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SMART METALS RECYCLING, LLC

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF YOLO

NORMA BORQUEZ, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

SMART METALS RECYCLING, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CV2024-0050

ASSIGNED FOR ALL PURPOSES TO:
THE HONORABLE SAMUEL T.
MCADAM, DEPARTMENT 14

**[PROPOSED] JUDGMENT AND ORDER
GRANTING FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

DATE: April 8, 2025

TIME: 9:00 a.m.

DEPT.: 14

Action Filed: January 3, 2024

Trial Date: Not Set

1 The above-referenced Class Action and PAGA Representative Action (“Action”) having
2 come before the Court on April 8, 2025 at 9:00 a.m. in Department 14 before the Honorable Samuel
3 T. McAdam, presiding for a hearing and Judgment and Order Granting Final Approval of Class
4 and PAGA Action Settlement (“Final Order”), consistent with the Court’s Preliminary Approval
5 Order (“Preliminary Approval Order”), filed and entered November 5, 2024 and as set forth in the
6 Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiff Norma
7 Borquez and Defendant Smart Metals Recycling, LLC (“Stipulation of Settlement”) in this Action,
8 and due and adequate notice having been given to all Class Members and Aggrieved Employees as
9 required in the Preliminary Approval Order, and the Court having considered all papers filed and
10 proceedings had herein and otherwise being fully informed, and good cause appearing therefor,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

12 1. All terms used herein shall have the same meaning as defined in the Stipulation of
13 Settlement.

14 2. Consistent with the definitions provided in the Stipulation of Settlement, the terms
15 “Class” and “Class Members” shall mean all persons employed by Defendant in California as a
16 non-exempt employee from January 3, 2020 through December 31, 2024. The Class, however, shall
17 not include any person who previously settled or released the claims covered by this Settlement, or
18 any person who previously was paid or received awards through civil or administrative actions for
19 the claims covered by this Settlement, or any person who submitted a timely and valid Request for
20 Exclusion as provided in this Settlement. The “Class Period” shall be January 3, 2020 through
21 December 31, 2024. All Class Members who worked any hours for Defendant in California during
22 any pay period from January 1, 2023 through December 31, 2024 are aggrieved employees with
23 respect to the California Private Attorneys General Act (“PAGA”) (“Aggrieved Employees”).
24 Aggrieved Employees will be paid their Individual PAGA Payment and release the Released PAGA
25 Claims regardless of whether they submit a timely and valid Request for Exclusion from the
26 Settlement. Aggrieved Employees are not eligible to exclude themselves from, or to opt out of, the
27 Released PAGA Claims (defined below). For purposes of the Settlement and this Final Order,
28 “Released Parties” as referenced herein and as released in the Settlement shall collectively mean:

1 (i) Defendant Smart Metals Recycling, LLC; (ii) each of Defendant's respective, present and future
2 parents, subsidiaries, partners and affiliates, including, without limitation, any corporation, limited
3 liability company or partnership; (iii) the past, present and future board members, directors,
4 officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents,
5 consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors,
6 successors and assigns of any of the foregoing; and (iv) any individual or entity which could be
7 jointly liable with any of the foregoing.

8 3. This Court has jurisdiction over the subject matter of this Action and over all Parties
9 to this Action, including all Class Members and Aggrieved Employees.

10 4. Distribution of the Class and PAGA Notice directed to the Class Members and
11 Aggrieved Employees as set forth in the Stipulation of Settlement and the other matters set forth
12 therein has been completed in conformity with the Preliminary Approval Order, including notice
13 to all Class Members and Aggrieved Employees who could be identified through reasonable effort,
14 and is the best notice practicable under the circumstances. The Class and PAGA Notice provided
15 due and adequate notice of the proceedings and of the matters set forth therein, including the
16 proposed Settlement set forth in the Stipulation of Settlement, to all persons entitled to such Class
17 and PAGA Notice, and the Class and PAGA Notice fully satisfied the requirements of due process.
18 All Class Members, Aggrieved Employees, Released Class Claims and all Released PAGA Claims,
19 are covered by and included within the Settlement and this Final Order.

20 5. The Court hereby finds the Settlement was entered into in good faith pursuant to and
21 within the meaning of California Code of Civil Procedure section 877.6. The Court further finds
22 that the Settlement is fair, adequate and reasonable and that Plaintiff has satisfied the standards and
23 applicable requirements for final approval of this class action Settlement under California law,
24 including the provisions of California Code of Civil Procedure section 382 and Federal Rule of
25 Civil Procedure Rule 23, approved for use by the California state courts in *Vasquez v. Superior*
26 *Court* (1971) 4 Cal.3d 800, 821.

27 6. The Court hereby approves the Settlement set forth in the Stipulation of Settlement
28 and finds that the Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties

1 to effectuate the Settlement according to its terms. The Court finds that the Settlement has been
2 reached as a result of arms-length negotiations and private mediation. The Court further finds that
3 the Parties have conducted investigation and research, and counsel for the Parties are able to
4 reasonably evaluate their respective positions. The Court also finds that Settlement at this time will
5 avoid additional substantial costs, as well as avoid the delay and risks that would be presented by
6 the further prosecution of the Action. The Court has reviewed the benefits that are being granted as
7 part of the Settlement and recognizes the significant value to the Class Members and Aggrieved
8 Employees. The Court also finds that the Class is properly certified as a class for settlement
9 purposes only.

10 7. As of the date of entry of this Final Order, and effective on the date when Defendant
11 fully funds the entire Gross Settlement Amount and funds all the employer's share of payroll taxes
12 owed on the Wage Portion of the Individual Class Payment, the Class Representative and each and
13 every Participating Class Member (i.e., Class Members who have not submitted a valid Request
14 for Exclusion) are hereby released and forever barred and enjoined from prosecuting the Released
15 Class Claims, except as to such rights or claims as may be created by the Settlement, against
16 Defendant and the Released Parties from any and all claims under state, federal and local law
17 ultimately alleged in this Action and that reasonably could have been alleged in this Action based
18 on the factual allegations contained in the operative Complaint in this Action and any amendments
19 thereto, as to the Participating Class Members, including without limitation, California Labor Code
20 sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 246, 256, 510, 512,
21 516, 558, 558.1, 1174, 1194, 1197.1, 1198, and 6720, California Industrial Commission Wage
22 Orders, California Code of Regulations, Title. 8, sections 11040, *et seq.* and 3203, *et seq.*, Business
23 and Professions Code sections 17200 *et seq.* and 3203 *et seq.*, California Code of Civil Procedure
24 section 1021.5, California Civil Code sections 3287 and 3289, and including all claims for or related
25 to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular
26 rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment
27 of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal
28 period premiums, rest breaks and rest break premiums, excessive temperature working conditions,

1 failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching
2 benefits for payments received under the Settlement, unfair competition, unfair business practices,
3 unlawful business practices, fraudulent business practices, class actions, representative actions,
4 aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil
5 penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other
6 claims and allegations alleged in the Action (collectively “Released Class Claims”). Expressly
7 excluded from the release are claims for vested benefits, wrongful termination, violation of the Fair
8 Employment and Housing Act, unemployment insurance, disability, social security, workers’
9 compensation, and claims outside the Class Period. In addition, as of the date of this Final Order,
10 and effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
11 all the employer’s share of payroll taxes owed on the Wage Portion of the Individual Class Payment,
12 the Class Representative and Participating Class Members are forever barred and enjoined from
13 instituting or accepting damages or obtaining relief on the Released Class Claims against the
14 Released Parties for any period from January 1, 2020 through December 31, 2024.

15 8. As of the date of entry of this Final Order, and effective on the date when Defendant
16 fully funds the entire Gross Settlement Amount, the claims to be released by the Aggrieved
17 Employees include all claims arising during the PAGA Period seeking civil penalties under PAGA,
18 that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent
19 permitted by law, and as a private attorney general acting on behalf of Plaintiffs and the Aggrieved
20 Employees, asserted or could reasonably have asserted based on the facts alleged in the Action
21 and/or the LWDA letter, including but not limited to all claims arising under the California Labor
22 Code including, but not limited to, sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226,
23 226.3, 226.7, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1194, 1197.1, 1198, 2698 *et seq.*, and
24 6720, California Industrial Commission Wage Orders, California Code of Regulations, Title. 8,
25 sections 1040 *et seq.* and 3203 *et seq.*, Business and Professions Code sections 17200 *et seq.*,
26 California Code of Civil Procedure section 1021.5, California Civil Code sections 3287 and 3289,
27 as alleged in the Action (collectively “Released PAGA Claims”). The Settlement shall release and
28 bar all Released PAGA Claims by or on behalf of Plaintiffs and all Aggrieved Employees from

1 January 1, 2023 through December 31, 2024 (“PAGA Period”), and for the entire PAGA Period,
2 regardless of whether Plaintiffs and/or an Aggrieved Employee negotiates (cashes) their/his/her
3 settlement checks sent pursuant to the Settlement. Aggrieved Employees cannot and do not have
4 the right to opt out of the PAGA Group and/or release their PAGA claims against the Released
5 Parties. As such, an individual opting out of the Settlement Class has no impact as to their/his/her
6 standing and/or inclusion in the PAGA Group assuming they/he/she qualify(ies) as an Aggrieved
7 Employee.

8 9. Neither the Settlement nor any of the terms set forth in the Stipulation of Settlement
9 is an admission by Defendant, or any of the other Released Parties, nor is this Final Order a finding
10 of the validity of any claims in this Action, or of any wrongdoing by Defendant or any of the other
11 Released Parties. Neither this Final Order, the Stipulation of Settlement, nor any document referred
12 to herein, nor any action taken to carry out the Stipulation of Settlement, may be construed as, or
13 may be used as, an admission by or against Defendant, or any of the other Released Parties, of any
14 fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Stipulation of
15 Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed
16 as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses
17 by Defendant, or any of the other Released Parties, and shall not be offered in evidence in any
18 action or proceeding in any court, administrative agency or other tribunal for any purpose
19 whatsoever other than to enforce the provisions of this Final Order, the Stipulation of Settlement,
20 the Released Class Claims, the Released PAGA Claims, and any related agreement or release.
21 Notwithstanding these restrictions, any of the Released Parties may file in this Action, or submit in
22 any other proceeding, the Final Order, the Stipulation of Settlement, and any other papers and
23 records on file in this Action as evidence of the Settlement to support a defense of *res judicata*,
24 collateral estoppel, release or other theory of claim or issue preclusion or similar defense as to the
25 Released Class Claims and the Released PAGA Claims.

26 10. The Court hereby enters judgment in the entire Action as of the filing date of this
27 Final Order, pursuant to the terms set forth in the Stipulation of Settlement. Without affecting the
28 finality of this Final Order in any way, the Court hereby retains continuing jurisdiction over the

1 interpretation, implementation and enforcement of the Settlement and all orders entered in
2 connection therewith pursuant to California Code of Civil Procedure section 664.6.

3 11. The Court finds the settlement payments provided for under the Settlement to be fair
4 and reasonable in light of all of the circumstances. The Court orders the calculations and the
5 payments to be made and administered in accordance with the terms of the Settlement. The Court
6 further orders Defendant to transmit the Gross Settlement Amount and Employer Taxes no later
7 than thirty (30) days after the entry of this Final Order.

8 12. The Court hereby confirms Justice for Workers, P.C. as Class Counsel for the
9 Settlement Class and for all Aggrieved Employees.

10 13. The Court further finds that the common fund doctrine is applicable to this Action
11 because there is a sufficiently identifiable class of beneficiaries (“the Class”), the benefits can be
12 accurately traced to the Settlement that the Class Representative and Class Counsel negotiated on
13 behalf of the Class, and the fee can be shifted with exactitude to those benefiting as the fee request
14 is a specific, lump-sum percentage of the common fund. *See Serrano v. Priest* (1977) 20 Cal.3d 25,
15 34-35. The Court finds the attorneys’ fees request of thirty-three and one-third percent (33 1/3%)
16 of the Gross Settlement Amount to be appropriate compensation for Class Counsel. The attorneys’
17 fees request is within the range that has been approved by other courts in similar cases and
18 reasonable in light of the circumstances of this Action, the substantial and beneficial results
19 obtained on behalf of the Class, and the contingent nature of the recovery over the course of this
20 Action, which included potential loss at summary judgment, certification and/or trial proceedings.
21 Pursuant to the terms of the Settlement, and the authorities, evidence, and argument submitted by
22 Class Counsel, the Court hereby awards Class Counsel attorneys’ fees in the amount of \$133,333.33
23 and attorneys’ costs in the amount of \$7,206.73, from the Gross Settlement Amount as final
24 payment for and complete satisfaction of any and all attorneys’ fees and costs incurred by and/or
25 owed to Class Counsel and any other person or entity related to this Action. The Court further
26 orders that the award of attorneys’ fees and costs set forth in this Paragraph shall be administered
27 pursuant to the terms of the Stipulation of Settlement and made payable to and deposited into the
28 bank account of “Justice for Workers, P.C.” as Class Counsel in this Action.

1 14. The Court also hereby approves and orders payment of a Class Representative
2 Service Payment to Plaintiff and Class Representative Norma Borquez in the amount of \$7,500.00
3 from the Gross Settlement Amount.

4 15. The Court also hereby approves and orders payment in the amount of \$30,000.00
5 from the Gross Settlement Amount for PAGA penalties, payable to the “California Labor and
6 Workforce Development Agency.”

7 16. The Court also hereby approves and orders payment from the Gross Settlement
8 Amount for actual claims administration expenses incurred by the Administrator, Phoenix Class
9 Action Administration Solutions, in the amount of \$7,950.00.

10 17. The Court also hereby approves and orders that any residue from uncashed
11 settlement award checks after the expiration date will be paid out to the California Controller’s
12 Unclaimed Property Fund in the name of the Class Member, thereby leaving no unclaimed residue
13 subject to California Code of Civil Procedure section 384.

14 18. The Court also hereby finds and orders that the Stipulation of Settlement is and
15 constitutes a fair, adequate, and reasonable compromise of the Released Claims against Defendant
16 and the Released Parties.

17 19. Provided the Settlement becomes effective under the terms of the Stipulation of
18 Settlement, the Court also hereby orders that the deadline for mailing the Court-approved Individual
19 Class Payments, Individual PAGA Payments, attorneys’ fees and costs, and Class Representative
20 Service Payment is as set forth in the Implementation Schedule within the Preliminary Approval
21 Order.

22 20. The Court also hereby finds that there were no objections to the Settlement raised
23 by any person on the record at the hearing on the Final Approval Order.

24 21. The Court hereby finds that no Class Members timely opted out of the Settlement.

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1 22. The Court sets a Compliance Hearing for _____, 2026 at 9:00 a.m. in
2 Department 14 of the above-entitled court. Plaintiff shall file a declaration from the Administrator
3 regarding the status of settlement distribution no later than seven (7) calendar days before the
4 Compliance Hearing.

5 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

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7 Dated: _____, 2025

By: _____
The Honorable Samuel T. McAdam
Judge of the Superior Court

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