialized in the Agreement and
8 its Exhibits.

9 54. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
10 and represent they are expressly authorized by the Parties whom they represent to negotiate this
11 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
12 pursuant to this Agreement to effectuate its terms, and to execute any other documents required
13 to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of
14 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
15 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
16 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

17 55. Binding on Successors and Assigns. This Agreement shall be binding upon, and
18 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

19 56. California Law Governs. All terms of this Agreement and the Exhibits hereto and
20 any disputes arising hereunder shall be governed by and interpreted according to the laws of the
21 State of California.

22 57. Counterparts. This Agreement may be executed in one or more counterparts. All
23 executed counterparts and each of them shall be deemed to be one and the same instrument
24 provided that counsel for the Parties to this Agreement shall exchange among themselves copies
25 or originals of the signed counterparts.

26 58. This Settlement is Fair, Adequate, and Reasonable. The Parties believe this
27 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
28 Settlement after extensive arm's-length negotiations, taking into account all relevant factors,

1 present and potential.

2 59. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
3 with respect to the interpretation, implementation, and enforcement of the terms of this
4 Agreement and all orders and judgments entered in connection therewith, and the Parties and
5 their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
6 implementing, and enforcing the settlement embodied in this Agreement and all orders and
7 judgments entered in connection therewith.

8 60. Invalidity of Any Provision. Before declaring any provision of this Agreement
9 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
10 consistent with applicable precedents so as to define all provisions of this Agreement valid and
11 enforceable.

12 61. Publicity. Plaintiff will not disclose or publicize the Settlement, including the fact
13 of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any
14 manner or form, directly or indirectly, to any person or entity. Likewise, Plaintiff's Counsel will
15 not disclose or publicize the Settlement, including the fact of the Settlement, its terms or
16 contents, and the negotiations underlying the Settlement, in any manner or form, directly or
17 indirectly, to any person or entity prior to the entry of the Final Approval Order and Judgment.
18 However, nothing in this paragraph shall restrict Plaintiff's Counsel from responding to
19 questions from Aggrieved Employees or the State of California or describing and explaining the
20 specific terms of the Settlement to Aggrieved Employees. In addition, nothing in this paragraph
21 shall restrict statements made in papers filed with the Court or any other court of competent
22 jurisdiction in connection with the Settlement of the claims against Defendant in this Action or
23 any continuing prosecution of the Action in other respects. Similarly, nothing in this paragraph
24 shall restrict Plaintiff and Plaintiff's Counsel from disclosing information to judicial,
25 administrative, or arbitral entities; or to Plaintiff's and Plaintiff's Counsel's respective attorneys,
26 accountants, or other professional advisors to whom disclosure is reasonably necessary to effect
27 the purpose for which they consulted such persons or entities.

28 62. No Admissions. Plaintiff has claimed and continue to claim that the Released

1 Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the
 2 Released Claims have no merit and do not give rise to liability. This Agreement is a compromise
 3 of disputed claims. Nothing contained in this Agreement and no documents referred to herein
 4 and no action taken to carry out this Agreement may be construed or used as an admission by or
 5 against the Defendant or Plaintiff or their Counsel as to the merits or lack thereof of the claims
 6 asserted.

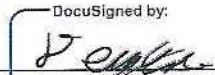
7 63. No Inducements. The Parties acknowledge that they are entering into this
 8 Agreement as a free and voluntary act without duress or undue pressure or influence of any kind
 9 or nature whatsoever and that neither Plaintiff nor Defendant have relied on any promises,
 10 representations, or warranties regarding the subject matter hereof other than as set forth in this
 11 Agreement.

12 IN WITNESS WHEREOF, this Settlement Agreement is executed by and on behalf of
 13 the Settling Parties and their duly authorized attorneys, as of the day and year herein set forth.

14
 15 DATED: January⁹ __, 2023

PLAINTIFF

DocuSigned by:



17 Plaintiff Dewy Anderson, on behalf of himself, the
 18 State of California, and all Aggrieved Employees

19 DATED: December³¹ __, 2022

20 DEFENDANT GRAHAM PACKAGING PET
 21 TECHNOLOGIES, INC.

22 By: 
 23 Name: Douglas Cassel
 24 Title: General Counsel

25 APPROVED AS TO FORM:
 26
 27
 28

1 DATED: January 9, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved Employees

4
5
6
7 DATED: January 9th, 2023

POLARIS LAW GROUP

8
9 By: 

William L. Marder

Attorneys for Plaintiff and the Aggrieved Employees

10
11 DATED: December __, 2022

BUCHANAN INGERSOLL & ROONEY LLP

12
13 By: 

Jason E. Murtagh

Attorneys for Defendant Graham Packaging PET Technologies, Inc.

EXHIBIT A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *Dewey Anderson v. Graham Packaging PET Technologies, Inc.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Dewey Anderson v. Graham Packaging PET Technologies, Inc.*, Stanislaus County Superior Court Case No. CV-21-005550 (the “Action”). The Action was filed by Plaintiff Dewey Anderson (“Plaintiff”) against Graham Packaging PET Technologies, Inc. (“Graham Packaging”) pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Labor Code § 2698, *et seq.* (“PAGA”).

In this lawsuit, Plaintiff claimed that Graham Packaging did not comply with certain requirements of the California Labor Code (the “Labor Code”). Specifically, Plaintiff claimed that (1) Graham Packaging did not provide its employees with itemized wage statements that contained all of the information required by the Labor Code; (2) Graham Packaging violated the Labor Code by failing to pay sick pay at the regular rate of pay; and (3) Graham Packaging violated the Labor Code by not properly calculating overtime rates to include non-discretionary forms of remuneration.

Graham Packaging maintains that it was in compliance with the Labor Code at all times. The settlement is not an admission of liability by Graham Packaging.

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: all current and former non-exempt employees of Graham Packaging in California from September 24, 2020, through August 31, 2022.

The “PAGA Period” is defined as September 24, 2020, through August 31, 2022.

Your payment was calculated based on the total number of pay periods you worked during the PAGA Period, multiplied by the per-pay period value derived from the settlement.

Your individual PAGA payment is estimated to be <<CheckAmount>>.

The Court has approved the parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees will release the Released Parties¹ from any and all claims under the PAGA which arose during the PAGA Period and (i) were asserted in the LWDA Letter and Plaintiffs' Complaint; and/or (ii) reasonably could have been asserted in the Action based upon the facts alleged in the LWDA Letter and Plaintiffs' Complaint ("PAGA Released Claims"). The PAGA Released Claims include, but are not limited to, claims under the PAGA based on Graham's failure to provide complete and accurate wage statements in violation of Labor Code Sections 226 and 226.3; failure to pay sick pay at the regular rate of pay in violation of Labor Code Sections 201, 202, and 203; failure to include non-discretionary forms of remuneration when calculating overtime pay, in violations of Sections 510, 558, and 1194; and any claims for attorneys' fees, costs, or interest resulting therefrom. Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement will be barred from proceeding with any claim released by this Settlement. A portion of this Settlement will go to the State of California's Labor and Workforce Development Agency. Please do not contact the Court regarding this Notice.

You may call the settlement administrator, [INSERT NAME OF ADMINISTRATOR], at [INSERT CONTACT NUMBER] with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California Department of Industrial Relations' Unpaid Wage Fund in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

Very truly yours,

[Administrator]

¹ "Released Parties" means Graham Packaging and its former, present and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.