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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ERNESTO DELGADO,

Plaintiffs,

vs.

KLOECKNER METALS
CORPORATION, et al.

Defendants.

Case No. 2:20-cv-07405-GW-SK

Assigned to Hon. Judge George H. Wu

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Date: November 8, 2021

Time: 8:30 a.m.

Courtroom: 9D, 9th Floor

1 **[PROPOSED] ORDER**

2 Plaintiff Ernesto Delgado (“Plaintiff” or “Class Representative”), having
3 made an application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a)
4 preliminarily approving the settlement of the litigation pursuant to the Stipulated
5 Settlement Agreement and Release of Claims (the “Settlement Agreement”); (b)
6 conditionally certifying a class for purposes of proceedings in connection with the
7 final approval of the Settlement Agreement; (c) approving the form of Notice and
8 directing the manner of delivery thereof; (d) approving Larry W. Lee, Kristen M.
9 Agnew, and Nicholas Rosenthal of Diversity Law Group as Class Counsel and
10 Plaintiff as Class Representative.

11 **IT IS HEREBY ORDERED THAT:**

12 1. All defined terms contained herein shall have the same meaning as set
13 forth in the Settlement Agreement executed by the Parties and filed with this
14 Court.

15 2. The Settlement Agreement is hereby PRELIMINARILY APPROVED
16 as appearing on its face to be fair, reasonable, and adequate and to have been the
17 product of serious, informed, and extensive arm’s-length negotiations among the
18 Plaintiff and Defendant Kloeckner Metals Corporation (“Defendant”) (Plaintiff and
19 Defendant collectively referred to as the “Parties”). In making this preliminary
20 finding, the Court considered the nature of the claims, the relative strength of
21 Plaintiff’s claims, the amounts and kinds of benefits paid in settlement, the
22 allocation of settlement proceeds among the class members, and the fact that a
23 settlement represents a compromise of the Parties’ respective positions rather than
24 the result of a finding of liability at trial. The Court further preliminarily finds that
25 the terms of the Settlement Agreement have no obvious deficiencies and do not
26 improperly grant preferential treatment to any individual class member.

27 3. For settlement purposes only, pursuant to Federal Rule of Civil
28 Procedure 23(a) and 23(b)(3), the Court conditionally certifies the following class:

1 All persons employed by Defendant as an hourly non-
2 exempt employee during the Class Period [April 6, 2016
3 through October 4, 2021].

4 4. If the Settlement Agreement does not become final for any reason, the
5 fact that the Parties were willing to stipulate to class certification as part of the
6 Settlement Agreement shall have no bearing on, and will not be admissible in
7 connection with, the issue of whether a class in this action should be certified in a
8 non-settlement context. The Court's findings are for purposes of conditionally
9 certifying a Settlement Class and will not have any claim or issue or evidentiary
10 preclusion or estoppel effect in any other action against the Releasees, or in this
11 Action if the Settlement Agreement is not finally approved.

12 5. The Court finds preliminarily, and for purposes of proceeding
13 pursuant to Fed. R. Civ. P. Rule 23(e), that the number of class members is
14 sufficiently numerous, the class members are ascertainable based on the
15 Defendant's records, the Plaintiff's claims are typical of those in the class, and that
16 there is adequate and fair representation.

17 6. Accordingly, for purposes of the Settlement Agreement only, this
18 litigation is hereby CONDITIONALLY CERTIFIED as a class action pursuant to
19 Fed. R. Civ. P. 23(e).

20 7. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as
21 Class Counsel for settlement purposes only Larry W. Lee, Kristen M. Agnew, and
22 Nicholas Rosenthal of Diversity Law Group. The Court finds that Class Counsel
23 collectively have extensive experience and expertise in prosecuting wage and hour
24 class actions.

25 8. Plaintiff is approved as the Class Representative for the Settlement
26 Class Members for settlement purposes only.

27 9. The Court finds on a preliminary basis that the proposed settlement
28 described in the Settlement Agreement (including the monetary provisions, the
plan of allocation, the release of claims, the proposed award of attorneys' fees and

costs and the Class Representative Service Payment) falls within the “range of reasonableness” and therefore grants preliminary approval of the Settlement Agreement. Based on a review of the papers submitted by the Parties, the Court finds that the Settlement Agreement is the result of extensive arm’s-length negotiations conducted after Class Counsel had adequately investigated the claims and became familiar with the strengths and weaknesses of those claims. The assistance of an experienced mediator in the settlement process supports the Court’s conclusion that the Settlement Agreement is non-collusive.

10. The Court hereby APPROVES Phoenix Settlement Administrators as the Settlement Administrator for the purposes of this settlement.

11. A hearing (the “Final Approval and Fairness Hearing”) is hereby SCHEDULED to be held before the Court on _____ at 8:30 a.m. at _____, for the following purposes:

- a. to determine finally whether this litigation satisfies the applicable prerequisites for class action treatment of a settlement class;
- b. to determine whether the proposed Settlement Agreement is fair, reasonable, and adequate and should be granted final approval by the Court;
- c. to determine whether the Order of Final Approval as provided under the Settlement Agreement should be entered, and to determine whether the Released Parties should be released of and from the Released Claims as provided in the Settlement Agreement;
- d. to determine whether the proposed plan of allocation of the Gross Settlement Amount is fair, adequate, and reasonable and should be approved by the Court;
- e. to finally consider Plaintiff’s application for the Class

Representative service payment;

- f. to finally determine whether Class Counsel's application for an award of attorneys' fees and costs is fair, reasonable, and adequate and should be approved by the Court;
- g. to determine that the Settlement Administrator's costs should be paid from the Gross Settlement Amount; and
- h. to rule upon such other matters as the Court may deem appropriate.

12. The form of Notice is hereby APPROVED. No later than fifteen (15) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class List and Data for purposes of preparing and mailing the Notice to Settlement Class Members. The Class List and Data shall be confidential. The Settlement Administrator shall not provide the Class List and Data to Class Counsel or Plaintiff or any third party, or use the Class List and Data or any information contained therein for any purpose other than to administer this settlement. Specifically, for each Settlement Class Member, Defendant will provide the Settlement Administrator with a Microsoft Excel spreadsheet and shall include the following information for each Settlement Class Member: (1) full name; (2) Social Security Number; (3) last known addresses; (4) telephone numbers (if any); and (5) total Weeks Worked during the Class Period ("Class List and Data"). No later than ten (10) calendar days after receiving the Class List and Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Settlement Class Members via regular first class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

13. The Court finds that the Notice, along with the related notification

1 materials, constitute the best notice practicable under the circumstances and are in
2 full compliance with the laws of the State of California, the United States
3 Constitution, and the requirements of due process. The Court further finds that the
4 notifications fully and accurately inform the Settlement Class Members of all
5 material elements of the proposed settlement, of the Settlement Class Members'
6 right to dispute their share of the settlement, of the Settlement Class Members'
7 right to be excluded from the Settlement Class, and of each Settlement Class
8 Member's right and opportunity to object to the settlement.

9 14. The Court hereby APPROVES the proposed Response Deadline of
10 forty-five (45) calendar days from the initial mailing of the Notice.

11 15. The Court hereby APPROVES the proposed procedure for opting out
12 of the Settlement Class. The date of the postmark on the return-mailing envelope
13 shall be the exclusive means used to determine whether a request for exclusion has
14 been timely submitted. Any member of the Class who requests exclusion from the
15 settlement will not be entitled to any share of the settlement and will not have any
16 right to object, appeal, or comment on the Agreement. Class members who fail to
17 submit a valid and timely request for exclusion shall be bound by all terms of the
18 Settlement Agreement and the Order and Final Judgment, regardless of whether
19 they otherwise have requested exclusion from the settlement.

20 16. All reasonable costs of settlement and claims administration,
21 including the mailing of Notice, shall be paid for as provided in the Settlement
22 Agreement.

23 17. All written objections and supporting papers ("Notice of Objection")
24 must (a) clearly identify the case name and number (*Delgado v. Kloeckner Metals*
25 *Corporation*, Case Number 2:20-cv-07405-GW-SK); (b) the individual's full
26 name, address, and telephone number; (d) the individual's dates of employment
27 with Defendant; (d) a written statement of the grounds for objection and legal
28 support (if any) for said objection, including any documentation or evidence in

1 support; (e) the name and address of counsel (if the individual is represented by
2 counsel); and (f) request to be heard at the Final Approval Hearing (if desired). The
3 Notice of Objection must be sent to the Settlement Administrator pursuant to the
4 terms of the Settlement Agreement and be postmarked on or before the applicable
5 deadline. Settlement Class Members who fail to make objections in the manner
6 specified above shall be deemed to have waived any objections and shall be
7 foreclosed from making any objections (whether by appeal or otherwise) to the
8 Settlement. Settlement Class Members who submit a Request for Exclusion are not
9 entitled to object to the Settlement.

10 18. It is further ordered that pending further order of this Court, all
11 proceedings in this matter except those contemplated herein and as part of the
12 settlement are stayed.

13 19. All Parties are otherwise ordered to comply with the terms of the
14 Settlement Agreement.

15 20. The Settlement Agreement resolves all of the class claims, as well as
16 the representative claim asserted under the Private Attorneys General Act (the
17 “PAGA”), California Labor Code § 2698, *et seq.*, contained in the Complaint, and
18 as set forth in Plaintiff’s PAGA notices submitted to the California Labor and
19 Workforce Development Agency.

20 21. Jurisdiction is hereby retained over this Action and the Parties to the
21 Action, and each of the Settlement Class Members for all matters relating to this
22 Action, the Settlement Agreement, including (without limitation) all matters relating
23 to the administration, interpretation, effectuation, and/or enforcement of the
24 Settlement Agreement and this Order.

25 IT IS SO ORDERED.

26 Dated: _____

27 HON. GEORGE H. WU
28 DISTRICT COURT JUDGE