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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SISKIYOU

12 LAPREAL VINCENT, CHARLENE
13 KEARNEY, individuals, on behalf of
14 themselves and on behalf of all persons
15 similarly situated,

16 Plaintiffs,

17 v.

18 WESTERN BUYERS LLC, a Limited
19 Liability Company; US LBM HOLDINGS,
20 LLC, a Limited Liability Company; ACS-US
21 LBM, LLC, a Limited Liability Company;
22 AMERICAN CONSTRUCTION SOURCE-
23 US LBM, INC., a Corporation; AMERICAN
24 CONSTRUCTION SOURCE LLC, a Limited
25 Liability Company; CALIFORNIA
26 BUILDING SUPPLY- US LBM, LLC, a
27 Limited Liability Company; DESERT
28 LUMBER- US LBM, LLC, a Limited Liability
Company; PARKER's BUILDING SUPPLY -
US LBM, LLC, a Limited Liability Company
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 23CV00757

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: September 26, 2024
Hearing Time: 9:30 a.m.

Judge: Hon. JoAnn Bicego
Courtroom: 2

Action Filed: January 23, 2023
Trial Date: None Set

1 The motion of Plaintiffs Lapreal Vincent and Charlene Kearney (“Plaintiffs”) for an order
2 finally approving the Class Action and PAGA Settlement Agreement (“Agreement”) with
3 Defendants Western Buyers, LLC; US LBM Holdings, LLC; ACS – US LBM, LLC; American
4 Construction Source - US LBM, Inc.; American Construction Source, LLC; California Building
5 Supply – US LBM, LLC; Desert Lumber – US LBM, LLC; Parker's Building Supply – US LBM,
6 LLC (“Defendants”), attorneys’ fees and costs, service payments, and the expenses of the
7 Administrator duly came on for hearing on September 26, 2024 before the Honorable JoAnn
8 Bicego.

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

- 13 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 14 2. This Court has jurisdiction over the subject matter of this litigation pending before
15 the California Superior Court for the County of Siskiyou, and over all Parties to this litigation,
16 including the Class.
- 17 3. Based on a review of the papers submitted by Plaintiffs and a review of the
18 applicable law, the Court finds that the Gross Settlement Amount of One Million Nine Hundred
19 Thousand Dollars (\$1,900,000) and the terms set forth in the Agreement are fair, reasonable, and
20 adequate.
- 21 4. The Court further finds that the Settlement was the result of arm’s length
22 negotiations conducted after Class Counsel had adequately investigated the claims and became
23 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
24 Settlement, the significant risks relating to certification, liability, and damages issues, and the
25 assistance of an experienced mediator in the settlement process, among other factors, support the
26 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

27 **Preliminary Approval of the Settlement**

1 5. On May 16, 2024, the Court granted preliminary approval of the Settlement. At
2 this same time, the Court approved conditional certification of the Class for settlement purposes
3 only.

4 **Notice to the Class**

5 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
6 by first class mail to members of the Class at their last known addresses on or about June 20,
7 2024. Mailing of the Class Notice to their last known addresses was the best notice option under
8 the circumstances and was reasonably calculated to communicate actual notice of the litigation
9 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
10 accurately informed the Class Members of all material elements of the proposed Settlement and of
11 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
12 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
13 State of California, the United States Constitution, due process and other applicable law. The
14 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
15 instructions and a variety of means to obtain additional information.

16 7. The Response Deadline for opting out of the Class or submitting written objections
17 to the Settlement was August 19, 2024, which was extended by 14 days for re-mailed Class
18 Notices. There was an adequate interval between mailing of the Class Notice and the response
19 deadline to permit Class Members to choose what to do and act on their decision. A full
20 opportunity has been afforded to the Participating Class Members to participate in this hearing,
21 and all Participating Class Members and other persons wishing to be heard have been heard. Class
22 Members also have had a full and fair opportunity to exclude themselves from the proposed
23 Settlement and Class. Accordingly, the Court determines that all Class Members who did not
24 timely and properly submit a request for exclusion are bound by the Settlement and this Final
25 Approval Order and Judgment.

26 **Fairness Of Settlement**

27 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
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1 48 Cal.App.4th 1794, 1801 (1996).

2 a. The settlement was reached through arm's-length bargaining between the
3 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
4 wage and hour representative and class actions. There has been no collusion between the Parties
5 in reaching the proposed settlement.

6 b. Plaintiffs' investigation and discovery have been sufficient to allow the
7 Court and counsel to act intelligently.

8 c. Counsel for both parties are experienced in similar employment class action
9 litigation. All counsel recommended approval of the Agreement.

10 d. The percentage of objectors and requests for exclusion is small. No
11 objections were received. No requests for exclusion were received.

12 e. The participation rate was high. 1,023 Class Members will be mailed a
13 settlement payment, representing 100% of the overall Class.

14 9. The consideration to be given to the Class Members under the terms of the
15 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
16 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
17 Members' claims, given the uncertainties and significant risks of the litigation and the delays
18 which would ensue from continued prosecution of the Action.

19 10. The Agreement is approved as fair, adequate and reasonable and in the best
20 interests of the Class Members.

21 **Attorneys' Fees and Costs**

22 11. An award of \$633,333 for attorneys' fees, representing one-third (1/3) of the Gross
23 Settlement Amount, and \$34,839.38 for litigation costs and expenses, is reasonable, in light of the
24 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
25 achieved by Class Counsel. The requested awards have been supported by Class Counsel's
26 lodestar and billing statement.

27 **Class Representative Service Payments**

1 12. The Agreement provides for a Class Representative Service Payment of not more
2 than \$15,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
3 Representative Service Payment in the amount of \$15,000 each to the Plaintiffs is reasonable in
4 light of the risks and burdens undertaken by the Plaintiffs in the litigation, for their time and effort
5 in bringing and prosecuting this matter on behalf of the Class, and for their execution of a general
6 release.

7 **Administration Expenses Payment**

8 13. The Administrator shall calculate and administer the payment to be made to the
9 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
10 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
11 Penalties, generate and issue any required tax reporting forms, calculate withholdings and perform
12 the other remaining duties set forth in the Agreement. The Administrator has documented
13 \$12,950 in fees and expenses, and this amount is reasonable in light of the work performed by the
14 Administrator.

15 **PAGA Penalties**

16 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
17 Amount of \$95,000, which shall be allocated \$71,250 to the LWDA as the LWDA's 75% share of
18 the settlement of civil penalties paid pursuant to the PAGA and \$23,750 to be distributed to the
19 Aggrieved Employees based on their respective pay periods worked during the PAGA Period,
20 which is October 26, 2021 to May 16, 2024. The Aggrieved Employees are all individuals who
21 were employed by Defendants in California and classified as a non-exempt employee at any time
22 during the PAGA Period. The Court finds the PAGA Penalties to be reasonable. All Aggrieved
23 Employees will be sent their share of the PAGA Penalties and will be subject to the release of the
24 Released PAGA Claims as set forth below, whether or not they opt out of the Class.

25 **II.**

26 **ORDERS**

27 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1 15. The certification of the Class for the purposes of settlement (only) is confirmed.
2 The Class is defined as follows:

3 All individuals who were employed by Defendants in California and classified as a
4 non-exempt employee at any time during the Class Period.

5 The Class Period is January 23, 2019 to May 16, 2024.

6 16. All persons who meet the foregoing definition are members of the Class or Class
7 Members, except for those individuals who submitted a valid request for exclusion (“opt out”)
8 from the Class. There were no individuals who requested exclusion.

9 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class. Defendants shall fully fund the Gross Settlement Amount and also fund
11 the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to
12 the Administrator no later than fourteen (14) days after the Effective Date.

13 18. Class Counsel are awarded attorneys' fees in the amount of \$633,333 and costs in
14 the amount of \$34,839.38. Class Counsel shall not seek or obtain any other compensation or
15 reimbursement from Defendants, Plaintiffs or members of the Class.

16 19. The payment of the Class Representative Service Payments in the amount of
17 \$15,000 each to the Plaintiffs is approved.

18 20. The payment of \$12,950 to the Administrator for their fees and expenses is
19 approved.

20 21. The PAGA Penalties of \$95,000 is approved and shall be allocated in accordance
21 with the Agreement.

22 22. The Agreement and this Settlement are not an admission by Defendants, nor is this
23 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
24 wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for
25 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
26 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
27 as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability
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1 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
2 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
3 admission or concession with regard to the denials or defenses by Defendants. Notwithstanding
4 these restrictions, Defendants may file in the Action or in any other proceeding this Final
5 Approval Order and Judgment, the Agreement, or any other papers and records on file in the
6 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
7 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
8 Claims and/or the Released PAGA Claims.

9 23. Notice of entry of this Final Approval Order and Judgment shall be given to all
10 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
11 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
12 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
13 to individual Class Members. Plaintiffs shall serve this Final Approval Order and Judgment on
14 the LWDA.

15 24. If the Agreement does not become final and effective in accordance with the terms
16 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
17 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
18 revert to their respective positions as of before entering into the Agreement, and expressly reserve
19 their respective rights regarding the prosecution and defense of this Action, including all available
20 defenses and affirmative defenses, and arguments that any claim in the Action could not be
21 certified as a class action and/or managed as a representative action.

22
23 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

24 25. Except as set forth in the Agreement and this Final Approval Order and Judgment,
25 Plaintiffs, and all members of the Class, shall take nothing in the Action.

26 26. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
27 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
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1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 27. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 28. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 29. As of the Effective Date and upon full funding of the Gross Settlement Amount by
9 Defendants, all Participating Class Members, on behalf of themselves and their respective former
10 and present representatives, agents, attorneys, heirs, administrators, successors, beneficiaries and
11 assigns, release the Released Parties from the Released Class Claims. "Released Class Claims"
12 are all claims, rights, demands, liabilities and causes of action that were alleged, or reasonably
13 could have been alleged, based on the facts, Labor Code and/or IWC Wage Order sections stated
14 in the Operative Complaint which occurred during the Class Period while employed by one or
15 more Defendant(s) in a non-exempt position in California. Except as expressly set forth in this
16 Agreement, Participating Class Members do not release any other claims not implicated by the
17 Operative Complaint, including claims for vested benefits, wrongful termination, violation of the
18 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
19 compensation, or Class claims based on facts occurring outside the Class Period.

20 30. As of the Effective Date and upon full funding of the Gross Settlement Amount by
21 Defendants, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
22 themselves and their respective former and present representatives, agents, attorneys, heirs,
23 administrators, successors, beneficiaries and assigns, release the Released Parties from the
24 Released PAGA Claims. The "Released PAGA Claims" are all claims, rights, demands, liabilities
25 and causes of action for PAGA penalties that were alleged, or reasonably could have been alleged,
26 based on the facts, Labor Code and/or IWC Wage Order sections stated in the Operative
27 Complaint and the PAGA Notice, which occurred during the PAGA Period while employed by
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1 one or more Defendant(s) in a non-exempt position in California Released PAGA Claims include
2 PAGA claims for civil penalties predicated upon failure to provide meal and/or rest periods,
3 failure to pay meal and/or rest period premiums at the regular rate, failure to properly calculate the
4 regular rate, failure to pay minimum wage, failure to pay overtime, failure to provide accurate
5 wages statements, failure to pay all wages owed, failure to pay reporting time pay, failure to
6 reimburse business expenses, failure to timely pay wages when due, failure to provide paid sick
7 leave, and failure to provide proper seating. The Released PAGA Claims do not include other
8 PAGA claims not implicated by the Operative Complaint or PAGA Notice, underlying wage and
9 hour claims, claims for vested benefits, wrongful termination, violation of the Fair Employment
10 and Housing Act, unemployment insurance, disability, social security, discrimination, worker's
11 compensation, and PAGA claims outside of the PAGA Period.

12 31. The Released Parties collectively mean: Defendants and each of their former and
13 present owners, investors, operating companies, affiliates, divisions, corporations in common
14 control, predecessors, successors, assigns, parent companies, subsidiaries and d/b/a's, and each of
15 its and their former and present directors, officers, employees, shareholders, partners, owners,
16 attorneys, insurers, and any other successor, assigns, or legal representatives as of the date of Final
17 Approval Hearing.

18 32. As of the Effective Date, Plaintiffs generally release and discharge Defendants and
19 the Released Parties as set forth fully in the Agreement.

20 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

21
22 Dated: _____

23 _____
24 HON. JOANN BICEGO
25 JUDGE, SUPERIOR COURT OF CALIFORNIA
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