

1
2
3
4
5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10

11 CLARENCE PHILLIPS, individually, on a
12 representative basis, and on behalf of all
13 others similarly situated;

14 Plaintiff,

15 vs.

16 HARDY WINDOW COMPANY, a
17 California Corporation; and DOES 1
18 through 20, inclusive;

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No.: CIVSB2312048

*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

[PROPOSED] ORDER:

- 1) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT;**
- 2) CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
- 4) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

1 Having considered the Class Action and PAGA Settlement Agreement (the “Settlement
2 Agreement”) between Plaintiff Clarence Phillips and Defendant Hardy Window Company
3 (“Defendant”) (collectively, the “Parties”), as well as the Memorandum of Points and Authorities
4 in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement, the
5 documents submitted in support of the motion, and all supporting legal authorities and
6 documents, IT IS HEREBY ORDERED:

7 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
8 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
9 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
10 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
11 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
12 arms-length negotiations conducted after the Parties adequately investigated and became familiar
13 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
14 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

15 2. For settlement purposes only, the Court finds that the proposed Class is
16 ascertainable and that there is a sufficiently defined community of interest among the Class
17 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
18 Classes, for settlement purposes only:

19 All current and former nonexempt employees who were employed by Hardy
20 Window Company in California at any time during the Class Period of December
21 10, 2019, through the date of this Order.

22 3. As set forth in the Settlement Agreement, “Aggrieved Employees” includes: all
23 current and former nonexempt employees who were employed by Hardy Window Company in
24 California at any time during the PAGA Period of May 4, 2022, through the date of this Order.

25 4. The class action settlement set forth in the Settlement Agreement between
26 Plaintiff and Defendant is preliminarily approved as it appears to be proper, to fall within the
27 range of a fair, reasonable and adequate settlement, and to be presumptively valid, subject only
28 to any objections that may be raised at the Final Approval Hearing.

1 5. For settlement purposes only, the Court appoints Plaintiff Clarence Phillips as
2 Class Representative, and Brian Mankin and Peter Carlson as Class Counsel.

3 6. The Court approves Phoenix Settlement Administrators to act as the
4 Administrator.

5 7. The Court approves, as to form and content, the Class Notice and finds that the
6 Class Notice satisfies the requirements of California Rule of Court, rules 3.766 and 3.769, subd.
7 (f), and fairly apprises the Class Members of the terms of the final approval hearing date, the
8 proposed settlement terms and of their options, including: (1) the nature of the action, the
9 definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement;
10 (2) Named Plaintiff's and Class Counsel's applications for the Class Representative Service
11 Payment, and Class Counsel's request for attorneys' fees and costs; (3) a formula used to
12 determine the Class Member's estimated Individual Class Payment; (4) Class Members' rights to
13 appear through counsel if they desire; (5) how to object to the Settlement or submit an opt-out
14 request if a Class Member wishes to do so; and (6) how to obtain additional information
15 regarding the action and the Settlement. Counsel for the Parties are authorized to correct
16 typographical errors and make clarifications, to the extent the same are found or needed, so long
17 as such corrections do not materially alter the substance of the documents.

18 8. The Court approves the procedure for Class Members to participate in, request
19 exclusion from or object to, and preserve appeal rights as set forth in the Settlement Agreement
20 and the Class Notice.

21 9. The Court finds that the deadlines and method set forth in the Settlement
22 Agreement for the mailing of the Class Notice meet the requirements of due process, provide the
23 best notice practicable under the circumstances, constitute due and sufficient notice to all persons
24 entitled to notice, and otherwise satisfy the requirements of California law and due process.

25 10. The Court directs the Settlement Administrator to perform address verification
26 measures and mail the Class Notice by first class mail to the Class Members as set forth in the
27 timeline below and to otherwise carry out the Settlement according to the terms of the Settlement
28 Agreement and in conformity with this Order. The Parties are also ordered to carry out the

Settlement according to the terms of the Settlement Agreement.

11. All Class Members shall be deemed to participate in the Settlement, although any Class Member who wishes to comment on or object to the Settlement or who elects not to participate in the Settlement has until 45 days after the mailing of the Class Notice to submit an objection or Request to be Excluded, pursuant to the procedures set forth in the Class Notice.

12. The Court approves the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Administrator's account as a result of a failure to timely cash a settlement check shall be issued to the State Controller's Office in the name of the Class Member, as set forth in the Settlement Agreement.

13. The following dates shall govern for purposes of this settlement:

August 1, 2024	Preliminary Approval (PA) hearing
September 3, 2024 (31 days after PA)	Deadline for Administrator to complete first mailing of the Notice
October 18, 2024 (45 days after mailing)	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Date: _____ Time: _____	Final Approval Hearing

14. A final approval hearing shall be held in this Court on the date and time above to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to award to Class Counsel; and (3) the amount of the Class Representative Service Payment. The Court may continue or adjourn the final approval hearing without further notice to the Class Notice.

1 15. Counsel for the parties shall file memoranda, declarations, or other statements and
2 materials in support of their request for final approval of the Settlement, attorneys' fees,
3 litigation costs, Class Representative's Service Payment, Administration Expenses Payment, and
4 payment to LWDA for PAGA penalties prior to the Final Approval hearing according to the time
5 limits set by the Code of Civil Procedure and the California Rules of Court.

6 16. Neither this Order, the Settlement Agreement, nor any document referred to
7 therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement
8 may be construed as, or may be used as an admission by or against Defendant or any of the other
9 Released Parties (as defined in the Settlement Agreement) of any fault, wrongdoing or liability
10 whatsoever. The entering into or carrying out of the Settlement Agreement, and any negotiations
11 or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence
12 of, an admission or concession with regard to the denials or defenses by Defendant or any of the
13 other Released Parties and shall not be offered in evidence in any action or proceeding against
14 Defendant or any of the Released Parties in any court, administrative agency or other tribunal for
15 any purpose whatsoever other than to enforce the provisions of this Order, the Settlement
16 Agreement, or any related agreement or release.

17 17. The Court may, for good cause shown, extend any of the deadlines set forth in
18 this Order.

19 18. In the event that the Settlement Agreement does not receive final approval or the
20 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and
21 shall be vacated.

22 19. Pending the Final Approval hearing, all proceedings in this action, other than
23 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
24 Order, are stayed.

25 20. Counsel for the parties are hereby authorized to utilize all reasonable procedures
26 in connection with the administration of the Settlement which are not materially inconsistent
27 with either this Order or the terms of the Settlement.
28

IT IS SO ORDERED.

Date: _____

Judge of the Superior Court