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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SKAGIT

MORGAN WITSCHER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

IMCO GENERAL CONSTRUCTION, INC.;
CITY OF ANACORTES; and FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND,

Defendants.

NO. 13-2-00975-0

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, on February 11, 2016, this Court entered its Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"); and

WHEREAS, individual notice complying with Civil Rule 23 was sent on February 22, 2016 (the "Initial Notice Date") to the last-known address of each member of the Settlement Class identified as of that date (the "Initial Notice Group"), and follow-up procedures outlined in the Settlement Agreement and approved by the Preliminary Approval Order have been completed; and

1 WHEREAS, additional members of the Settlement Class were identified since the
2 Initial Notice Date, who were inadvertently omitted from the original Settlement Class List (the
3 “Supplemental Notice Group”); and

4 WHEREAS, the parties stipulated that final approval of the Settlement should be
5 postponed to allow for notice to these additional members of the Settlement Class
6 (“Supplemental Notice”); and

7 WHEREAS, a fairness hearing on conditional final approval of the Settlement was held
8 before the Court on April 22, 2016; and

9 WHEREAS, no objections to the Settlement were made by any member of Initial
10 Notice Group; and

11 WHEREAS, on April 22, 2016, the Court entered an Order Authorizing Supplemental
12 Notice and Granting Conditional Final Approval of Class Action Settlement, subject to the
13 issuance of Supplemental Notice to members of the Supplemental Notice Group; and

14 WHEREAS, pursuant to the Court’s April 22, 2016 Order, Defendant IMCO General
15 Construction, Inc. (“IMCO”) mailed Supplemental Notice to the Supplemental Notice Group
16 on or before April 27, 2016 and members of that group had the opportunity to opt out or object
17 before May 27, 2016; and

18 WHEREAS, no objections to the Settlement were made by any member of the
19 Supplemental Notice Group and no member of the Supplemental Notice Group opted out of the
20 Settlement; and

21 WHEREAS, this Court held a Final Fairness Hearing on June 16, 2016; and

22 WHEREAS, the Court, being advised, finds that good cause exists for entry of the
23 below Order; now, therefore,

24 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

25 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
26 the same meaning as set forth in the Settlement Agreement attached as Exhibit 1 to the

1 Declaration of Marc C. Cote in Support of Plaintiff's Motion for Final Approval of Class
2 Action Settlement.

3 2. The Court finds that notice to the Initial Notice Group and Supplemental Notice
4 Group has been completed in conformity with the Preliminary Approval Order and the Order
5 Authorizing Supplemental Notice and Granting Conditional Final Approval of Class Action
6 Settlement. The Court finds that this notice was the best notice practicable under the
7 circumstances, that it provided due and adequate notice of the proceedings and of the matters
8 set forth therein, and that it fully satisfied all applicable requirements of law and due process.

9 3. The Court finds it has personal and subject matter jurisdiction over all claims
10 asserted in this litigation with respect to all members of the Settlement Class.

11 4. Pursuant to CR 23, the Court has certified the following class for settlement
12 purposes: All current and former non-managerial and non-supervisory hourly paid construction
13 craft employees of Defendant IMCO General Construction, Inc. ("IMCO") who worked for the
14 company in Washington between January 1, 2009 and November 10, 2014.

15 5. In connection with this certification, the Court makes the following findings:

16 a. The Settlement Class is so numerous that joinder of all members is
17 impracticable;

18 b. There are questions of law or fact common to the Settlement Class for
19 purposes of determining whether this Settlement should be approved;

20 c. Plaintiff's claims are typical of the Settlement Class claims;

21 d. Plaintiff is capable of fairly and adequately protecting the interests of the
22 Settlement Class members in connection with the Settlement;

23 e. For purposes of determining whether the settlement is fair, reasonable
24 and adequate, common questions of law and fact predominate over questions affecting only
25 individual Settlement Class members. Accordingly, the Settlement Class is sufficiently
26 cohesive to warrant settlement by representation; and

1 f. For purposes of settlement, certification of the Settlement Class is
2 superior to other available methods for the fair and efficient settlement of the claims of the
3 Settlement Class.

4 6. The Court has appointed Morgan Witschel as representative of the Settlement
5 Class.

6 7. The Court has appointed Toby J. Marshall and Marc. C. Cote of Terrell Marshall
7 Law Group PLLC as Class Counsel.

8 8. No objections to the Settlement have been lodged.

9 9. The terms set forth in the Settlement, including the total payment by IMCO of
10 \$1,100,000, are finally approved, as being fair, adequate, and reasonable in light of the degree
11 of recovery obtained in relation to the risks faced by the Settlement Class. The Settlement
12 Class is properly certified as part of this settlement. The relief provided to the Settlement Class
13 under the Settlement Agreement is appropriate as to the individual members of the Settlement
14 Class and as a whole.

15 10. The Court finally approves the payment of \$275,000 in attorney fees to Class
16 Counsel as fair and reasonable based on the “percentage-of-recovery” approach for common
17 fund settlements like the settlement in this case. The benchmark in Washington for an attorney
18 fee award in a common fund class action settlement is 25 percent of the fund. *See Bowles v.*
19 *Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). The approved attorney fee award
20 of \$275,000 is 25 percent of the \$1,100,000 common fund. The Court has also performed a
21 lodestar cross-check, and this cross-check demonstrates that counsel’s request is reasonable
22 under the lodestar method. The Court reaches the conclusion that Class Counsel’s attorney fees
23 are reasonable under the alternative lodestar method after analyzing (1) the number of hours
24 Class Counsel reasonably expended on the litigation (over 600) multiplied by counsel’s
25 reasonable hourly rates for this case (including the rates of \$300 for Marc Cote and \$400 for
26 Toby Marshall); (2) the substantial financial recovery for Settlement Class members; (3) the

1 diligent effort utilized by Class Counsel in litigating Plaintiffs' claims; (4) Class Counsel's
2 substantial experience in complex litigation and skill utilized to achieve the Settlement; (5) the
3 hurdles to certifying the Settlement Class and proving liability and damages at trial; (6) the
4 substantial risks Class Counsel took in litigating this case; (7) the high-quality work Class
5 Counsel performed; and (8) the reasonable costs incurred by Class Counsel in litigating this
6 case. The requested fee represents a modest multiplier of less than 2 on Class Counsel's
7 lodestar.

8 11. The Court finally approves payment of \$7,157.30 in litigation expenses to Class
9 Counsel as fair and reasonable to compensate Class Counsel for the costs incurred in this case.

10 12. The Court finally approves payment of \$6,734.68 in settlement administration
11 fees and expenses to Terrell Marshall Law Group PLLC ("TMLG") as fair and reasonable to
12 compensate TMLG for its work and costs incurred in administering the settlement.

13 13. The Court finally approves the incentive payment of \$5,000 to Plaintiff Morgan
14 Witschel. This award reasonably compensates Mr. Witschel for his time and effort in stepping
15 forward to serve as a class representative, assisting in the investigation, keeping abreast of the
16 litigation, and reviewing and approving the proposed settlement terms after consulting with
17 Class Counsel.

18 14. The Settlement is binding on all Settlement Class members.

19 15. Each member of the Settlement Class shall be entitled to receive a pro rata share
20 of the Settlement Class funds as set forth in the Settlement Agreement. Any Qualified Class
21 Member who fails to cash or deposit a disbursement check issued to that member after a period
22 of 90 calendar days has elapsed from the date on which the disbursement check was issued will
23 not receive a share of class settlement funds but will be bound nevertheless by the terms of the
24 Settlement Agreement. If, after 90 days following IMCO's issuance of checks to Qualified
25 Class Members, the amount of checks remaining uncashed exceeds \$100,000, IMCO shall
26 redistribute the remaining amount proportionally (based on the calculations described in

1 Section III.G.6 and .7 of the Settlement Agreement) to all Qualified Class Members who
2 cashed their original checks. If, after 90 days following the First Distribution, the amount of
3 checks remaining uncashed exceeds \$10,000 but is less than \$100,000, the parties shall consult
4 and determine, after assessing the administrative cost and burden, whether to redistribute the
5 remaining amount in accordance with the preceding sentence. The proceeds of any uncashed
6 checks after 90 days following the Second Distribution (or if there is no Second Distribution)
7 shall be distributed to the Legal Foundation of Washington.

8 16. All Settlement Class Members are bound by the terms of the Settlement
9 Agreement. As of the Effective Date, the Settlement and the Settlement Agreement will
10 constitute a full and final settlement and release of all claims against Defendants by Plaintiff
11 and all Qualified Class Members that were or could have been asserted by or on behalf of
12 Qualified Class Members based on the facts alleged in the Complaint, including, but not limited
13 to, any claims for failure to provide rest breaks, failure to pay for missed rest breaks, overtime
14 violations for failure to provide or pay for missed rest breaks, breach of contract for failure to
15 provide rest breaks as outlined in any policy, employee handbook, or manual, violations of
16 RCW 49.52 for failure to provide rest breaks or pay for missed rest breaks, and any other
17 claims relating to missed rest breaks, including claims relating to missed rest breaks that seek
18 penalties, interest, fees, costs, and/or attorneys' fees. In addition to the foregoing, as part of
19 this Settlement, Plaintiff Morgan Witschel individually releases any other actual or potential
20 claims against any Defendant arising on or before the date he signed the Settlement Agreement,
21 whether those claims were presently known or unknown, including, but not limited to: (a) any
22 claims arising from or related to Plaintiff's employment with IMCO or the termination of that
23 employment; (b) any claims for wages, benefits, other compensation, damages, penalties,
24 personal injury, attorneys' fees, costs, restitution, or equitable relief, arising out of any express
25 or implied contract, any federal, state, or local statute, regulation, or ordinance, the common
26 law, or equity; and (c) any claim to or right of reinstatement or re-employment with IMCO.

