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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN BERNARDINO

14
15 VICTOR HERNANDEZ, on behalf of himself
16 and on behalf of all persons similarly situated,

17 Plaintiff,

18 vs.

19 MITSUBISHI CEMENT CORPORATION, a
20 Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

CASE NO.: CIVSB2125260

23 [PROPOSED] PRELIMINARY
24 APPROVAL ORDER

Hearing Date: May 31, 2023

Hearing Time: 1:30 p.m.

Judge: Hon. Joseph T. Ortiz

Dept: 17

Date Filed: August 11, 2021

Trial Date: Not set

25 This matter came before the Honorable Joseph T. Ortiz of the Superior Court of the State of
26 California, in and for the County San Bernardino, on May 31, 2023, for hearing on the unopposed
27 motion by Plaintiff Victor Hernandez ("Plaintiff") for preliminary approval of the Settlement with
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PRELIMINARY APPROVAL ORDER

1 Defendant Mitsubishi Cement Corporation (“Defendant”). The Court, having considered the briefs,
2 argument of counsel and all matters presented to the Court and good cause appearing, hereby
3 GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

4 **IT IS HEREBY ORDERED:**

5 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement
6 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
7 Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement. This is based
8 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
9 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
10 Procedure and California Rules of Court, rule 3.769.

11 2. This Order incorporates by reference the definitions in the Agreement, and all terms
12 defined therein shall have the same meaning in this Order as set forth in the Agreement.

13 3. The Gross Settlement Amount that Defendant shall pay is Two Million Fifty
14 Thousand Dollars (\$2,050,000). It appears to the Court on a preliminary basis that the settlement
15 amount and terms are fair, adequate, and reasonable as to all potential Class Members when
16 balanced against the probable outcome of further litigation and the significant risks relating to
17 certification, liability, and damages issues. It further appears that investigation and research have
18 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
19 positions. It further appears to the Court that the Settlement will avoid substantial additional costs
20 by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
21 of the Action. It further appears that the Settlement has been reached as the result of serious and
22 non-collusive, arms-length negotiations.

23 4. The Court preliminarily finds that the Settlement appears to be within the range of
24 reasonableness of a settlement that could ultimately be given final approval by this Court. The
25 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
26 preliminarily finds that the monetary settlement awards made available to the Class is fair, adequate,
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1 and reasonable when balanced against the probable outcome of further litigation and the significant
2 risks relating to certification, liability, and damages issues.

3 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$16,000, and
5 proposed a Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any
7 service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, prior to final approval.

9 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 representative treatment and certification of a class for settlement purposes only. This stipulation
11 will not be deemed admissible in this or any other proceeding should this Settlement not become
12 final. For settlement purposes only, the Court conditionally certifies the Class which consists of "all
13 individuals who are or previously were employed by Defendant and classified as non-exempt
14 employees at any time during the Class Period." The "Class Period" is August 11, 2017 through
15 April 16, 2023.

16 7. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
18 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
19 (b) common questions of law and fact predominate, and there is a well-defined community of
20 interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the
21 claims of the Plaintiff are typical of the claims of the members of the Class; (d) the Plaintiff will
22 fairly and adequately protect the interests of the members of the Class; (e) a class action is superior
23 to other available methods for the efficient adjudication of this controversy; and (f) counsel for the
24 Class is qualified to act as counsel for the Class and the Plaintiff is an adequate representative of the
25 Class.

26 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
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1 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

2 9. The Agreement provides for \$50,000 PAGA Penalties out of the Gross Settlement
3 Amount, of which \$37,500 shall be allocated to the Labor & Workforce Development Agency
4 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this Agreement
5 pursuant to the PAGA and \$12,500 to the Aggrieved Employees. “Aggrieved Employees” are all
6 individuals who are or previously were employed by Defendant in California and who were
7 classified as non-employees at any time during the PAGA Period (September 13, 2020 through
8 April 16, 2023). Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA will be
9 provided notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties
10 to be reasonable.

11 10. The Court hereby approves, as to form and content, the Class Notice attached to the
12 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
13 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right to
14 be excluded from the Class by submitting a written opt-out request, and of each member’s right and
15 opportunity to object to the Settlement. The Court further finds that the distribution of the Class
16 Notice substantially in the manner and form set forth in the Agreement and this Order meets the
17 requirements of due process, is the best notice practicable under the circumstances, and shall
18 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
19 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
20 Notice Packet is returned because of an incorrect address, the Administrator will promptly search for
21 a more current address for the Class Member and re-mail the Class Notice Packet to any new
22 address for the Class Member no later than seven (7) days after the receipt of the undelivered Class
23 Notice.

24 11. The Court hereby appoints ILYM Group as the Administrator. No later than twenty-
25 one (21) days after this Order, Defendant will provide the Class Data to the Administrator. The
26 Administrator will perform address updates and verifications as necessary prior to the first mailing.
27 Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after
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1 receiving the Class Data, the Administrator will mail the Class Notice Packet to all Class Members
2 via first-class regular U.S. Mail to their last known address.

3 12. The Court hereby preliminarily approves the proposed procedure for exclusion from
4 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
5 Class as provided in the Class Notice by following the instructions for requesting exclusion from the
6 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked or
7 received no later than forty-five (45) calendar days after the date of the mailing of the Class Notice
8 (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline for requests
9 for exclusion will be extended an additional fourteen (14) days. A Request for Exclusion may also
10 be faxed or emailed to the Administrator as indicated in the Class Notice. Any such person who
11 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
12 Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal,
13 or comment thereon. Class Members who have not requested exclusion shall be bound by all
14 determinations of the Court, the Agreement, and the Judgment. A request for exclusion may only
15 opt out that particular individual, and any attempt to affect an opt out of a group, class, or subclass
16 of individuals is not permitted and will be deemed invalid.

17 13. Any Class Member who has not opted out may appear at the final approval hearing
18 and may object or express the Member’s views regarding the Settlement, and may present evidence
19 and file briefs or other papers that may be proper and relevant to the issues to be heard and
20 determined by the Court as provided in the Class Notice. Class Members will have until the
21 Response Deadline to submit their written objections to the Administrator. Written objections may
22 also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class Notice
23 Packet is re-mailed, the Response Deadline for written objections will be extended an additional
24 fourteen (14) days. Alternatively, Class Members may appear at the Final Approval Hearing to
25 make an oral objection.

26 14. A final approval hearing shall be held before this Court on October 17, 2023 at 1:30
27 p.m. in Department 17 at the San Bernardino County Superior Court to hear the motion for final
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1 approval and the motion for attorneys' fees and costs, and to determine all necessary matters
2 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
3 and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
4 approved by the Court; whether the Final Approval Order and Judgment should be entered herein;
5 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
6 reasonable to the Class Members; and to finally approve attorneys' fees and costs, service award,
7 and the fees and expenses of the Administrator. All papers in support of the motion for final
8 approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court
9 and served on all counsel no later than sixteen (16) court days before the hearing and both motions
10 shall be heard at this final approval hearing.

11 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
12 shall be construed as a concession or admission by Defendant in any way that the claims asserted
13 have any merit or that this Action was properly brought as a class or representative action, and shall
14 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
15 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or
16 with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is
17 finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or
18 conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
19 construed as, offered or admitted in evidence as, received as or deemed to be evidence for any
20 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption,
21 concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission,
22 concession or damage.

23 16. In the event the Settlement does not become effective in accordance with the terms of
24 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
25 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
26 the Parties shall revert to their respective positions as of before entering into the Agreement, and
27 expressly reserve their respective rights regarding the prosecution and defense of this Action,
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1 including all available defenses and affirmative defenses, and arguments that any claim in the
2 Action could not be certified as a class action and/or managed as a representative action. In such an
3 event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred
4 to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
5 Agreement with respect to the effect of the Agreement if it is not approved.

6 17. The Court reserves the right to adjourn or continue the date of the final approval
7 hearing and all dates provided for in the Agreement without further notice to Class Members and
8 retains jurisdiction to consider all further applications arising out of or connected with the proposed
9 Settlement.

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11 **IT IS SO ORDERED.**

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13 Dated: _____

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15 HON. JOSEPH T. ORTIZ
16 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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