

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff JAMES F. RACHAL, JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JAMES F. RACHAL, JR., an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

ELG METALS, INC., a Pennsylvania
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 20STCV45861

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: November 18, 2022

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

1 This matter having come before the Honorable Judge Stuart M. Rice of the Superior Court of the
2 State of California, in and for the County of Los Angeles, at 10:30 a.m. on November 18, 2022, with
3 Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law
4 Group, APLC as counsel for plaintiff JAMES F. RACHAL, JR. ("Plaintiff"), and Garrett V. Jensen,
5 Esq., and Carolina A. Schwalbach, Esq. of CDF Labor Law, LLP appearing for defendant ELG
6 METALS, INC., (hereinafter "Defendant"). The Court, having carefully considered the briefs,
7 argument of counsel and all the matters presented to the Court, and good cause appearing, hereby
8 GRANTS Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Joint Stipulation of Settlement and Release of Class
11 and PAGA Action ("Settlement Agreement" or "Agreement"), a true and correct copy of which is
12 attached hereto as **Exhibit "1"**. This is based on the Court's determination that the Settlement
13 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
14 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
18 Defendant shall pay is Two Hundred Twelve Thousand, Five Hundred Dollars (\$212,500.00). It
19 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and
20 reasonable as to all Class Members when balanced against the probable outcome of further litigation
21 relating to certification, liability, and damages issues. It further appears that investigation and research
22 have been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial additional
24 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
25 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
26 intensive, serious, and non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
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1 reasonably of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
4 reasonable when balanced against the probable outcome of further litigation relating to certification,
5 liability, and damages issues.

6 5. Plaintiff seeks an award of Class Counsel's Attorneys' Fees and Expenses not to exceed
7 one-third of the Gross Settlement Amount, currently estimated to be Seventy Thousand Eight Hundred
8 and Thirty-Three Dollars and Thirty-Three Cents (\$70,833.33) plus costs and expenses not to exceed
9 Twenty Thousand Dollars (\$20,000), and proposed Incentive Award to the Class Representative, James
10 F. Rachal, Jr., in an amount not to exceed Ten Thousand Dollars (\$10,000). While these awards appear
11 to be within the range of reasonableness, the Court will not approve Class Counsel's Attorneys' Fees
12 and Expenses or Incentive Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Class:

17 "All non-exempt employees of Defendant in California from January 18,
18 2017 to July 27, 2022."

19 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
20 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
21 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
22 common questions of law and fact predominate, and there is a well-defined community of interest
23 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
24 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
25 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
26 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified
27 to act as counsel for the Class Representative in his individual capacity and as the representative of the
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1 Class Members.

2 8. The Court provisionally appoints plaintiff JAMES F. RACHAL, JR., as the
3 representative of the Class.

4 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
5 APC, and Shani Zakay, Esq., of Zakay Law Group, APLC, as Class Counsel for the Class Members.

6 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
7 Class Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit “A”**. The Court finds
8 that the notice appears to fully and accurately inform the Class Members and PAGA Group Members
9 of all material elements of the proposed Settlement, including right of any Class Member to be excluded
10 from the Class by submitting a written request for exclusion, and of each Class Member’s right and
11 opportunity to object to the Settlement. The Court further finds that the distribution of the notice
12 substantially in the manner and form set forth in the Agreement and this Order meets the requirements
13 of due process, is the most reasonable notice under the circumstances, and shall constitute due and
14 sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class
15 mail, pursuant to the terms set forth in the Agreement.

16 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within
17 twenty-one (21) calendar days of this order, Defendant shall provide, to the Settlement Administrator
18 the Class Data, including information regarding Class Members that Defendant will in good faith
19 compile from its records, including each Class Member’s full name; most recent known mailing
20 address; Social Security Number; the number of pay periods worked for each Settlement Class Member
21 and PAGA Group Member. Within thirty (30) calendar days after the date of preliminary approval, the
22 Settlement Administrator shall mail the Class Notice to all identified, potential Class Members via first
23 class U.S. Mail using the most current mailing address information available.

24 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
25 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
26 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
27 Settlement of the Released Class Claims that are set forth in the Notice. All requests for exclusion must

1 be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the
2 date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more
3 than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to
4 opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment
5 under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or
6 comment thereon. Class Members who have not requested exclusion shall be bound by all
7 determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out
8 that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
9 individuals is not permitted and will be deemed invalid.

10 13. Any Class Member who has not opted out may appear at the final approval hearing and
11 may object or express the Class Member's views regarding the Settlement and may present evidence
12 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
13 by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the
14 Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement
15 Administrator.

16 14. A final approval hearing shall be held before this Court on _____ at
17 _____ AM in Department 1 of the Los Angeles County Superior Court to determine all necessary
18 matters concerning the Settlement, including: whether the proposed settlement of the Action on the
19 terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be
20 finally approved by the Court; whether an Order Granting Final Approval should be entered herein;
21 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
22 reasonable to the Class; and to finally approve the Class Counsel's Attorneys' Fees and Expenses,
23 Incentive Award, and the Settlement Administration Costs. All papers in support of the motion for final
24 approval and the motion for Class Counsel's Attorneys' Fees and Expenses and Incentive Award shall
25 be filed with the Court and served on all counsel no later than sixteen (16) court days before the hearing.

26 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
27 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
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evidence of, or used against Defendant as, an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement. In such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

17. Pending final determination of whether the Settlement should be approved, Class Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting, intervening in, instigating or in any way participating in the commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Released Class Claims, unless and until they submit a timely request for exclusion pursuant to the Agreement.

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18. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: _____

JUDGE OF THE SUPERIOR COURT