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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12

13 JESUS NIETO, et al.,

14 *Plaintiffs,*

15 vs.

16 AMERICAN BUILDING SUPPLY, INC., et al.,

17 *Defendants.*
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Case No.: 34-2019-00259025

[Assigned to: Hon. Jill Talley]

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 3, 2023

Time: 9:00 a.m.

Courtroom: Dept. 25

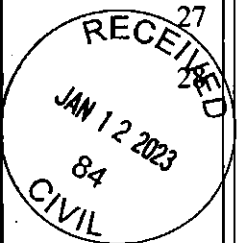
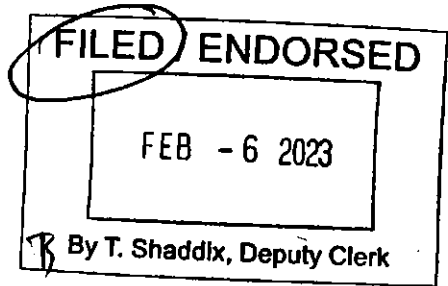
Judge: Hon. Jill Talley

[Hearing set by Court Order of October 5, 2022]

Action Filed: June 19, 2019

Trial Date: Not Set

BY FAX



1 [Additional counsel]

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13 Attorneys for Plaintiff, JOAN JIMENEZ, individually
14 and on behalf of other individuals similarly situated
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16
17 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

18 This matter came on for hearing on February 3, 2023, upon the Motion for Final Approval of the
19 proposed settlement ("Settlement") of this action on the terms set forth in the JOINT STIPULATION
20 RE: CLASS AND REPRESENTATIVE ACTION SETTLEMENT (the "Agreement") *see* Declaration
21 of H. Scott Leviant In Support of Plaintiff's Motion for Final Approval of Class Action Settlement
22 ["Leviant Decl."], at Exh. 1).

23 After reviewing the Agreement, the Notice process, having reviewed the entire record on this
24 action, having heard the argument of Counsel for respective Parties, and good cause appearing, the Court
25 Orders as follows:

26 1. To the extent defined in the Agreement, attached hereto as Exhibit I and incorporated
27 herein by reference, the terms in this Order shall have the meanings set forth therein.

28 2. The Court finds that the terms of the proposed class action Settlement are fair,
reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting final
approval of the class action settlement the Court has considered the factors identified in *Dunk v. Ford*
Motor Co., 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer, Inc.*, 91 Cal.
App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

3. The Court finds that the Settlement has been reached as a result of intensive, serious and
non-collusive arms-length negotiations. The Court further finds that the Parties have conducted

1 thorough investigation and research, and the attorneys for the Parties are able to reasonably evaluate
2 their respective positions. The Court also finds that settlement at this time will avoid additional
3 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
4 of the action. The Court finds that the risks of further prosecution are substantial.

5 4. The parties' Settlement is granted final approval as it meets the criteria for final
6 settlement approval. The settlement falls within the range of possible approval as fair, adequate and
7 reasonable, and appears to be the product of arm's-length and informed negotiations and to treat all
8 Class Members fairly. The Settlement Class meets the requirements for conditional certification for
9 settlement purposes only under Code of Civil Procedure § 382.

10 5. The Class Notice provided to the Settlement Class conforms with the requirements of
11 Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and 3.769, the California and
12 United States Constitutions, and any other applicable law, and constitutes the best notice practicable
13 under the circumstances, by providing individual notice to all Class Members who could be identified
14 through reasonable effort, and by providing due and adequate notice of the proceedings and of the
15 matters set forth therein to the other Class Members. The Class Notice fully satisfied the requirements
16 of due process.

17 6. The following persons are certified as Class Members solely for the purpose of entering
18 a settlement in this matter:

19 All persons who have worked for JELD-WEN, Inc. and/or American Building
20 Supply, Inc. as non-exempt employees in the State of California at any time during the
21 Class Period (the "Class Period" is the time period from May 18, 2017, to May 21,
22 2022). (Settlement, ¶¶ 1.f, 1.g.)

23 7. The Court also defines the following "PAGA Employees" impacted by the proposed
24 settlement of PAGA claims:

25 All Class Members who have worked for JELD-WEN, Inc. and/or American
26 Building Supply, Inc. as non-exempt employees in the State of California at any time
27 during the PAGA Period (the "PAGA Period" is the time period from June 19, 2018, to
28 May 21, 2022). (Settlement, ¶¶ 1.f, 1.g., 1.w, 15.)

8. Plaintiffs JESUS NIETO and JOAN JIMENEZ are appointed as the Class
Representatives. The Court finds Plaintiffs' counsel are adequate, as they are experienced in wage and
hour class action litigation and have no conflicts of interest with absent Class Members, and that they

adequately represented the interests of absent class members in the Litigation. Moon & Yang, APC, and Bradley/Grombacher, LLP, are appointed Class Counsel.

9. The Court appoints Phoenix Settlement Administrators to act as the Settlement Administrator, pursuant to the terms set forth in the Agreement.

10. One Class Member timely requested exclusion from the Class. That Class Member is Robert Vuittonet. All other Class Members remain bound by the Final Approval Order and Judgment in the Action. No Class Members who worked during the PAGA Period have the right to exclude themselves from the Settlement with respect to resolution of the PAGA Claims.

11. Upon entry of this Final Approval Order and the Judgment, funding of the Settlement and compensation to the Class Members shall be implemented pursuant to the terms of the Settlement.

12. In addition to any recovery that Plaintiffs may receive under the Settlement as a Class Member, and in recognition of the Plaintiffs' efforts on behalf of the Settlement Class, the Court hereby approves the payment of enhancement award to Plaintiffs JESUS NIETO and JOAN JIMENEZ in the amount of \$7,500 each (for a total of \$15,000).

13. The Court approves the payment of attorneys' fees to Class Counsel in the amount of \$350,000.00, with \$175,000.00 awarded to Moon & Yang, APC, and \$175,000.00 of that amount awarded to Bradley Grombacher, LLP. Litigation expenses are approved by the Court in the following amount: \$32,439.38, with \$22,949.77 of that amount awarded to Moon & Yang, APC, and \$9,489.61 of that amount awarded to Bradley Grombacher, LLP.

14. The Court approves and orders payment in the amount of \$25,000.00 to Phoenix Settlement Administrators for performance of its services as the Settlement Administrator, as set forth in the Notice to the Class.

15. Upon completion of administration of the Settlement, the Parties shall file a declaration stating that all amounts payable under the Settlement have been paid and that the terms of the Settlement have been completed.

16. The Court sets a non-appearance case review regarding compliance with all fund distribution requirements under the Settlement for 9/29, 2023, at 9:00 AM, in Dept. 27 of the above-entitled Court. A Final Report, including any declaration from the Settlement

1 Administrator regarding compliance, shall be filed with the Court no later than _____,
2 2023.

3 17. The Court approves and orders payment in the amount of \$75,000.00 to the Labor and
4 Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys
5 General Act of 2004 (Labor Code § 2698 *et seq.*).

6 18. Once Defendant fully funds the Settlement by paying the Total Class Action Settlement
7 Amount, Plaintiffs and the Class Members, shall have, by operation of this Final Approval Order and the
8 separate Judgment, fully, finally and forever released, relinquished, and discharged Defendant from the
9 Released Class Claims described in the Settlement as follows:

10 Upon the later of the date of final approval of the [Agreement] or the date that
11 Defendant delivers all amounts owed under this Settlement to the Settlement
12 Administrator, Plaintiffs and Class Members (including the Class Representatives)
release the Released Parties from the following, collectively referred to as the "Released
Class Claims, as those terms are defined in the Settlement Agreement:

13 Any and all claims, actions, demands, causes of action, suits, debts, obligations,
14 damages, rights or liabilities that have been asserted by Plaintiffs, or the Class Members
15 or any of their respective heirs, executors, administrators, beneficiaries, predecessors,
16 successors, attorneys, assigns, agents, and/or representatives arising out of any claims
that were encompassed in the Nieto Lawsuit and/or the Jimenez Lawsuit, and any
claims which reasonably flow from the facts alleged in any of the following:

- 17 • The Notice of Labor Code Violation and PAGA Penalties submitted by Nieto to
the LWDA (June 19, 2019);
- 18 • The Complaint filed in the Nieto Lawsuit (June 19, 2019);
- 19 • The First Amended Complaint filed in the Nieto Lawsuit (September 10, 2019);
- 20 • The Notice of Labor Code Violation and PAGA Penalties submitted by Jimenez
21 to the LWDA (May 17, 2021);
- 22 • The Complaint filed in the Jimenez Lawsuit (May 18, 2021);
- 23 • The First Amended Complaint filed in the Jimenez Lawsuit (July 30, 2021);
- 24 • The Amended Notice of Labor Code Violation and PAGA Penalties submitted
by Jimenez and Nieto to the LWDA (Exhibit E [to the Agreement]); and
- 25 • The Second Amended Class Action Complaint filed by Plaintiffs in connection
26 with this Stipulation (Exhibit D [to the Agreement]), including, but not limited
27 to: claims for unpaid wages (including claims for minimum wage and overtime
28 compensation), meal and rest period premiums, interest, penalties (including
waiting time penalties pursuant to Labor Code section 203, failure to pay wages
timely pursuant to Labor Code section 204, pay stub penalties pursuant to Labor
Code section 226, and civil penalties pursuant to the Labor Code Private

1 Attorneys General Act of 2004 (Labor Code sections 2698, et seq.) ("PAGA")),
2 claims pursuant to Labor Code sections 200, 201, 202, 203, 204, 210, 226,
3 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
4 1199, 2698, et seq., the Industrial Welfare Commission Wage Orders relating to
5 claims for unpaid hours worked, meal periods and rest breaks, and
6 recordkeeping, and claims under Business and Professions Code sections
7 17200, et seq., claims for attorneys' fees and costs, conversion, fraud, common
8 count, and unfair business practices. Released Class Claims include all claimed
9 or unclaimed compensatory, consequential, incidental, liquidated, punitive and
10 exemplary damages, restitution, interest, costs and fees, injunctive or equitable
11 relief, and any other remedies available at law or equity allegedly owed or
12 available to the Class arising or reasonably flowing from any of the complaints
13 and/or PAGA letters in the Nieto Lawsuit and/or the Jimenez Lawsuit, as
14 identified above, against the Released Parties for the time period from May 18,
15 2017 up to and including May 21, 2022.

9 The res judicata effect of the Judgment will be the same as that of the Release.

10 The Parties agree that no Class Member who worked for Defendant and/or ABS as non-
11 exempt employees in California during the PAGA Period has the right to exclude
12 himself or herself from the Settlement or to object to the terms of this Stipulation as it
13 pertains to resolution of the PAGA claims. All Class Members who worked for
14 Defendant and/or ABS as non-exempt employees in California during the PAGA
15 Period will be bound by this Stipulation with respect to the PAGA claims, upon the
16 later of its approval by the Court or Defendant's delivery of all amounts owed under
17 this Settlement to the Settlement Administrator, regardless of whether he or she
18 negotiates his or her settlement check.

15 19. The Parties are ordered to give notice of this final Order and Judgment to the LWDA,
16 pursuant to Labor Code § 2699(1)(3).

17 20. The Court hereby directs the Parties to effectuate the terms of the Settlement as set forth in
18 the Settlement Agreement.

19 21. The Court retains jurisdiction to consider all further applications arising out of or in
20 connection with the settlement.

22 **IT IS SO ORDERED.**

23
24 Dated: 2/6/23



Jill Talley
Hon. Jill Talley
SACRAMENTO COUNTY SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

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MELIS ATALAY

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Counsel for Defendants AMERICAN

BUILDING SUPPLY, INC. and JELD-WEN,
INC.

Counsel for Plaintiff JOAN JIMENEZ

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **January 12, 2023** at Los Angeles, California.

H. Scott Leviant

Type or Print Name


Signature