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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANTHONY SJOMELING, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CUMMINGS INDUSTRIES, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CIVSB2213873

Assigned to the Hon. Christian Towns

**[PROPOSED] ORDER GRANTING
FINAL APPROVING OF CLASS
ACTION SETTLEMENT AND FINAL
JUDGEMENT**

HEARING INFO

Date: October 2, 2024

Time: 8:30 a.m.

Dept.: S26

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

OCT 02 2024

BY

Jessica Morales
JESSICA MORALES, DEPUTY

1 This matter came for hearing on October 2, 2024, regarding Plaintiff Anthony Sjomeling's
2 ("Plaintiff") unopposed Motion for Final Approval of Class Action Settlement on the terms set forth
3 in the Class Action and PAGA Settlement Agreement (the "Settlement" or the "Settlement
4 Agreement"). In conformity with California Rules of Court, rule 3.769, with due and adequate notice
5 having been given to Class Members (as defined in the Settlement), and having considered the
6 Settlement, all of the legal authorities and documents submitted in support thereof, all papers filed
7 and proceedings had herein, all oral and written comments received regarding the Settlement, and
8 having reviewed the record in this litigation, and good cause appearing, the Court **GRANTS** final
9 approval of the Settlement and orders and makes the following findings and determinations and enters
10 final judgment as follows:

11 1. All terms used in this order shall have the same meaning as those terms used and/or
12 defined in the parties' Settlement Agreement and Plaintiff's Motion for Order Granting Final
13 Approval of Class Action Settlement. A copy of the Settlement is attached to the Declaration of
14 Mehrdad Bokhour in Support of the Plaintiff's Motion for Final Approval of Class Action and is
15 made a part of this order.

16 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
17 jurisdiction to approve this Settlement and all exhibits thereto.

18 3. For settlement purposes only, the Court finally certifies the Settlement Class, as
19 defined in the Settlement and as follows: "all current and former non-exempt employees who worked
20 for any Defendants within the State of California at any time during the Class Period," which is the
21 period from July 6, 2018, through December 31, 2023. The PAGA Members include "all current and
22 former non-exempt employees who worked for any Defendants within the State of California at any
23 time during the PAGA Period," which is the period from May 10, 2022, through December 31, 2023.
24 "Defendant" means and refers to defendant Cummings Industries, Inc.

25 4. The Court deems this definition sufficient for the purpose of rule 3.765(a) of the
26 California Rules of Court and solely for the purpose of effectuating the Settlement.

27 5. The Court finds that an ascertainable class of 81 class members exists and a well-
28 defined community of interest exists on the questions of law and fact involved because in the context

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

5 6. The Court is satisfied that ILYM Group, Inc., appointed as the Settlement
6 Administrator, completed the distribution of the Class Notice to the Class in a manner that complies
7 with California Rule of Court 3.766. The Class Notice informed 81 prospective Class Members of
8 the Settlement terms, their rights under the settlement and their settlement share, their rights to submit
9 a request for exclusion, their rights to comment on or object to the Settlement, and their rights to
10 appear at the Final Approval and Fairness Hearing and be heard regarding approval of the Settlement.
11 Each of these procedures provided a sufficient period of time to respond and to act. No Class
12 Members filed a written objection to the Settlement as part of this notice process, no Class Members
13 filed a written statement of intention to appear at the Final Approval and Fairness Hearing, and no
14 individual submitted a request for exclusion.

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

20 8. The Court directs the Parties to effectuate the Settlement Agreement according to its
21 terms and declares the Settlement Agreement to be binding on all 81 Participating Class Members.

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

26 10. The Court also finds that the Settlement now will avoid additional and potentially
27 substantial litigation costs, as well as delay and risks to the Parties, if they continue to litigate the
28 case. Additionally, after considering the monetary recovery provided as part of the Settlement in

1 light of the challenges posed by continued litigation, the Court concludes that Class Counsel secured
2 significant relief for Class Members.

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

5 12. The Court appoints Plaintiff Anthony Sjomeling as Class Representative and finds
6 him to be adequate.

7 13. The Court appoints Joshua Falakassa of Falakassa Law, P.C. and Mehrdad Bokhour
8 of Bokhour Law Group, P.C. as Class Counsel and finds each of them to be adequate, experienced,
9 and well-versed in class action litigation.

10 14. The terms of the Settlement Agreement, including the Gross Settlement Amount of
11 \$325,000 and the individual settlement shares, are fair, adequate, and reasonable to the Class and
12 each Class Member, and the Courts grants final approval of the Settlement set forth in the Settlement
13 Agreement, subject to this order.

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

16 A. The Court awards \$6,000 in Administration Costs to ILYM Group, Inc., the
17 Settlement Administrator, and finds this amount to be fair and reasonable.
18 The Court grants final approval of it and orders the Parties to make the
19 payment to the Settlement Administrator in accordance with the Settlement
20 Agreement.

21 B. The Court awards \$108,333.33 to Class Counsel as attorneys' fees and finds
22 this amount fair and reasonable in light of the benefit obtained for the Class.
23 The Court grants final approval of awards and orders the Class Counsel
24 Attorney Fees payment to be made in accordance with the Settlement
25 Agreement.

26 C. The Court awards \$14,217.15 to the Bokhour Law Group, P.C. in litigation
27 costs, an amount which the Court finds to be reflective of the reasonable costs
28 incurred. The Court grants final approval of and orders the Class Counsel

1 Costs in this amount to be made in accordance with the Settlement
2 Agreement.

3 D. The Court awards \$10,000 to the Class Representative as payment requested
4 by Plaintiff and finds this amount to be fair and reasonable. The Court grants
5 final approval of and orders the Service Payment to be made in accordance
6 with the Settlement Agreement.

7 E. The Court approves the \$5,000 allocation for penalties under the Labor Code
8 Private Attorneys General Act of 2004 and orders 75% thereof (*i.e.*, \$3,750)
9 to be paid to the California Labor and Workforce Development Agency in
10 accordance with the terms of the Settlement Agreement and the remainder
11 (*i.e.*, \$1,250) to the PAGA Members.

12 16. The Court orders the Parties to comply with and carry out all terms and provisions of
13 the Settlement, to the extent that the terms thereunder do not contradict this Order, in which case the
14 provisions of this order shall take precedence and supersede the Settlement.

15 17. Nothing in the Settlement or this order purports to extinguish or waive Defendants'
16 rights to continue to oppose the merits of the claims in this Action or class treatment of these claims
17 in this case if the Settlement fails to become final or effective, or in any other case without limitation.
18 If the Settlement Agreement does not become final and effective in accordance with the terms of the
19 Settlement, then this Order Granting Final Approval and Entry of Judgment, and all orders entered in
20 connection herewith, shall be rendered null and void and shall be vacated, and the parties shall revert
21 to their respective positions as of before entering into the Settlement Agreement, and expressly
22 reserve their respective rights regarding the prosecution and defense of this Action, including all
23 available defenses and affirmative defenses, and arguments that any claim in the Action could not be
24 certified as a class action and/or managed as a representative action. The Settlement Agreement is
25 not an admission by Defendants, nor is this Order Granting Final Approval and Entry of Judgment a
26 finding of the validity of any claims in the Action or of any wrongdoing by Defendants or that this
27 Action is appropriate for class or representative treatment (other than for settlement purposes).
28 Neither this Order Granting Final Approval and Entry of Judgment, the Settlement Agreement, nor

1 any document referred to herein, nor any action taken to carry out the Settlement is, may be construed
2 as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability.
3 The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings
4 related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
5 concession with regard to the denials or defenses by Defendants. Notwithstanding these restrictions,
6 Defendants may file in the Action or in any other proceeding this Order Granting Final Approval and
7 Entry of Judgment, the Settlement Agreement, or any other papers and records on file in the Action
8 as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel, release, or other
9 theory of claim or issue preclusion or similar defense as to the released claims.

10 18. The Settlement shall bind all 81 Participating Class Members and this order, including
11 the release of claims (including Released Class Claims, Released PAGA Claims, and General Release
12 by Plaintiff) as set forth in the Settlement Agreement.

13 19. The Parties shall bear their respective attorneys' fees and costs except as otherwise
14 provided in this order and the Settlement Agreement.

15 20. Final Settlement Class Members shall have 180 calendar days after mailing by the
16 Settlement Administrator to cash their settlement checks.

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

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

24 23. Plaintiff shall file a report regarding the distribution status with the Court within one
25 hundred and twenty (120) days after all funds have been distributed.

26 24. The Court hereby sets a hearing date of 8. 4, 2025, at 8:30 a.m. for a
27 hearing on the final accounting and distribution of the settlement.

28 25. This final judgment is intended to be a final disposition of the above-captioned action

1 and is intended to be immediately appealable. This final judgment resolves and extinguishes all
2 claims released by the Settlement Agreement against the Defendants and the Released Parties as set
3 forth in the Agreement.

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5 **IT IS SO ORDERED.**

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7 DATED: 10-2, 2024

C Towns
HONORABLE CHRISTIAN TOWNS

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