

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

v.

CMC AMERICA, LLC; and DOES 1
through 100,

Defendants.

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

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 26, 2024
Time: 9:00 a.m.
Dept.: C-73

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable Joel R. Wohlfeil presiding, on January 26, 2024. The Court having considered the
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: All
6 hourly, non-exempt technicians, repairmen, mechanical technicians, machinery technicians,
7 machinery repairmen, or similar job designations and titles, and all other similarly situated non-
8 exempt, hourly employees who worked for Defendant CMC America, LLC from May 24, 2018
9 through January 17, 2023.

10 2. The Court grants preliminary approval of the Settlement and the Class based upon
11 the terms set forth in the Settlement Agreement filed herewith. Capitalized terms shall have the
12 definitions set forth in the Settlement.

13 3. The Settlement appears to be fair, adequate and reasonable to the Class. The
14 Settlement falls within the range of reasonableness and appears to be presumptively valid,
15 subject only to any objections that may be raised at the final approval hearing and final approval
16 by this Court.

17 5. Plaintiff Gerardo Diaz is conditionally approved as the Class Representative for
18 the Class.

19 6. The proposed Class Representative Enhancement Payment of \$10,000 payable to
20 the Plaintiff for his services as the class representative is conditionally approved.

21 7. David Mara and Matthew Crawford of Mara Law Firm, PC are conditionally
22 approved as Class Counsel for the Class.

23 8. The proposed awards of up to \$50,000 in attorneys' fees and up to \$5,000 in
24 actual costs payable to Class Counsel are conditionally approved.

25 9. A final approval hearing on the question of whether the Settlement, attorneys'
26 fees and costs to Class Counsel, and the Class Representative Enhancement Payment should be
27 finally approved as fair, reasonable and adequate as to Class Members is scheduled in
28

1 Department C-73 on the date and time set forth in Paragraph 16 below.

2 10. The Court confirms Apex Class Action LLC (“Apex”) as the Settlement
3 Administrator.

4 11. The proposed payment of no more than \$5,000 in costs to Apex for its services as
5 the Settlement Administrator is conditionally approved.

6 12. The Court hereby preliminarily approves the allocation of \$5,000 of the Gross
7 Fund Value Amount to Plaintiff’s PAGA claims. Of this amount, 75% will be paid to the Labor
8 and Workforce Development Agency (“LWDA”) and the remaining 25% will be distributed to
9 the Aggrieved Employees. At the Final Approval Hearing, the Court will determine the
10 sufficiency of the PAGA payment. If the Court decides to award less than the amounts set forth
11 by the Parties, then excess amount will become part of the available Net Settlement Amount.

12 13. The Court approves, as to form and content, the Notice in substantially the form
13 attached as Exhibit A to the Settlement. The Court approves the procedure for Class Members to
14 participate in, to opt out of, and to object to, the Settlement as set forth in the Notice of
15 Settlement.

16 14. The Court directs the mailing of the Notice by first class mail to Class Members
17 in accordance with the implementation schedule set forth in Paragraph 16 below. The Court
18 finds the dates selected for the mailing and distribution of the Notice, as set forth in the
19 Implementation Schedule, meet the requirements of due process and provide the best notice
20 practicable under the circumstances and shall constitute due and sufficient notice to all persons
21 entitled thereto.

22 15. To facilitate administration of the Settlement pending final approval, the Court
23 hereby enjoins Plaintiffs and all Class Members from filing or prosecuting any claims, suits or
24 administrative proceedings (including, but not limited to, filing claims with the Division of
25 Labor Standards Enforcement of the California Department of Industrial Relations) regarding
26 claims released by the Settlement unless and until such Class Members have filed valid Requests
27 for Exclusion with the Settlement Administrator and the time for filing valid Requests for
28

1 Exclusion with the Settlement Administrator has elapsed. This provision shall not apply to
2 claims not alleged in the Action.

3 16. The Court orders the following **Implementation Schedule** for further
4 proceedings:

5 a.	Deadline for Defendant to submit 6 Class Data to Settlement 7 Administrator:	[10 business days after entry of the Preliminary Approval Order]
8 b.	Deadline for Settlement 9 Administrator to Mail the Notice to 10 Class Members	[10 business days after receipt of the Class Data]
11 c.	Deadline for Class Members to 12 Postmark Requests for Exclusion Forms	[30 days after mailing of Notice to Class Members]
13 d.	Deadline for Receipt by Court and 14 Counsel of any Objections to the Settlement	[30 days after mailing of Notice to Class Members]
15 e.	Deadline for Class Counsel to file 16 Motion for Final Approval of 17 Settlement	[16 Court days before Final Approval Hearing]
18 f.	Deadline for Class Counsel to file 19 Motion for Attorneys' Fees, Costs and Service Awards	[16 Court days before Final Approval Hearing]
20 g.	Final Approval Hearing and Final 21 Approval	_____, 2024 _____

22 **IT IS SO ORDERED.**

23
24 Dated: _____, 2024

25 BY _____
26 Honorable Joel R. Wohlfeil
27 San Diego Superior Court Judge
28