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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

APR 26 2024

BY: 
Ashley Cassel, Deputy

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

11 CRISTIAN CHOLICO and ROBERT
12 MULDREW, individually, and on behalf of
13 other members of the general public similarly
14 situated;

15 Plaintiffs,

16 v.

17 VISTA METALS CORP., a California
18 corporation; and DOES 1 through 100,
19 inclusive;

20 Defendants.

Case No.: CIVSB2126589

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

CLASS ACTION

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

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

Complaint Filed: September 20, 2021
FAC Filed: February 10, 2022
SAC Filed: July 11, 2022
TAC Filed: September 1, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Cristian Cholico and Robert
2 Muldrew's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and considering
3 the papers submitted in support of the motion, including the Class Action and PAGA Settlement
4 Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiffs and Defendant Vista Metals Corp. ("Defendant") entered the Settlement
7 Agreement on or about August 29, 2023 to settle this lawsuit.

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

13 The Court held a Final Approval Hearing on April 26, 2024 to determine whether to give
14 final approval to the Settlement of this lawsuit.

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

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

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all individuals who worked at least one
26 Qualifying Workweek during the period from March 22, 2017 through September 19, 2023 for
27 Defendant as non-exempt Union-represented employees and/or as non-exempt non-Union-
28 represented employees that had the title of "Leadman" or "Foreman" in California ("Class," "Class

1 Members,” and “Class Period”). There are four hundred forty-six (446) Class Members who did
2 not submit valid and timely Requests for Exclusion from the Settlement (“Participating Class
3 Members”).¹

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

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

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

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27 ¹ The Administrator mailed Class Notices to four hundred forty-nine (449) Class Members
28 and received three (3) requests for exclusion. Thus, there are four hundred forty-six (446)
Participating Class Members.

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

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

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

19 9. Release by Participating Class Members Who Are Not Allegedly Aggrieved
20 Employees. Upon the Effective Date and Defendant’s full funding of the entire Gross Settlement
21 Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class
22 Payments, all Participating Class Members, on behalf of themselves and their former and present
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
24 Released Parties from the Released Class Claims.

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- 1 a. Release by Participating and Non-Participating Class Members Who Are
2 Allegedly Aggrieved Employees. Upon the Effective Date and Defendant’s
3 full funding of the entire Gross Settlement Amount and all employer payroll
4 taxes owed on the Wage Portion of the Individual Class Payments, all
5 Participating and Non-Participating Class Members, who are Allegedly
6 Aggrieved Employees, are deemed to release, on behalf of themselves and
7 their former and present representatives, agents, attorneys, heirs,
8 administrators, successors, and assigns, the Released Parties from the
9 Released PAGA Claims.
- 10 b. Plaintiffs’ Released Claims. Upon the Effective Date and Defendant’s full
11 funding of the entire Gross Settlement Amount and all employer payroll
12 taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs
13 and their former and present spouses, representatives, agents, attorneys,
14 heirs, administrators, successors, and assigns generally release and forever
15 discharge the Released Parties from the Plaintiffs’ Released Claims.
16 Plaintiffs also expressly waive and relinquish the provisions, rights, and
17 benefits, if any, of section 1542 of the Civil Code.
- 18 c. Released Parties. The Released Parties include Defendant and each of its
19 current, former, and future parents, owners, subsidiaries, divisions, and
20 affiliated or related persons or entities, and each of their respective officers,
21 directors, employees, partners, shareholders, attorneys, agents, executors,
22 and assigns.

23 10. Class Representative Service Payments. The Court finds the Class Representative
24 Service Payments of \$10,000, to be paid by Defendant to each Plaintiff (totaling \$20,000), out of
25 the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Service
26 Payments are to be paid pursuant to the terms and provisions set forth in the Agreement.

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

8 b. The Court reviewed Plaintiffs' declarations outlining their involvement.
9 Given the risks inherent in the services as the class representatives, duration
10 of the case and time involved, and benefits created for the Class, the Court
11 approves the payment of the Class Representative Service Payments of
12 \$10,000 to each Plaintiff.

13 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The
14 Court finds the Class Counsel Fees Payment of \$416,666.67, to be paid by Defendant to Class
15 Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. The Court finds
16 the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs
17 incurred of \$26,505.03, to be paid by Defendant to Class Counsel out of the Gross Settlement
18 Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms
19 and provisions set forth in the Agreement. Defendant shall not be required to pay for any other
20 attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other
21 counsel representing Plaintiffs or Class Members. Defendant shall also not be required to pay for
22 any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or Class
23 Members in connection with or related in any manner to this lawsuit, Agreement, settlement
24 administration, Released Class Claims, and Released PAGA Claims.

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1 a. The Court has an independent right and responsibility to review the Class
2 Counsel Fees Payment and only award so much as it determines reasonable.
3 (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118
4 Cal.App.4th 123, 127-128.) The Class Counsel Fees Payment of
5 \$416,666.67 is one-third (1/3) of the common fund created for the benefit
6 of the Class and is supported by use of the percentage-fee method. (See
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)
8 Considering the results achieved, financial risk undertaken, difficult nature
9 of this litigation, skills required, percentage fees award in previous and other
10 cases, and contingent fees charged in the marketplace, the Court finds the
11 Class Counsel Fees Payment is consistent with the marketplace, is
12 reasonable, and is approved.

13 b. The Court reviewed the declaration of Douglas Han regarding the costs
14 expended in prosecuting this case. Under the terms of the Settlement, Class
15 Counsel may seek reimbursement of up to \$20,000 in litigation costs. The
16 Court finds Class Counsel expended \$26,505.03 in litigation costs, and such
17 costs were reasonable. The Court approves the payment of the Class
18 Counsel Litigation Expenses Payment of \$26,505.03 from the common
19 fund for the reimbursement of Class Counsel's litigation costs.²

20 12. Administration Expenses Payment. The Court finds Administration Expenses
21 Payment of \$13,000, to be paid by Defendant to the Administrator out of the Gross Settlement
22 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
23 pursuant to terms and provisions set forth in the Settlement Agreement.

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27 ² Class Counsel underestimated the final costs and expenses when initially drafting the
28 Settlement Agreement. As a result, Class Counsel are requesting a Class Counsel Litigation
Expenses Payment of \$26,505.03.

1 a. The Court reviewed the declaration of Kaylie O'Connor from CPT Group,
2 Inc., the Administrator. The Court finds notice was provided to the Class
3 pursuant to the Preliminary Approval Order, constitutes the best practicable
4 notice to the Class, and satisfied due process. Thus, the Court approves the
5 payment of the Administration Expenses Payment of \$13,000 for the
6 Administrator's services in administering the Settlement.

7 13. PAGA Penalties. The Court finds the PAGA Penalties of \$75,000, seventy-five
8 percent (75%) of which (\$56,250) will be paid to the California Labor and Workforce
9 Development Agency out of the Gross Settlement Amount and twenty-five percent (25%) of which
10 (\$18,750) will be distributed to Allegedly Aggrieved Employees, on a pro rata basis, to be
11 reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and provisions
12 set forth in the Settlement Agreement.

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

17 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
18 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
19 Settlement was the product of arm's-length negotiations following extensive litigation, discovery,
20 and exchange of documentation. The negotiations were facilitated with the aid of Deborah Saxe,
21 an experienced and well-respected mediator.

22 a. The fairness of the Settlement is demonstrated by there being no objections
23 to and only three (3) requests for exclusion from the Settlement. The Class
24 Members who requested exclusion were Christian Perez, Ivan Tinoco, and
25 Ramon Carbajal.

26 b. The fairness of the Settlement is further illustrated by the gross *average*
27 Individual Class Payment being approximately \$1,520.17, and the gross
28 *highest* Individual Class Payment being about \$4,595.84.

1 16. Uncashed Checks. Participating Class Members and Allegedly Aggrieved
2 Employees must cash or deposit their settlement checks within ninety (90) calendar days after the
3 checks are mailed to them by the Administrator. Uncashed settlement checks will be canceled and
4 transmitted to the California Controller’s Unclaimed Property Fund.

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

10 18. Final Accounting and Compliance. The Court sets a compliance hearing for April
11 28, 2025 at 8:30 a.m. in Department S-26. Within five (5) court days before this hearing, Plaintiffs
12 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
13 compliance status report shall specify the total amount paid to Participating Class Members and
14 the residual of the unclaimed settlement funds that will be paid to the entity identified as the
15 recipient of such funds in the Settlement Agreement.

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

- 20 a. enforcing the terms and provisions of the Settlement and resolving any
21 disputes, claims, or causes of action in this lawsuit that, in whole or in part,
22 are related to or arise out of the Settlement Agreement or this Order and
23 Judgment;
- 24 b. entering such additional orders as may be necessary or appropriate to protect
25 or effectuate this Order and Judgment approving the Settlement Agreement,
26 and permanently enjoining Plaintiffs from initiating or pursuing related
27 proceedings, or to ensure the fair and orderly administration of the
28 Settlement Agreement; and

1 c. entering any other necessary or appropriate orders to protect and effectuate
2 this Court's retention of continuing jurisdiction.

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

6 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
7 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769,
8 THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS
9 ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY
10 OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO
11 ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT
12 THEREON.

13 **IT IS SO ORDERED.**

14 DATED: 4/26/24

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17 HONORABLE JESSICA MORGAN
18 SUPERIOR COURT JUDGE
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On April 26, 2024 I served the foregoing documents described as

[PROPOSED] SECOND AMENDED ORDER OF FINAL APPROVAL AND JUDGMENT

on interested parties in this action a true and correct copy thereof to the email addresses as follows:

Jesse A. Cripps (jcripps@gibsondunn.com)
Arlen Gharibian (agharibian@gibsondunn.com)
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Ave., Ste. 5200
Los Angeles, CA 90071
Attorney(s) for Defendant Vista Metals Corp.

[X] BY E-MAIL

The above-referenced document was transmitted to the addressee(s) at the e-mail addresses listed herein, which are their most recently known e-mail addresses or e-mail addresses of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 26, 2024, at Pasadena, California.



Jessica Torrez