

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 25 2023

BY 
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on behalf of himself and others similarly situated.

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

DANIEL DIAMOND, on behalf of himself and
others similarly situated,

PLAINTIFF,

v.

LOVE'S COUNTRY STORES OF
CALIFORNIA, a corporation; and DOES 1 to
100, inclusive.

DEFENDANTS.

Case No.: CIVDS2012915

CLASS ACTION

*[Assigned for all purposes to the Honorable
David Cohn, Dept. S-26]*

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

Hearing Information:

Date: May 25, 2023
Time: 10:00 a.m.
Dept: S26

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

1 Plaintiff Daniel Diamond ("Plaintiff") Motion for Final Approval of Class Action Settlement
2 and Motion for Award of Attorneys' Fees and Costs with Defendant Love's Country Stores of
3 California ("Defendant") came before this Court on May 25, 2023 at 10:00 a.m. in Department S26
4 of San Bernardino County Superior Court, located at 247 West Third St., San Bernardino, California
5 92415. Having received and considered the amended Joint Stipulation of Class Action Settlement and
6 Release ("Settlement"), Plaintiff's Motion for Final Approval of Class Action Settlement, the
7 supporting papers filed by the Parties, the declaration of Taylor Mitzner on behalf of Phoenix Class
8 Action Administration Solutions and the evidence and argument received by the Court in conjunction
9 with the Motion for Preliminary Approval of Class Action Settlement and Documents thereto, the
10 Court grants final approval of the Settlement and HEREBY ORDERS AND MAKES THE
11 FOLLOWING DETERMINATION:

12 1. This Court has jurisdiction over the subject matter of the action and over the Parties,
13 including all members of the settlement class.

14 2. The Court finds that the Settlement Class (defined below) is properly certified as a
15 class for settlement purposes only:

16 all current and former managers and/or assistant managers who were
17 employed by Love's Country Stores of California in the State of
18 California and who were classified as an exempt employee but did not
19 meet the minimum salary required for exempt employees during the
20 Class Period.

21 3. The Court appoints Plaintiff Daniel Diamond as Class Representative for settlement
22 purposes only.

23 4. The Court appoints Joseph Lavi, Esq., Vincent C. Granberry, Esq., Melissa A.
24 Huether, Esq., and Courtney M. Miller, Esq. of Lavi & Ebrahimian, LLP as Class Counsel for
25 settlement purposes only.

26 5. The notice provided to the class members conforms with the requirements of
27 California Code of Civil Procedure section 382, California Civil Code section 1781, California Rules
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1 of Court 3.766 and 3.769, the California and United States Constitutions, and any other applicable
2 law, and constitutes the best notice practicable under the circumstances, by providing individual
3 notice to all class members who could be identified through reasonable effort, and by providing due
4 and adequate notice of the proceedings and of the matters set forth therein to the other class members.
5 The notice fully satisfied the requirements of due process.

6 6. The Court finds the settlement was entered into in good faith, that the settlement is
7 fair, reasonable and adequate, and that the settlement satisfies the standards and applicable
8 requirements for final approval of this class action settlement under California law, including the
9 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule
10 3.769.

11 7. The Settlement Agreement is not an admission by Defendant or by any other released
12 party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant
13 or any other released party. Neither this Order, the Settlement, nor any document referred to herein,
14 nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission
15 of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant or
16 any of the other released parties.

17 8. No Settlement Class Members have objected to the terms of the Settlement.

18 9. No Settlement Class Members have requested exclusion from the Settlement.

19 10. Within ten (10) business days following Effective Date, Defendant shall provide the
20 Maximum Settlement Amount and an amount sufficient to pay the employer's share of payroll taxes
21 to the Settlement Administrator. Within fifteen (15) business after the Effective Date, the Settlement
22 Administrator will pay (a) to Participating Class Members, their Individual Settlement Payments and
23 to PAGA Employees, their Individual PAGA Payments; (b) to Plaintiff, his Enhancement Payment,
24 as approved by the Court; (c) to Class Counsel, their Attorneys' Fees and Costs, as approved by the
25 Court; (d) to the Settlement Administrator, the Settlement Administration Costs, as approved by the
26 Court; and (e) to the LWDA, the LWDA Payment.

1 11. In addition to any recovery that Plaintiff may receive under the Settlement, and in
2 recognition of the Plaintiff's efforts on behalf of the settlement class, the Court hereby approves the
3 payment from the Maximum Settlement Amount of an Enhancement Payment to Plaintiff in the
4 amount of Nine Thousand Dollars and Zero Cents (\$9,000.00).

5 12. The Court approves the payment from the Maximum Settlement Amount of attorneys'
6 fees to Class Counsel in the sum of One Hundred Eighty-Four Thousand Six Hundred Sixty-Six
7 Dollars and Sixty-Six Cents (\$184,666.66), and the reimbursement of litigation expenses in the sum
8 of Twenty-Two Thousand Sixty-Five Dollars and Twenty Cents (\$22,065.20). Both are reasonable
9 amounts. The reasonableness of the fee award is determined based on a reasonable percentage of a
10 common fund obtained for the class. The court also has considered the lodestar amount. Awarding
11 fees on a percentage basis encourages efficient litigation practices and reflects the actual benefit
12 obtained for the class.

13 13. The Court approves and orders payment from the Maximum Settlement Amount in the
14 amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to Phoenix Class Action
15 Administration Solutions for performance of settlement administration services.

16 14. The Court approves and orders payment from the Maximum Settlement Amount in the
17 amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) attributed to the resolution of and
18 in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
19 *et seq.*, "PAGA") claims ("PAGA Settlement Amount"). The amount of Fifteen Thousand S Dollars
20 and Zero Cents (\$15,000.00) is to be paid to the California Labor and Workforce Development
21 Agency ("LWDA"). The amount of Five Thousand Dollars and No Cents (\$5,000.00) shall be
22 distributed to PAGA Employees who worked during the PAGA Period.

23 15. Settlement checks issued to participating Settlement Class Members and/or PAGA
24 Employees remaining uncashed after one hundred and eighty (180) days from the date of issuance of
25 the check will be voided. All funds from uncashed checks shall be distributed to the California State
26 Controller's Office, Unclaimed Property Division in the name of the participating Settlement Class
27 Members who failed to cash their check.

1 16. As of the Effective Date and full funding of the Maximum Settlement Amount, each
2 Participating Class Member hereby fully, finally, and forever releases and discharges each and every
3 one of the Released Parties from all claims, demands, rights, liabilities, and causes of action arising
4 in whole or in part, during the Class Period, for any of the following: a) misclassification as exempt
5 employees b) failure to pay minimum and regular wages for all hours worked; c) failure to pay for all
6 overtime hours worked at the applicable overtime rate of pay; d) failure to provide legally complaint
7 meal periods and/or pay meal period premium wages; e) failure to provide legally complaint rest
8 periods and/or pay rest period premium wages; f) failure to indemnify for employment-related losses/
9 expenditures; g) failure to provide complete and accurate wage statements; h) failure to timely pay
10 employees after termination or resignation of employment; applicable civil penalties; or any alleged
11 or actual failure to pay any interest or penalties owed as a result of any of the foregoing; or i) in any
12 manner arising out of any of the other facts or legal theories alleged or asserted in the Action, whether
13 formally raised in the operative complaint in this Action, or otherwise (collectively, the "Released
14 Class Claims"). These claims include all claims that arose during the class period under Labor Code
15 section 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1197, 1199, as well as the IWC
16 Wage Order, and section 17200 *et. seq.* of. the California Business and Professions Code, based on
17 the foregoing, as well as any civil penalty claims predicated on the claims alleged in the LWDA letter
18 and/or Complaint under PAGA, Labor Code 2699 *et seq.* The Parties understand and agree that the
19 word "claims" includes all actions, group actions, complaints and grievances that could potentially be
20 brought by Representative Plaintiff against the Released Parties.

21 17. As of the Effective Date and full funding of the Maximum Settlement Amount, each
22 PAGA Employee and the State of California hereby fully, finally, and forever releases and discharges
23 each and every one of the Released Parties from all claims, demands, rights, liabilities, and causes of
24 action: (a) arising in whole or in part, during the PAGA Period, for any of the following: any alleged
25 or actual unfair business practices or any alleged or actual violations of the Private Attorneys General
26 Act, Labor Code section 2699 *et seq.* ("PAGA") which derive from the foregoing Released Class
27 Claims; or (b) in any manner arising out of any of the other facts or legal theories alleged or asserted

1 in the Action, whether formally raised in the operative complaint in this Action, the April 28, 2020
2 letter to the LWDA, or otherwise (collectively, the "Released PAGA Claims") (together the Released
3 Class Claims and Released PAGA Claims are the "Released Claims").

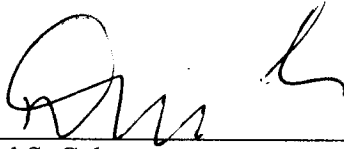
4 18. This Court shall retain jurisdiction with respect to all matters related to the
5 administration and consummation of the settlement, and any and all claims, asserted in, arising out
6 of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the
7 settlement and the determination of all controversies relating thereto.

8 19. The settlement administrator shall file a final report by 5/25/21
9 indicating the disbursements were made pursuant to the settlement. clerk's office
on 5/25/21

10 20. A status conference regarding distribution of the settlement funds is set for
11 5/25/21 at 8:30 a.m./~~p.m.~~ in Department S26 of the above-
12 captioned Court.

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14 **IT IS SO ORDERED.**

15 Dated: 5/25/21

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18 Hon. David S. Cohn
19 Judge of the Superior Court
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