

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK "JOE" MENDEZ, an individual, on behalf of himself and others similarly situated; DONALD MAX KIMBALL, an individual, on behalf of himself and others similarly situated; and SIA GOULD, an individual, on behalf of herself and others similarly situated,

Plaintiffs,

vs.

STEELSCAPE WASHINGTON, LLC, a Washington limited liability company; and STEELSCAPE, LLC, a foreign limited liability company,

Defendants.

C19-5691 TSZ

**ORDER GRANTING
PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT**

ORDER

Plaintiffs Frank "Joe" Mendez, Donald Max Kimball, and Sia Gould, on behalf of themselves and on behalf other similarly situated persons, filed a Motion for Preliminary Approval of Class Action Settlement. Dkt. No. 32. Defendants Steelscape Washington, LLC, and Steelscape, LLC (collectively "Steelscape"), do not oppose this motion in regard to the parties' settlement. This Court, having considered the Motion for Preliminary

ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT – 1
C19-5691 TSZ

HKM EMPLOYMENT ATTORNEYS LLP
600 Stewart Street, Suite 901
Seattle, Washington 98101
Tel: (206) 838-2504

1 Approval, the Declaration of Donald W. Heyrich, the parties' Joint Status Report, and
2 related exhibits, hereby orders as follows:

3 1. The terms of the Settlement Agreement and the negotiated settlement
4 therein are preliminarily approved as fair, reasonable and adequate, subject to further
5 consideration thereof at the Final Approval Hearing, as specified in Paragraphs 21 and 22
6 of this Order.

7 2. The definitions contained within the Settlement Agreement are hereby
8 incorporated by reference into this Order.

9 3. The Court has jurisdiction over the subject matter of this case and the
10 Parties, including members of the Settlement Class, and venue is proper in this District.

11 4. For purposes of settlement only, and without prejudice to Steelscape's right
12 to contest class certification in the event the proposed Settlement Agreement is not fully
13 implemented or otherwise fails in its negotiated terms, the Court finds that the
14 requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are
15 satisfied. The Court further finds that Plaintiffs Mendez, Kimball and Gould, together with
16 their Class Counsel, are adequate representatives of the Settlement Class.

17 5. For purposes of settlement only, and without prejudice to Steelscape's right
18 to contest class certification in the event the proposed Settlement Agreement is not fully
19 implemented or otherwise fails in its negotiated terms, the terms of settlement as set forth
20 in the Settlement Agreement is preliminarily approved because it is within the range of
21 approval as fair, reasonable, and adequate. Accordingly, the Settlement Notice shall be
22 issued to the eligible members of the Settlement Class, and distributed by the Settlement
23 Administrator.

24 6. The Court hereby provisionally certifies the following Settlement Class in
25 accordance with the Settlement Agreement, and pursuant to Fed.R.Civ.P. 23(a) and
26 23(b)(3), for the purposes of settlement:

ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT – 2
C19-5691 TSZ

HKM EMPLOYMENT ATTORNEYS LLP
600 Stewart Street, Suite 901
Seattle, Washington 98101
Tel: (206) 838-2504

1 [A]ll current and former employees of Defendants who were employed in
2 production positions during Fiscal Year 2017 and/or Fiscal Year 2018 at
3 Defendants' facility in Kalama, Washington and who received a fiscal-
4 year-end bonus for: (a) Fiscal Year 2017 under the Steelscape LLC
5 Kalama Production Employees Pay for Performance FY17 bonus
6 opportunity; and or (b) Fiscal Year 2018 under the Coated Products North
7 America (CPNA) Bonus Pay for Performance Steelscape Production &
8 Production Support bonus opportunity.

6 7. For purposes of settlement only, and without prejudice to Steelscape's right
7 to contest class certification in the event the proposed Settlement Agreement is not fully
8 implemented or otherwise fails in its negotiated terms, Plaintiffs Mendez, Kimball and
9 Gould shall be Representatives of the Settlement Class, and Plaintiff's counsel of record is
10 appointed as qualified counsel for the Settlement Class ("Class Counsel"). The law firm
11 representing the Settlement Class and who shall serve as Class Counsel are:

12 Donald W. Heyrich
13 Erin S. Norgaard
14 Brin L. Dolman
15 HKM Employment Attorneys
16 600 Stewart Street, Suite 901
17 Seattle, WA 98101

16 8. JND Legal Administration is hereby appointed as Settlement Administrator.

17 9. Steelscape is hereby ordered, in accordance with Paragraph 11.b. of the
18 Settlement Agreement, to prepare and provide a list of the eligible members of the
19 Settlement Class with current contact information, and transmit the same to the Settlement
20 Administrator within 10 business days of this Order.

21 10. The Settlement Administrator shall carry out all duties and responsibilities
22 specified in the Settlement Agreement, and use the information transmitted by Steelscape
23 solely for the purpose of communicating with the Settlement Class and implementing the
24 intended purpose of the Settlement Agreement.

1 11. The Parties, Steelscape’s Counsel, and Class Counsel shall comply with the
2 terms of the Settlement Agreement, which are hereby incorporated by reference into this
3 Order.

4 12. The proposed Settlement Notice, attached as Exhibit 1 to the Joint Status
5 Report, docket no. 35-1, is hereby approved. Counsel for the Parties, in cooperation with
6 the Settlement Administrator, are authorized to make appropriate edits to the Settlement
7 Notice consistent with this Order.

8 13. Within 10 business days following receipt of the Settlement Class
9 information from Steelscape (20 business days from the issuance of this Order), in
10 accordance with Paragraph 11.b. of the Settlement Agreement, the Settlement
11 Administrator shall mail the Settlement Notice to the eligible members of the Settlement
12 Class. The Settlement Notice shall include information for the dates for the opt-out
13 deadline, the deadline to object or comment in writing, and the date for the Final Approval
14 Hearing.

15 14. The reasonable costs and expenses of printing and mailing the Settlement
16 Notice, professional settlement administration services, and other related administrative
17 expenses shall be borne by the Settlement Class.

18 15. Within 10 business days following the opt-out deadline, in accordance with
19 Paragraph 11.f. of the Settlement Agreement, the Settlement Administrator shall provide to
20 Counsel for the Parties a sworn declaration in the form of the Settlement Administrator’s
21 Report. Class Counsel shall file with this Court the Settlement Administrator’s Report as
22 part of the pleadings in support of Final Approval.

23 16. The Settlement Notice to the eligible members of the Settlement Class, in
24 accordance with Paragraph 11.b. of the Settlement Agreement, is hereby found to be: (a)
25 the best Settlement Notice practicable under the circumstances; (b) valid, due and
26 sufficient notice of this Order to all persons affected by and/or entitled to participate in the

1 settlement; and (c) in full compliance with the notice requirements of Fed.R.Civ.P. 23 and
2 due process to all persons entitled to such Settlement Notice.

3 17. Any member of the Settlement Class wishing to be excluded from the
4 Settlement Class shall communicate such a request to the Settlement Administrator, in
5 accordance with the Settlement Notice and Paragraph 11.c. of the Settlement Agreement.
6 The members of the Settlement Class must communicate by email, first class mail, or
7 facsimile transmission, an Opt-Out Request on or before 60 calendar days following entry
8 of this Order. Any Opt-Out Request that does not include all the required information
9 and/or is not received in compliance with the Opt-Out Deadline will not be honored. The
10 written request must include the individual's name, address, request for exclusion, and
11 signature; if sent by email, the signed request for exclusion must be scanned and included
12 as an attachment to the email. Any member of the Settlement Class who does not properly
13 and timely submit a request for exclusion shall be included in the Settlement Class and
14 shall be bound by the determinations of this Court, and any Final Judgment entered in this
15 case, if this settlement receives Final Approval from this Court. The specific date for the
16 Opt-Out Deadline shall be set forth in the Settlement Notice.

17 18. The Settlement Administrator, in accordance with Paragraph 11.c. of the
18 Settlement Agreement, shall be responsible for the receipt of all Opt-Out Requests and
19 shall preserve all such communications until administration is complete or further order of
20 the Court. All written communications received from the eligible members of the
21 Settlement Class to the Settlement Administrator, and all responses, relating to the
22 Settlement Agreement shall reasonably be available to Steelscape's Counsel and Class
23 Counsel for inspection and copying, subject to further Order of the Court. The Settlement
24 Notice shall identify the Settlement Administrator as the designee for receiving Opt-Out
25 Requests.
26

1 19. All other events contemplated under the Settlement Agreement occur after
2 this Order and before the Final Approval Hearing described in Paragraphs 21 and 22 of this
3 Order shall be governed by the Settlement Agreement, not inconsistent with this Order.

4 20. Any petitions for attorneys' fees and reimbursement of expenses by Class
5 Counsel, and/or requests for service awards, shall be filed not later than 30 calendar days
6 prior to the Deadline for Written Objections prior to the Final Approval Hearing. Any
7 pleadings in support of Final Approval shall be filed no later than 7 business days prior to
8 the Final Approval Hearing.

9 21. A Final Approval Hearing shall be held before the undersigned at
10 **10:00 a.m. on February 22, 2022**, in the United States District Court for the Western
11 District of Washington at Seattle, 700 Stewart Street, Seattle, Washington 98101.
12 Alternatively, the Court may issue a notice to the Parties and the Settlement Class with
13 connection information for a virtual Final Approval Hearing. At the Final Approval
14 Hearing, the Court will consider the fairness, reasonableness, and adequacy of the
15 settlement, the entry of any final Order or Judgment in the case, petitions for attorneys'
16 fees and for reimbursement of expenses by Class Counsel, the issuance of service awards,
17 if any, and other related matters. The Final Approval Hearing may be postponed,
18 adjourned, or continued by Order of the Court.

19 22. Any member of the Settlement Class who does not opt out of the settlement
20 may appear at the Final Approval Hearing in person or by counsel, and will be heard to the
21 extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness,
22 and adequacy of the Settlement Agreement, the entry of any final Order or Judgment in the
23 case, petitions for attorneys' fees and for reimbursement of expenses by Class Counsel, the
24 issuance of service awards, if any, and other related matters.

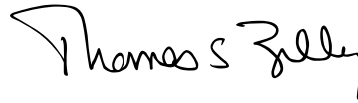
25 23. If the Settlement Agreement is not fully implemented, or if the Settlement
26 Agreement is otherwise terminated for any lawful reason, all proceedings, orders, and

1 actions taken in furtherance of the Settlement Agreement shall be without prejudice to the
2 rights of the Parties, and all orders issued pursuant to the Settlement Agreement shall be
3 vacated. Evidence of the Settlement Agreement, negotiations, proceedings, documents, or
4 statements shall not be used for the purpose of any subsequent proceedings in this case.

5 24. Counsel for the Parties are hereby authorized to utilize all reasonable
6 procedures in connection with the administration of the Settlement Agreement which are
7 not materially inconsistent with either this Order or the terms of the Settlement Agreement.

8 **IT IS SO ORDERED.**

9
10 DATED this 12th of October, 2021.

11 

12
13 _____
14 HONORABLE THOMAS S. ZILLY
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26