

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Max W. Gavron (State Bar No. 291697)
mgavron@diversitylaw.com
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
ktulyathan@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
Shaelyn A. Stewart (State Bar No. 335149)
Shaelyn.Stewart@webberlawgroup.com
WEBBER LAW GROUP
1610 R Street, Suite 300
Sacramento, CA 95811
Telephone: (916) 588-0683

Attorneys for Plaintiff and the Class

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

VINCENT RAMSEY JR., individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACKAGING CORPORATION OF AMERICA,
et al.,

Defendants.

VINCENT RAMSEY JR., individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACKAGING CORPORATION OF AMERICA,
et al.,

Defendants.

Case No. 34-2021-00313350-CU-OE-GDS
[Consolidated with 34-2022-00316273-CU-OE-GDS]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: May 26, 2023

Time: 9:00 a.m.

Dept.: 28

Reservation No.: 2721493

Complaint Filed: December 29, 2021

FAC Filed: July 1, 2022

Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 26, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Lauri A. Damrell, in Department 28 of the above referenced Court located at 720 9th Street, Sacramento, California 95814, Plaintiff Vincent Ramsey (“Plaintiff”) will seek an Order: (1) approving the Stipulation Re: Settlement of Class and PAGA Action (“Stipulation”) in this matter; (2) conditionally certifying the following Class for settlement purposes only: “non-exempt employees who worked for Defendants in California and who were paid overtime and/or shift differential wages during the Class Period”; (3) appointing Plaintiff Vincent Ramsey as the Class Representative, and Larry W. Lee, Max W. Gavron, and Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C. and Kelsey A. Webber and Shaelyn A. Stewart of Webber Law Group as Class Counsel; (4) preliminarily approving the Stipulation and the total Gross Settlement Amount in the amount of Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00); (5) finding on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the Class Representative service payment, attorneys’ fees and costs, settlement administration costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice To Class Members Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement (“Class Notice”) to be sent to Class Members; (7) appointing Phoenix Settlement Administrators as the Administrator; and (8) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

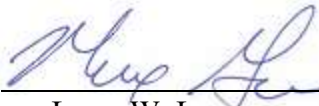
The basis for this Motion, filed without any opposition from Defendants Packaging Corporation of America and PCA Central California Corrugated, LLC (collectively, “Defendants”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement. This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement and the proposed Class Notice, and the supporting

1 Declarations of Larry W. Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan, Kelsey A. Webber, and
2 Plaintiff Vincent Ramsey, and upon the oral arguments of counsel (should there be any) and on the
3 complete records and file herein.

4 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
5 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
6 the department may be downloaded off the court’s website. If the party does not have online access,
7 they may call the dedicated phone number for the department as referenced in the local telephone
8 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
9 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court
10 day before the hearing, no hearing will be held.

11
12 DATED: May 4, 2023

DIVERSITY LAW GROUP, P.C.
WEBBER LAW GROUP

13
14 By: 

Larry W. Lee

Max W. Gavron

Kelsey A. Webber

Attorneys for Plaintiff and the Class
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I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act (“PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiff Vincent Ramsey (“Plaintiff”) alleges that Defendants Packaging Corporation of America and PCA Central California Corrugated, LLC (collectively, “Defendants”) (together with Plaintiff, the “Parties”) failed to provide accurate itemized wage statements. Plaintiff brings class and PAGA claims based on these alleged violations. The Parties have reached a proposed class and PAGA action settlement, the terms of which are reflected in the Parties’ Stipulation Re: Settlement of Class and PAGA Actions (“Stipulation”).

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal principles applicable to the claims asserted against Defendants. Through the exchange of formal and informal discovery, Defendants provided necessary documents and data pertaining to the number of putative class members and applicable wage statements issued for purposes of performing an analysis of the alleged violations and penalties resulting therefrom. Thereafter, the Parties attended a full day of mediation with neutral Michael J. Loeb, Esq. The mediation did not result in a settlement, but the Parties continued to negotiate and litigate the case. Thereafter, the Parties arrived at the proposed settlement presented to the Court. The following represent the key terms of the settlement:

- Gross Settlement Amount of \$975,00.00, which will be paid by Defendants and distributed to the Class on a **non-reversionary** basis (*See* Stipulation ¶ 1.16);
- Estimated Class of 682 individuals (*Id.* ¶ 1.7);
- Class Members do not need to submit claim forms to participate in the settlement (*Id.* ¶ 2.7.4 (explaining if a class member fails to opt out they will be bound by the settlement));
- Class Representative Service Award of up to \$10,000.00 (*Id.* ¶ 1.12);
- Class Counsel’s attorneys’ fees of up to \$325,000.00 (33 1/3% of the Gross Settlement Amount) (*Id.* ¶ 1.6);
- Class Counsel’s litigation costs of up to \$25,000.00 (*Id.* ¶ 1.5);

- Settlement administration costs of up to \$11,000.00 (*Id.* ¶ 1.4);
- Payment to the California Labor and Workforce Development Agency of \$60,000.00, representing 75% of the total PAGA Penalties amount of \$80,000.00 (*Id.* ¶ 1.20);
- Net Settlement Amount of approximately \$524,000.00 (*Id.* ¶ 1.21); and
- Raw average of \$768.33 ($\$524,000.00 \div 682$ Class Members) to each Participating Class Member.

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Stipulation is fair, adequate, and reasonable, in light of all known circumstances and the expenses and risks inherent in litigation and respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On December 21, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency (“LWDA”), alleging violations of Labor Code § 226, pursuant to the Private Attorneys General Act (“PAGA”), Labor Code § 2699 (“PAGA letter”). Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2. On December 28, 2021, Plaintiff filed a class action complaint in the Superior Court of the State of California for the County of Sacramento on behalf of himself and all similarly situated employees (the “Action”). Gavron Decl. ¶ 3. Plaintiff asserted claims for violation of Labor Code § 226. On March 3, 2022, Plaintiff filed a related action in the Superior Court of the State of California for the County of Sacramento. *Id.* ¶ 4. The related complaint alleged a single cause of action for violation of the PAGA. *Id.* ¶ 4.

On July 1, 2022, Plaintiff filed a first amended consolidated class and representative action complaint (“First Amended Complaint”), consolidating the claims of the class action and the related action. *Id.* ¶ 5. The First Amended Complaint is the operative complaint. *Id.* ¶ 5.

Plaintiff contends that each of the Defendants operated as a single entity despite their purported separate corporate forms. Plaintiff contends that Defendants issued noncompliant wage statements to employees whenever overtime and/or shift differential wages were paid. Plaintiff seeks damages and penalties under the California Labor Code and the PAGA, as well as attorneys’ fees and costs. *Id.* ¶ 6. Defendants deny that they violated the California Labor Code, and they deny that any

1 damages or penalties are owed.

2 The Parties engaged in both formal and informal discovery. *Id.* ¶ 7. Among other relevant
3 topics, the discovery required Defendants to provide documents and data pertaining to the number of
4 putative class members and applicable wage statements. *Id.*

5 On September 28, 2022, the Parties engaged in a full-day mediation with neutral Michael J.
6 Loeb, Esq. Gavron Decl. ¶ 8. In advance of the mediation, Defendants provided Plaintiff's counsel
7 with informal data and information pertaining to the putative class size and number of applicable
8 wage statements, as well as sample corrective wage statements. *Id.* ¶ 9. This information allowed
9 Plaintiff to conduct a damages analysis. *Id.* The mediation did not result in settlement, however.
10 Thereafter, the Parties continued settlement discussions over the course of several months and
11 ultimately reached an agreement to resolve the Action. *Id.* ¶9. In resolution of Plaintiff's class and
12 PAGA claims, the Parties entered the Stipulation Re: Settlement of Class and PAGA Action, a true
13 and correct copy of which is attached as **Exhibit A** to the Declaration of Max W. Gavron. *Id.*

14 **III. DISCUSSION**

15 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is
16 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
17 notice has been distributed to the class members for their comment or objections.

18 The preliminary approval by the trial court is simply a conditional finding that the settlement
19 appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he
20 strength of the findings made by a judge at a preliminary hearing or conference concerning a
21 tentative settlement proposal may vary. The court may find that the settlement proposal contains
22 some merit, is within the range of reasonableness required for a settlement offer, or is presumptively
23 valid subject only to any objections that may be raised at a final hearing.” Alba Conte & Herbert B.
24 Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

25 Here, the Parties have reached such an agreement and have submitted to this Court in
26 connection with this Motion a copy of the Stipulation fully setting forth the agreement reached
27 among the Parties. The parties also may, at the preliminary approval stage, request that the court
28 provisionally approve certification of the class—conditional upon final approval of the settlement.

1 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v.*
2 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal.
3 App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
4 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-*
5 *United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in
6 the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As
7 further explained by Professor Newberg:

8 The strength of the findings made by a judge at a preliminary hearing or
9 conference concerning a tentative settlement proposal...may be set out in
10 conditional orders granting tentative approval to the various items
11 submitted to the court. Three basic rulings are often conditionally entered
12 at this preliminary hearing. These conditional rulings may approve a
temporary settlement class, the proposed settlement, and the class counsel’s
application for fees and expenses.

13 *4 Newberg on Class Actions* § 11.26.

14 The Stipulation contains a provision pursuant to which the Parties stipulate to the Court’s
15 provisional certification of the class but do so for the purposes of this settlement only. Defendants
16 have reserved the right to contest class certification in the event that the settlement is not approved
17 and litigation resumes.

18 **A. Proposed Class Definition**

19 The current settlement is being settled on behalf of “non-exempt employees who worked for
20 Defendant in California and who were paid overtime and/or shift differential wages during the Class
21 Period.” *See* Stipulation ¶ 1.7. The Class Period is defined as “the period from December 21, 2020,
22 through February 18, 2022.” *Id.* ¶ 1.10. There are approximately 682 individuals that comprise the
23 Class. *Id.* ¶ 1.7.

24 **B. Settlement Terms and Evaluation**

25 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
26 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel*
27 *Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re*
28 *Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their

1 judgment for that of the proponents, particularly where, as here, settlement has been reached with the
2 participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v.*
3 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087
4 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*
5 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*,
6 79 F.R.D. 571 (E.D. Pa. 1978).

7 While the recommendations of counsel proposing the settlement are not conclusive, the Court
8 can properly take them into account, particularly where, as here, they have been involved in informal
9 discovery and negotiations for some period of time, appear to be competent, have experience with
10 this type of litigation, and have exchanged substantial evidence from the opposing party. *See*
11 *Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[s]o
12 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial
13 presumption of fairness attaches to the proposed settlement...[citations] and ‘great weight’ is
14 accorded to the recommendations of counsel, who are most closely acquainted with the facts of the
15 underlying litigation”). Here, both Plaintiff’s and Defendants’ counsel have a great deal of
16 experience in wage and hour class action litigation. Plaintiff’s counsel has been approved as class
17 counsel in a number of wage and hour class actions and have extensive litigation experience. Gavron
18 Decl. ¶¶ 28-34; Declaration Larry W. Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of Kwanporn “Mai”
19 Tulyathan (“Tulyathan Decl.”) ¶¶ 6-11; Declaration of Kelsey A. Webber (“Webber Decl.”) ¶¶ 3-8.
20 Each side has apprised the other of their respective factual contentions, legal theories, and defenses,
21 resulting in negotiations taking place between the Parties. Gavron Decl. ¶ 12.

22 Based on the class data provided by Defendants, Plaintiff estimated that Defendants could
23 face potential liability of up to approximately \$2,894,600.00 for Plaintiff’s class claims if Plaintiff
24 succeeded on all claims at trial. Gavron Decl. ¶ 13. Plaintiff was able to estimate the potential class
25 penalties based on class data provided by Defendants, which identified 682 putative class members,
26 approximately 29,287 wage statements reflecting incorrect total hours worked and/or shift
27 differential wages. *Id.* ¶ 13. From this, Plaintiff estimated the penalties as approximately
28 \$2,894,600.00, which was based on 29,287 alleged wage statements [(\$100 x 29,287) - (\$50 x 682

1 class members)]. *Id.* ¶ 13; Lab. Code § 226(e). Plaintiff could have argued at trial to award separate
2 penalties for distinct violations of the subsections Labor Code § 226, as opposed to a single penalty
3 for a wage statement that violated the law in any way. However, it is unlikely a Court would
4 interpret the statute in this way. If the Court awarded separate penalties for different theories of
5 liability, Defendants’ exposure on the class claim would be closer to \$5 million.

6 Substantively, Defendants also would have many defenses, including that the violations were
7 not “knowing and intentional” and thus would not warrant Section 226(e) penalties. *See Harris v.*
8 *Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in
9 favor of employer and finding its conduct was not “knowing and intentional”). Defendants would
10 have also argued that they were entitled to a “good faith” defense on this claim. *See, e.g., Naranjo v.*
11 *Spectrum Sec. Servs., Inc.*, 88 Cal. App. 5th 937, 947 (2023), *review filed* (Apr. 7, 2023); *Apodaca v.*
12 *Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an employer
13 has a good faith belief that it is not in violation of Section 226, any violation is not knowing and
14 intentional.”); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal.
15 Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047
16 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ’ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22,
17 2011) (same). Significantly, Defendants indicated that they have revised their wage statements such
18 that any liability that Plaintiff could seek in this lawsuit would be limited.

19 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that
20 Defendants could face civil penalties of up to \$2,928,700.00. Gavron Decl. ¶15. This amount is
21 calculated based on the PAGA’s initial \$100 penalty for each aggrieved employee per pay period,
22 based on the *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021) decision, in which the
23 Court held that the \$100 penalty applies to PAGA claims. Gavron Decl. ¶ 15. While the PAGA
24 provides for a heightened penalty for a “subsequent violation,” courts are hesitant to award the
25 heightened penalty absent a showing of a prior violation. *Amaral v. Cintas Corp. No. 2*, 163
26 Cal.App.4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
27 *Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts
28 have held that employers are not subject to heightened penalties for subsequent violations unless and

1 until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *see*
2 *also Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty
3 unless prior citation or court ruling).

4 Even assuming Plaintiff ultimately prevailed on his PAGA claims, the Court still has
5 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline
6 to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do
7 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed,
8 as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
9 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
10 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying
11 with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.*
12 at p. 539.

13 Based on the data provided by Defendants, Plaintiff’s counsel estimated total damages and
14 penalties to be as high as \$5,823,300.00, if the Court awarded full penalties on both Plaintiff’s class
15 and PAGA claims. *Id.* ¶ 17. Therefore, Plaintiff’s settlement of \$975,000.00 is approximately 16.7%
16 of the total estimated liability. If the Court were to reduce the maximum PAGA penalties by 90%, as
17 was done in *Carrington*, the settlement value is an even higher percentage of the potentially available
18 recovery. *Id.*

19 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the fairness
20 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
21 prevailing on one or more of the causes of action or theories alleged in the operative complaint, the
22 possibility of non-certification, and the potential for appeals. Gavron Decl. ¶ 18. These risks on class
23 certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l*
24 *Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently
25 prevailed at trial after eight years of litigation, but the judgment and the certification ruling were
26 reversed by the California Supreme Court after an additional five years of litigation. The case was
27 remanded to superior court where class certification was denied and plaintiffs’ subsequent appeal
28 also was denied.

1 Numerous courts have held that **gross** settlements approximating between only 8% and 25%
2 of the defendant's potential exposure are fair and reasonable. *See Lesevic v. Spectraforce Techs., Inc.*,
3 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class fund of \$600,000
4 that compensated for 7% of maximum potential recovery was reasonable); *Bellinghausen v. Tractor*
5 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015) (holding
6 that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure
7 was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal.
8 2014) (granting preliminary approval of wage and hour class settlement which obtained **only 9.1%** of
9 projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*,
10 No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that
11 gross class action settlement of approximately 15% of the potential recovery was fair and
12 reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal.
13 Apr. 26, 2013) (24 percent was reasonable).

14 Despite the asserted fairness of the settlement terms, as set forth in the Notice To Class
15 Members Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement ("Class
16 Notice"), should any Class Member wish to pursue his or her own case for the claims being released
17 herein, each Class Member has the right to submit a request to Opt Out from the settlement, with the
18 exception of the PAGA claims. *See* Class Notice, attached as **Exhibit A** to the Stipulation. Moreover,
19 as set forth in the Class Notice, Class Members are advised of their right to object to any of the terms
20 contained in the Stipulation and attend the final approval hearing. *Id.*

21 **1. Amount and Manner of Distribution of the Compensation to be Provided**
22 **to Class Members Including the Amount, or an Estimate, of What Each**
23 **Class Member Will Receive**

24 The Stipulation provides for Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00) as
25 the Gross Settlement Amount. Stipulation ¶ 1.16. The Net Settlement Amount [calculated after
26 deduction of attorneys' fees (up to \$325,000.00), costs (up to \$25,000.00), the Class Representative
27 Service Award (up to \$10,000.00), PAGA Penalties (\$80,000.00), and Administrator Costs (up to
28 \$11,000)] is estimated to be approximately \$524,000.00. Stipulation ¶¶ 1.4, 1.5, 1.6, 1.12, 1.16, 1.21,
1.28.

Pursuant to the Stipulation, the Net Settlement Amount will be apportioned among the Class Members on a pro rata basis, based on the number of wage statements reflecting payment of overtime and/or shift differential wages received by each respective Class Member during the Class Period, as compared to the total number of wage statements reflecting payment of overtime and/or shift differential wages received by all Class Members during the Class Period. *See* Stipulation ¶ 2.2.1. Based thereon, on a raw average, each Class Member potentially may recover approximately \$768.33 (\$524,000.00 ÷ 682 Class Members). Gavron Decl. ¶ 20. The amount actually paid to each Participating Class Member will increase or decrease depending on the number of applicable wage statements he or she received during the Class Period and the number of putative class members who choose not to participate in the settlement. Twenty-five percent (25%) of the PAGA Penalties, or \$20,000.00, shall be paid to PAGA Members (Class Members who were employed by Defendants during the PAGA Period of December 21, 2020, through February 18, 2022) on a pro rata basis, based on the number of wage statements reflecting payment of overtime and/or shift differential wages received by each respective PAGA Member during the PAGA Period, as compared to the total number of wage statements reflecting payment of overtime and/or shift differential wages received by all PAGA Members during the PAGA Period. *See* Stipulation ¶¶ 1.26, 1.29, 2.3.2. Finally, uncashed checks (upon the expiration date) shall be sent to the *cy pres* recipient Center for Employment Opportunities, in accordance with California Code of Civil Procedure § 384. *See* Stipulation ¶ 2.8.2; *see* Gavron Decl. ¶ 23. Class Counsel does not have any conflicts of interest with the designated *cy pres* recipient. Gavron Decl. ¶ 23.

2. Settlement Funds Do Not Revert to the Defendants

None of the settlement funds will revert to Defendants. Stipulation ¶ 2.1.1.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Class Members who do not opt out of the settlement ("Participating Class Members") will provide a limited release of the claims that were alleged or could have been alleged in the operative complaint against the Released Parties ("Settled Claims"). *See* Stipulation ¶¶ 1.30, 1.34, 1.35, 2.9.1. In addition, regardless of their decision to participate in the settlement, PAGA Members will also provide a limited release of the PAGA

claims only (“Settled PAGA Claims”). *See* Stipulation ¶¶ 1.36, 2.9.2. Given that the releases above are tailored to only claims pled or could arise out of the facts alleged in the operative complaint that accrued during the Class and/or PAGA Period, the releases are appropriately limited.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the Individual Settlement Sums to Participating Class Members and PAGA Payments to PAGA Members shall be allocated as one hundred percent (100%) penalties or interest, for which an IRS Form 1099 will issue. Stipulation ¶ 2.4.1.

5. No Affirmative Obligations to be Undertaken by Class Members

Class Members will not be required to make a submission to participate in the settlement. Thus, this substantially decreases the amount of burden each Class Member must bear in order to receive their Individual Settlement Sum. If a Class Member does not wish to take part in this settlement and be bound by the release, the Class Member must submit a request to Opt Out of the settlement. Stipulation ¶¶ 1.25, 2.7.3

C. Notice to Class Members

Should the Court grant the instant Motion, Defendants will provide the Administrator with a list containing each Class Member’s name, last known address, Social Security Number, and number of wage statements reflecting payment of overtime and/or shift differential wages received by each Class Member during the Class Period (“Class Data”). Stipulation ¶¶ 1.9, 2.6.3. Defendants shall provide this information within twenty-one (21) days of preliminary approval of this settlement. *Id.* ¶ 2.6.3. Upon receipt of the information and prior to mailing the Class Notice, the Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. *Id.* ¶ 1.33, 2.6.4. Within fifteen (15) calendar days of receipt of the Class Data, the Administrator shall mail the Class Notice to all Class Members. *Id.* ¶ 1.23, 2.6.5. Any Class Notices returned to the Administrator as non-deliverable on or before the Notice Response Deadline shall be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto. *Id.* ¶ 2.6.6. If no forwarding address is provided, the Administrator shall promptly attempt to determine the correct address using another search of the National Change of Address Database and perform a re-mailing. *Id.* ¶¶ 1.33, 2.6.6.

1 The Class Notice will describe the terms of the settlement and advise Class Members of their
2 estimated Individual Settlement Sum and PAGA Payment, their opportunity to opt out of the
3 settlement, object to the settlement, and/or dispute the facts and methods used to calculate their
4 Individual Settlement Sum and PAGA Payment. *Id.* ¶ 1.22. If Class Members need further
5 information about the settlement and/or the lawsuit, Class Counsel’s contact information and the
6 Administrator’s contact information are provided in the Class Notice. *See* Class Notice.

7 **D. Typicality and Adequacy of Representation**

8 **1. Class Representative’s Claims are Typical of the Class**

9 The commonality requirement is met when there are questions of law and fact common to the
10 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal
11 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple
12 with disparate legal remedies within the class”). Commonality requires only that some common legal
13 or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See*
14 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the
15 commonality inquiry. Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or
16 procedure, violated the Labor Code by failing to provide accurate itemized wage statements.
17 Declaration of Vincent Ramsey (“Ramsey Decl.”) ¶¶ 2-3. Moreover, Plaintiff does not have any
18 interests adverse to the Class, nor have any such issues been raised or presented. Ramsey Decl. ¶ 4.
19 Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing
20 information and documents to his counsel. *Id.* ¶ 5.

21 **2. Class Counsel Have Adequately Represented the Class**

22 From the inception of the case, Class Counsel have zealously represented the interests of the
23 Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel
24 to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class.
25 Gavron Decl. ¶ 25. The settlement was obtained for the benefit of the Class, as opposed to the
26 individual Class Representative. Further, Class Counsel have been approved as class counsel on a
27 number of prior cases, have litigated numerous other class action cases, and are competent to
28 represent the Class. Gavron Decl. ¶¶ 28-34; Lee Decl. ¶¶ 6-8; Tulyathan Decl. ¶¶ 6-11; Webber Decl.

¶¶ 3-8.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

In 2016, the California Supreme Court held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at p. 505.

Here, the Parties have agreed to a payment of approximately one-third of the Gross Settlement Amount (\$975,000.00) for payment to Class Counsel as of attorneys' fees. Stipulation ¶ 1.6. The Parties have agreed to a payment of the foregoing attorneys' fees and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs up to \$25,000.00. *Id.* ¶ 1.5. Class Counsel have, at their own risk, expended costs, for example, to file this instant action and other pleadings in the case, effect service of process, participate in mediation, and pay other litigation-related costs. If Class Counsel's actual costs are less than \$25,000.00, the remainder will go to the Class for distribution. *Id.* ¶ 1.21.

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1 **2. Proposed Payment to the Class Representative**

2 Class Representative Vincent Ramsey requests an enhancement of \$10,000.00. Stipulation ¶
3 1.12. The Class Representative met and conferred with Class Counsel on a number of occasions to
4 discuss the case, provided documents and information to Class Counsel, and reviewed the
5 Stipulation. As part of his duties as the Class Representative, Plaintiff provided invaluable
6 information, evidence, and documents that resulted in this settlement. Ramsey Decl. ¶ 5. In addition
7 to the invaluable services that he provided, Plaintiff also took a significant risk, both professionally
8 and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Class.
9 Because the claims alleged by the Class Representative involved the payment of costs to the
10 prevailing party, Plaintiff could have possibly faced paying the costs of Defendants, had he not
11 prevailed in this action. Plaintiff also agreed to provide a general release of claims and waiver of the
12 protections of Civil Code § 1542, which is something that was not required of the Class Members.
13 Stipulation ¶ 2.9.4.

14 **3. Settlement Administration Fees**

15 The Parties have agreed to an estimated payment of \$11,000.00 to the Administrator, Phoenix
16 Settlement Administrators, to send notices and to administer this settlement. Stipulation ¶ 1.3, 1.4.
17 The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶
18 22.

19 **4. Notice to LWDA**

20 Concurrent with the filing of this Motion, Plaintiff submitted all required documentation to
21 the LWDA. Gavron Decl. ¶ 37; Ex. B.

22 **IV. CONCLUSION**

23 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
24 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and
25 set a date for a final approval hearing.
26
27
28

1 DATED: May 4, 2023

DIVERSITY LAW GROUP, P.C.
WEBBER LAW GROUP

2
3 By: 

4 Larry W. Lee

5 Max W. Gavron

6 Kelsey A. Webber

7 Attorneys for Plaintiff and the Class
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On May 4, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
14 **2. DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT OF**
15 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENT**
17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
19 **4. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
22 **5. DECLARATION OF VINCENT RAMSEY IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
25 **6. DECLARATION OF KELSEY A. WEBBER IN SUPPORT OF PLAINTIFF'S**
26 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
27 **SETTLEMENT**
28 **7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on the interested parties in this action as follows:

Joshua J. Cliffe jcliffe@littler.com Jo B. Gbujama jgbujama@littler.com Littler Mendelson, P.C. 333 Bush Street, 34 th Floor San Francisco, California 94104 <i>Attorneys for Defendants Packaging Corporation of America and PCA Central California Corrugated, LLC</i>	Kelsey A. Webber Kelsey.Webber@webberlawgroup.com Shaelyn A. Stewart Shaelyn.Stewart@webberlawgroup.com Webber Law Group, P.C. 1610 R. Street, Suite 300 Sacramento, California 95811 <i>Attorneys for Plaintiff</i>
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1
2 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
3 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
4 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
5 indicated above or on the attached mailing list. I certify that said electronic transmission was
6 completed and that all pages were received by the party(ies) identified herein or on the attached
7 mailing list.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 above is true and correct. Executed on May 4, 2023, at Los Angeles, California.
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Erika Mejia