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12 on behalf of herself and all others similarly situated

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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF SAN BERNARDINO**

24 JENNIFER N. ORTEGA CHAVEZ, an
25 individual, and on behalf of all others similarly
26 situated,

27 Plaintiff,

28 v.

WINPAK LANE, INC., a Delaware
corporation; MARK GRIFFIN, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CIVSB2202274
Consolidated with CIVSB2207313

[Assigned to the Hon. David Cohn in Dept. S-
26]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

ACTION FILED: January 28, 2022

TRIAL DATE: None set

1 This Joint Stipulation Re: Class Action and Representative Action Settlement
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 Jennifer N. Ortega Chavez (“Plaintiff”) individually and on behalf of the Settlement Class, as
4 defined below, on one hand; and Defendant Winpak Lane, Inc. (“Winpak”), , on the other hand,
5 in the lawsuits entitled *Jennifer N. Ortega Chavez v. Winpak Lane, Inc., et al.*, filed in San
6 Bernardino County Superior Court, Case No. CIVSB2202274 (“Class Action”) and Case No.
7 CIVSB2207313 (“PAGA Action,” and collectively, the “Action”). Plaintiff and Defendant shall
8 be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties
9 to fully, finally, and forever resolve, discharge, and settle the claims as set forth herein, based
10 upon and subject to the terms and conditions of this Agreement.

11 **1. DEFINITIONS**

12 **A. “Class Action”** means *Jennifer N. Ortega Chavez v. Winpak Lane, Inc., et al.*, filed
13 in San Bernardino County Superior Court, Case No. CIVSB2202274. The “Class Action” and
14 “PAGA Action” are collectively referred to as “Action.”

15 **B. “Aggrieved Employees”** means Class Members working for Winpak during the
16 PAGA Period as non-exempt, hourly-paid employees in California.

17 **C. “Class Counsel”** means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel
18 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
19 “Plaintiff’s Counsel.”

20 **D. “Class Period”** means the period from January 28, 2018, through October 3,
21 2022.

22 **E. “Court”** means the Superior Court of the State of California for the County of
23 San Bernardino.

24 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
25 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
26 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
27 have been filed, the date on which they have been resolved or exhausted.

28 **G. “Defendants”** means Winpak Lane, Inc., and Mark Griffin.

1 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
2 the wage portions of the Individual Settlement Payments under the Federal Insurance
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
4 and contributions required of employers, such as for unemployment insurance.

5 **I. “General Release”** means the broader release of claims by Plaintiff, which is in
6 addition to his limited release of claims as a Participating Class Member.

7 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Three
8 Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00),¹ which shall be paid by Winpak,
9 and from which all payments for the Individual Settlement Payments to Participating Class
10 Members, Individual PAGA Payments to Aggrieved Employees and the Court-approved
11 amounts for attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel,
12 Settlement Administration Costs, a Service Award to Plaintiff, and the LWDA Payment for
13 resolution of Plaintiff’s cause of action for civil penalties under the Labor Code Private
14 Attorneys’ General Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), interest and
15 certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by Winpak
16 separate and apart from the Gross Settlement Amount.

17 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
18 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
19 Individual Settlement Share.

20 **L. “Individual Settlement Payment”** means a payment to a Participating Class
21 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
22 which he or she may be entitled if he or she is also an Aggrieved Employee.

23 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
24 Amount that a Participating Class Member is projected to receive based on the number of
25 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
26 shall be reflected in his her Class Notice.

27
28 _____
¹ As the same may be increased in accordance with Paragraph 17, below.

1 **N. “LWDA Payment”** means the payment to the State of California Labor and
2 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
3 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
4 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
5 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
6 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
7 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
8 based on the Workweeks worked in the PAGA Period, as further set out herein.

9 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
10 that is available for distribution to Participating Class Members after deductions for the Court-
11 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
12 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
13 Payment and the PAGA Payment.

14 **Q. “PAGA Action”** means *Jennifer N. Ortega Chavez v. Winpak Lane, Inc., et al.*,
15 filed in San Bernardino County Superior Court, Case No. CIVSB2207313.

16 **R. “PAGA Payment”** is the 25% portion of the Twenty Thousand Dollars and Zero Cents
17 (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero Cents
18 (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
19 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
20 which would be in addition to their Individual Settlement Payment if they are Participating Class
21 Members, as well.

22 **S. “PAGA Period”** means the period from January 26, 2021, through October 3,
23 2022.

24 **T. “Participating Class Members”** means all Settlement Class Members who do
25 not submit a timely and valid Request for Exclusion.

26 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
27 Settlement Amount that a Participating Class Member is eligible to receive based on the number
28 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once

1 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
2 may be entitled if he or she is also an Aggrieved Employee.

3 **V.** “**Parties**” shall refer to Plaintiff and Defendants collectively.

4 **W.** “**Plaintiff**,” “**Named Plaintiff**” or “**Class Representative**” shall refer to Jennifer
5 N. Ortega Chavez.

6 **X.** “**Preliminary Approval Date**” means the date on which the Court enters an Order
7 granting preliminary approval of the Settlement.

8 **Y.** “**Released Parties**” shall mean Defendants and each of their past, present, and
9 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
10 sponsored employee benefit plans of any nature, and their successors and predecessors in interest,
11 including all of their officers, directors, shareholders, exempt employees, including Mark Griffin,
12 agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys,
13 administrators, fiduciaries, trustees and agents.

14 **Z.** “**Response Deadline**” means the deadline for Settlement Class Members to mail
15 any Requests for Exclusion, objections, or Workweek Disputes to the Settlement Administrator,
16 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
17 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
18 such an instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-
19 five (45) days from the date of the initial mailing, whichever is later, in which to postmark a
20 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
21 exclusive means for determining whether a Request for Exclusion, objection or Workweek
22 Dispute was submitted by the Response Deadline.

23 **AA.** “**Request for Exclusion**” means a written request to be excluded from the
24 Settlement Class pursuant to Section 9.C below.

25 **BB.** “**Service Award**” means monetary amounts to be paid to Plaintiff of up to Seven
26 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court approval,
27 will be paid out of the Gross Settlement Amount.

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1 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
4 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, and
5 Individual PAGA Payments, as well as associated taxes and withholdings, providing
6 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
7 doing administrative work related to unclaimed checks, transmitting payment to Class Counsel
8 for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and
9 expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment,
10 providing weekly reports of opt-outs, objections and related information, and any other actions
11 of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
12 Agreement. The Settlement Administration Costs are estimated not to exceed \$6,990.00. If the
13 actual amount of the Settlement Administration Costs is less than \$6,990.00, the difference
14 between \$6,990.00 and the actual Settlement Administration Costs shall be a part of the Net
15 Settlement Amount. If the Settlement Administration Costs exceed \$6,990.00, then such excess
16 will be paid solely from the Gross Settlement Amount and Winpak will not be responsible for
17 paying any additional funds in order to pay these additional costs.

18 **DD. “Settlement Administrator”** means the Third-Party Administrator mutually
19 agreed upon by the Parties that will be responsible for the administration of the Settlement
20 including, without limitation, translating the Class Notice in Spanish, the distribution of the
21 Individual Settlement Payments to be made by Winpak from the Gross Settlement Amount and
22 related matters under this Agreement.

23 **EE. “Settlement Class” or “Settlement Class Members”** means all current and
24 former non-exempt, hourly paid employees who worked in California for Winpak at any time
25 during the Class Period.

26 **FF. “Workweeks”** means the number of workweeks that a Settlement Class Member
27 was employed by Winpak in a non-exempt, hourly-paid position during the Class Period, based
28 on hire date, re-hire dates (if applicable), and termination dates (if applicable).

1 **2. BACKGROUND**

2 **A.** On January 7, 2022, Plaintiff filed with the LWDA and served on Defendants a
3 notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the
4 LWDA to recover civil penalties, on behalf of Aggrieved Employees, for alleged Labor Code
5 violations (“PAGA Notice”).

6 **B.** On January 28, 2022, Plaintiff filed a putative wage-and-hour class action alleging
7 that, during the Class Period, Defendants, as it pertains to Class Members: (1) failed to pay
8 overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
9 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
10 (5) failed to pay all wages due upon termination or resignation; (6) failed to provide accurate and
11 itemized wage statements; (7) failed to timely pay wages during employment; (8) failed to pay
12 vested vacation; and (9) engaged in unfair competition (the “Class Action”).

13 **C.** On April 22, 2022, after sixty-five (65) days had passed since Plaintiff filed and
14 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
15 Code violations, Plaintiff filed a separate representative action, Case No. CIVSB2207313,
16 seeking PAGA civil penalties against Defendants for Labor Code violations alleged in the PAGA
17 Notice (the “PAGA Action”).

18 **D.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
19 mediation, in which Plaintiff was provided with, among other things: (1) a sampling of time and
20 payroll records for all Class Members; (2) Class Members’ data points, including the number of
21 Pay Periods and Workweeks worked by putative class members during the Class Period and
22 PAGA Period, and the number of employees and terminated employees during the Class Period
23 and PAGA Period; and (3) all relevant policy documents of Winpak.

24 **E.** On October 3, 2022, the Parties attended in a full-day mediation before Marc
25 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and
26 employment matters. The mediation was unsuccessful, however the Parties continued
27 negotiations through the mediator in the months after. With the aid of the mediator’s evaluation,
28 the Parties reached the Settlement to resolve the Action.

1 **F.** Class Counsel have conducted significant investigation of the law and facts
2 relating to the claims asserted in the Action and PAGA Notice, and have concluded that the
3 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
4 Class, taking into account the sharply contested issues involved, the expense and time necessary
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
7 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
8 to be received by the Settlement Class Members.

9 **G.** Defendants have concluded that, because of the substantial expense of defending
10 against the Action, the length of time necessary to resolve the issues presented herein, the
11 inconvenience involved, and the concomitant disruption to their business operations, it is in their
12 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
13 claims asserted against them in the Action and the PAGA Notice. However, Defendants
14 nevertheless desire to settle the Action for the purpose of avoiding the burden, expense, and
15 uncertainty of continuing litigation and for the purpose of putting to rest the controversies
16 engendered by the Action.

17 **H.** This Agreement is intended to and does effectuate the full, final and complete
18 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
19 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
20 and Aggrieved Employees.

21 **I.** On February 8, 2023, the Court consolidated the PAGA Action and the Class
22 Action.

23 **3. JURISDICTION**

24 The Court has jurisdiction over the Parties and the subject matter of the Action. The
25 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
26 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
27 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
28 pursuant to California Rule of Court, rule 3.769, subdivision (h).

1 **4. STIPULATION OF CLASS CERTIFICATION**

2 The Parties stipulate to the certification of the Settlement Class under this Agreement for
3 purposes of settlement only.

4 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

5 After full execution of this Agreement, Plaintiff will move for an order granting
6 preliminary approval of the Settlement, approving, and directing the mailing of the proposed
7 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally
8 certifying the Settlement Class for settlement purposes only, and approving the deadlines
9 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes and
10 Objections. If and when the Court preliminarily approves the Settlement, and after administration
11 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order,
12 Plaintiffs will move for an order finally approving the Settlement and seek entry of a Judgment
13 in line with this Settlement. The Parties may both respond to any Objections lodged to final
14 approval of the Settlement up to five (5) court days before the Final Approval Hearing.

15 **6. STATEMENT OF NO ADMISSION**

16 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
17 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
18 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
19 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
20 in the event that this Agreement is not approved by the Court, or any appellate court, is
21 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
22 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
23 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
24 way any of its objections or defenses in the Action and the PAGA Notice. The Parties shall be
25 restored to their respective positions in the Action prior to the entry of this Settlement.

26 **7. RELEASE OF CLAIMS**

27 **A. Release by Participating Class Members**

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1 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
2 of Judgment and payment by Winpak to the Third-Party Administrator selected of the full Gross
3 Settlement Amount and Employer’s Taxes necessary to effectuate the Settlement, Plaintiff and
4 all Participating Class Members release all claims against the Released Parties asserted in the
5 complaint filed in the Class Action, or any and all claims that may be asserted against the
6 Released Parties based on the factual allegations in the complaint filed in the Class Action. For
7 the duration of the Class Period, the release includes: (1) all claims for failure to pay overtime
8 wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal
9 periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or
10 compensation in lieu thereof; (5) all claims for failure to pay all wages due upon termination or
11 resignation; (6) all claims for failure to provide accurate and itemized wage statements; (7) all
12 claims for failure to timely pay wages during employment; (8) all claims for failure to provide
13 compensation for unused vested paid vacation; and (9) all claims asserted through California
14 Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations
15 referenced in the Complaint (the “Class Released Claims”).

16 **B. Release by Aggrieved Employees**

17 For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all
18 claims released during the Class Period, as well as all asserted PAGA claims for penalties arising
19 out of Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 in connection with alleged
20 violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232,
21 232.5, 246, *et seq.*, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5,
22 among others (the “PAGA Released Claims”). The Class Released Claims and PAGA Released
23 Claims shall be referred to herein as the “Released Claims.”

24 **C. General Release**

25 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
26 of Judgment and payment by Winpak to the Settlement Administrator selected of the full Gross
27 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
28 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases

1 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
2 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
3 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
4 arising out of, relating to or in connection with any act or omission of the Released Parties
5 through the date of full execution of this Agreement in connection with Plaintiff's employment
6 with Winpak or termination thereof, except for any and all other claims that may not be released
7 as a matter of law through this Agreement. To the extent of the General Release provided herein,
8 Plaintiff stipulates and agrees that, upon entry of an Order granting Final Approval of the
9 Settlement, entry of Judgment and payment by Winpak to the Settlement Administrator selected
10 of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the
11 Settlement, they shall have expressly waived and relinquished, to the fullest extent permitted by
12 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
13 similar provision under federal or state law, which provides:

14 A general release does not extend to claims which the creditor
15 does not know or suspect to exist in his or her favor at the time of
16 executing the release, which if known by him or her must have
17 materially affected his or her settlement with the debtor or
18 released party.

18 The releases above expressly exclude all other claims, including claims for vested
19 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
20 compensation, and any other claims outside of the Class Released Claims of Participating Class
21 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
22 Employees (and, to the extent permitted by law, the State of California) arising outside of the
23 PAGA Period.

24 **8. SETTLEMENT ADMINISTRATOR**

25 A. Plaintiff and Defendants, through their respective counsel, have selected Apex
26 Class Action Settlement Administration to administer the Settlement, which includes, but is not
27 limited to, translating the Class Notice to Spanish, distributing and responding to inquiries about
28 the Class Notice and calculating all amounts to be paid from the Gross Settlement Amount.

1 Charges and expenses of the Settlement Administrator, currently estimated to be \$6,990.00, will
2 be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration
3 Costs is less than \$6,990.00, the difference between \$6,990.00 and the actual Settlement
4 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
5 Administration Costs exceed \$6,990.00, then such excess will be paid solely from the Gross
6 Settlement Amount and Winpak will not be responsible for paying any additional funds in order
7 to pay these additional costs.

8 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
9 **PROCESS**

10 **A. Notice to the Settlement Class Members**

11 (1) Within fourteen (14) calendar days after the Preliminary Approval Date,
12 Defendants' Counsel shall provide the Settlement Administrator with information with respect
13 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
14 currently in Winpak's possession, custody or control; (3) last known telephone number(s)
15 currently in Winpak's possession, custody or control; (4) last known Social Security Number(s)
16 in Winpak's possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates
17 and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member
18 ("Class List"). The Settlement Administrator shall perform an address search using the United
19 States Postal Service National Change of Address ("NCOA") database and update the addresses
20 contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar
21 days or soon thereafter of receiving the Class List from Winpak, the Settlement Administrator
22 shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-
23 class regular U.S. Mail using the most current mailing address information available. The
24 Settlement Administrator shall maintain the Class List and digital copies of all the Settlement
25 Administrator's records evidencing the giving of notice to any Settlement Class Member for at
26 least four (4) years from the Final Approval Date.

27 (2) The Class Notice will set forth:
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- (a) the Settlement Class Member’s estimated Individual Settlement Payment and Individual PAGA Payment, and the basis for each;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;
- (d) the proposed Settlement Administration Costs;
- (e) the definition of the Settlement Class;
- (f) a statement that the Court has preliminarily approved the Settlement;
- (g) how the Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures;
- (i) the date and location of the Final Approval Hearing; and
- (j) that the Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member disputes the accuracy of the number of Workweeks as set forth on his or her Class Notice (“Workweek Dispute”). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the

1 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
2 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
3 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
4 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
5 Member within three (3) business days. Further, any Class Notices that are returned to the
6 Settlement Administrator with a forwarding address before the Response Deadline shall be
7 promptly re-mailed to the forwarding address affixed thereto.

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9 (4) No later than seven (7) calendar days from the Response Deadline, the
10 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
11 completion of the notice process, including the number of attempts to obtain valid mailing
12 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
13 and copies of all Requests for Exclusion and objections/comments received by the Settlement
14 Administrator.

15 **B. Objections**

16 Only Participating Class Members may object to the Settlement. In order for any
17 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
18 do so by mailing a written objection to the Settlement Administrator at the address or phone
19 number provided on the Class Notice no later than the Response Deadline. The Settlement
20 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
21 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
22 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection should
23 set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of
24 the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether
25 the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
26 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
27 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
28 will remain a member of the Settlement Class and if the Court approves this Agreement, the

1 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
2 the same extent as a Settlement Class Member who does not object. The date of mailing of the
3 Class Notice to the objecting Settlement Class Member shall be conclusively determined
4 according to the records of the Settlement Administrator. Settlement Class Members need not
5 object in writing to be heard at the Final Approval Hearing; they may object or comment in
6 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
7 to any objection lodged with the Court up to five (5) court days before the Final Approval
8 Hearing.

9 **C. Requesting Exclusion**

10 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
11 Settlement by mailing a written request to be excluded from the Settlement ("Request for
12 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
13 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
14 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
15 and (4) any statement standing for the proposition that the Class Member does not wish to
16 participate in the Settlement or the following statement: "Please exclude me from the Settlement
17 Class in the *Ortega Chavez v. Winpak Lane Inc., et al.*, matter." The Settlement Administrator
18 shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants'
19 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
20 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
21 Member who requests exclusion using this procedure will not be entitled to receive any payment
22 from the Settlement and will not be bound by the Settlement Agreement or have any right to
23 object to, appeal or comment on the Settlement. Any Settlement Class Member who does not opt
24 out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by
25 all terms of the Settlement, including those pertaining to the Released Claims, as well as any
26 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
27 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a
28 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for

1 Exclusion will control and the Objection will be overruled. Settlement Class Members who
2 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
3 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
4 Payments, and will be bound by the release of the PAGA Released Claims.

5 **D. Disputes Regarding Settlement Class Members' Workweek Data**

6 Each Settlement Class Member may dispute the number of Workweeks attributed to him
7 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
8 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
9 Response Deadline. The Settlement Administrator shall immediately provide copies of all
10 disputes to Class Counsel and counsel for Defendants, and shall immediately attempt to resolve
11 all such disputes directly with relevant Settlement Class Member(s) with the assistance of
12 Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall
13 adjudicate the dispute.

14 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
15 **PAGA PAYMENTS TO PARTICIPATING CLASS MEMBERS**

16 Individual Settlement Payments will be calculated and distributed to Participating Class
17 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
18 Members' respective number of Workweeks during the Class Period. Individual PAGA
19 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
20 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
21 number of Workweeks during the PAGA Period. Specific calculations of the Individual
22 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
23 follows:

24 **A.** The Settlement Administrator will determine the total number of Workweeks
25 worked by each Settlement Class Member during the Class Period ("Class Member's
26 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
27 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
28 Administrator will determine the total number of Workweeks worked by each Aggrieved

1 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
2 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
3 (“PAGA Workweeks”).

4 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
5 Settlement Administrator will use the following formula: Individual Settlement Share =
6 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

7 **C.** To determine each Participating Class Member’s Participating Individual
8 Settlement Share, the Settlement Administrator will determine the aggregate number of
9 Workweeks worked by all Participating Class Members during the Class Period (“Participating
10 Class Workweeks”) and use the following formula: Individual Settlement Share =
11 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
12 Amount.

13 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
14 to Participating Class Members by way of check and is referred to as “Individual Settlement
15 Payment(s)”.

16 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
17 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
18 PAGA Payment = ([Aggrieved Employee’s Workweeks ÷ PAGA Workweeks] x \$5,000.00
19 (the “PAGA Payment”).

20 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
21 to Participating Class Members and/or Aggrieved Employees by way of check. When a
22 Participating Class Member is also an Aggrieved Employee, one check may be issued that
23 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

24 **11. DISTRIBUTION OF PAYMENTS**

25 **A. Distribution of Individual Settlement Payments**

26 Participating Class Members will receive an Individual Settlement Payment and
27 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
28 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one

1 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
2 calendar days after expiration of the 180-day period, checks for such payments shall be
3 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
4 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”).
5 The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure
6 section 384, shall be transmitted to Legal Aid at Work the *cy pres* recipient, for use in San
7 Bernardino County. The Settlement Administrator shall prepare a report regarding the
8 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be
9 presented to the Court by Class Counsel along with a proposed amended judgment that is
10 consistent with the provisions of Code of Civil Procedure section 384. By signing this
11 Agreement, the Parties and their counsel agree that they have no interest in the governance of,
12 or conflict of interest with, the *cy pres* recipient.

13 **B. Funding of Settlement**

14 Winpak shall, within seven (7) calendar days of Final Approval Date, make payment of
15 the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
16 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
17 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
18 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
19 the Court’s Orders and subject to the conditions described herein.

20 **C. Time for Distribution**

21 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
22 Employer Taxes by Winpak, or as soon thereafter as practicable, the Settlement Administrator
23 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as
24 specified in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award
25 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
26 Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the
27 LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual
28 PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the

1 Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable
2 taxes and withholdings, as specified in this Agreement and approved by the Court. All interest
3 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
4 Participating Class Members based on the number of pay periods worked by them in the Class
5 Period.

6 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

7 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
8 fees of up to 35% of the Gross Settlement Amount or, unless escalated pursuant to Paragraph 17
9 of this Agreement, amounts to One Hundred Twenty-Two Thousand, Five Hundred Dollars and
10 Zero Cents (\$122,500.00). Class Counsel shall further apply for, and Defendants shall not
11 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
12 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
13 up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). Awards of attorneys' fees and costs
14 shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs
15 necessary to prosecute, settle, and obtain Final Approval of the settlement in the Class and PAGA
16 Action. The "future" aspect of the amounts stated herein includes, without limitation, all time
17 and expenses expended by Class Counsel (including any appeals therein). There will be no
18 additional charge of any kind to either the Settlement Class Members or request for additional
19 consideration from Defendants for such work unless, in the event of a material breach of this
20 Agreement by Defendants, Plaintiff is required to move the Court for enforcement of this
21 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
22 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
23 be a part of the Net Settlement Amount.

24 **13. SERVICE AWARD TO PLAINTIFF**

25 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
26 amount not to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for
27 participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff
28 shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If

1 the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then
2 the unapproved portion(s) shall be a part of the Net Settlement Amount.

3 **14. TAXATION AND ALLOCATION**

4 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
5 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
6 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
7 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
8 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
9 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
10 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
11 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
12 be made pursuant to applicable state and/or local withholding codes or regulations.

13 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
14 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
15 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
16 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
17 set forth in this Section may be modified in a manner to bring Defendants into compliance with
18 any such changes.

19 **C.** All Employer Taxes shall be paid by Winpak separate, apart and above from the
20 Gross Settlement Amount. Winpak shall remain liable to pay the employer's share of payroll
21 taxes as described above.

22 **D.** Neither Counsel for Plaintiff nor Defendants intend anything contained in this
23 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
24 be relied upon as such within the meaning of United States Treasury Department Circular 230
25 (31 C.F.R. Part 10, as amended) or otherwise.

26 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

27 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
28 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five

1 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
2 (*i.e.*, the LWDA Payment), and twenty-five percent (25%) (\$5,000.00) will be distributed to
3 Aggrieved Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon their respective
4 Workweeks.

5 **16. COURT APPROVAL**

6 This Agreement is contingent upon an order by the Court granting Final Approval of the
7 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
8 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
9 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
10 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
11 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
12 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
13 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
14 the Settlement Agreement being voided or not approved, and which control in such an event.

15 **17. INCREASE IN WORKWEEKS**

16 Winpak represents that there are no more than 16,849 Workweeks worked by Class
17 Members during the Class Period. In the event the number of Workweeks worked increases by
18 more than 10% or 1,685 Workweeks worked, then the Gross Settlement Amount shall be
19 increased proportionally by the Workweeks worked in the Class Period in excess of 18,534
20 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by
21 dividing the originally agreed-upon Gross Settlement Amount (\$350,000.00) by 16,849
22 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts
23 to \$20.77 per Workweek ($\$350,000.00 / 16,849$ Workweeks). Thus, for example, should there
24 be 20,000 Workweeks worked by Class Members in the Class Period, then the Gross Settlement
25 Amount shall be increased by \$30,448.82 ($(20,000 \text{ Workweeks} - 18,534 \text{ Workweeks}) \times \20.77
26 per Workweek).

27 **18. NOTICE OF JUDGMENT**

28

1 In addition to any duties set out herein, the Settlement Administrator shall provide
2 notice of the Final Judgment entered in the Action by posting the same on its website for a
3 period of no less than four (4) years.

4 **19. MISCELLANEOUS PROVISIONS**

5 **A. Interpretation of the Agreement**

6 This Agreement constitutes the entire agreement between the Parties with respect to its
7 subject matter. Except as expressly provided herein, this Agreement has not been executed in
8 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
9 written representations or terms shall modify, vary or contradict its terms. In entering into this
10 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
11 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
12 enforced under the laws of the State of California, both in its procedural and substantive aspects,
13 without regard to its conflict of law provisions. Any claim arising out of or relating to the
14 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
15 Court of the State of California for the County of San Bernardino, and Plaintiff and Defendants
16 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
17 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
18 each of them, participated in the negotiation and drafting of this Agreement and had available to
19 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants
20 may claim that any ambiguity in this Agreement should be construed against the other. The
21 Agreement may be modified only by a writing signed by counsel for the Parties and approved by
22 the Court.

23 **B. Further Cooperation**

24 The Parties and their respective attorneys shall proceed diligently to prepare and execute
25 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
26 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
27 will not take any action inconsistent with this Agreement, including, without limitation,
28 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any

1 Party has taken actions inconsistent with the Settlement, including, without limitation,
2 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
3 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
4 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
5 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
6 opt-outs and/or objections.

7 **C. Counterparts**

8 The Agreement may be executed in one or more actual or non-original counterparts, all
9 of which will be considered one and the same instrument, and all of which will be considered
10 duplicate originals.

11 **D. Authority**

12 Each individual signing below warrants that he or she has the authority to execute this
13 Agreement on behalf of the party for whom or which that individual signs.

14 **E. No Third-Party Beneficiaries**

15 Plaintiff, Participating Class Members, Class Counsel and Defendants are direct
16 beneficiaries of this Agreement, but there are no third-party beneficiaries.

17 **F. Deadlines Falling on Weekends or Holidays**

18 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday or
19 legal holiday, that deadline shall be continued until the following business day.

20 **G. Severability**

21 In the event that one or more of the provisions contained in this Agreement shall, for any
22 reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or
23 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
24 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
25 as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

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IT IS SO AGREED:

Dated: Jun 9, 2023, 2023


Jennifer Ortega (Jun 9, 2023 08:13 PDT)

JENNIFER N. ORTEGA CHAVEZ
Plaintiff and Class Representative

Dated: _____, 2023

WINPAK LANE, INC.
Defendant
By: _____
Its: _____

AGREED AS TO FORM:

Dated: June 16, 2023



DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Jennifer N. Ortega Chavez

Dated: _____, 2023

LONNIE D. GIAMELA
LALONNIE V. GRAY
**Counsel for Defendants Winpak Lane, Inc.,
and Mark Griffin**

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IT IS SO AGREED:

Dated: _____, 2023

JENNIFER N. ORTEGA CHAVEZ
Plaintiff and Class Representative

Dated: June 16, 2023

hsar hmun,
WINPAK LANE, INC.
Defendant
By: HSAR HMUN
Its: **General Manager**

AGREED AS TO FORM:

Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Jennifer N. Ortega Chavez

Dated: June 16, 2023

Lonnie D. Giamele
LONNIE D. GIAMELA
LALONNIE V. GRAY
**Counsel for Defendants Winpak Lane, Inc.,
and Mark Griffin**