

1
2
3
4
5
6
7
8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN DIEGO**

12 GERARDO DIAZ, on behalf of himself, all
13 others similarly situated, and on behalf of the
14 general public,

15 Plaintiff,

16 v.

17 CMC AMERICA, LLC; and DOES 1 through
18 100,
19

20 Defendants.
21
22
23
24
25
26
27

Case No. 37-2022-00019716-CU-OE-CTL

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT, AND
ENTERING OF FINAL JUDGMENT**

Date: May 23, 2024

Time: 9:00 a.m.

Dept.: C-73

1 This matter came on for hearing on May 23, 2024, at 9:00 a.m., in Department C-73 of the
2 above-captioned Court on Plaintiff's Motion for Final Approval of Class Action Settlement,
3 Attorneys' Fees, Costs, Class Representative Enhancement Payment, and Entering of Final
4 Judgment. Having received and considered the Settlement Agreement, the supporting papers filed
5 by the Parties, and the evidence and argument received by the Court in conjunction with the Motion
6 for Preliminary Approval of Class Action Settlement, and the instant Motion for Final Approval,
7 Attorneys' Fees, Costs, Class Representative Enhancement Payment, and Entering of Final
8 Judgment, the Court grants final approval of the Settlement and HEREBY ORDERS AND
9 MAKES THE FOLLOWING DETERMINATIONS:

10 1. Pursuant to the Preliminary Approval Order, the Notice was mailed to all members
11 of the Class by first-class U.S. mail. The Notice informed the Class of the terms of the Settlement,
12 of their right to receive their proportional Settlement Payment, of their right to request exclusion
13 from the Class and the Settlement, of their right to comment upon or object to the Settlement and
14 to appear in person or by counsel at the final approval hearing and of the date set for the Final
15 Approval hearing. Adequate periods of time were provided by each of these procedures.

16 2. In response to the Notice, no member of the Class filed written objections to the
17 Settlement, or stated an intention to appear at the final approval hearing. No member of the Class
18 timely and validly requested to be excluded from the Settlement. No member of the Class filed a
19 dispute regarding the Settlement.

20 3. The Court finds and determines that this notice procedure afforded adequate
21 protections to Class Members and provides the basis for the Court to make an informed decision
22 regarding approval of the Settlement based on the Class Members' response. The Court finds and
23 determines that the Notice provided in the Action was the best notice practicable, which satisfied
24 the requirements of law and due process.

25 4. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
27 finally approved, and that all terms and provisions of the Settlement Agreement should be and
28 hereby are ordered to be consummated.

1 5. The Court has certified a Class, as that term is defined in and by the terms of the
2 Settlement Agreement, and the Court deems this definition sufficient for purposes of California
3 Rule of Court 3.765(a).

4 6. The Court hereby approves the terms set forth in the Settlement Agreement and
5 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties
6 to effectuate the Settlement according to its terms. The Court finds that the Settlement was reached
7 as a result of informed and non-collusive arm's-length negotiations. The Court further finds that
8 the Parties conducted extensive investigation, research, and discovery and that their attorneys were
9 able to reasonably evaluate their respective positions. The Court also finds that Settlement will
10 enable the Parties to avoid additional and potentially substantial litigation costs, as well as delay
11 and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary
12 recovery provided as part of the Settlement and recognizes the significant value accorded to the
13 Class.

14 7. The Court hereby confirms David Mara and Matthew Crawford of Mara Law Firm,
15 PC as Class Counsel in this action.

16 8. The Court hereby confirms the Plaintiff Gerardo Diaz as the Class Representatives
17 in this action.

18 9. The Court finds and determines that the Individual Settlement Amounts provided
19 for by the terms of the Settlement to be paid to the Class are fair and reasonable. The Court hereby
20 gives final approval to and orders the payment of those amounts be made to the participating
21 members of the Class in accordance with the terms of the Settlement.

22 10. The Court finds and determines that payment to the California Labor and
23 Workforce Development Agency of \$3,750 as its share of the settlement of civil penalties in this
24 case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders that
25 the payment of that amount be paid in accordance with the Settlement.

26 11. The Court finds and determines the Class Representative Enhancement Payment in
27 the sum of \$10,000 to Plaintiff Gerardo Diaz, to be fair and reasonable. The Court hereby orders
28

1 the Administrator to make this payment to the Plaintiff/Class Representative in accordance with
2 the terms of the Settlement Agreement.

3 12. The Court finds and determines that the payment to be paid to the Settlement
4 Administrator, Apex Class Action LLC, in the sum of \$3,500 for its fee and expenses incurred is
5 fair and reasonable. The Court hereby orders the Administrator to make this payment to itself in
6 accordance with the terms of the Settlement Agreement.

7 13. Pursuant to the terms of the Settlement, and the authorities, evidence and argument
8 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the sum of
9 \$50,512.98 and litigation costs of \$2,193.51. The Court finds such amounts to be fair and
10 reasonable. The Court hereby orders the Settlement Administrator to make these payments in
11 accordance with the terms of the Settlement Agreement.

12 14. Neither Defendant nor any related persons or entities shall have any further liability
13 for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except
14 as provided for by the Settlement Agreement.

15 15. The Court finds and determines that the release contained in the Settlement
16 Agreement at Section I, paragraph 37. is appropriate and shall bind all Class Members who did
17 not timely opt out of the Settlement.

18 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations
19 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that
20 Defendant make payments to Participating Class Members in accordance with the Settlement
21 Agreement.

22 17. The Court finds and determines that nothing in the Settlement Agreement, this
23 Order, or the Judgment (1) is intended or will be construed as an admission of liability or
24 wrongdoing by Defendant or (2) may be offered or admitted in evidence against Defendant (other
25 than solely in connection with this Settlement).

26 18. The Court hereby enters final judgment in this case in accordance with the terms of
27 the Settlement Agreement, Preliminary Approval Order and this Order.
28

19. The Parties shall bear their own costs and attorneys' fees except as otherwise provided for by the Settlement Agreement and this Court's Order Granting Final Approval.

20. Without affecting the finality of this Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

JUDGMENT

21. This document shall constitute a judgment for purposes of California Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall be entered within the meaning and for purposes of Code of Civil Procedure sections 577, 904.1(a), and Rules 3.769, and 8.104 of the California Rules of Court whereby the named Plaintiff/Class Representative and all Class Members shall take nothing from Defendant except as expressly set forth in the Settlement Agreement, in conjunction with Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement. The Court pursuant to California Rule of Court 3.769(h) shall retain jurisdiction over the parties to enforce the terms of the judgment.

Date:

By: _____
Honorable Joel R. Wohlfeil
Judge of the Superior Court