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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

14 FRANCISCO GARCIA, an individual, on
15 behalf of himself, and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 SPECIALTY MINERALS INC., a
20 corporation; DOES 1 through 50, inclusive,

21 Defendants.

CASE NO.: CIVSB2127695

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

Hearing Date: October 18, 2023

Hearing Time: 10:00 a.m.

Judge: Hon. Jessica Morgan

Dept: 26

Action Filed: September 29, 2021

Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Francisco Garcia (“Plaintiff”) for an order finally
2 approving the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant
3 Specialty Minerals Inc. (“Defendant”), award of attorneys’ fees and costs, service payment, and
4 payment of the expenses of the Administrator duly came on for hearing on October 18, 2023
5 before the Honorable Jessica Morgan.

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
13 all Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of One Million Fifty Thousand
16 Dollars (\$1,050,000) 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
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On June 7, 2023, the Court granted preliminary approval of the Settlement. At this
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

1 about July 11, 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
3 of 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
5 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
6 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
7 fully with the laws of the State of California, the United States Constitution, due process and other
8 applicable law. The Class Notice fairly and adequately described the Settlement and provided
9 Class Members 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 August 25, 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
13 choose what to do and to act on their decision. A full and fair opportunity has been afforded to the
14 Class Members to participate in this hearing, and all Class Members and other persons wishing to
15 be heard have had a full and fair opportunity to be heard. Class Members also have had a full and
16 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
17 Court determines that all Class Members who did not timely and properly submit a request for
18 exclusion 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.*
21 48 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 T. Warren Jackson, an experienced mediator of wage
24 and hour class actions. There has been no collusion between the Parties in reaching the
25 Settlement.

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

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

3 d. No objections by Class Members were received. No requests for exclusion
4 were received.

5 e. The participation rate was exceptionally high. 109 Participating Class
6 Members will be mailed a 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
11 which would ensue from continued prosecution of the action.

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

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

15 11. An award of \$350,000 for attorneys' fees, representing one-third of the Gross
16 Settlement Amount, and \$23,978.24 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
25 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
26 release.

1 **Administration Expenses Payment**

2 13. The Administrator shall calculate and administer the payment to be made to the
3 Class Members, transmit payment for attorneys’ fees and costs to Class Counsel, transmit the
4 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
5 calculate withholdings, and perform the other remaining duties set forth in the Agreement. The
6 Administrator has documented \$6,650 in fees and expenses, and this amount is reasonable
7 considering the work performed by the Administrator.

8 **PAGA Penalties**

9 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount
10 of \$25,000, which shall be allocated \$18,750 to the Labor & Workforce Development Agency
11 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
12 Agreement pursuant to the PAGA and \$6,250 to be distributed to the Aggrieved Employees and
13 allocated by (a) dividing the AE PAGA Penalties (\$6,250) by the total number of PAGA Pay
14 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
15 result by each Aggrieved Employee’s PAGA Pay Periods. “Aggrieved Employees” are all
16 individuals who are or previously were employed by Defendant in California who were classified
17 as hourly, non-exempt employees at any time during the PAGA Period (September 29, 2020
18 through May 29, 2023]). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA was
19 provided notice of the Agreement and these settlement terms and has not indicated any objection
20 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 in California
27 who were classified as hourly, non-exempt employees at any time during the Class
28 Period (September 29, 2017 through May 29, 2023).

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

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

4. Class Counsel are awarded attorneys’ fees in the amount of \$350,000.00 and costs in the amount of \$23,978.24. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff, or members of the Class.

5. The payment of Class Representative Service Payment in the amount of \$10,000.00 to the Plaintiff is approved.

6. The payment of \$6,650 to the Administrator for its fees and expenses is approved.

7. The PAGA Penalties of \$25,000 is approved and is to be distributed in accordance with the Agreement.

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

9. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant or that this Action is appropriate for class or representative treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in

1 the Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
2 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
3 Claims and/or Released PAGA Claims.

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

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

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

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

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

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

25 4. Effective on the date when Defendant fully funds the Gross Settlement Amount and
26 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
27

1 Participating Class Members, Aggrieved Employees and the LWDA will release claims against all
2 Released Parties as follows:

3 (a) All Participating Class Members, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
5 and assigns, release Released Parties from the Released Class Claims. The “Released Class
6 Claims” are all known and unknown claims that were alleged, or reasonably could have been
7 alleged, based on facts stated in the Operative Complaint, including claims for unpaid wages and
8 overtime, untimely final paychecks, record-keeping violations, itemized wage statements, meal
9 and rest period wages and premiums, business expenses incurred, and restitution and penalties
10 under the Private Attorneys General Act, which occurred during the Class Period, including claims
11 arising under federal, state, or local law, including the California Labor Code. Except as expressly
12 set forth in this Agreement, Participating Class Members do not release any other claims,
13 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
14 Housing Act, unemployment insurance, disability, social security, workers’ compensation, or
15 claims based on facts occurring outside the Class Period. “Released Parties” means Defendant and
16 each of its former and present directors, officers, shareholders, owners, employees, attorneys,
17 insurers, predecessors, successors, parents, assigns and subsidiaries.

18 (b) All Aggrieved Employees and the LWDA release, on behalf of themselves
19 and their respective former and present representatives, agents, attorneys, heirs, administrators,
20 successors, and assigns, the Released Parties from all of the Released PAGA Claims. The
21 “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably
22 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA
23 Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include
24 other PAGA claims, underlying wage and hour claims, claims for wrongful termination,
25 discrimination, unemployment insurance, disability and worker’s compensation, and PAGA
26 claims outside of the PAGA Period.

1 (c) Plaintiff and his or her respective former and present spouses,
2 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
3 and discharge Released Parties from all claims related to or arising from transactions, occurrences,
4 or events that occurred prior to the Effective Date ("Plaintiff's Release") as fully set forth in the
5 Agreement.

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

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

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

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18 Dated: _____

19 _____
20 HON. JESSICA MORGAN
21 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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