

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

AUG 24 2023

BY Victoria Sanchez
VICTORIA SANCHEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MICHAEL FENSKE, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

FRESENIUS USA MANUFACTURING
INC.,; and DOES 1-10, inclusive,

Defendants

Case No. CIVSB2105447

Assigned for all purposes to:
Hon. Jessica Morgan
Dept. S-26

**~~[PROPOSED]~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING JUDGMENT**

Date: August 24, 2023
Time: 10:00 a.m.
Dept: S-26

**~~[PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

1 This matter came on for hearing on August 24, 2023, at 10:00 a.m., in Department S-26
2 of the above-captioned Court on the unopposed Motion for Final Approval of Class Action
3 Settlement pursuant to California Rule of Court 3.769, this Court's Order Granting Preliminary
4 Approval filed March 27, 2023 and the Joint Stipulation of Settlement ("Settlement
5 Agreement"), a copy of which was filed in conjunction with the Plaintiff's Motion for
6 Preliminary Approval of Class Action Settlement.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 the Parties, and the evidence and argument received by the Court in conjunction with the
9 unopposed Motion for Preliminary Approval of Class Action Settlement heard March 27, 2023,
10 and the instant Motion for Final Approval, the Court grants final approval of the Settlement and
11 HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Order Granting Preliminary Approval, a Notice Packet was sent to
13 each Settlement Class Member by first-class mail. These papers informed the Settlement Class
14 of the terms of the Settlement, their right to receive an Individual Settlement Payment, their right
15 (a) to comment on or object to the Settlement, (b) to request exclusion from the Settlement and
16 pursue their own remedies, and (c) of their right to appear in person or by counsel at the final
17 approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time
18 were provided by each of these procedures. No member of the Class filed written objection to
19 the proposed Settlement as part of this notice process or stated an intention to appear at the final
20 approval hearing.

21 2. The Court finds and determines that this notice procedure afforded adequate
22 protections to Settlement Class Members and provides the basis for the Court to make an informed
23 decision regarding approval of the Settlement based on the responses of the Settlement Class.
24 The Court finds and determines that the notice provided in this case was the best notice
25 practicable, which satisfied the requirements of law and due process.

26 3. With respect to the Settlement Class and for purposes of approving this Settlement
27 only, this Court finds and concludes that: (a) the members of the Settlement Class are
28 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions

1 of law or fact common to the Settlement Class, and there is a well-defined community of interest
2 among members of the Settlement Class with respect to the subject matter of the Action; (c) the
3 claims of Class Representative Michael Fenske is typical of the claims of the members of the
4 Settlement Class; (d) the Class Representative has fairly and adequately protected the interests of
5 the members of the Settlement Class; (e) a class action is superior to other available methods for
6 an efficient adjudication of this controversy; and (f) the counsel of record for the Class
7 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in their
8 individual and representative capacities for the Class.

9 4. The Court has certified a Settlement Class, as that term is defined in and by the
10 terms of the Settlement Agreement as all non-exempt, hourly California employees of Defendant
11 Fresenius USA Manufacturing, Inc., that worked for Defendant in California at any time from
12 August 14, 2016 to October 15, 2022, excluding drivers subject to Department of Transportation
13 regulations. The Court deems this definition sufficient for purposes of California Rule of Court
14 3.765(a).

15 5. The Court hereby confirms Aegis Law Firm, PC as Class Counsel.

16 6. The Court hereby confirms Plaintiff Michael Fenske as the Class Representative
17 in this Action.

18 7. The Court finds and determines that the terms set forth in the Settlement
19 Agreement are fair, reasonable, and adequate and directs the Parties to effectuate the Settlement
20 according to its terms, having found that the Settlement was reached as a result of informed and
21 non-collusive arm's-length negotiations facilitated by a neutral mediator. The Court further finds
22 that the Parties conducted extensive investigation, research, and discovery and that their attorneys
23 were able to reasonably evaluate their respective positions. The Court also finds that the
24 Settlement will enable the Parties to avoid additional and potentially substantial litigation costs,
25 as well as delay and risks if the Parties were to continue to litigate the case. The Court has
26 reviewed the monetary recovery provided as part of the Settlement and recognizes the significant
27 value accorded to the Class.

1 8. The Court further finds and determines that the terms of the Settlement are fair,
2 reasonable and adequate to the Settlement Class and to each Settlement Class Member and that
3 the Settlement is ordered finally approved, and that all terms and provisions of the Settlement
4 should be and hereby are ordered to be consummated.

5 9. The Court hereby approves the Gross Settlement Amount of \$300,000.00

6 10. The Court finds and determines that the Individual Settlement Payments to be paid
7 to participating Settlement Class Members as provided for by the Settlement are fair and
8 reasonable. The Court hereby gives final approval to and orders the payment of those amounts
9 be made to the participating Settlement Class Members in accordance with the Settlement
10 Agreement.

11 11. The Court finds and determines that payment to the California Labor and
12 Workforce Development Agency of \$18,750.00 as its share of the settlement of civil penalties in
13 this case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders
14 that the payment of that amount be paid in accordance with the Settlement Agreement.

15 12. The Court finds and determines that the fees and expenses in administering the
16 Settlement incurred by CPT Group Class Action Administrators in the amount of \$9,000.00, are
17 fair and reasonable. The Court hereby gives final approval to and orders that the payment of that
18 amount in accordance with the Settlement.

19 13. The Court finds and determines the Class Representative Enhancement Award
20 of up to \$7,500.00 for Plaintiff Michael Fenske is fair and reasonable. The Court hereby orders
21 the Administrator to make this payment to the Plaintiff/Class Representative in accordance with
22 the terms of the Settlement Agreement.

23 14. Pursuant to the terms of the Settlement, and the authorities, evidence and
24 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees
25 in the sum of \$100,000.00 and litigation costs of \$17,504.83 The Court finds such amounts to
26 be fair and reasonable. The Court hereby orders the Settlement Administrator to make these
27 payments in accordance with the terms of the Settlement Agreement.

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1 15. Without affecting the finality of this order or the entry of judgment in any way,
2 the Court retains jurisdiction of all matters relating to the interpretation, administration,
3 implementation, effectuation, and enforcement of this order and the Settlement.

4 16. Neither Defendant nor any related persons or entities shall have any further
5 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
6 except as provided for by the Settlement Agreement.

7 17. Neither the making of the Settlement Agreement nor the entry into the Settlement
8 Agreement constitutes an admission by Defendant, nor is this order a finding of the validity of
9 any claims in this case or of any other wrongdoing. Further, the Settlement Agreement is not a
10 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any
11 entity or persons; nor may any action taken to carry out the terms of the Settlement Agreement
12 be construed as an admission or concession by or against Defendant or any related person or
13 entity.

14 18. Nothing in this order shall preclude any action to enforce the Parties' obligations
15 under the Settlement or under this order, including the requirement that Defendants make
16 payment to the participating Settlement Class Members in accordance with the Settlement.

17 19. Upon completion of administration of the Settlement, the Settlement
18 Administrator will provide written certification of such completion to the Court and counsel for
19 the Parties which shall be filed with the Court five (5) court days before the non-appearance
20 compliance hearing set for **October 18, 2024 at 8:30 AM** ~~10:00 a.m.~~ ~~for _____, 2024 at~~
21 ~~_____.m.~~ in Dept. S-26.

22 20. The Court hereby enters final judgment in accordance with the terms of the
23 Settlement Agreement, the Order Granting Preliminary Approval of Class Action Settlement
24 filed on March 27, 2023 and this Order.

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1 21. The Parties will bear their own costs and attorneys' fees except as otherwise
2 provided by this Court's Order awarding Class Counsels' Award for attorneys' fees and litigation
3 costs.

4 DATED: _____

8/24/23



Honorable Jessica Morgan
JUDGE OF THE SUPERIOR COURT