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

JAMES PEVEY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

LUMBER CITY CORP., a California
corporation d/b/a DIY HOME CENTER;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2010240

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

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

Date: May 2, 2022
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: June 2, 2020
FAC Filed: January 29, 2021
SAC Filed: July 23, 2021
Trial Date: Not Set

1 Plaintiffs James Pevey and Anne Peterson (“Plaintiffs”), and Defendant Lumber City
2 Corp. dba DIY Home Center (“Defendant”) (together, the “Parties”) have entered into the Joint
3 Stipulation of Class Action/PAGA Settlement (“Settlement Agreement”) to settle the above-
4 captioned class action subject to the Court’s approval (the “Settlement”).

5 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
6 Action Settlement, including approval of the Class Representative Enhancement Payments for
7 Plaintiffs and Class Counsel’s application for a fee and expense award. The Court has read,
8 heard, and considered all the pleadings and documents submitted, and the presentations made in
9 connection with the Motion which came on for hearing on May 2, 2022.

10 **I. BACKGROUND**

11 On July 23, 2021, Plaintiffs filed the operative Second Amended Complaint on behalf of
12 himself and all similarly situated employees, against Defendant in Superior Court of the State of
13 California for the County of San Bernardino. The lawsuit alleged causes of action for (1)
14 violation of Labor Code § 226.7; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of
15 Labor Code § 226; (4) violation of Business and Professions Code § 17200, *et seq.*; and (5)
16 violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”); as well as
17 Peterson’s individual claims under the FEHA, asserting that Defendant failed to provide
18 compliant meal and rest periods, maintain accurate time records, and provide wage statements
19 that identified accurate gross and net wages earned, applicable hourly rates of pay, and pay
20 period start and end dates. The Second Amended Complaint is the operative Complaint
21 (“Complaint”).

22 **A. Class Members**

23 The “Class” includes

24 All current and former non-exempt employees of Defendant in the
25 State of California who earned wages at any time between April 6,
26 2016, through July 31, 2021” (the “Class”).

26 The Exempt Class is comprised of:

27 All current and former exempt employees of Defendant in the State
28 of California who earned wages at any time between April 6, 2018,
through July 31, 2021” (the “Exempt Class”).

1 **B. Operation of the Settlement**

2 Pursuant to the Preliminary Approval Order dated November 19, 2021, this Court
3 conditionally certified the Class and granted preliminary approval to the Settlement Agreement.
4 The Preliminary Approval Order also approved of the proposed forms of notice and notice plan.
5 The Court entered the Preliminary Approval Order after review and consideration of all of the
6 pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing.

7 In compliance with the Preliminary Approval Order, the Notice of Class Action
8 Settlement (“Notice Packet”) was sent to all Class Members via first class mail. Follow-up
9 mailings were sent to 60 individuals and 5 Notice Packets remain undeliverable. The notice
10 process was timely completed. The Settlement Administrator received no requests for exclusion
11 and no objections.

12 This Court finds that the Settlement appears to be the product of serious, informed, non-
13 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
14 treatment to any individuals. The Court finds that the Settlement was entered into in good faith
15 pursuant to California Code of Civil Procedure § 877.6. The Court further finds that the
16 Settlement is fair, reasonable, and adequate and that Plaintiffs have satisfied the standards for
17 final approval of a class action settlement under California law. Under the provisions of
18 California Code of Civil Procedure § 382 and Federal Rule of Civil Procedure 23, as approved
19 for use by the California state court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the
20 trial court has discretion to certify a class where:

21 [Q]uestions of law or fact common to the members of the class
22 predominate over any questions affecting only individual
23 members, and that a class action is superior to the available
 ... Fed. R. Civ. Proc. 23.

24 Certification of a settlement class is the appropriate judicial device under these
25 circumstances.

26 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
27 FOLLOWS:

- 28 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the

1 Settlement Agreement filed in this case.

2 2. The Court has jurisdiction over the subject matter of the litigation, the Class
3 Representatives, the other members of the Settlement Class, and Defendant.

4 3. The Court finds that the dissemination of the Notice Packet, as disseminated by
5 the appointed Settlement Administrator Phoenix Settlement Administrators to the Class
6 Members, constituted the best notice practicable under the circumstances to all persons within
7 the definition of the Class, and fully met the requirements of California law and due process
8 under the United States Constitution.

9 4. The Court approves the settlement of the above-captioned action, as set forth in
10 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties are
11 directed to perform in accordance with the terms set forth in the Settlement Agreement.

12 5. Except as otherwise provided in the Settlement Agreement, the Parties are to bear
13 their own costs and attorneys' fees.

14 6. The Court hereby certifies the following Class for settlement purposes only: all
15 current and former non-exempt employees of Defendant in the State of California who earned
16 wages at any time between April 6, 2016, through July 31, 2021" (the "Class"); and the
17 following Exempt Class for settlement purposes only: all current and former exempt employees
18 of Defendant in the State of California who earned wages at any time between April 6, 2018,
19 through July 31, 2021" (the "Exempt Class").

20 7. With respect to the Class and for purposes of approving the settlement only and
21 for no other purpose, this Court finds and concludes that: (a) the members of the Class are
22 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
23 questions of law or fact common to the Class, and there is a well-defined community of interest
24 among members of the Class with respect to the subject matter of the non-exempt claims in the
25 Litigation; (c) the claims of Class Representatives are typical of the claims of the members of the
26 Class; (d) the Class Representatives have fairly and adequately protected the interests of the
27 members of the Class; (e) a class action is superior to other available methods for an efficient
28 adjudication of this controversy; and (f) the counsel of record for the Class Representatives, *i.e.*,

1 Class Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and
2 representative capacity and for the Class.

3 8. Defendant shall continue to remit to the Qualified Settlement Fund established by
4 the Settlement Administrator the six installment payments until the total Gross Settlement
5 Amount of One Million One Hundred Eighty Thousand Dollars (\$1,180,000.00) has been
6 deposited, pursuant to the terms of the Settlement Agreement.

7 9. From the Gross Settlement Amount, the Settlement Administrator shall pay:

8 (a) to Class Counsel attorneys' fees in the amount of Three Hundred Ninety-
9 Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$393,333.33) and
10 reimbursement of costs in the amount of

11 _____ (\$_____);

12 (b) a service award to Class Representatives James Pevey and Anne Peterson
13 to reimburse them for their unique services in the amount of Ten Thousand Dollars (\$10,000.00)
14 each;

15 (c) the sum of Fifty-Six Thousand Two Hundred Fifty Dollars (\$56,250.00) to
16 the California Labor and Workforce Development Agency for its seventy-five percent (75%)
17 share of PAGA Penalties; and

18 (d) the sum of Eleven Thousand Five Hundred Dollars (\$11,500.00) to the
19 Settlement Administrator, Phoenix Settlement Administrators, for its fees and costs relating to
20 the settlement administration process.

21 10. The Court finds that these amounts are fair and reasonable. The Settlement
22 Administrator is directed to make such payments in accordance with the terms of the Settlement
23 Agreement.

24 11. The Court approves the individual settlement payment amounts, which shall be
25 distributed by the Settlement Administrator pursuant to the terms of the Settlement Agreement
26 from the Net Settlement Amount, after payment of those amounts set forth in Paragraph 10.

27 12. The Court hereby enters final judgment in this case in accordance with the terms
28 of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of

1 the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction
2 over the action and the Parties, including all Participating Class Members, for purposes of
3 enforcing and interpreting this Order and the Settlement.

4 13. A compliance hearing is set to be held on _____, 2022 at ____ a.m. in
5 Department S-26 of the San Bernardino County Superior Court in order to determine the number
6 and amount of any uncashed checks that have been distributed to the *cy pres* recipient.

7 IT IS SO ORDERED.

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9 DATED: _____

10 HON. DAVID COHN
11 SUPERIOR COURT OF CALIFORNIA
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