

1
2
3
4
5
6
7
8
9
10
11
12
13

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANDRES ARCOS, individually and on behalf
of others similarly situated,

Plaintiff,

vs.

AXIOM MATERIALS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No.: 30-2020-01144794-CU-OE-
CXC

(Consolidated Case Nos: 30-2020-01140945-
CU-OE-CXC; 30-2020-01155811-CU-OE-
CXC; and 30-2020-01168863-CU-OE-CXC)

[Assigned for all purposes to the Hon. Peter
Wilson, Dept. CX101]

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

Date: February 9, 2023
Time: 2:00 p.m.
Dept: CX101

1 **TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:**

2 The above-referenced Actions (“Actions”) having come before the Court on January 5,
3 2023, for a hearing and Final Order Approving Class Action and PAGA Settlement (“Final
4 Order”), consistent with the Court’s Preliminary Approval Order (“Preliminary Approval
5 Order”), and as set forth in the Class Action Settlement Agreement and Amendments thereto
6 (“Agreement”), and due and adequate notice having been given to all Class Members as required
7 in the Preliminary Approval Order, and the Court having considered all papers filed and
8 proceedings had herein and otherwise being fully informed and good cause appearing therefore,
9 it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. The term “Class” and “Class Members” shall mean the following: All current and
12 former non-exempt employees of Defendant Axiom Materials, Inc. (“Defendant”) who were
13 employed by Defendant in California at any time between May 26, 2016 and August 15, 2022
14 (“Class Period”).

15 3. “PAGA Members” shall mean all current and former non-exempt employees of
16 Defendant in California who worked for Defendant or any predecessor or successor company of
17 Defendant in California at any time between May 15, 2019 and August 15, 2022 (“PAGA
18 Period”).

19 4. This Court has jurisdiction over the subject matter of the Actions and over all
20 Parties to the Actions, including all Class Members.

21 5. Distribution of the Notice directed to the Class Members as set forth in the
22 Agreement and the other matters set forth therein has been completed in conformity with the
23 Preliminary Approval Order, including individual notice to all Class Members who could be
24 identified through reasonable effort, and the best notice practicable under the circumstances. The
25 Notice provided due and adequate notice of the proceedings and of the matters set forth therein,
26 including the proposed Settlement set forth in the Agreement, to all persons entitled to such
27 Notice, and the Notice fully satisfied the requirements of due process. All Class Members and all
28 Released Claims are covered by and included within the Settlement and this Final Order.

1 6. The Court hereby finds the Settlement was entered into in good faith pursuant to
2 and within the meaning of California Code of Civil Procedure section 877.6. The Court further
3 finds that the Settlement is fair, adequate, and reasonable and that Plaintiffs have satisfied the
4 standards and applicable requirements for final approval of this class action settlement under
5 California law, including the provisions of California Code of Civil Procedure section 382 and
6 Federal Rule of Civil Procedure 23, approved for use by the California state courts in *Vasquez v.*
7 *Superior Court*, 4 Cal.3d 800, 821 (1971).

8 7. The Court hereby approves the Settlement set forth in the Agreement and finds
9 that the Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to
10 effectuate the Settlement according to its terms. The Court finds that the Settlement has been
11 reached as a result of intensive, serious and non-collusive arms-length negotiations. The Court
12 further finds that the Parties have conducted extensive investigation and research, and counsel for
13 the Parties are able to reasonably evaluate their respective positions. The Court also finds that
14 Settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
15 that would be presented by the further prosecution of the Actions. The Court has reviewed the
16 benefits that are being granted as part of the Settlement and recognizes the significant value to
17 the Class Members. The Court also finds that the Class is properly certified as a class for
18 settlement purposes only.

19 8. Upon the complete funding of the Gross Settlement Amount, all applicable
20 employer-side payroll taxes, and the additional \$2,957.85 due to the Settlement Administrator,
21 Participating Class Members shall release and discharge Defendant and any of its parents,
22 subsidiaries, predecessors, successors, affiliates and assigns, and its and their agents, attorneys,
23 insurers, investors, shareholders, owners, members, partners, officers, directors, managers, and
24 employees (“Released Parties”) from any and all claims, rights, demands, liabilities, and causes
25 of action that either were or could have been asserted or sought under state or Federal law based
26 on or arising from the facts alleged in the operative Complaints during the Class Period including,
27 but not limited to, the following claims: (1) failure to pay wages, including but not limited to
28 overtime wages, (2) failure to provide compliant meal and rest breaks and failure to pay premiums

1 for alleged meal and rest break violations, (3) inaccurate wage statements, (4) failure to pay
2 unpaid wages at time of separation, including accrued but unpaid vacation or paid time off, as
3 well as any associated waiting-time penalties, (5) violations of Business & Professions Code §§
4 17200 *et seq.*, (6) statutory penalties recoverable under or pursuant to PAGA, and (7) all damages,
5 penalties, attorney fees, costs, interest, and other amounts recoverable pursuant to (1) through (6),
6 above, to the extent permissible under the California Labor Code, California Industrial Welfare
7 Commission Order, and the California Business and Professions Code.

8 9. Upon the complete funding of the Gross Settlement Amount and all applicable
9 employer-side payroll taxes Participating Class Members shall release and discharge Released
10 Parties from any and all claims, for civil penalties under the California Labor Code Private
11 Attorneys General Act of 2004 alleged or that could have been alleged based on the facts asserted
12 in the operative Complaints including, but not limited to civil penalties arising from allegation
13 regarding Defendant's alleged: (1) failure to pay wages, including but not limited to overtime
14 wages, (2) failure to provide compliant meal and rest breaks and failure to pay premiums for
15 alleged meal and rest break violations, (3) inaccurate wage statements, (4) failure to pay unpaid
16 wages at time of separation, including accrued but unpaid vacation or paid time off, as well as
17 any associated waiting-time penalties, and (5) violations of Business & Professions Code §§
18 17200 *et seq.*, (6) all damages, penalties, attorney fees, costs, interest, and other amounts
19 recoverable pursuant to (1) through (6), above, to the extent permissible under the California
20 Labor Code, California Industrial Welfare Commission Order, and the California Business and
21 Professions Code. The Released PAGA Claims also includes a release from the State of California
22 (to the extent Plaintiff is permitted to provide such a release for the State of California for the
23 PAGA period) of all PAGA claims alleged in the operative Complaints during the PAGA Period.

24 10. Additionally, upon the Court entering the final approval Order and remittance of
25 the Gross Settlement Amount by Defendant to the Settlement Administrator, the Representative
26 Plaintiffs, and each of them, fully release and forever discharge Defendant, the Released Parties,
27 and Defendant's respective present and former officers, directors, employees, shareholders,
28 members, agents, trustees, representatives, attorneys, insurers, investors, parent companies,

1 subsidiaries, divisions, affiliates, predecessors, successors, assigns, and any individual or entity
2 that could be jointly liable with Defendant, from any and all claims, causes of action, damages,
3 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorney's fees,
4 costs, interest, and any other form of relief or remedy in law, equity, or whatever kind or nature,
5 whether known or unknown, suspected or unsuspected, exclusive of any workers compensation
6 claims, including but not limited to (1) all Released Claims, (2) the Actions and any claims arising
7 out of or related to the Actions, (3) any claims under Federal, state or local law for or relating to
8 wages, benefits, compensation, vacation or other paid time off, and claims for liquidated damages,
9 penalties, or costs and fees associated therewith, (4) wrongful termination, discrimination,
10 harassment, and/or retaliation, (5) any act, omission, or occurrence or claim arising out of or
11 related to the Actions or Plaintiffs' employment or secession of employment with Defendant
12 taking place on or before the Effective Date of the Settlement, and (6) and any other form of relief
13 or remedy of any kind, nature, or description whatsoever, whether premised on statute, contract,
14 tort, or other theory of liability under state, federal, or local law. This release specifically excludes
15 claims for unemployment insurance, disability, social security, and workers' compensation (with
16 the exception of claims arising pursuant to California Labor Code sections 132(a) and 4553).

17 11. The Representative Plaintiffs hereby agree that, notwithstanding § 1542 of the
18 California Civil Code, all claims that the Representative Plaintiffs may have, known or unknown,
19 suspected or unsuspected, are hereby released. Section 1542 provides:

20 A general release does not extend to claims that the creditor or releasing party does
21 not know or suspect to exist in his or her favor at the time of executing the release
22 and that, if known by him or her, would have materially affected his or her
23 settlement with the debtor or released party.

24 The Representative Plaintiffs expressly waive the provisions of Section 1542 with full
25 knowledge and with the specific intent to release all known or unknown, suspected or unsuspected,
26 claims arising on or before the Effective Date of the Settlement, and therefore specifically waive
27 the provisions of any statute, rule, decision, or other source of law of the United States or of any
28 state of the United States or any subdivision of a state which prevents release of unknown claims.

12. No Class Member submitted a timely and valid request to be excluded from the

1 Settlement. Accordingly, all Class Members are hereby explicitly included in this order and
2 Judgment and participating in the settlement. The last date to timely submit a request for exclusion
3 was November 5, 2022.

4 13. The Court also hereby finds that there were no written objections to the Settlement.
5 The last day to submit a written objection to the settlement was November 5, 2022. The Court
6 also notes there were no objections made at the hearing on Final Approval of the Settlement.

7 14. The Court finds the settlement payments provided for under the Agreement to be
8 fair and reasonable in light of all of the circumstances. Pursuant to the terms of the Agreement
9 and amendments thereto the Court orders Defendant to fund the Gross Settlement Amount of
10 \$850,000.00 within sixty (60) calendar days of the date of this order to provide payments for the
11 Class/PAGA Members individual settlement payments, class representative incentive payments
12 for Plaintiff, Class Counsel's attorney fees and costs, the Settlement Administrator's fees and
13 expenses, the additional \$2,957.85 due to the Settlement Administrator, and penalties to the
14 California Labor and Workforce Development Agency pursuant to Labor Code Section 2698 *et*
15 *seq.* The calculations and the payments shall be made in accordance with the terms of the
16 Agreement and as modified by this Final Order and Judgment.

17 15. Pursuant to the terms of the Agreement and amendments thereto, and the
18 authorities, evidence and argument submitted by Class Counsel, the Court hereby awards
19 attorneys' fees of \$283,333.33 to Class Counsel (\$113,333.33 to Protection Law Group, LLP;
20 \$113,333.33 to Aegis Law Firm, PC; \$56,666.67 to Melmed Law Group, P.C.). The Court also
21 approve and awards the recovery of litigation costs incurred by Class Counsel in the amount of
22 \$21,234.50 (\$12,103.25 to Protection Law Group, LLP; \$6,878.40 to Aegis Law Firm, PC;
23 \$2,252.85 to Melmed Law Group, P.C.). The award of attorneys' fees and costs is the final
24 payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or
25 owed to Class Counsel and any other person or entity related to the Action.

26 16. The Court hereby approves and orders a Class Representative Enhancement
27 Payment of \$5,000.00 to Plaintiff Steve Valenzuela, \$5,000.00 to Plaintiff William Zelaya, and
28 \$5,000.00 to Plaintiff Andres Arcos, for a total enhancement of \$15,000.00 to Plaintiffs.

1 17. The Court approves and orders the payment in the amount of \$37,500.00 (75% of
2 \$50,000.00) from the Gross Settlement Amount to the California Labor Workforce Development
3 Agency for penalties arising under the Private Attorneys General Act of 2004 (PAGA). The
4 remaining \$12,500.00 (25% of \$50,000.00) shall be distributed to the PAGA Members as set forth
5 in the Agreement.

6 18. The Court also hereby approves and orders payment from the Gross Settlement
7 Amount for actual settlement administration expenses incurred by the Settlement Administrator,
8 ILYM Group, Inc., in the amount of \$7,000.00, and \$2,957.85 to be paid directly by Defendant.

9 19. The Court hereby approves and orders payment of individual settlement payments
10 from the Net Settlement Amount to the Participating Class Members as set forth in the Agreement.

11 20. The Court also hereby approves and orders that any checks distributed from the
12 Gross Settlement Amount yet remaining uncashed after one hundred and eighty (180) calendar
13 days after being issued shall be void. All uncashed settlement checks shall be transferred to the
14 California State Controller's Office and held in trust for such Class Members pursuant to
15 California Unclaimed Property Law, Civil Code Section 1500 et seq.

16 21. Provided the Settlement becomes effective under the terms of the Agreement, the
17 Court also hereby orders that the deadline for mailing the Court-approved individual settlement
18 payments, attorneys' fees and costs, and enhancement payments as set forth in the Agreement.

19 22. Neither the Settlement nor any of the terms set forth in the Agreement is an
20 admission by Defendant, or any of the other Released Parties, nor is this Final Order a finding of
21 the validity of any claims in the Action or of any wrongdoing by Defendant, or any of the other
22 Released Parties. Neither this Final Order, the Agreement, nor any document referred to herein,
23 nor any action taken to carry out the Agreement is, may be construed as, or may be used as, an
24 admission by or against Defendant, or any of the other Released Parties, of any fault, wrongdoing
25 or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations
26 or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence
27 of, an admission or concession with regard to the denials or defenses by Defendant, or any of the
28 other Released Parties, and shall not be offered in evidence in any action or proceeding in any

1 court, administrative agency or other tribunal for any purpose whatsoever other than to enforce
2 the provisions of this Final Order, the Agreement, the Released Claims, or any related agreement
3 or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action,
4 or submit in any other proceeding, the Final Order, the Agreement, and any other papers and
5 records on file in the Actions as evidence of the Settlement to support a defense of *res judicata*,
6 *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense as to
7 the Released Claims.

8 23. Without affecting the finality of this Judgment, the Court shall retain continuing
9 jurisdiction over this action and the parties, including all Class Members, and over all matters
10 pertaining to the implementation and enforcement of the terms of the Agreement pursuant to
11 California Rule of Court 3.769(h) and California Code of Civil Procedure section 664.6. Except
12 as provided to the contrary herein, any disputes or controversies arising with or with respect to
13 the interpretation, enforcement, or implementation of the Agreement shall be presented to the
14 Court for resolution.

15 24. The Final Judgment will be posted on the Settlement Administrator's website
16 (www.ilymgroup.com/Axiom), and the address to the website will be listed on the "Memo"
17 section of each individual settlement check.

18 25. The Court sets a Final Accounting Hearing for January 26, 2024 at 9:00 am, with
19 a Final Report due January 16, 2024. The Final Report will include all information necessary for
20 the Court to determine the total amount actually paid to class members and any amounts tendered
21 to the State Controller's Office under Unclaimed Property law.

22 IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

23
24
25 DATED: _____

26 Honorable Peter J. Wilson
27 JUDGE OF THE SUPERIOR COURT
28