

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

FILED
Clerk of the Superior Court

MAY 24 2024

By: T. Abas

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DAVID HERRERA, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

METAL SURFACES INTERNATIONAL,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00003417-CU-OE-CTL
[Consolidated with Case No. 37-2021-
00033571-CU-OE-CTL]

Assigned for All Purposes to:
Honorable Gregory W. Pollack
Department C-71

CLASS ACTION

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

Hearing Date: May 24, 2024
Hearing Time: 9:30 a.m.
Hearing Place: Department C-71

Complaint Filed: January 27, 2022
FAC Filed: July 31, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs David Herrera and Ryon
2 Delgadillo's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and
3 considering the papers submitted in support of the motion, including the Joint Stipulation and
4 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS**
5 **AND ORDERS:**

6 Plaintiffs and Defendant Metal Surfaces International, LLC ("Defendant") entered the
7 Settlement Agreement on or about October 10, 2023 to settle this lawsuit.

8 The Court entered an order dated December 8, 2023 preliminarily approving the
9 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, providing Class Members with an opportunity to object to the Settlement or exclude
12 themselves from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on May 24, 2024 to determine whether to give
14 final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of any and all persons who have been employed
26 by Defendant as non-exempt employees in California at any time from February 6, 2017, to
27 August 13, 2023 ("Class," "Class Members," and "Class Period"). There are two hundred eight
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1 (208) Class Members who did not submit valid and timely requests to exclude themselves from
2 this Settlement ("Participating Class Members").

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
5 Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds the Notice of Class Action Settlement ("Class
7 Notice") and its distribution to Class Members were implemented pursuant to the Settlement and
8 this Court's Preliminary Approval Order. The Court also finds the Class Notice:

- 9 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
10 pendency of this lawsuit; (ii) material terms and provisions of the
11 Settlement Agreement and their rights; (iii) their right to object to any
12 aspect of the Settlement Agreement; (iv) their right to exclude themselves
13 from the Settlement Agreement; (v) their right to receive settlement
14 payments; (vi) their right to appear at the Final Approval Hearing; and
15 (vii) binding effect of the orders and judgment in this lawsuit on all
16 Participating Class Members;
- 17 b. constitutes notice that fully satisfied the requirements of Code of Civil
18 Procedure section 382, California Rule of Court 3.769, and due process;
- 19 c. constitutes the best practicable notice to Class Members under the
20 circumstances of this lawsuit; and
- 21 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

22 6. Final Settlement Approval. The terms and provisions of the Settlement
23 Agreement have been entered into good faith and are the product of arm's-length negotiations by
24 experienced counsel who have done a meaningful investigation of the claims. The Settlement
25 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
26 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
27 Settlement Agreement according to its terms and provisions.

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1 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiffs, Participating Class Members, Eligible Aggrieved
3 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Claims.
8 The Settlement Agreement will have no binding effect upon, and provide no res judicata
9 preclusion to, those Class Members who have submitted timely requests for exclusion.

10 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
11 any action to enforce the terms and provisions of the Settlement Agreement.

12 9. Release of Claims. Upon Defendant's fulfillment of its payment obligations
13 under Section III (J)(9)(a) of the Agreement, Participating Class Members waive, release,
14 promise never to assert in any forum, remise, and forever discharge the Released Parties from the
15 Released Claims for the time frame within the Class Period.

16 a. Effect of PAGA Settlement. Upon Defendant's fulfillment of its payment
17 obligations under Section III (J)(9)(a) of the Agreement, California Labor
18 and Workforce Development Agency ("LWDA"), and any other
19 representative, proxy, or agent thereof, including, but not limited to, any
20 and all Eligible Aggrieved Employees during the Private Attorneys
21 General Act of 2004 ("PAGA") Timeframe, are barred from pursuing any
22 action for civil penalties under Labor Code sections 2698, *et seq.* (PAGA),
23 against the Released Parties based on or arising out of alleged violations of
24 Labor Code sections alleged in Plaintiff Herrera's letter to the LWDA and
25 the complaint.

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1 b. Plaintiffs' Release of Claims and General Release. Upon Defendant's
2 fulfillment of its payment obligations under Section III (J)(9)(a) of the
3 Agreement, and in exchange for the Class Representative Enhancement
4 Payments to Plaintiffs, in recognition of their work and efforts in obtaining
5 the benefits for the Class, and undertaking the risk for the payment of
6 costs in the event this matter had not successfully resolved, Plaintiffs
7 provide a general release of claims for themselves and their respective
8 spouses, heirs, successors, and assigns. With respect to the General
9 Release, each of the Plaintiffs stipulates and agrees that, as of the Effective
10 Final Settlement Date, Plaintiffs shall be deemed to have, expressly
11 waived and relinquished, to the fullest extent permitted by law, the
12 provisions, rights and benefits of section 1542 of the Civil Code.

13 c. Released Parties. The Released Parties include Defendant and any and all
14 of its affiliated companies and its respective parent companies,
15 subsidiaries, affiliates, shareholders, members, agents (including, without
16 limitation, any investment bankers, accountants, insurers, reinsurers,
17 attorneys and any past, present or future officers, directors and employees)
18 predecessors, successors, and assigns.

19 10. Class Representative Enhancement Payments. The Court finds the Class
20 Representative Enhancement Payments of \$10,000, to be paid by Defendant to each Plaintiff
21 (totaling \$20,000), out of the Gross Settlement Amount, to be reasonable and appropriate. The
22 Class Representative Enhancement Payments are to be paid pursuant to the terms and provisions
23 set forth in the Agreement.

24 a. The rationale for making enhancement payments is class representatives
25 should be compensated for the expense and risk they incurred in
26 conferring a benefit on the Class. Criteria courts consider include: (i) risk
27 to the class representatives in commencing suit; (ii) notoriety and personal
28 difficulties; (iii) amount of time and effort spent by the class

representatives; (iv) duration of the litigation; and (v) personal benefit (or lack thereof) enjoyed by class representatives.

- b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the risks inherent in the services as the class representatives, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Enhancement Payments of \$10,000 to each Plaintiff.

11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of \$262,500, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the Court finds the Cost Award as reimbursement for actual litigation costs incurred of \$13,680.99, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, and Released Claims.

- a. The Court has an independent right and responsibility to review the Attorney Fee Award and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The Attorney Fee Award of \$262,500 is thirty-five percent (35%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the

1 Attorney Fee Award is consistent with the marketplace, is reasonable, and
2 is approved.

- 3 b. The Court reviewed the declaration of Douglas Han regarding the costs
4 expended in prosecuting this case. Under the terms of the Settlement,
5 Class Counsel may seek reimbursement of up to \$20,000 in litigation
6 costs. The Court finds Class Counsel expended \$13,680.99 in litigation
7 costs, and such costs were reasonable. The Court approves the payment of
8 the Cost Award of \$13,680.99 from the common fund for the
9 reimbursement of Class Counsel's litigation costs.

10 12. Administration Costs. The Court finds Administration Costs of \$8,750, to be paid
11 by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
12 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
13 provisions set forth in the Settlement Agreement.

- 14 a. The Court reviewed the declaration of Lluvia Islas from Phoenix Class
15 Action Administration Solutions, the Settlement Administrator. The Court
16 finds notice was provided to the Class pursuant to the Preliminary
17 Approval Order, constitutes the best practicable notice to the Class, and
18 satisfied due process. Thus, the Court approves the payment of the
19 Administration Costs of \$8,750 for the Settlement Administrator's
20 services in administering the Settlement.

21 13. PAGA Payment. The Court finds the PAGA Payment of \$50,000, seventy-five
22 percent (75%) of which (\$37,500) will be paid to the LWDA out of the Gross Settlement
23 Amount and twenty-five percent (25%) of which (\$12,500) will be distributed to Eligible
24 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
25 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

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1 14. Funding the Gross Settlement Amount. No later than December 31, 2024,
2 Defendant shall deposit the Gross Settlement Amount of \$750,000 needed to pay the entire
3 Gross Settlement Amount by wiring the funds to the Settlement Administrator. At this time,
4 Defendant will also wire Defendant's portion of payroll taxes as the Class Members' current or
5 former employer, which will be paid separately and in addition to the Gross Settlement Amount,
6 to the Settlement Administrator. Defendant shall also at this time provide any tax information
7 that the Settlement Administrator may need to calculate each Participating Class Member's
8 Individual Settlement Share. Within fourteen (14) calendar days after the funding of the
9 Settlement, the Settlement Administrator shall calculate and pay all payments due under the
10 Settlement Agreement.

11 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
12 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
13 Settlement was the product of arm's-length negotiations following extensive litigation,
14 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
15 Mike Ludwig, an experienced and well-respected mediator.

16 a. The fairness of the Settlement is demonstrated by there being no
17 objections to and no requests for exclusion from the Settlement.

18 b. The fairness of the Settlement is further illustrated by the gross *average*
19 Individual Settlement Share being approximately \$1,899.37, and the gross
20 *highest* Individual Settlement Share being about \$4,176.59.

21 16. Uncashed Checks. Participating Class Members must cash or deposit their
22 Individual Settlement Share checks within one hundred eighty (180) calendar days after the
23 checks are mailed to them. Uncashed settlement checks will be canceled and paid to the
24 California State Controller: Unpaid Wage Fund.

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1 17. Modification of Settlement Agreement. The Participating Class Members are
2 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
3 Agreement by an express written instrument signed by counsel for all Parties or their successors-
4 in-interest subject to the Court's approval. Such amendments or modifications shall be consistent
5 with this Order and Judgment and cannot limit the rights of Participating Class Members under
6 the Settlement Agreement.

7 18. Final Accounting and Compliance. The Court sets a compliance hearing for
8 August 8, 2025 in Department C-71. Within five (5) court days before this hearing, Plaintiffs
9 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
10 compliance status report shall specify the total amount paid to Participating Class Members and
11 the residual of the unclaimed settlement funds that will be paid to the entity identified as the
12 recipient of such funds in the Settlement Agreement.

13 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
14 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
15 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
16 and for any other necessary purpose, including, without limitation:

- 17 a. enforcing the terms and provisions of the Settlement and resolving any
18 disputes, claims, or causes of action in this lawsuit that, in whole or in
19 part, are related to or arise out of the Settlement or this Order and
20 Judgment;
- 21 b. entering such additional orders as may be necessary or appropriate to
22 protect or effectuate this Order and Judgment approving the Settlement,
23 and permanently enjoining Plaintiffs from initiating or pursuing related
24 proceedings, or to ensure the fair and orderly administration of the
25 Settlement; and
- 26 c. entering any other necessary or appropriate orders to protect and effectuate
27 this Court's retention of continuing jurisdiction.

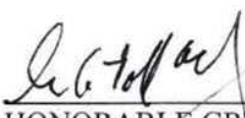
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1 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
2 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Agreement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

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12 **IT IS SO ORDERED.**

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14 DATED: _____

15  5/24/24
16 _____
17 HONORABLE GREGORY W. POLLACK
18 SUPERIOR COURT JUDGE
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is award@justicelawcorp.com

On June 4, 2024, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Herrera, et al. v. Metal Surfaces International, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 853998-21**
Court Case No.: 37-2022-00003417-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 4, 2024, at Pasadena, California.



Alex Ward