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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 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] PRELIMINARY
APPROVAL ORDER**

Hearing Date: June 7, 2023
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept: 26

Action Filed: September 29, 2021
Trial Date: Not set

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24 This matter came before the Honorable David Cohn of the Superior Court of the State of
25 California, in and for the County San Bernardino, on June 7, 2023, for hearing on the unopposed
26 motion by Plaintiff Francisco Garcia ("Plaintiff") for preliminary approval of the Settlement with
27 Defendant Specialty Minerals Inc. ("Defendant"). The Court, having considered the briefs,
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PRELIMINARY APPROVAL ORDER

1 argument of counsel and all matters presented to the Court and good cause appearing, hereby
2 GRANTS Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

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4 **IT IS HEREBY ORDERED:**

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

11 2. This Order incorporates by reference the definitions in the Agreement, and all
12 terms 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 One Million Fifty
14 Thousand Dollars (\$1,050,000). 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
21 prosecution of the Action. It further appears that the Settlement has been reached as the result of
22 serious and 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 award made available to the Class is fair,

1 adequate, and reasonable when balanced against the probable outcome of further litigation and the
2 significant risks relating to certification, liability, and damages issues.

3 5. The Agreement specifies an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000, 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
7 any 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
13 "all individuals who are or previously were employed by Defendant in California who were
14 classified as hourly, non-exempt employees at any time during the Class Period." The "Class
15 Period" is September 29, 2017 through May 29, 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:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
22 the Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient adjudication of this controversy; and
24 (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
25 representative of the 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 PAGA Penalties out of the Gross Settlement Amount
3 of \$25,000, which shall be allocated \$18,750 to the Labor & Workforce Development Agency
4 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
5 Agreement pursuant to the PAGA and \$6,250 to the Aggrieved Employees. “Aggrieved
6 Employees” are all individuals who are or previously were employed by Defendant in California
7 who were classified as hourly, non-exempt employees at any time during the PAGA Period
8 (September 29, 2020 through May 29, 2023). Pursuant to Labor Code section 2699, subdivision
9 (l)(2), the LWDA will be provided notice of the Agreement and these settlement terms. The Court
10 finds the PAGA Penalties 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
14 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
15 and opportunity to object to the Settlement. The Court further finds that the distribution of the
16 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
17 the 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
21 for 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
23 Class Notice.

24 11. The Court hereby appoints ILYM Group as the Administrator. No later than
25 twenty (20) 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
27 mailing. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14)
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1 days after receiving the Class Data, the Administrator will mail the Class Notice Packet to all
2 Class Members via first-class regular U.S. Mail to their last known address.

3 12. The Court hereby preliminarily approves the proposed procedure for exclusion
4 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
5 from the Class as provided in the Class Notice by following the instructions for requesting
6 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
7 postmarked or received no later than forty-five (45) calendar days after the date of the mailing of
8 the Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response
9 Deadline for requests for exclusion will be extended an additional fourteen (14) days. A Request
10 for Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
11 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
12 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
13 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
14 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
15 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
16 group, class, or subclass 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
19 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
20 and 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
22 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
23 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
24 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
25 Hearing to make an oral objection.

26 14. A final approval hearing shall be held before this Court on October 18, 2023 at
27 10:00 a.m. in Department 26 at the San Bernardino County Superior Court to hear the motion for
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1 final 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
4 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
5 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
6 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
7 service award, and the fees and expenses of the Administrator. All papers in support of the motion
8 for final approval and the motion for attorneys' fees, costs and service awards shall be filed with
9 the Court and served on all counsel no later than sixteen (16) court days before the hearing and
10 both motions shall be heard at this final approval hearing.

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

23 16. In the event the Settlement does not become effective in accordance with the terms
24 of 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,
26 and the Parties shall revert to their respective positions as of before entering into the Agreement,
27 and 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
3 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
4 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
5 the 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
9 proposed Settlement.

10 **IT IS SO ORDERED.**

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12 Dated: _____

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14 HON. DAVID COHN
15 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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