

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (Cal. Bar 287811)
2 *david@tomorrowlaw.com*
3 Jeffrey D. Klein (Cal. Bar 297296)
jeff@tomorrowlaw.com
4 Vedang J. Patel (Cal. Bar 328647)
vedang@tomorrowlaw.com
5 Iona Levin (Cal. Bar 294657)
iona@tomorrowlaw.com
6 8484 Wilshire Blvd., Suite 500
7 Beverly Hills, California 90211
Tel: (310) 438-5555 Fax: (310) 300-1705

8 Attorneys for Plaintiff, JENNIFER N. ORTEGA CHAVEZ,
9 on behalf of herself and all others similarly situated
and aggrieved

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

14 JENNIFER N. ORTEGA CHAVEZ, an
15 individual, and on behalf of all others similarly
16 situated,
17
18 Plaintiff,
19
20 v.
21 WINPAK LANE, INC., a Delaware
20 corporation; MARK GRIFFIN, an individual;
and DOES 1 through 100, inclusive,
22
23 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 12 2023

BY 
JESSICA MORALES, DEPUTY

CASE NO.: CIVSB2202274
Consolidated with CIVSB2207313
[Assigned to the Hon. David Cohn in Dept. S-26]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT AND
CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY**

24
25 This Court, having considered the Motion of plaintiff JENNIFER N. ORTEGA CHAVEZ
26 (“Plaintiff”) for Preliminary Approval of the Class Action and Representative Action Settlement
27 and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary
28 Approval”), the Declarations of David D. Bibiyan, Vedang J. Patel and Sean Hartranft, the Joint

1 Stipulation Re: Class Action and Representative Action Settlement (the “Settlement,” “Settlement
2 Agreement” or “Agreement”), the proposed Notice of Proposed Class Action Settlement and Date
3 for Final Approval Hearing (“Class Notice”), and other documents submitted in support of the
4 Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

5 1. The definitions set out in the Settlement Agreement are incorporated by reference
6 into this Order; all terms defined therein shall have the same meaning in this Order.

7 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement
8 Class Members” or “Class Members”) for the purpose of settlement only: all current and former
9 non-exempt, hourly-paid employees who worked in California for Winpak Lane, Inc. (“Winpak”),
10 at any time during the period from January 28, 2018 through October 3, 2022 (“Class Period”).

11 3. The Court preliminarily appoints the named plaintiff Jennifer N. Ortega Chavez as
12 Class Representative, and David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel of Bibiyan Law
13 Group, P.C., as Class Counsel.

14 4. The Court preliminarily approves the proposed class settlement upon the terms and
15 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
16 settlement appears to be within the range of reasonableness of settlement that could ultimately be
17 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
18 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
19 probable outcome of further litigation relating to liability and damages issues. It further appears that
20 extensive and costly investigation and research has been conducted such that counsel for the parties
21 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
22 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
23 delay and risks that would be presented by the further prosecution of the Action. It further appears
24 that the settlement has been reached as the result of intensive, non-collusive and arms-length
25 negotiations utilizing an experienced third-party neutral.

26 5. The Court approves, as to form and content, the Class Notice that has been submitted
27 herewith.

28 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to

1 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The
2 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies
3 with the requirements of law and appears to be the best notice practicable under the circumstances.

4 7. The Court hereby preliminarily approves the definition and disposition of the Gross
5 Settlement Amount of \$350,000.00, which is inclusive of: attorneys' fees of up to thirty-five percent
6 (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
7 Agreement, amounts to \$122,500.00, in addition to actual costs incurred of up to \$30,000.00; service
8 award of up to \$7,500.00 to Plaintiff; costs of settlement administration of no more than \$6,990.00;
9 and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of \$20,000.00, of
10 which \$15,000.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA")
11 and \$5,000.00 (25%) to "Aggrieved Employees," defined as defined as Class Members working for
12 Winpak during the period from January 26, 2021 through October 3, 2022 ("PAGA Period") as non-
13 exempt, hourly-paid employees in California.

14 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
15 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

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

22 10. Class Member's "Workweek" shall mean the number of workweeks that a Settlement
23 Class Member was employed by Winpak in a non-exempt, hourly-paid position during the Class
24 Period, based on hire dates, re-hire dates (if applicable), and termination dates (if applicable).

25 11. The Gross Settlement Amount is based on Winpak's representation that there were
26 no more than 16,849 Workweeks worked by Class Members during the Class Period. In the event
27 the number of Workweeks worked increases by more than 10% or 1,685 Workweeks worked, then
28 the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in the

1 Class Period in excess of 18,534 Workweeks multiplied by the Workweek Value. The Workweek
2 Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount
3 (\$350,000.00) by 16,849 Workweeks. The Parties agree that the Workweek Value amounts to and
4 the settlement amounts to \$20.77 per Workweek ($\$350,000.00 / 16,849$ Workweeks). Thus, for
5 example, should there be 20,000 Workweeks worked by Class Members in the Class Period, then
6 the Gross Settlement Amount shall be increased by \$30,448.82 ($(20,000$ Workweeks $- 18,534$
7 Workweeks) \times \$20.77 per Workweek).

8 12. The Court deems Apex Class Action Settlement Administration (“Apex” or
9 “Settlement Administrator”), the Settlement Administrator, and payment of administrative costs,
10 not to exceed \$6,990.00, out of the Gross Settlement Amount for services to be rendered by Apex
11 on behalf of the class.

12 13. The Court directs Defendant’s Counsel to, within fourteen (14) calendar days after
13 the Preliminary Approval Date, provide the Settlement Administrator with information with respect
14 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
15 currently in Winpak’s possession, custody or control; (3) last known telephone number(s) currently
16 in Winpak’s possession, custody or control; (4) last known Social Security Number(s) in Winpak’s
17 possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates and, if applicable,
18 re-hire date(s) and/or separation date(s)) for each Settlement Class Member (“Class List”).

19 14. The Settlement Administrator shall perform an address search using the United States
20 Postal Service National Change of Address (“NCOA”) database and update the addresses contained
21 on the Class List with the newly-found addresses, if any.

22 15. Within seven (7) calendar days or soon thereafter of receiving the Class List from
23 Winpak, the Settlement Administrator shall mail the Class Notice in English and Spanish to the
24 Settlement Class Members via first-class regular U.S. Mail using the most current mailing address
25 information available.

26 16. “Response Deadline” means the deadline for Settlement Class Members to mail any
27 Requests for Exclusion, objections, or Workweek Disputes to the Settlement Administrator, which
28 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and

1 Spanish by the Settlement Administrator, unless a Class Member's notice is re-mailed. In such an
2 instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days
3 from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion,
4 Workweek Dispute or objection. The date of the postmark shall be the exclusive means for
5 determining whether a Request for Exclusion, objection or Workweek Dispute was submitted by
6 the Response Deadline.

7 17. Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
8 Settlement by mailing a written request to be excluded from the Settlement ("Request for
9 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline. To
10 be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last four (4)
11 digits of the Class Member's Social Security Number; (3) the Class Member's signature; and (4)
12 any statement standing for the proposition that the Class Member does not wish to participate in the
13 Settlement or the following statement: "Please exclude me from the Settlement Class in the *Ortega*
14 *Chavez v. Winpak Lane Inc., et al.*, matter."

15 18. Any Settlement Class Member who does not opt out of the Settlement by submitting
16 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
17 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
18 if Final Approval of the Settlement is granted.

19 19. Only Participating Class Members may object to the Settlement. In order for any
20 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do
21 so by mailing a written objection to the Settlement Administrator at the address or phone number
22 provided on the Class Notice no later than the Response Deadline.

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

28 21. Participating Class Members may (though are not required to) appear at the Final

1 Fairness and Approval Hearing, either in person, virtually, or through the objector's own counsel.

2 22. If a Class Member submits both an Objection and a Request for Exclusion, the
3 Request for Exclusion will control, and the Objection will be overruled.

4 23. All papers filed in support of final approval, including supporting documents for
5 attorneys' fees and costs, shall be filed by per CCP.

6 24. A Final Fairness and Approval Hearing shall be held with the Court on
7 11/14 at 9:00 .m in Department S-26 of the above-entitled Court to
8 determine: (1) whether the proposed settlement is fair, reasonable and adequate, and should be
9 finally approved by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class
10 Counsel; (3) the amount of service award to the Class Representative; (4) the amount to be paid to
11 the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the
12 LWDA and Aggrieved Employees.

13 25. Within seven (7) calendar days after payment of the full Gross Settlement Amount
14 and Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
15 shall distribute all payments due from the QSA, as specified in this Agreement and approved by the
16 Court, for: (1) the Service Award to Plaintiff; (2) the Attorneys' Fees and Cost Award to be paid to
17 Class Counsel; (3) the Settlement Administrator Costs; (4) the LWDA Payment; (5) Individual
18 PAGA Payments to Aggrieved Employees; and (6) Individual Settlement Payments to Participating
19 Class Members, less applicable taxes and withholdings. All interest accrued shall be for the benefit
20 of the Class Members and distributed on a *pro rata* basis to Participating Class Members based on
21 the number of pay periods worked by them in the Class Period.

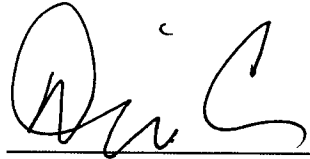
22 26. Participating Class Members will receive an Individual Settlement Payment and
23 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
24 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and
25 eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after
26 expiration of the 180-day period, checks for such payments shall be canceled and funds associated
27 with such checks shall be considered unpaid, unclaimed, or abandoned cash residue pursuant to
28 Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued

1 interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal
2 Aid at Work the *cy pres* recipient, for use in San Bernardino County.

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IT IS SO ORDERED.

Dated: 7/12/22



Judge of the Superior Court
DAVID COHN