

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

NOV 19 2021

BY 
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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
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 19, 2021
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' application for an Order Granting Preliminary Approval of Class Action
2 Settlement was filed with the Court on October 27, 2021, and a hearing was held before this
3 Court on November 19, 2021.

4 The Court has considered the Joint Stipulation of Class Action Settlement ("Settlement
5 Agreement") and all other papers filed in this action.

6 NOW THEREFORE, IT IS HEREBY ORDERED:

7 1. This Court grants preliminary approval of the Settlement Agreement between
8 Plaintiffs and Defendant filed herewith. The Joint Stipulation of Class Action/PAGA Settlement
9 ("Settlement Agreement") appears to be fair, adequate, and reasonable to the Class;

10 2. The Class Representatives and Defendant (hereafter, "Settling Parties"), through
11 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
12 Litigation on behalf of the Class (as defined below and in the Settlement Agreement) as a whole;

13 3. The Court hereby conditionally certifies the following Class for settlement
14 purposes only:

15 All current and former non-exempt employees of Defendant in the
16 State of California who earned wages at any time between April 6,
17 2016, through July 31, 2021" (the "Class");

18 and an Exempt Class of:

19 All current and former exempt employees of Defendant in the State
20 of California who earned wages at any time between April 6, 2018,
21 through July 31, 2021" (the "Exempt Class");

22 Should for whatever reason the Settlement Agreement not become Final, the fact that the
23 Parties were willing to stipulate to certification of a class as part of the Settlement Agreement
24 shall have no bearing on, or be admissible in connection with, the Litigation or the issue of
25 whether a class should be certified in a non-settlement context.

26 4. The Court appoints and designates: (a) Plaintiffs James Pevey and Anne Peterson
27 as Class Representatives and (b) Larry W. Lee and Max W. Gavron of Diversity Law Group,
28 P.C.; William L. Marder of Polaris Law Group; and David J. Lee of David Lee Law, APC as
Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with

1 respect to all acts or consents required by, or which may be given, pursuant to the Settlement
2 Agreement, and such other acts reasonably necessary to finalize the Settlement Agreement and
3 its terms. Any Class Member may enter an appearance through his or her own counsel at such
4 Class Member's own expense. Any Class Member who does not enter an appearance or appear
5 on his or her own behalf will be represented by Class Counsel.

6 5. The Court hereby approves the terms and conditions provided for in the
7 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
8 falls within the range of reasonableness of a settlement, including the amount of the PAGA
9 penalties, and appears to be presumptively valid, subject only to any objections that may be
10 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
11 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
12 Members when balanced against the probable outcome of further litigation relating to liability
13 and damages issues. It also appears that investigation, research, and court proceedings have been
14 conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective
15 positions. It appears to the Court that settlement at this time will avoid substantial additional
16 costs by all Settling Parties, as well as avoid the delay and risks that would be presented by the
17 further prosecution of the Litigation. It also appears that settlement has been reached as a result
18 of intensive, serious, and non-collusive arm's-length negotiations.

19 6. A final fairness hearing on the question of whether the proposed Settlement
20 Agreement, the allocation of payments to Participating Class Members, attorneys' fees and costs
21 to Class Counsel, payment of PAGA penalties to the Labor Workforce & Development Agency,
22 and the Class Representative Enhancement Payment should be finally approved as fair,
23 reasonable, and adequate as to the members of the Class is hereby set for

24 5/2/22 at 10:00 in this Court.

25 7. The Court hereby approves, as to form and content, the Notice of Class Action
26 Settlement ("Notice Packet") to be sent to Class Members, which is attached as **Exhibit A** to the
27 Settlement Agreement. The Court finds that distribution of the Notice Packet substantially in the
28 manner and form set forth in the Settlement Agreement and this Order meets the requirements of

1 due process and shall constitute due and sufficient notice to all parties entitled thereto.

2 8. The Court appoints and designates Phoenix Settlement Administrators as the
3 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
4 approved Notice Packet to Class Members using the procedures set forth in the Settlement
5 Agreement.

6 9. Any Class Member may choose to opt out of and be excluded from the settlement
7 as provided in the Settlement Agreement and Notice Packet and by following the instructions for
8 requesting exclusion. Any person who timely and properly opts out of the settlement will not be
9 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.
10 Any Opt Out request must be in writing and signed by each such Class Member opting out and
11 must otherwise comply with the requirements delineated in the Notice Packet. Class Members
12 who have not requested exclusion by submitting a valid and timely Opt Out request, by the Opt
13 Out deadline, shall be bound by all determinations of the Court, the Settlement Agreement, and
14 Judgment.

15 10. Any Class Member may object to the Settlement Agreement or express his or her
16 views regarding the Settlement Agreement and may present evidence and file briefs or other
17 papers that may be proper and relevant to the issues to be heard and determined by the Court as
18 provided in the Class Notice.

19 11. The Motion for Final Approval shall be filed by the Class Representative no later
20 than sixteen (16) court days before the Settlement Fairness Hearing.

21 12. The Court reserves the right to adjourn or continue the date of the Settlement
22 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
23 the Class, and retains jurisdiction to consider all further applications arising out of or connected
24 with the Settlement Agreement.

25 IT IS SO ORDERED.

26
27 DATED: 11/19/21



HON. DAVID COHN
SUPERIOR COURT OF CALIFORNIA