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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN BERNARDINO

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

16 Plaintiff,

17 vs.

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

21 Defendants.

CASE NO.: CIVSB2125260

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: October 17, 2023

Hearing Time: 1:30 p.m.

Judge: Hon. Joseph T. Ortiz

Dept: 17

Date Filed: August 11, 2021

Trial Date: Not set

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FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Victor Hernandez (“Plaintiff”) for an order finally
2 approving the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant
3 Mitsubishi Cement Corporation (“Defendant”), attorneys’ fees and costs, service payments, and the
4 expenses of the Administrator duly came on for hearing on October 17, 2023 before the Honorable
5 Joseph T. Ortiz.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of San Bernardino, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Two Million Fifty Thousand
16 Dollars (\$2,050,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length negotiations
18 conducted after Class Counsel had adequately investigated the claims and became familiar with the
19 strengths and weaknesses of those claims. In particular, the amount of the Settlement, and the
20 assistance of an experienced mediator in the settlement process, among other factors, support the
21 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On May 31, 2023, the Court granted preliminary approval of the Settlement. At the
24 same time, the Court approved conditional certification of the Class for settlement purposes only.

25 **Notice to the Class**

- 26 6. In compliance with the Preliminary Approval Order, the Court-approved Class
27 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
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1 about July 5, 2023. Mailing of the Class Notice to their last-known addresses was the best notice
2 practicable under the circumstances and was reasonably calculated to communicate actual notice of
3 the litigation and the proposed settlement to the Class. The Class Notice given to the Class
4 Members fully and accurately informed the Class Members of all material elements of the proposed
5 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
6 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
7 laws of the State of California, the United States Constitution, due process and other applicable law.
8 The Class Notice fairly and adequately described the Settlement and provided Class Members
9 adequate instructions and a variety of means to obtain additional information.

10 7. The Response Deadline for opting out or submitting written objections to the
11 Settlement was September 5, 2023, which for re-mailings was extended by fourteen (14) days.
12 There was an adequate interval between notice and the deadline to permit Class Members to choose
13 what to do and to act on their decision. A full and fair opportunity has been afforded to the Class
14 Members to participate in this hearing, and all Class Members and other persons wishing to be heard
15 have had a full and fair opportunity to be heard. Class Members also have had a full and fair
16 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the Court
17 determines that all Class Members who did not timely and properly submit a request for exclusion
18 are bound by the Settlement and this Final Approval Order and Judgment.

19 **Fairness of the Settlement**

20 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48
21 Cal.App.4th 1794, 1801 (1996).

22 a. The settlement was reached through arm's-length bargaining between the
23 Parties during an all-day mediation before Louis Marlin, an experienced mediator of wage and hour
24 class actions. There has been no collusion between the Parties in reaching the Settlement.

25 b. Plaintiff and his counsel's investigation and discovery have been sufficient to
26 allow the Court and counsel to act intelligently.

1 c. Counsel for all Parties are experienced in similar employment class action
2 litigation. Plaintiffs' counsel recommended approval of the Agreement.

3 d. The percentage of objectors and requests for exclusion is small. No
4 objections were received. No requests for exclusion were received.

5 e. The participation rate was high. 216 Class Members will be mailed a
6 settlement payment, representing 100% of the overall Class.

7 9. The consideration to be given to the Class Members under the terms of the
8 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
9 asserted in this action and is fair, reasonable, and adequate compensation for the release of Class
10 Members' claims, given the uncertainties and significant risks of the litigation and the delays which
11 would ensue from continued prosecution of the action.

12 10. The Agreement is approved as fair, adequate, and reasonable and in the best interests
13 of the Class Members.

14 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

15 11. An award of \$683,333 for attorneys' fees, representing one-third of the Gross
16 Settlement Amount, and \$14,341.94 for litigation costs and expenses, is reasonable, in light of the
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
18 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
19 and billing statement.

20 **Class Representative Service Payment**

21 12. The Agreement provides for a Class Representative Service Payment of not more
22 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
23 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
24 the risks and burdens undertaken by the Plaintiff in this litigation, for his time and effort in bringing
25 and prosecuting this matter on behalf of the Class, and for his execution of a general release.

1 **Administration Expenses Payment**

2 13. The Administrator shall calculate and administer the payment to be made to the Class
3 Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the Class
4 Representative Service Payment to the Plaintiff, issue all required tax reporting forms, calculate
5 withholdings and perform the other remaining duties set forth in the Agreement. The Administrator
6 has documented \$10,250 in fees and expenses, and this amount is reasonable considering the work
7 performed by the Administrator.

8 **PAGA Penalties**

9 14. The Agreement provides for \$50,000 PAGA Penalties out of the Gross Settlement
10 Amount , \$37,500 of which shall be allocated to the Labor & Workforce Development Agency
11 ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this Agreement
12 pursuant to the PAGA and \$12,500 to be distributed to the Aggrieved Employees and allocated by
13 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,500) by
14 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
15 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
16 Periods. "Aggrieved Employees" are all individuals who are or previously were employed by
17 Defendant in California and who were classified as non-employees at any time during the PAGA
18 Period (September 13, 2020 through April 16, 2023). Pursuant to Labor Code section 2699,
19 subdivision (l)(2), the LWDA was provided notice of the Agreement and these settlement terms and
20 has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

21 **II.**

22 **ORDERS**

23 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

24 1. The Class is certified for the purposes of settlement only. The Class is defined as
25 follows:

26 All individuals who are or previously were employed by Defendant and classified as
27 non-exempt employees at any time during the Class Period (August 11, 2017 through
28 April 16, 2023).

1 2. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. There are no
3 individuals who requested exclusions from the Class.

4 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
5 best interest of the Class.

6 4. Class Counsel are awarded attorneys’ fees in the amount of \$683,333 and costs in the
7 amount of \$14,341.94. Class Counsel shall not seek or obtain any other compensation or
8 reimbursement from Defendant, Plaintiff or members of the Class.

9 5. The payment of Class Representative Service Payment in the amount of \$10,000 to
10 the Plaintiff is approved.

11 6. The payment of \$10,250 to the Administrator for its fees and expenses is approved.

12 7. The PAGA Penalties of \$50,000 is approved and is to be distributed in accordance
13 with the Agreement.

14 8. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall submit a
15 copy of this Final Approval Order and Judgment to the LWDA within 10 days after its entry.

16 9. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
17 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
18 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
19 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
20 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is,
21 may be construed as, or may be used as an admission by or against Defendant of any fault,
22 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
23 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
24 evidence of, an admission, or concession with regard to the denials or defenses by Defendant.
25 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this
26 Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the
27 Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
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1 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
2 Claims and/or Released PAGA Claims.

3 10. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment to
7 individual Class Members.

8 11. If the Agreement does not become final and effective in accordance with the terms of
9 the Agreement, then this Final Approval Order and Judgment, and all orders entered in connection
10 herewith, shall be rendered null and void and shall be vacated, and the Parties shall revert to their
11 respective positions as of before entering into the Agreement, and expressly reserve their respective
12 rights regarding the prosecution and defense of this Action, including all available defenses and
13 affirmative defenses, and arguments that any claim in the Action could not be certified as a class
14 action and/or managed as a representative action.

15 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

16 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
17 Plaintiff, and all members of the Class, shall take nothing in the Action.

18 2. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
19 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
20 supervise and adjudicate any dispute arising from or in connection with the distribution of
21 settlement benefits.

22 3. All Parties shall bear their own attorneys' fees and costs, except as otherwise
23 provided in the Agreement and in this Final Approval Order and Judgment.

24 4. Effective on the date when Defendant fully fund the Gross Settlement Amount and
25 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
26 Participating Class Members, Aggrieved Employees, and the LWDA will release claims against all
27 Released Parties as follows:

1 (a) All Participating Class Members, on behalf of themselves and their respective
2 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
3 release Released Parties from the Released Class Claims. The “Released Class Claims” are all
4 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
5 Operative Complaints, which occurred during the Class Period except as expressly set forth in this
6 Agreement, Participating Class Members do not release any other claims, including claims for
7 vested benefits, Plaintiff’s ninth cause of action for constructive discharge, wrongful termination,
8 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
9 security, workers’ compensation, and claims outside the Class Period.

10 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf of
11 themselves and their respective former and present representatives, agents, attorneys, heirs,
12 administrators, successors, and assigns, the Released Parties from all the Released PAGA Claims.
13 The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably
14 could have been alleged, based on the facts stated in the Operative Complaints and the PAGA
15 Notice, which occurred during the PAGA Period and expressly excluding all other claims, including
16 claims for vested benefits, Plaintiff’s ninth cause of action for constructive discharge, wrongful
17 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
18 disability, social security, worker’s compensation, and PAGA claims outside of the PAGA Period.

19 (c) Plaintiff and his respective former and present spouses, representatives,
20 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
21 Released Parties from all claims, transactions, or occurrences that occurred during the Class Period
22 (“Plaintiff’s Release”) as fully set forth in the Agreement.

23 5. For any Class Member or Aggrieved Employee whose Individual Class Payment
24 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
25 Administrator shall transmit the funds represented by such checks to the California Controller's
26 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
27 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

1 6. The Court hereby enters judgment in the entire Action as of the filing date of this
2 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the finality
3 of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction over the
4 interpretation, implementation, and enforcement of the Settlement and all orders entered in
5 connection therewith pursuant to California Code of Civil Procedure section 664.6.

6 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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8 Dated: _____

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