

FILED
Clerk of the Superior Court

JAN 30 2023

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **FOR THE COUNTY OF SAN DIEGO**

18 MARTIN ORTIZ, individually, and on behalf of
19 all others similarly situated,

20 *Plaintiff,*

21 v.

22 TARA MATERIALS, INC., a Georgia
23 corporation, and DOES 1 through 10, inclusive,

24 *Defendants.*

Case No. 37-2021-0001473-CU-OE-CTL

CLASS ACTION

[Assigned for all purposes to: Hon. Eddie Sturgeon, Dept. C-67]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points and Authorities; and Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: January 30, 2023

Time: 8:30 a.m.

Dept: C-67

1 The Court has before it Plaintiff Martin Ortiz's ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Joint Stipulation and
4 Settlement Agreement of Class Action and PAGA Representative Claims ("Settlement" or
5 "Settlement Agreement"), and good cause appearing, the Court hereby finds and orders as
6 follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiff Defendant Tara Materials,
11 Inc. ("Defendant"), attached to the Declaration of Justin F. Marquez in Support of Plaintiff's
12 Motion for Preliminary Approval of Class Action Settlement as Exhibit 2.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court. The Court notes that Defendant has
15 agreed to create a common fund of \$140,000.00 to cover: (a) settlement payments to the class
16 members who do not validly opt out; (b) a \$5,000.00 payment for the settlement of claims for
17 penalties under the Private Attorneys General Act ("PAGA"), with 75% of which (\$3,750.00)
18 being paid to the State of California, Labor & Workforce Development Agency ("LWDA") and
19 25% (\$1,250.00) being paid to the PAGA Group Members; (c) the Class Representative service
20 award of up to \$2,500.00 for Plaintiff; (d) Class Counsel's attorneys' fees, not to exceed 33
21 1/3% of the Gross Settlement Amount (\$46,666.67), and up to \$15,000.00 in costs for actual
22 litigation expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up to
23 \$6,500.00.

24 3. The Court preliminarily finds that the terms of the Settlement appear to be within
25 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
26 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair
27 and reasonable to the class members when balanced against the probable outcome of further
28 litigation relating to class certification, liability and damages issues, and potential appeals; (2)

1 significant informal discovery, investigation, research, and litigation have been conducted such
2 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
3 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
4 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
5 the result of intensive, serious, and non-collusive negotiations between the Parties with the
6 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
7 that the Settlement Agreement was entered into in good faith.

8 4. A Final Fairness Hearing on the question of whether the proposed settlement,
9 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the settlement
10 of claims for penalties under PAGA, and the class representative's service award should be
11 finally approved as fair, reasonable and adequate as to the members of the class is hereby set in
12 accordance with the Implementation Schedule set forth below.

13 5. The Court provisionally certifies for settlement purposes only the following class
14 (the "Settlement Class"): All current and former non-exempt employees who worked for
15 Defendant within the State of California during the Settlement Period.

16 6. Plaintiff is granted leave to file a First Amended Class and Representative Action
17 Complaint, which will add causes of action for Defendant's failure to indemnify employees for
18 expenditures (Cal. Lab. Code § 2802) and civil penalties under PAGA.

19 7. The Settlement Period means the period from January 13, 2017 through March
20 15, 2022.

21 8. The PAGA Period means the period from January 19, 2020 through March 15,
22 2022.

23 9. The Court finds, for settlement purposes only, that the Settlement Class meets the
24 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
25 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
26 of law and fact that are common, or of general interest, to all Settlement Class Members, which
27 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
28 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect

1 the interests of the Settlement Class Members; and (5) a class action is superior to other
2 available methods for the fair and efficient adjudication of the controversy.

3 10. The Court appoints as Class Representative, for settlement purposes only,
4 Plaintiff Martin Ortiz. The Court further preliminarily approves Plaintiff's ability to request an
5 incentive award up to \$2,500.00.

6 11. The Court appoints, for settlement purposes only, Wilshire Law Firm, PLC as
7 Class Counsel. The Court further preliminarily approves Class Counsel's ability to request
8 attorneys' fees of up to one-third of the Total Settlement Amount (\$46,666.67), and costs not to
9 exceed \$15,000.00.

10 12. The Court appoints Phoenix Settlement Administrators as the Settlement
11 Administrator with reasonable administration costs estimated not to exceed \$6,500.00.

12 13. The Court approves, as to form and content the Notice of Proposed Class Action
13 Settlement, attached as Exhibit A to the Settlement Agreement. The Court finds, on a
14 preliminary basis, that the plan for distribution of the Notice to Settlement Class Members
15 satisfies due process, provides the best notice practicable under the circumstances, and shall
16 constitute due and sufficient notice to all persons entitled thereto.

17 14. The Parties are ordered to carry out the Settlement according to the terms of the
18 Settlement Agreement.

19 15. Any Class Member who does not timely and validly request exclusion from the
20 Settlement may object to the Settlement Agreement.

21 16. The Court orders the following Implementation Schedule:

22 Defendant to provide Class List to the 23 Settlement Administrator	February 13, 2023*
24 Settlement Administrator to mail the Notice	On or before February 27, 2023*
25 Response Deadline (Opt-out or Dispute 26 Workweeks)	April 13, 2023*
27 Deadline to Provide Written Objections, if	April 13, 2023*

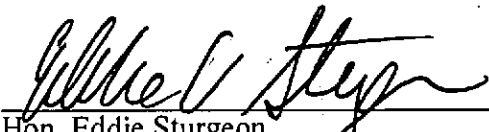
1	any	
2	Deadline to file Motion for Final Approval,	16 court days before hearing on Motion for
3	Request for Attorneys' Fees and Costs, and	Final Approval, Request for Attorneys' Fees
4	Service Award to Plaintiff	and Costs, and Service Award to Plaintiff
5	Final Approval Hearing	May <u>26</u> , 2023 at <u>9:00</u> <u>a.m./p.m.</u> , or first
6		available date thereafter, in Department C-67

7 *If the Court signs this Order after January 30, 2023, then this date shall be adjusted commensurate
8 with the number of days between January 30, 2023, and the date the Order is signed. If the new
9 deadline falls on a weekend or holiday, the deadline shall be the next business day.

10 17. The Court further ORDERS that, pending further order of this Court, all proceedings
11 in this lawsuit, except those contemplated herein and in the settlement, are stayed.

12 **IT IS SO ORDERED.**

13
14
15 DATE: 1-30-23

16 
17 _____
18 Hon. Eddie Sturgeon
19 San Diego County Superior Court

PROOF OF SERVICE

Ortiz v. Tara Materials, Inc., et al.

37-2021-00001473-CU-OE-CTL

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On January 6, 2023, I served the foregoing **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Danielle Hultenius Moore (SBN 232480)
dmoore@fisherphillips.com
Bret Martin (SBN 304658)
bmartin@fisherphillips.com
Benjamin P. Carney (SBN 317206)
bcarney@fisherphillips.com
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, California 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.
- (X) **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

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

Executed on **January 6, 2023**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name



Signature