

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

AUG 24 2020

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By Alfredo Morales deputy
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RECEIVED
LOS ANGELES SUPERIOR COURT
AUG 19 2020
S. DREW

Attorneys for Plaintiff Jason Mitchiner, individually
on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JASON MITCHINER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COX TARGET MEDIA, INC., a Delaware
corporation, VALPAK FRANCHISE
OPERATIONS, INC. a Delaware corporation;
and DOES 1 through 25,

Defendants.

Case No. 19STCV00319

Assigned to Hon. Amy D. Hogue
Dept: SSC- 7

[PROPOSED] ORDER:

- (1) PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT;**
- (2) CONDITIONALLY
CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES
ONLY;**
- (3) APPROVING THE NOTICE
OF SETTLEMENT; AND**
- (4) SETTING A HEARING ON
MOTION FOR FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: August 18, 2020
Time: 11:00 a.m.
Dept.: 7

Case Filed: January 7, 2019

08/25/2020

08/25/2020

1 The Court has reviewed the Motion for Preliminary Approval of Class Action
2 Settlement of Plaintiff Jason Mitchiner, individually and on behalf of all others similarly
3 situated ("Plaintiff

4 The Court, having considered the motion, the Declaration of Aaron Gundzik, the
5 Declaration of the settlement administrator, the Supplemental Declaration of Aaron
6 Gundzik, the First Amended Stipulation of Class Action Settlement ("Stipulation" or
7 "Settlement Agreement") executed by the parties, as well as the Notice of Proposed Class
8 Action Settlement ("Notice of Settlement") attached as Exhibit "1" hereto, makes the
9 following findings:

10 1. The parties to this action are Plaintiff Jason Mitchiner, individually and on
11 behalf of all others similarly situated ("Plaintiff") and Defendants Cox Target Media, Inc.
12 and Valpak Franchise Operations, Inc. Plaintiff seeks to represent a class of all persons who
13 worked as outside sales persons for Defendants in California from January 7, 2015 through
14 August 5, 2019.

15 2. After participating in an arms-length mediation, Plaintiff and Defendants
16 have agreed to a proposed settlement of this action on behalf of the class that Plaintiff seeks
17 to represent. The terms of the proposed settlement are fully set forth in the Settlement
18 Agreement (included as Exhibit 1 to the Declaration of Aaron C. Gundzik in support of
19 Plaintiff's motion for preliminary approval).

20 3. The terms of the proposed settlement include the following:

21 a. The proposed Class consists of all persons who worked for
22 Defendants in California as outside sales persons during the Settlement Class Period.

23 b. "Settlement Class Period" means January 7, 2015 through August 5,
24 2019.

25 c. In settlement, Defendant will pay the gross amount of \$121,020, of
26 which \$21,020 has been paid to some class members as individual settlements. From the
27 gross settlement amount, the parties propose to deduct fees for settlement administration
28 costs (not to exceed \$5,000), an enhancement award to Plaintiff Jason Mitchiner in the

1 amount of \$5,000, Class Counsel's reasonable and actual costs, not to exceed \$5,000, and
2 Class counsel's attorneys' fees as approved by the Court, but not to exceed \$40,340.

3 d. The amount remaining, after deductions approved by the
4 Court, will be distributed to individual class members, who do not exclude themselves from
5 the settlement, in accord with the formula specified in the Settlement Agreement.

6 4. The Parties propose that notice of this proposed settlement be sent to all Class
7 members by regular mail and that class members shall have forty-five (45) days to opt out of
8 or object to the settlement.

9 5. The proposed class counsel are experienced and in their view, the proposed
10 settlement is fair and reasonable.

11 6. The proposed settlement is fair and reasonable to class members.

12 7. The notice procedure set forth in the Settlement Agreement will adequately
13 notify the class of the settlement and of their right to opt out or object.

14 8. The Settlement Agreement and Notice of Settlement include a proposed
15 release which will bind those class members who do not opt out of the Class.

16 Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

17 1. The motion is granted.

18 2. The class action settlement, as set forth in the Settlement Agreement, is
19 preliminarily approved pursuant to Rules of Court 3.766 and 3.769.

20 3. The proposed class is provisionally certified as an opt-out class action under
21 section 382 of the Code of Civil Procedure solely for the purpose of the settlement of this
22 matter, with the class defined as specified above and in the Settlement Agreement.

23 4. Plaintiff Jason Mitchiner is appointed as the class representative for the
24 provisionally-certified class.

25 5. Aaron C. Gundzik and Jonathan Lebe are appointed as Class counsel for the
26 provisionally-certified class.

27 6. Phoenix Class Administration Solutions is approved as the Settlement
28 Administrator.

1 7. The Notice of Settlement, substantially in the form attached hereto as Exhibit
2 1, is approved and the Settlement Administrator is authorized to send the Notice of
3 Settlement to the provisionally-certified class.

4 8. The Court directs the settlement administrator to mail the Notice of
5 Settlement to the class members in a manner consistent with the Settlement Agreement.

6 9. The Court preliminarily approves of the class release in the Settlement
7 Agreement.

8 10. Defendant is to provide the Class Data List (as defined in the Settlement
9 Agreement) to the Settlement Administrator no later than ten business days following entry
10 of this Order.

11 11. The Court directs that any and all objections to the Settlement be sent to the
12 Settlement Administrator and postmarked no later than forty-five (45) calendar days after
13 the Notice of Settlement is mailed or re-mailed.

14 12. The Court directs that all requests for exclusion must be sent to the
15 Settlement Administrator and postmarked no later than forty-five (45) calendar days after
16 the Notice of Settlement is mailed or re-mailed.

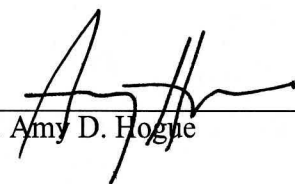
17 13. A final approval hearing on the question of whether the proposed class
18 settlement should be finally approved as fair, reasonable, and adequate as to the members
19 of the proposed settlement class, for approval of class counsel's attorneys' fees and class
20 counsel's costs, for approval of the enhancement award to the class representative Jason
21 Mitchiner and for approval of the fees of the settlement administrator is set for January 12,
22 2021, at 11:00 a.m., in Department 7 of the above-entitled Court.

23 14. The Court orders that the papers in support of the final approval of the
24 settlement and Plaintiff's award of attorneys' fees and costs shall be filed by December 17,
25 2020.

26 15. The Settlement Administrator's declaration attesting to the mailing of the
27 Notice of Settlement and providing information on requests for exclusion and objections
28 shall be filed on December 17, 2020.

1 16. Responses to any objections to the settlement shall be filed with the Court no
2 later than December 17, 2020.

3
4 Dated: 8-24-2020



Hon. Amy D. Hogue

08/25/2020

08/25/2020

Exhibit 1

NOTICE OF CLASS ACTION SETTLEMENT

Mitchiner v. Cox Target Media, Inc., et al.
Los Angeles County Superior Court Case No. 19STCV000319

PLEASE READ THIS NOTICE CAREFULLY.

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or don't act.

If you were employed in California as an outside salesperson for Valpak Franchise Operations, Inc. or Cox Target Media, Inc. at any time between January 7, 2015 and August 5, 2019, then you may be entitled to receive money from a class action settlement.

If you are a member of the settlement class, you will receive a settlement payment and will be bound by the terms of the release described below, unless you properly submit a timely Request for Exclusion from the settlement (described below). This Notice explains the proposed settlement and provides an estimate of how much money you will receive as a settlement payment if you do not exclude yourself from the settlement. If you do not want to be part of the settlement class, then you must submit a Request for Exclusion (described below) that is post-marked no later than [45 days from mailing] otherwise you will be bound by the terms of the settlement.

1. WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is to let you know that there is a class action lawsuit pending in the Los Angeles County Superior Court, Case No. 19STCV000319 entitled *Mitchiner v. Cox Target Media, Inc., et al.*, that you may be a member of a proposed settlement class, and that you may be entitled to a payment as part of the settlement of that lawsuit related to alleged wage and hour violations.

A hearing addressing the fairness, adequacy, and reasonableness of the settlement will be held on January 12, 2021 at 11 a.m. to determine whether the settlement should receive the Court's final approval.

2. WHAT ARE THE CLASS CLAIMS?

The lawsuit alleges, in relevant part, that Cox Target Media, Inc. ("Cox") and Valpak Franchise Operations, Inc. ("Valpak") (collectively "Defendants") failed to fully reimburse business expenses of their California-based outside salesperson as required by Labor Code section 2802 ("Section 2802") during the period of January 7, 2015 through August 5, 2019. The complaint seeks to recover unreimbursed expenses, interest, and attorney's fees.

3. WHAT IS DEFENDANTS' POSITION ON THE CLAIMS?

Defendants deny all the allegations in the case. Defendants contend that they complied with all applicable California wage and hour laws concerning expense reimbursement.

4. WHY DOES PLAINTIFF SEEK SETTLEMENT APPROVAL?

Plaintiff seeks approval of the settlement because Plaintiff has reached a proposed settlement with Defendants that Plaintiff believes to be fair, reasonable, adequate and in the best interests of the members of the Class and all parties.

5. WHY DID I GET THIS NOTICE?

You received this Notice because you were identified as having worked for Cox or Valpak in California in an outside sales position at some point between January 7, 2015 and August 5, 2019. It is estimated that the settlement class in this action will contain 106 individuals who collectively worked approximately 3,023 pay periods in class positions during the relevant period.

6. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Counsel for Plaintiff

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rrosenthal@howardandhoward.com

7. WHAT IS THE PROPOSED SETTLEMENT?

The following is a summary of the proposed settlement. The specific and complete terms of the proposed settlement are stated in the Stipulation of Settlement, which is on file with the Court.

Under the Stipulation of Class Settlement and Release between Plaintiff and Defendants ("Stipulation of Settlement" or "Settlement Agreement"), Defendants have agreed to pay \$121,020 as a "Gross Fund Value" to settle the claims asserted in this lawsuit. Defendants shall be entitled to a credit of \$21,020 which is the amount Valpak has already paid during 2019 to individuals who fall within the class definition in the *Mitchiner* complaint individually to settle their wage and hour claims. Those individuals will be entitled to participate in the class settlement as well, but their share of the settlement shall be reduced by amounts they already received in individual settlements, and the settlement agreements such individuals signed will not be superseded by the release included in the Stipulation of Settlement. To the extent this would reduce their settlement below zero, they will be assigned a claim value of \$1.

Prior to any distribution of funds to Class Members, subject to Court approval, the following amounts will be deducted from the Gross Fund Value: (1) Class Counsel's attorney's fees (not to exceed \$40,340) to compensate class counsel for the unpaid work they have performed on the class action; (2) class counsel's actual litigation costs, up to \$5,000; (3) costs of administering the settlement (not to exceed \$5,000); and (3) an award of additional funds (not to exceed \$5,000) to the class representative, in consideration of the time and effort that he has expended on the case. Following the Court-approved deductions for attorneys' fees, class representative award, and costs, the remaining sum of approximately \$65,680 (the "Net Fund Value") will be distributed to all members of the Class who do not request to be excluded from the settlement.

The settlement will be distributed on a proportional basis based upon the number of pay period each class member worked in a class position during the class period as compared to the number of pay periods worked by all participating class members as a whole.

The motion for final approval of the settlement, which will include Class Counsel's application for an award of attorney's fees and costs will be filed with the court by December 17, 2020 and may be viewed in the court file at the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90013. In light of the current Pandemic, you must make a reservation with the Court to review the Court's files. To do so, please call the Court at 213-310-7000.

Defendants have agreed to pay each Class Member who does not validly request exclusion from the Settlement through the Settlement Administrator, an amount as calculated in accordance with the terms of the Settlement Agreement after final approval of the class action settlement. This settlement payment will be distributed approximately twenty-five (25) calendar days after the effective date of the final approval provided there is no objection or appeal of the Court's final approval of the class action settlement. Your settlement check will be valid for 180 days, after which it will become void. If you do not cash or deposit the check before it becomes void, the funds will be sent to the California State Controller as Unclaimed Property in your name. Instructions for retrieving your settlement funds from the Unclaimed Property can be found at www.ucpi.sco.ca.gov/UCP or by contacting the California State Controller's office.

8. YOUR ESTIMATED PAYMENT UNDER THIS SETTLEMENT IS \$_____. This Amount is based on your having worked ___ pay periods (rounded up to the nearest integer) during the class period [and the fact that you already received a settlement payment from Defendants in the amount of \$_____]. If you dispute that you worked this number of pay periods or the amount of any previous settlement payment, you may contact the Claims Administrator, as discussed below.

Any payment that you receive from the settlement will be deemed an expense reimbursement. Taxes will not be withheld from this payment. The amount of the payment will be reported on an IRS Form 1099.

9. WHAT ARE MY RIGHTS IN THIS MATTER?

If you fit the description of a Class Member as set forth in this Notice, you have four options. Each option has its own consequences which you should understand before making your decision. Your rights regarding each option and the procedure you must follow to select each option are set forth below.

A. Option One. Do Nothing and Participate in the Settlement.

To get money from the settlement, you do not need take any action. If you are a Class Member and you do not exclude yourself from the Class, you will be bound by the settlement. The judgment will bind all members of the Settlement Class who do not request exclusion. By participating in the settlement, you will receive payment and will release Defendants and other "Releasees" (which includes Defendants' employees, officers, affiliates, parent companies, and predecessor companies you worked for during the class period that were acquired by Defendants) for any and all claims asserted in the Complaint and any other claims based on the same cited statutes or underlying facts.

The Class Members who participate in the settlement agree to release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind (including participation to any extent in any class or collective action), to obtain a recovery against any of the Releasees for the Released Claims.

If the Court gives final approval to the settlement, the Settlement Administrator will send you a check to the address it has on file for you. It is important that you keep the Settlement Administrator informed of any changes in your address until you received your settlement payment.

B. Option Two. You Can Exclude Yourself (“Opt Out”) from the Settlement.

If you do not wish to participate in or be bound by the settlement, you must mail to the Settlement Administrator, _____, at the address provided below, a request for exclusion from the Class Action Settlement, **post-marked on or before [DATE]**. Requests for exclusion must state, in effect, that you do not wish to participate in the settlement of this action. In addition, any request for exclusion **must** include the case name (*Mitchiner v. Cox Target Media, Inc.*, No. 19STCV000319) your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes.

If you request exclusion, you will not receive any money from the settlement, nor will you be considered to have released your claims alleged in this action and the settlement will have no impact on your ability to bring whatever individual claims you might wish to bring against Defendants.

C. Option Three. You May Dispute the Information Used to Calculate Your Settlement Payment.

The amount of your settlement payment will be determined by the number of pay periods that you worked for Defendants during the Class Period and by the amount of any previous settlement payment that you received from Defendants. If you do not believe that the number of pay periods assigned to you in Section 8 of this notice or the amount of previous settlement payment identified in Section 8 is correct, you may dispute those numbers. Any such dispute must be mailed to the Settlement Administrator and **post-marked on or before [DATE]**. Disputes must state the number of pay periods that you believe that you worked or the amount of your previous settlement payment and must be accompanied by documentation (such as pay stubs, settlement check or settlement agreement) supporting your dispute. In addition, your dispute **must** include the case name (*Mitchiner v. Cox Target Media, Inc.*, No. 19STCV000319) your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes.

D. Option Four. You May Object to the Settlement.

If you are a Class Member and you do not exclude yourself from the Settlement Class (opt out), you may object to the settlement before final approval of the settlement by the Court. In order to object to the settlement or any portion of it, you must send any such written objection, which includes all reasons for such objection, to the Claims Administrator on or before **[DATE]**. Objections must state all of the bases of your objection. In addition, any objection **must** include the case name (*Mitchiner v. Cox Target Media, Inc.*, No. 19STCV000319) your first and last name, address, phone number, and last four digits of social security number for verification purposes and must be signed by you or your attorney. Regardless of whether you submit a written objection in this manner, you may still attend the Final Approval Hearing and ask to be heard by the Court about your objection to the settlement. See section 10, below for further information about attending the hearing.

10 FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed settlement, the plan of distribution, the enhancement award to the Plaintiff, and Class Counsel’s request for attorneys’ fees and costs, and other issues will be held on January 12, 2021 at 11 a.m., in Department 7 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, CA 90012. You may attend the Final Approval Hearing and be heard even if you do not submit an objection to the settlement. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, it is recommended that you contact the Settlement Administrator to confirm the date and time.

If you are planning to come to the Final Approval Hearing, you should review the Court's social distancing requirements at: <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx> (Here for You, Safe for You)

These rules require that all persons entering any courthouse or courtroom must wear a face covering/mask over his or her nose and mouth at all times within the public areas of the courthouse or courtroom. Individuals who wear a face shield must ensure it covers both the nose and the mouth, wraps around the sides of a wearer's face and extend to below the chin with a cloth drape from the bottom of the face shield to below the neck. Children under the age of three (3) are exempt, as are persons with a medical condition, mental health condition, or disability that precludes them from wearing a face covering. However, they must "take whatever protective measures their condition permits, such as wearing a face shield without a drape on the bottom edge."

Individuals are required to maintain at least (6) six feet of physical distance from all persons (except those within their household) at all times and comply with social distance signage throughout the courthouse.

Individuals are requested to use hand sanitizer when entering the courthouse, practice good hand-washing hygiene, and cover coughs and sneezes, preferably with a tissue.

11. NON-RETALIATION

Defendants will not retaliate or take any adverse action against a Class Member for participating in the settlement.

12. ADDITIONAL INFORMATION.

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, CA 90012. You may also obtain access to the settlement agreement and other documents from the Settlement Administrator as follows:

Mitchiner v. Cox Target Media, Inc., et al.

c/o _____

[ADDRESS]

[TELEPHONE NUMBER]

If you have questions, you may call the Settlement Administrator, _____, toll free at [TELEPHONE NUMBER]. Ask about the *Mitchiner v. Cox Target Media, Inc.* class settlement.

You may also contact Class Counsel at the addresses and telephone numbers listed above. **PLEASE DO NOT CALL THE COURT OR COUNSEL FOR DEFENDANTS.**

If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On August 19, 2020, I served the following document described as

- **[PROPOSED] ORDER**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

<p>() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.</p>	<p>() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (213) 542-2101. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.</p>
<p>() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.</p>	<p>(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served through Case Anywhere pursuant to the Court's Order Authorizing Electronic Service dated June 3, 2019 to the names and email addresses listed on the Service List attached hereto.</p>

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on August 19, 2020, at Sherman Oaks, California.



Nicole Salazar

SERVICE LIST

Thomas R. Kaufman, Esq. Michaela R. Goldstein, Esq. SHEPPARD MULLIN RICHTER & HAMPTON LLP 1901 Avenue of the Stars, Suite 1600 Los Angeles, CA 90067 Tel: (310) 228-3748 Fax: (310) 228-3942 Email: tkaufman@sheppardmullin.com mgoldstein@sheppardmullin.com <i>Attorneys for Defendant Cox Target Media, Inc.</i>	Robert L. Rosenthal, Esq. HOWARD & HOWARD 3800 Howard Hughes, #1000 Las Vegas, NV 89169 Tel: (702) 677-4809 Fax: (702) 567-1568 Email: rosenthal@HowardandHoward.com <i>Attorneys for Defendant Valpak Franchise Operations, Inc.</i>
Jonathan M. Lebe, Esq. LEBE LAW A PROFESSIONAL LAW CORPORATION 777 S. Alameda Street, Second Floor Los Angeles, CA 90021 Tel: (213) 358-7046 Fax: (310) 820-1258 Email: jon@lebelaw.com <i>Attorneys for Plaintiff Jason Mitchiner, individually and on behalf of all others similarly situated</i>	

08/25/2020