

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Email: Kyle@bamlawca.com

12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF GLENN**

15 **FABIAN MARTINEZ, PAUL ADAMS,**
16 **MICHAEL RUSH, and RICHARD L.**
17 **YOUNG, individually on behalf of themselves**
18 **and on behalf of all persons similarly situated,**

19 Plaintiffs,

20 vs.

21 **JOHNS MANVILLE, a Corporation; and**
22 **DOES 1 through 50, inclusive,**

23 Defendants.

CASE NO.: 23CV03097

CLASS ACTION

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

Hearing Date: November 20, 2024

Hearing Time: 2:30 p.m.

Judge: Hon. Alicia Ekland

Dept: 2

Date Filed: March 15, 2023

Trial Date: Not set

1 This matter came before the Honorable Alicia Ekland of the Superior Court of the State of
2 California, in and for the County Glenn, on November 20, 2024, for hearing on the unopposed
3 motion by Plaintiffs Fabian Martinez, Paul Adams, Michael Rush, and Richard L. Young
4 (“Plaintiffs”) for preliminary approval of the Settlement with Defendant Johns Manville
5 (“Defendant”). The Court, having considered the briefs, argument of counsel and all matters
6 presented to the Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for
7 Preliminary Approval of Class Action Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action and PAGA Settlement
11 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
12 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based
13 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
14 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
15 Procedure and California Rules of Court, rule 3.769.

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

18 3. The Gross Settlement Amount that Defendant shall pay is Seven Hundred Fifty
19 Thousand United States Dollars (\$750,000). It appears to the Court on a preliminary basis that the
20 settlement amount and terms are fair, adequate and reasonable as to all potential Class Members
21 when balanced against the probable outcome of further litigation and the significant risks relating
22 to certification, liability and damages issues. It further appears that investigation and research
23 have been conducted such that counsel for the Parties are able to reasonably evaluate their
24 respective positions. It further appears to the Court that the Settlement will avoid substantial
25 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
26 further prosecution of the Action. It further appears that the Settlement has been reached as the
27 result of serious and non-collusive, arm’s-length negotiations.

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

7 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$40,000, and
9 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
10 \$10,000 to Plaintiff Martinez and not more than \$5,000 each to Plaintiffs Young, Adam, and
11 Rush. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any
12 service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence
13 supporting these requests, including lodestar, prior to final approval.

14 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
15 representative treatment and certification of a class for settlement purposes only. This stipulation
16 will not be deemed admissible in this or any other proceeding should this Settlement not become
17 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
18 "all individuals who were employed by Defendant in California and classified as non-exempt
19 employees at any time during the Class Period." The "Class Period" is August 20, 2020, to
20 November 20, 2024.

21 7. The Court concludes that, for settlement purposes only, the Class meets the
22 requirements for conditional certification under section 382 of the California Code of Civil
23 Procedure.

24 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
25 Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel
26 for the Class.

1 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
2 Amount of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development
3 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
4 Agreement pursuant to the PAGA and \$5,000 to the Aggrieved Employees. “Aggrieved
5 Employees” are all individuals who were employed by Defendant in California and classified as
6 non-exempt employees at any time during the PAGA Period (February 10, 2022, to November 20,
7 2024). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided
8 notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be
9 reasonable.

10 10. The Court hereby approves, as to form and content, the Class Notice attached to the
11 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
12 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
13 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
14 and opportunity to object to the Settlement. The Court further finds that the distribution of the
15 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
16 the requirements of due process, is the best notice practicable under the circumstances, and shall
17 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
18 the Class Notice in English by first class mail pursuant to the terms set forth in the Agreement. If a
19 Class Notice Packet is returned because of an incorrect address, the Administrator will promptly
20 search for a more current address for the Class Member and re-mail the Class Notice Packet to any
21 new address for the Class Member no later than seven (7) days after the receipt of the undelivered
22 Class Notice.

23 11. The Court hereby appoints Apex Class Action LLC as the Administrator. No later
24 than fifteen (15) days after this Order, Defendant will provide the Class Data to the Administrator
25 in accordance with the Agreement. The Administrator will perform address updates and
26 verifications as necessary prior to the first mailing. Using best efforts to mail it as soon as
27 possible, and in no event later than fourteen (14) days after receiving the Class Data, the
28

1 Administrator will mail the Class Notice Packet to all Class Members via first-class regular U.S.
2 Mail to their last known address.

3 12. The Court hereby preliminarily approves the proposed procedure for exclusion
4 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
5 from the Class as provided in the Class Notice by following the instructions for requesting
6 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
7 postmarked or received no later than forty-five (45) calendar days after the date of the mailing of
8 the Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response
9 Deadline for requests for exclusion will be extended an additional fourteen (14) days. A Request
10 for Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
11 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
12 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
13 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
14 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
15 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
16 group, class, or subclass of individuals is not permitted and will be deemed invalid.

17 13. Any Class Member who has not opted out may appear at the final approval hearing
18 and may object or express the Member’s views regarding the Settlement and may present evidence
19 and file briefs or other papers that may be proper and relevant to the issues to be heard and
20 determined by the Court as provided in the Class Notice. Class Members will have until the
21 Response Deadline to submit their written objections to the Administrator. Written objections
22 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
23 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
24 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
25 Hearing to make an oral objection.

26 14. A final approval hearing shall be held before this Court on April 16, 2025 at 2:30
27 p.m. in Department 2 at the Glenn County Superior Court to hear the motion for final approval,
28

1 and to determine all necessary matters concerning the Settlement, including: whether the proposed
2 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
3 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
4 Order and Judgment should be entered herein; whether the plan of allocation contained in the
5 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
6 finally approve attorneys' fees and costs, service awards, and the fees and expenses of the
7 Administrator. All papers in support of the motion for final approval and for attorneys' fees, costs
8 and service awards shall be filed with the Court and served on all counsel no later than sixteen
9 (16) court days before the hearing and this motion shall be heard at this final approval hearing.

10 15. Neither the Settlement nor any exhibit, document, or instrument delivered
11 thereunder shall be construed as a concession or admission by Defendant in any way that the
12 claims asserted have any merit or that this Action was properly brought as a class or representative
13 action, and shall not be used as evidence of, or used against Defendant as, an admission or
14 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
15 omission by Defendant or with respect to the truth of any allegation asserted by any person.
16 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
17 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
18 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
19 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
20 evidence of a presumption, concession, indication or admission by Defendant of any liability,
21 fault, wrongdoing, omission, concession or damage.

22 16. In the event the Settlement does not become effective in accordance with the terms
23 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
24 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
25 and the Parties shall revert to their respective positions as of before entering into the Agreement,
26 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
27 including all available defenses and affirmative defenses, and arguments that any claim in the
28

1 Action could not be certified as a class action and/or managed as a representative action. In such
2 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
3 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
4 the Agreement with respect to the effect of the Agreement if it is not approved.

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

9 **IT IS SO ORDERED.**

10
11 Dated: _____

12 _____
13 HON. ALICIA EKLAND
14 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
15
16
17
18
19
20
21
22
23
24
25
26
27
28