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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN BERNARDINO**

18 GUSTAVO CHAVEZ FRANCO, an individual,
19 on behalf of himself, the State of California, as a
20 private attorney general, and on behalf of all
21 others similarly situated,

22 Plaintiff,

23 v.

24 BMC WEST, LLC, a Delaware Limited Liability
25 Company; and DOES 1 TO 50,

26 Defendants.

Case Number: CIVSB2123090

27 **[Proposed] Order Granting Final Approval of**
28 **Class Action Settlement and Final Judgment**

29 011 SC-2023-43644 @

30 Date: June 26, 2023

31 Time: 1:30 p.m.

32 Dept.: S17

33 Judge: Hon. Joseph T. Ortiz

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

JUN 26 2023

BY Jessica Garcia
JESSICA GARCIA, DEPUTY

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

This matter came for a hearing on June 26, 2023, regarding Plaintiffs Gustavo Chavez Franco, Geovany Cisneros Palma, Rodolfo C. Dominguez, Gerardo Cisneros, Gabriel Ramos, and Chris Rosillo's ("Plaintiffs") unopposed *Motion for Final Approval of Class Action Settlement* (the "Motion"), which seeks final approval of a class action settlement based on the terms set forth in the parties' *Stipulation of Class and PAGA Representative Action Settlement* (the "Settlement Agreement"). In conformity with California Rules of Court, rule 3.769, with due and adequate notice having been given to Class Members (as defined in the Settlement Agreement and the Motion), and having considered the Settlement Agreement, all of the legal authorities and documents submitted in support thereof, all papers filed and proceedings had herein, all oral and written comments received regarding the Settlement Agreement, and having reviewed the record in this litigation, and good cause appearing, the Court **GRANTS** final approval of the Settlement Agreement and orders and makes the following findings and determinations and enters final judgment as follows:

1. The Court grants Plaintiffs leave to file the overlength brief attached to the Motion.

2. All terms used in this order shall have the same meanings given as those terms are used and/or defined in the parties' Settlement Agreement and the Motion. A copy of the Settlement Agreement is attached to the *Declaration of Jonathan Melmed in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement* as **Exhibit 1** and is made a part of this order.

3. The Court has personal and subject matter jurisdiction over Plaintiffs and Defendant BMC West, LLC ("Defendant") (collectively, the "Parties") in this litigation to approve this Settlement Agreement and all exhibits thereto.

4. For settlement purposes only, the Court finally certifies the Class, as defined in the Motion and the Settlement Agreement and as follows: "*All individuals who are or were employed by Defendant as hourly non-exempt employees in California from January 19, 2018 to September 8, 2022.*" The Court deems this definition sufficient for the purpose of rule 3.765(a) of the California Rules of Court, and solely for the purpose of effectuating the Settlement Agreement.

5. The Court finds that an ascertainable class of 7,191 participating Class Members exists and a well-defined community of interest exists on the questions of law and fact involved because in

1 the context of the Settlement Agreement: (i) all related matters, predominate over any individual
2 questions; (ii) the claims of the Plaintiffs are typical of claims of the Class Members; and (iii) in
3 negotiating, entering into and implementing the Settlement Agreement, Plaintiffs and Plaintiffs'
4 counsel have fairly and adequately represented and protected the interest of the Class Members.¹

5 6. The Court is satisfied that CPT Group, Inc., which was appointed as the Settlement
6 Administrator, completed the distribution of Class Notice to the Class in a manner that comports with
7 California Rule of Court 3.766. The Class Notice informed the prospective Class Members of the
8 Settlement Agreement's terms, their rights under the Settlement Agreement to receive their settlement
9 share, their rights to submit a request for exclusion, their rights to comment on or object to the
10 Settlement Agreement, and their rights to appear at the Final Approval and Fairness Hearing, and be
11 heard regarding approval of the Settlement Agreement. Sufficient periods of time to respond and to act
12 were provided by each of these procedures.

13 7. The Court hereby approves the terms set forth in the Settlement Agreement and finds
14 that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, consistent, and
15 compliant with all applicable requirements of the California Code of Civil Procedure, the California
16 and United States Constitutions, including the Due Process clauses, the California Rules of Court, and
17 any other applicable law, and in the best interests of each of the Parties and Class Members.

18 8. The Court directs the Parties to effectuate the Settlement Agreement according to its
19 terms and declares the Settlement Agreement to be binding on all participating Class Members.

20 9. The Court finds that the Settlement Agreement has been reached as a result of informed
21 and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted
22 extensive investigation and research, and their attorneys were able to reasonably evaluate their
23 respective positions.

24 10. The Court also finds that the Settlement Agreement will avoid additional and potentially
25 substantial litigation costs, as well as delay and risks of the Parties were to continue to litigate the case.

26
27 ¹ CPT Group, Inc. mailed Class Notices to all 7,196 Class Members and received five requests for
28 exclusion. Thus, there are 7,191 participating Class Members.

1 Additionally, after considering the monetary recovery provided as part of the Settlement Agreement in
2 light of the challenges posed by continued litigation, and Court concludes that Plaintiffs' counsel
3 secured significant relief for Class Members.

4 11. The Settlement Agreement is not an admission by Defendant, nor is this order a finding
5 of the validity of any allegations or of any wrongdoing by Defendant.

6 12. The Court appoints Plaintiffs Gustavo Chavez Franco, Geovany Cisneros Palma,
7 Rodolfo C. Dominguez, Gerardo Cisneros, Gabriel Ramos, and Chris Rosillo as class representatives
8 and finds them to be adequate.

9 13. The Court appoints as class counsel the following attorneys: Craig J. Ackermann and
10 Avi Kreitenberg of Ackermann & Tilajef, P.C.; Tatiana Hernandez of the Law Office of Tatiana
11 Hernandez P.C.; Jonathan Melmed and Kyle D. Smith of Melmed Law Group P.C.; Jonathan Durham
12 and Ned B. Ng of the Law Offices of Durham & Ng; and Douglas Han and Shunt Tatavos-Gharajeh of
13 Justice Law Corporation. The Court finds each of them to be adequate, experienced, and well-versed
14 in class action litigation.

15 14. The terms of the Settlement Agreement, including the Gross Settlement Amount of
16 \$2,380,000.00 and the individual settlement shares, are fair, adequate, and reasonable to the Class and
17 to each Class Member, and the Courts grants final approval of the Settlement set forth in the Settlement
18 Agreement, subject to this order.

19 15. The Court approves the following allocations, which fall within the ranges stipulated by
20 and through the Settlement Agreement:

21 A. The Court awards \$35,250.00 to CPT Group, Inc., the Settlement Administrator,
22 and finds this amount to be fair and reasonable. The Court grants final approval of it and orders
23 the Parties to make the payment to the Settlement Administrator in accordance with the
24 Settlement Agreement.

25 B. The Court awards \$793,333.33 to Plaintiffs' counsel as attorneys' fees and finds
26 this amount to be fair and reasonable considering the benefit obtained for the Class. The Court
27 grants final approval of, awards, and orders the payment to Plaintiffs' counsel to be made in
28 accordance with the Settlement Agreement.

1 C. The Court awards \$23,450.72 in litigation costs, an amount which the Court
2 finds to be reflective of the reasonable costs incurred. The Court grants final approval of, and
3 orders the litigation expenses payment in this amount to be made to Plaintiffs' counsel in
4 accordance with the Settlement Agreement.

5 D. The Court awards \$10,000.00 to each of the class representatives (totaling
6 \$60,000.00), in addition to any amount they may be entitled to as Class Members and/or
7 Aggrieved Employees, as service payments requested by Plaintiffs and finds this amount to be
8 fair and reasonable. The Court grants final approval of, and orders the class representative
9 payments to be made in accordance with the Settlement Agreement.

10 E. The Court awards \$10,000.00 to Ricardo Perez Ruelas, the named plaintiff in a
11 related action, *Ruelas v. BMC West, LLC* (Stanislaus Sup. Ct., Case No. CV-22-001789)
12 (initially filed on April 21, 2022) (the "*Ruelas Action*"), in addition to any amount he may be
13 entitled to as a Class Member and/or Aggrieved Employee, as a service payment requested by
14 Plaintiffs and finds this amount to be fair and reasonable. The Court grants final approval of,
15 and orders this service payment to be made in accordance with the Settlement Agreement.

16 F. The Court awards 1% of the Gross Settlement Amount (i.e., \$23,800.00) to
17 Boucher LLP and Majarian Law Group, APC, as attorneys' fees and costs for their role as
18 counsel in the *Ruelas Action* and finds this amount to be fair and reasonable considering the
19 benefit obtained for the Class. The Court grants final approval of, awards, and orders this
20 payment to be made in accordance with the Settlement Agreement.

21 G. The Court approves the \$238,000.00 allocation for penalties under the Labor
22 Code Private Attorneys General Act of 2004, and orders 75% thereof (i.e., \$178,500.00) to be
23 paid to the California Labor and Workforce Development Agency in accordance with the terms
24 of the Settlement Agreement and the remainder (i.e., \$59,500.00) to the Aggrieved Employees.

25 16. The Court orders the Parties to comply with and carry out all terms and provisions of
26 the Settlement, to the extent that the terms thereunder do not contradict with this order, in which case
27 the provisions of this order shall take precedence and supersede the Settlement Agreement.
28

1 17. Nothing in the Settlement Agreement or this order purports to extinguish or waive
2 Defendant's rights to continue to oppose the merits of the claims in this action or class treatment of
3 these claims in this case if the Settlement Agreement fails to become final or effective, or in any other
4 case without limitation.

5 18. All Class Members who did not request exclusion from the Settlement Agreement shall
6 be bound by the Settlement and this order, including the release of claims as set forth in the Settlement
7 Agreement.²

8 19. All Aggrieved Employees shall be bound by the PAGA-portion of Settlement
9 Agreement and this order, including the release of PAGA claims as set forth in the Settlement
10 Agreement.

11 20. The Parties shall bear their own respective attorneys' fees and costs except as otherwise
12 provided in this order and the Settlement Agreement.

13 21. All checks mailed to the Class Members must be cashed within one hundred and eighty
14 (180) days after mailing. If a Class Member fails to cash his/her check by the deadline, then the
15 Settlement Administrator shall submit such funds to the Court Appointed Special Advocates (CASA)
16 of San Bernardino County as the *cy pres* recipient. The Court finds that this meets the requirements of
17 Code of Civil Procedure section 384.

18 22. Within seven days of this order, the Settlement Administrator shall give notice of
19 judgment to Settlement Class Members pursuant to California Rules of Court, rule 3.771(b) by posting
20 a copy of this order and final judgment on its website.

21 23. The Court retains continuing jurisdiction over the Action and the Settlement, including
22 jurisdiction pursuant to rule 3.769(h) of the California Rules of Court, solely for purposes of
23 (a) enforcing the Settlement Agreement, (b) addressing settlement administration matters, and
24 (c) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
25

26 _____
27 ² The names of the five individual who requested exclusion from the settlement are: Kim R. Aleman,
28 Santos Huerta Jr., Igor Parkhomovich, Keith E. Shoffner, and Charles L. Vilardo.

24. Plaintiffs shall file with the Court a report regarding the status of distribution within 210 days after all funds have been distributed.

25. This final judgment is intended to be a final disposition of the above-captioned action in its entirety and is intended to be immediately appealable. This final judgment resolves and extinguishes all claims released by the Settlement Agreement against Defendant.

26. The Court hereby sets a hearing date of March 1, 2024 at 8:30 p.m./a.m.
for a hearing on the final accounting and distribution of the settlement funds.

IT IS SO ORDERED, ADJUGED, AND DECREED.

FINAL JUDGMENT IS HEREBY ENTERED.

Dated:

Dated: 6/26/23

JOSEPH T. ORTIZ

Judge of the Superior Court, County of San Bernardino

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PROOF OF SERVICE