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

FEB 09 2023

BY 
VICTORIA SANCHEZ, DEPUTY

6 *Attorneys for Plaintiffs*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 SANTOS APARICIO and ANDRES AVINA,
11 individually, and on behalf of other members
12 of the general public similarly situated;

12 Plaintiffs,

13 v.

14 CAMERON WELDING SUPPLY, a
15 California corporation; and DOES 1 through
16 100, inclusive;

17 Defendants.

Case No.: CIVSB2202694

Assigned for All Purposes to:
Honorable Jessica Morgan
Department S-26

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 2, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department S-26

Complaint Filed: February 10, 2022
FAC Filed: August 16, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Santos Aparicio, Andres
2 Avina, and Jean Hyung Choi’s (“Plaintiffs,” “Plaintiff Aparicio,” “Plaintiff Avina,” and
3 “Plaintiff Choi”) Motion for Final Approval of Class Action Settlement, and considering the
4 papers submitted in support of the motion, including the Class Action and PAGA Settlement
5 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby **FINDS AND**
6 **ORDERS:**

7 Plaintiffs and Defendant Cameron Welding Supply (“Defendant”) entered the Settlement
8 Agreement on or about May 15, 2023 to settle this lawsuit.

9 The Court entered an order dated July 20, 2023 preliminarily approving the settlement of
10 this lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil Procedure section
11 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, providing
12 Class Members with an opportunity to object to the Settlement or exclude themselves from the
13 Class, and scheduling a Final Approval Hearing.

14 The Court held a Final Approval Hearing on January 2, 2024 to determine whether to
15 give final approval to the Settlement of this lawsuit.

16 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
17 (“Order and Judgment”) incorporates the Settlement Agreement. Unless otherwise provided
18 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
19 in the Settlement Agreement.

20 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
21 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
22 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
23 including jurisdiction to approve the Settlement and grants final certification of the Class.

24 3. Final Class Certification. The Court finds the Class satisfies all applicable
25 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
26 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
27 exempt employees of Defendant within the State of California at any time during the period from
28 February 10, 2018, through April 12, 2023 (“Class,” “Class Members,” and “Class Period”).

1 There are one hundred twenty-four (124) Class Members who did not submit valid and timely
2 Requests for Exclusion from the Settlement (“Participating Class Members”).

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
5 Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds the Court Approved Notice of Class Action
7 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to
8 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
9 Approval Order. The Court also finds the Class Notice:

- 10 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the
12 Settlement Agreement and their rights; (iii) their right to object to any
13 aspect of the Settlement Agreement; (iv) their right to exclude themselves
14 from the Settlement Agreement; (v) their right to receive settlement
15 payments; (vi) their right to appear at the Final Approval Hearing; and
16 (vii) binding effect of the orders and judgment in this lawsuit on all
17 Participating Class Members;
- 18 b. constitutes notice that fully satisfied the requirements of Code of Civil
19 Procedure section 382, California Rule of Court 3.769, and due process;
- 20 c. constitutes the best practicable notice to Class Members under the
21 circumstances of this lawsuit; and
- 22 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

23 6. Final Settlement Approval. The terms and provisions of the Settlement
24 Agreement have been entered into good faith and are the product of arm’s-length negotiations by
25 experienced counsel who have done a meaningful investigation of the claims. The Settlement
26 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
27 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
28 Settlement Agreement according to its terms and provisions.

1 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiffs, Participating Class Members, Aggrieved
3 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Class
8 Claims and Released Private Attorneys General Act of 2004 (“PAGA”) Claims. The Settlement
9 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
10 Class Members who have submitted timely requests for exclusion.

11 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
12 any action to enforce the terms and provisions of the Settlement Agreement.

13 9. Release by Participating Class Members Who Are Not Aggrieved Employees.
14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
15 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
16 Participating Class Members, on behalf of themselves and their former and present
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
18 Released Parties from the Released Class Claims.

19 a. Release by Non-Participating Class Members Who Are Aggrieved
20 Employees. Effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount and funds all employer payroll taxes owed on
22 the Wage Portion of the Individual Class Payments, all Participating and
23 Non-Participating Class Members, who are Aggrieved Employees, are
24 deemed to release, on behalf of themselves and their former and present
25 representatives, agents, attorneys, heirs, administrators, successors, and
26 assigns, the Released Parties from the Released PAGA Claims.

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1 b. Plaintiffs' Release. Effective on the date when Defendant fully funds the
2 entire Gross Settlement Amount and funds all employer payroll taxes
3 owed on the Wage Portion of the Individual Class Payments, Plaintiffs and
4 their former and present spouses, representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns generally, release and discharge
6 Released Parties from Plaintiffs' Release. Furthermore, Plaintiffs
7 expressly waive and relinquish the provisions, rights, and benefits, if any,
8 of section 1542 of the Civil Code.

9 c. Released Parties. The Released Parties include Defendant and its parents,
10 predecessors, successors, all affiliates, subsidiaries, officers, directors,
11 members, agents, employees, and stockholders.

12 10. Class Representative Service Payments. The Court finds the Class Representative
13 Service Payments of \$7,500 to Plaintiff Aparicio and Plaintiff Avina each and \$5,000 to Plaintiff
14 Choi, to be paid by Defendant to Plaintiffs (totaling \$20,000), out of the Gross Settlement
15 Amount, to be reasonable and appropriate. The Class Representative Service Payments are to be
16 paid pursuant to the terms and provisions set forth in the Agreement.

17 a. The rationale for making enhancement payments is class representatives
18 should be compensated for the expense and risk they incurred in
19 conferring a benefit on the Class. Criteria courts consider include: (1) risk
20 to the class representatives in commencing suit; (2) notoriety and personal
21 difficulties; (3) amount of time and effort spent by the class
22 representatives; (4) duration of the litigation; and (5) personal benefit (or
23 lack thereof) enjoyed by class representatives.

24 b. The Court reviewed Plaintiffs' declarations outlining their involvement.
25 Given the risks inherent in the services as the class representatives,
26 duration of the case and time involved, and benefits created for the Class,
27 the Court approves the payment of the Class Representative Service
28

1 Payments of \$7,500 to Plaintiff Aparicio and Plaintiff Avina each and
2 \$5,000 to Plaintiff Choi.

3 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

4 The Court finds the Class Counsel Fees Payment of \$143,666.67, to be paid by Defendant to
5 Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In
6 addition, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for
7 actual litigation costs incurred of \$15,548.61, to be paid by Defendant to Class Counsel out of
8 the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
9 paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall
10 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
11 incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members.
12 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
13 disbursements incurred by Plaintiffs or Class Members in connection with or related in any
14 manner to this lawsuit, Settlement Agreement, settlement administration, Released Class Claims,
15 and Released PAGA Claims.

- 16 a. The Court has an independent right and responsibility to review the Class
17 Counsel Fees Payment and only award so much as it determines
18 reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.*
19 (2004) 118 Cal.App.4th 123, 127-28.) The Class Counsel Fees Payment of
20 \$143,666.67 is one-third (1/3) of the common fund created for the benefit
21 of the Class and is supported by use of the percentage-fee method. (See
22 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)
23 Considering the results achieved, financial risk undertaken, difficult nature
24 of this litigation, skills required, percentage fees award in previous and
25 other cases, and contingent fees charged in the marketplace, the Court
26 finds the Class Counsel Fees Payment is consistent with the marketplace,
27 is reasonable, and is approved.

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1 b. The Court reviewed the declaration of Douglas Han regarding the costs
2 expended in prosecuting this case. Under the terms of the Settlement,
3 Class Counsel may seek reimbursement of up to \$20,000 in litigation
4 costs. The Court finds Class Counsel expended \$15,548.61 in litigation
5 costs, and such costs were reasonable. The Court approves the payment of
6 the Class Counsel Litigation Expenses Payment of \$15,548.61 from the
7 common fund for the reimbursement of Class Counsel’s litigation costs.

8 12. Administration Expenses Payment. The Court finds Administration Expenses
9 Payment of \$9,000, to be paid by Defendant to the Administrator out of the Gross Settlement
10 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
11 pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court reviewed the declaration of Kaylie O’Connor from CPT Group,
13 Inc., the Administrator. The Court finds notice was provided to the Class
14 pursuant to the Preliminary Approval Order, constitutes the best
15 practicable notice to the Class, and satisfied due process. Thus, the Court
16 approves the payment of the Administration Expenses Payment of \$9,000
17 for the Administrator’s services in administering the Settlement.

18 13. PAGA Penalties. The Court finds the PAGA Penalties of \$20,000, seventy-five
19 percent (75%) of which (\$15,000) will be paid to the LWDA out of the Gross Settlement
20 Amount and twenty-five percent (25%) of which (\$5,000) will be distributed to Aggrieved
21 Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be
22 paid pursuant to the terms and provisions set forth in the Settlement Agreement.

23 14. Funding the Settlement. Defendant shall fund the Gross Settlement Amount by
24 transmitting the funds to the Administrator no later than the Effective Date. Within fourteen (14)
25 calendar days after Defendant fully funds the Gross Settlement Amount, the Administrator will
26 mail checks to the appropriate persons and entities.

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1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Lisa
5 Klerman, an experienced and well-respected mediator.

6 a. The fairness of the Settlement is demonstrated by there being no
7 objections to and no requests for exclusion from the Settlement.

8 b. The fairness of the Settlement is further illustrated by the *gross average*
9 Individual Class Payment being approximately \$1,836.97, and the *gross*
10 *highest* Individual Class Payment being about \$5,162.09.

11 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
12 cash or deposit their settlement checks within one hundred eighty (180) calendar days after the
13 settlement checks are mailed to them by the Administrator. Uncashed settlement checks will be
14 canceled and transmitted to the California Controller's Unclaimed Property Fund.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
17 Agreement by an express written instrument signed by all Parties or their representatives and
18 approved by the Court. Such amendments or modifications shall be consistent with this Order
19 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

20 18. Final Accounting and Compliance. The Court sets a compliance hearing for
21 ~~August 23,~~ *Oct. 4,* 2024 in Department S-26. Within five (5) court days before this hearing, Plaintiffs
22 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
23 compliance status report shall specify the total amount paid to Participating Class Members and
24 the residual of the unclaimed settlement funds that will be paid to the entity identified as the
25 recipient of such funds in the Settlement Agreement.

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1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any
6 disputes, claims, or causes of action in this lawsuit that, in whole or in
7 part, are related to or arise out of the Settlement or this Order and
8 Judgment;
- 9 b. entering such additional orders as may be necessary or appropriate to
10 protect or effectuate this Order and Judgment approving the Settlement,
11 and permanently enjoining Plaintiffs from initiating or pursuing related
12 proceedings, or to ensure the fair and orderly administration of the
13 Settlement; and
- 14 c. entering any other necessary or appropriate orders to protect and effectuate
15 this Court's retention of continuing jurisdiction.

16 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment, and Class Representative Service Payments is
18 GRANTED. The Administrator is directed to carry out the terms of the Agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

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9 **IT IS SO ORDERED.**

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11 DATED: 2/9/24



HONORABLE JESSICA MORGAN
SUPERIOR COURT JUDGE