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**FILED**  
Superior Court of California  
County of Los Angeles

03/15/2023

David W. Slayton, Executive Officer / Clerk of Court

By: T. Lewis Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ROGER FLORES and MARK CLEMONS,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

ELEMENT MATERIALS TECHNOLOGY  
HUNTINGTON BEACH LLC; and DOES 1-  
10, inclusive,

Defendants.

Case No. 18STCV10074

Assigned for all purposes to  
Hon. David S. Cunningham  
Dept. 11

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

Date: March 8, 2023  
Time: 10:00 a.m.  
Dept: 11

1 WHEREAS, the above-entitled action is pending before this Court as a putative class  
2 action (the “Action”);

3 WHEREAS, Plaintiffs Roger Flores and Mark Clemons (“Plaintiffs”), individually and  
4 on behalf of all others similarly situated and on behalf of the general public have applied to this  
5 Court for an order preliminarily approving the settlement of the Action in accordance with the  
6 Joint Stipulation for Settlement (the “Settlement” or “Agreement”) entered into by Plaintiffs and  
7 Defendant Element Materials Technology Huntington Beach LLC, (“Defendant”) which sets  
8 forth the terms and conditions for a proposed settlement upon the terms and conditions set forth  
9 therein (Plaintiffs and Defendant shall be collectively referred to herein as the “Parties”); and

10 WHEREAS, the Court has read and considered Plaintiff’s Motion for Preliminary  
11 Approval of Class Action Settlement, and Plaintiff’s Supplemental Brief in Support of Plaintiff’s  
12 Motion for Preliminary Approval of Class Action Settlement;

13 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
14 THAT:

15 1. This Order incorporates by reference the definitions in the Settlement attached as  
16 Exhibit 1 to the Supplemental Declaration of Daniel E. Ishu in Support of Plaintiff’s Motion for  
17 Preliminary Approval of Class Action Settlement and all terms defined therein shall have the same  
18 meaning in this Order.

19 2. It appears to the Court on a preliminary basis that (a) the Settlement is fair,  
20 adequate and reasonable; (b) the Gross Settlement Amount and Net Settlement Amount are fair,  
21 adequate and reasonable when balanced against the probable outcome of further litigation relating  
22 to liability and damages issues; (c) sufficient investigation and research have been conducted such  
23 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;  
24 (d) settlement at this time will avoid additional costs by all Parties, as well as avoid the delay and  
25 risks that would be presented by the further prosecution of the Action; and (e) the Settlement has  
26 been reached as the result of non-collusive, arms-length negotiations.

27 3. With respect to the Class and for purposes of proceeding pursuant to California  
28 Code of Civil Procedure § 382 for approval of the settlement only, the Court finds on a

1 preliminary basis that (a) Class Members are ascertainable and so numerous that joinder of all  
2 Class Members is impracticable; (b) there are questions of law and fact common to the Class that  
3 predominate over any questions affecting only individual Class Members; (c) Plaintiff's claims  
4 are typical of the Class' claims; (d) class certification is a superior method for implementing the  
5 Settlement and adjudicating this Action in a fair and efficient manner; (e) the Class  
6 Representatives can fairly and adequately protect the Class' interests; and (f) Class Counsel are  
7 qualified to serve as counsel for the Class.

8 4. Accordingly, solely for purposes of effectuating this Settlement, this Court hereby  
9 conditionally certifies the class for settlement purposes only. The Class is defined as all current and  
10 former non-exempt employees who are or were employed by Defendant in California at any time  
11 from December 28, 2014 through October 5, 2022.

12 5. Plaintiffs Roger Flores and Mark Clemons are hereby preliminarily appointed and  
13 designated, for all purposes, as the Class Representatives and the attorneys of Aegis Law Firm, PC  
14 are hereby preliminarily appointed and designated as counsel for the Class ("Class Counsel"). Class  
15 Counsel is authorized to act on behalf of the Class Members with respect to all acts or consents  
16 required by, or which may be given pursuant to, the Settlement, and such other acts reasonably  
17 necessary to consummate the Settlement. Any Class Member may enter an appearance either  
18 personally or through counsel of such individual's own choosing and at such individual's own  
19 expense. Any Class Member who does not enter an appearance or appear on his or her own will be  
20 represented by Class Counsel.

21 6. Should, for whatever reason, the Settlement not become final, the fact that the  
22 Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no  
23 bearing on, nor be admissible in connection with, the issue of whether a class should be certified in  
24 a non-settlement context.

25 7. The Court hereby preliminarily approves the definition and disposition of the Gross  
26 Settlement Amount and Net Settlement Amount and related matters provided for in the Settlement,  
27 subject to modification at final approval.  
28

1           8.     The Court hereby preliminarily approves Class Counsel attorneys' fees of  
2 \$500,000.00, Class Counsel litigation expenses not to exceed \$25,000.00, an Incentive Award up  
3 to \$10,000.00 to Plaintiff Mark Clemons and an Incentive Award up to \$15,000.00 to Plaintiff  
4 Roger Flores, payment to the LWDA in the amount of \$50,000.00, and costs of administration not  
5 to exceed \$11,000.00, subject to final approval.

6           9.     The Court hereby approves, as to form and content, the Class Notice, to be  
7 distributed to Class Members. The Court finds that distribution of the Class Notice, substantially in  
8 the manner and form set forth in the Settlement and this Order, meets the requirements of due  
9 process, is the best notice practicable under the circumstances, and shall constitute due and  
10 sufficient notice to all persons entitled thereto.

11          10.    The Court hereby appoints Phoenix Class Action Administration Solutions as  
12 Settlement Administrator and hereby directs the Settlement Administrator to mail or cause to be  
13 mailed to Class Members the Class Notice using the procedures set forth in the Settlement  
14 Agreement. Class Members who wish to participate in the settlement provided for by the Settlement  
15 Agreement do not need to respond to the Class Notice.

16          11.    All costs of mailing of the Class Notice, whether foreseen or not, shall be paid  
17 from the Gross Settlement Amount, including the cost of searching for Class Members' addresses  
18 as provided in the Settlement, and all other reasonable costs of the Settlement Administrator up  
19 to \$11,000.00 as provided in the Settlement.

20          12.    Any Class Member may choose to opt-out of and be excluded from the Class as  
21 provided in the Class Notice. Any such person who chooses to opt-out of and be excluded from the  
22 Class will not be entitled to any recovery under the Settlement and will not be bound by the  
23 Settlement or have any right to object, appeal or comment thereon. Class Members who have not  
24 requested exclusion/opted-out shall be Participating Class Members and bound by all  
25 determinations of the Court, the Settlement, and the Final Judgment.

26                13.    A Final Fairness and Approval Hearing shall be held before this Court on  
27 ~~October 2, 2023 at 10:00 AM~~ <sup>CE \*13. A</sup> ~~JKE/BJ~~ <sup>JKE/BJ</sup> in Department 11 of the Superior Court for the State of California,  
28 County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012. All papers in

support of final approval and related awards for fees, costs, and Plaintiff's incentive award must be filed and served at least 16 court days before the final approval hearing.

14. Any Participating Class Member must object to the Settlement by following the instructions for submitting written objections that are set forth in the Settlement Agreement and Class Notice, and may appear at the Final Fairness and Approval Hearing. The Court shall retain final authority with respect to the consideration and admissibility of any objections. Any Participating Class Member who objects to the Settlement shall be bound by the order of the Court.

15. The Settlement is not a concession or admission, and shall not be used against the Released Parties, as an admission or indication with respect to any claim of any fault or omission by the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage in the Action, or in any other action or proceeding, except for purposes of enforcing the Settlement once it receives final approval.

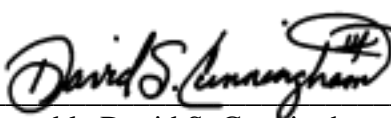
16. Pending the Final Approval and Fairness Hearing, all proceedings in this Action, other than proceedings necessary to carry out or enforce the terms of the Settlement and this Order, are hereby stayed.

17. Jurisdiction is hereby retained over this Action, the Parties to the Action, and each of the Class Members for all matters relating to this Action, and this Settlement, including (without limitation) all matters relating to the administration, interpretation, effectuation, and/or enforcement of this Settlement and this Order.

18. The Court reserves the right to adjourn or continue the date of any hearing and all dates provided for in the Settlement without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

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DATED: 03/15/2023

  
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Honorable David S. Cunningham  
JUDGE OF THE SUPERIOR COURT