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FILED/ENDORSED
SEP 19 2019
By D. Lashley, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

ROBERT J. KRAMER, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC., a
Delaware Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 34-2017-00222434-CU-OE-GDS

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint Filed: November 17, 2017

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 **[PROPOSED] ORDER**

2 On November 17, 2017, Plaintiff ROBERT J. KRAMER (“Plaintiff”) filed a putative class
3 action against Defendant Lumber Liquidators, Inc. (“Defendant”) in the Superior Court of California,
4 County of Sacramento entitled, *Robert J. Kramer, behalf of himself, all others similarly situated v.*
5 *Lumber Liquidators, Inc.*, a Delaware corporation; and Does 1 through 100, inclusive, Case No. 34-
6 2017-00222434-CU-OE-GDS.

7 On February 20, 2019, Plaintiff filed a First Amended Complaint asserting the following
8 causes of action: (1) Failure to Pay All Wages Earned (Labor Code § 204); (2) (2) Failure to Pay
9 Overtime Wages (Labor Code §§ 510, 1194(a), and 1198); (3) Failure to Provide Accurate, Itemized
10 Wage Statements (Labor Code § 226(a)); (4) Failure to Provide Meal Periods (Labor Code §§ 226.7
11 and 512(a)); (5) Failure to Provide Rest Breaks (Labor Code § 226.7); (6) Failure to Maintain Records
12 (Labor Code § 1174(d)); (7) Failure to Reimburse Business Expenses (Labor Code § 2802); (8) Failure
13 to Pay All Wages Upon Termination (Labor Code §§ 201-203); (9) Unfair Business Practice (Business
14 & Professions Code §§ 17200 *et seq.*); and (10) Private Attorneys General Act (Labor Code §§ 2699
15 *et seq.*).

16 NOW THEREFORE, having read and considered the Class Action Settlement Agreement and
17 Exhibits thereto, **IT IS HEREBY ORDERED:**

18 1. This Order hereby incorporates by reference the definitions of the Class Action
19 Settlement Agreement (“Settlement”) as though fully set forth herein, and all terms used herein shall
20 have the same meaning as set forth in the Settlement.

21 2. The Court conditionally certifies and approves, for settlement purposes only, a Class
22 as defined as follows: All current and/or former Store Managers and Store Managers in Training
23 employed in the state of California by Lumber Liquidators at any time between November 17, 2013
24 until the time of preliminary approval of the Settlement by the Court.

25 3. Dominic J. Messiha of the Law Office of Dominic J. Messiha, and Justin Marino of
26 Stevenson Marino, LLP (“Class Counsel”) shall represent the Putative Class for purposes of the
27 Settlement in this Action. Any Putative Class Member may enter an appearance in the Action, at their

28 2.

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

1 own expense, either individually or through counsel of their own choice. However, if they do not
2 enter an appearance, they will be represented by Class Counsel.

3 4. The Class Representative shall be Plaintiff, Robert J. Kramer.

4 5. The Court hereby preliminarily approves the proposed Settlement upon the terms,
5 conditions, and all release language set forth in the Settlement attached to the Declaration of Dominic
6 J. Messiha, Esq. as **Exhibit 7**. The Court finds that the Settlement appears to be within the range of
7 reasonableness necessary for preliminary approval by the Court. It appears to the Court that the
8 Settlement terms are fair, adequate, and reasonable as to all potential Class Members when balanced
9 against the probable outcome of further litigation, given the risks relating to liability and damages. It
10 further appears that extensive and costly investigation and research has been conducted such that
11 counsel for the Parties at this time are reasonably able to evaluate their respective positions. It further
12 appears to the Court that the Settlement at this time will avoid substantial additional costs by all parties,
13 as well as the delay and risks that would be presented by the further prosecution of the Action. It
14 appears that the Settlement has been reached as a result of intensive, arms-length negotiations utilizing
15 an experienced third party neutral.

16 6. The Court confirms Angeion Group as the Settlement Administrator and preliminarily
17 approves that settlement administration costs shall be paid from the Total Settlement Amount (as that
18 term is defined in the Settlement). The cost of administration includes all tasks required of the
19 Settlement Administrator by this Agreement, including the issuance of the Notice of Settlement and
20 other documents as explained in the Settlement. Angeion Group is directed to perform all other
21 responsibilities set forth for the Settlement Administrator as set forth in the Settlement.

22 7. A Final Approval Hearing (the "Hearing") shall be held on 1/17/2020
23 9:30 am before the Honorable Judge Parker in Courtroom 35 of the above-referenced
24 Court. The purpose of such Hearing will be to: (a) determine whether the proposed Settlement should
25 be approved by the Court as fair, reasonable and adequate; (b) determine the reasonableness of Class
26 Counsel's request for attorneys' fees and costs; (c) the reasonableness of the Service Award requested
27 for Plaintiff; and (d) Order entry of Judgment in the Action, which shall constitute a complete release

28 3.

1 and bar with respect the Released Claims described in Paragraph 13, below.

2 8. The Court hereby approves, as to form and content, the Notice of Class Action
3 Settlement (“Class Notice”) and envelope attached as Exhibit A to the Settlement. The Court finds
4 that the mailing and distribution of the Class Notice in the manner set forth in Paragraph 9 of this
5 Order meet the requirements of due process and are the best notice practicable under the circumstances
6 and shall constitute due and sufficient notice to all persons entitled thereto.

7 9. The Court directs the mailing of the Court approved Class Notice via First Class U.S.
8 Mail to the Class Members in accordance with the schedule and procedures set forth in the Settlement.
9 The Court finds that the dates and procedure selected and for the mailing of the Notice meet the
10 requirements of due process, provide the best notice practicable under the circumstances, and
11 constitute due and sufficient notice to all persons entitled to notice.

12 A. Defendant will provide to the Settlement Administrator the Class Information,
13 within fifteen (15) business days after the entry of this Order; and

14 B. The Settlement Administrator shall mail the Class Notice within twenty-one
15 (21) calendar days after receipt of the Class Information. The Settlement
16 Administrator’s duties will include establishing a toll-free telephone number through
17 which Class Members may make inquiries about the Settlement and a website, which
18 will have links to the Notice of Settlement, the Settlement Agreement, motions for
19 approval and for attorneys’ fees, and a Post Office Box for receipt of Class Member
20 communications; preparing, printing and mailing the Notice of Settlement to Class
21 Members; receiving and reviewing Objections and Requests for Exclusion, if any,
22 submitted by Class Members; calculating Individual Settlement Payments; calculating
23 and paying any and all payroll tax or other required withholdings from the wage portion
24 of the Individual Settlement Payments as required under this Settlement Agreement
25 and applicable law; providing weekly status reports to Defense and Class Counsel;
26 providing a due diligence declaration for submission to the Court prior to the Final
27 Approval Hearing; mailing Individual Settlement Payments to Class Members; paying

1 the Service Award, Class Counsel Fees Award and Class Counsel Costs Award;
2 mailing the PAGA Award to the California Labor & Workforce Development Agency;
3 printing and providing Class Members, Plaintiff and Class Counsel with IRS Forms W-
4 2 and/or 1099 as required under this Settlement Agreement and applicable law;
5 providing a due diligence declaration for submission to the Court upon the completion
6 of the Settlement; providing Defense Counsel with an accounting of all checks issued
7 and cashed, and for such other tasks as the Parties mutually agree. The Settlement
8 Administrator shall keep the Parties timely apprised of the performance of all
9 Settlement Administrator responsibilities. Any legally mandated tax reports, tax forms,
10 tax filings, or other tax documents required by administration of this Settlement
11 Agreement shall be prepared by the Settlement Administrator. Any expenses incurred
12 in connection with such preparation shall be a Settlement Administration Cost.

13 10. Putative Class Members may request exclusion from the Settlement by submitting a
14 timely written request to be excluded from the Class as set forth in the Settlement. In order to be valid,
15 the Request for Exclusion (Opt-Out) letter must be postmarked on or before the Response Deadline.
16 To be valid, the Request for Exclusion: (1) must contain the full name, address and last four digits of
17 the social security number of the person requesting exclusion; (2) must be signed by the person
18 requesting exclusion; and (3) must state in substance: "I want to exclude myself from the Settlement
19 in *Robert J. Kramer v. Lumber Liquidators, Inc.*, pending in the Superior Court of California, County
20 of Sacramento, Case No. 34-2017-00222434. I understand that by requesting to be excluded from the
21 Settlement, I will receive no money from the Settlement." If the Request for Exclusion does not contain
22 the information listed in (1)-(3) or is not postmarked by the Response Deadline and returned to the
23 Settlement Administrator at the specified address, it will not be deemed a timely and valid Request for
24 Exclusion from the Class. Any Putative Class Member who submits a valid and timely Request for
25 Exclusion will not be entitled to any recovery under the Settlement and will not be bound by the
26 Settlement or have any right to object, appeal or comment thereon. Putative Class Members who fail
27 to submit valid and timely Requests for Exclusion shall be bound by all terms of the Settlement and

1 any Final Judgment. Any Class Members who submit a timely and valid Request for Exclusion from
2 the Settlement will not be entitled to any monetary recovery under the Settlement and will not be
3 bound by the terms of the Settlement. Any Class Member who submits a timely and valid Request for
4 Exclusion will not have any right to object, appeal or comment on the Settlement. Class Members
5 who fail to submit a timely and valid Request for Exclusion, postmarked on or before the Response
6 Deadline shall be members of the Class and will be bound by all terms of the Settlement and the Final
7 Approval Order entered in this Action.

8 11. Putative Class Members who do not request exclusion may object to the Settlement and
9 appear at the Final Approval Hearing to show cause why the proposed Settlement should not be
10 approved, Judgment in the Action should be entered, and to present any opposition to the application
11 of Class Counsel for attorneys' fees, costs and expenses. Class Members who wish to object to the
12 Settlement must submit a written Notice of Objection to the Court by the Response Deadline. To be
13 valid, the Notice of Objection: (1) must contain the full name, address and last four digits of the social
14 security number of the Class Member; and (2) must be signed by the Class Member. The Notice of
15 Objection should also state the case name and number, Robert J. Kramer v. Lumber Liquidators, Inc.,
16 a Delaware Corporation, pending in the Superior Court of California, County of Sacramento, Case No.
17 34-2017-00222434, the basis for the objection and if the Class Member intends to appear at the Final
18 Approval Hearing. If the Notice of Objection does not contain the information listed in (1)-(2) or is
19 not filed or postmarked by the Response Deadline and returned to the Court at the specified address,
20 it will not be deemed a timely and valid Notice of Objection to this Settlement.

21 Any Putative Class Member who does not make his or her objection in the manner provided
22 for herein shall be deemed to have waived such objection and shall forever be foreclosed from making
23 any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Joint
24 Stipulation or to the award of attorneys' fees and costs and expenses to Class Counsel unless otherwise
25 ordered by the Court.

26 12. The Court hereby preliminarily approves the definition and disposition of the Total
27 Settlement Amount as that term is defined in the Settlement. The Total Settlement Amount is equal

1 to, and shall not exceed Four Million Seven Hundred Fifty Thousand Dollars and No Cents
2 (\$4,750,000.00), which is inclusive of the payment of attorneys' fees to Class Counsel not to exceed
3 One Million Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and No Cents
4 (\$1,583,333,33); Class Counsel's costs not to exceed Thirty Thousand Dollars and No Cents
5 (\$30,000.00); the Settlement Administration Costs not to exceed Fifteen Thousand Dollars and No
6 Cents (\$15,000.00); the Net Distribution Fund to be distributed to Class Members who do not exclude
7 themselves from the Settlement; the Class Representative Payment to Plaintiff in the amount of Ten
8 Thousand Dollars and No Cents (\$10,000.00); and the PAGA Award not to exceed Eighty Thousand
9 Dollars and No Cents (\$80,000.00), of which \$60,000 will be paid to the LWDA and \$20,000 will be
10 distributed to Class Members. The Court preliminarily approves the above distribution of the Total
11 Settlement Amount, all subject to the Court's Final Approval of the Settlement. Defendant shall be
12 required to pay only the Total Settlement Amount, in addition to Defendant's portion of any payroll
13 taxes which will be paid pursuant to the terms of the Joint Stipulation.

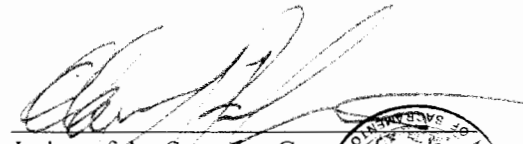

14 13. Upon entry of Judgment by the Court in accordance with the Settlement, all Putative
15 Class Members who did not exclude themselves from the Settlement shall fully and finally release and
16 discharge Defendant Lumber Liquidators, Inc., and their subsidiaries, parents and affiliates, employee
17 benefit plans sponsored or maintained by any of the foregoing, their attorneys, and their respective
18 successors and predecessors in interest; all of their respective officers, directors, employees,
19 administrators, fiduciaries, trustees, beneficiaries and agents; each of their past, present and future
20 officers, directors, shareholders, members, employees, agents, principals, heirs, representatives,
21 accountants, auditors, consultants, insurers and reinsurers ("Released Parties") of all "Released
22 Claims" as defined in the Settlement, including all claims which were plead in the operative First
23 Amended Complaint (titled Class Action and Private Attorneys' General Act Complaint) or which
24 could have been plead based on the facts alleged in the operative First Amended Complaint, including
25 without limitations claims for unpaid wages and overtime, itemized wage statements, meal and rest
26 period wages and premiums, record keeping violations, unpaid business expenses, untimely final
27 paychecks, and unfair competition.

1 (2) the Settlement does not become final for any other reason; or (3) Judgment is not entered by the
2 Court dismissing the lawsuit as to all Claims as to all Class Members with prejudice, the Settlement
3 Agreement shall be null and void and any order entered by the Court in furtherance of the Settlement
4 shall be treated as void from the beginning. In such case, the Parties shall be returned to their
5 respective statuses as of the date and time immediately prior to the execution of the Settlement
6 Agreement and the Parties shall proceed in all respects as if the Settlement Agreement had not been
7 executed.

8 20. Neither the Settlement, preliminarily approved or not approved, nor any exhibit,
9 document or instrument delivered hereunder, nor any statement, transaction or proceeding in
10 connection with the negotiation, execution or implementation of this Settlement, shall be admissible
11 in evidence for any purpose except as provided in the Settlement.

12 **IT IS SO ORDERED.**

13 Dated: September 19, 2009

14 
15 Judge of the Superior Court
16 Alan G. Perkins
17 

1 **PROOF OF SERVICE**

2 1. I am over 18 years of age and not a party to this action. I am a resident or employed
3 in the county where the mailing took place. My business address is: Law Office of Dominic J.
4 Messiha, PC, 11601 Wilshire Blvd., Suite 500, Los Angeles California 90025.

5 2. On September 17, 2019, I caused to be delivered by U.S. Mail from Los Angeles,
6 California the following Documents:

7 **NOTICE OF LODGING OF [PROPOSED] ORDER PRELIMINARILY
8 APPROVING CLASS ACTION SETTLEMENT**

9 3. Service was made on the following recipients:

10 **KARIN M. COGBILL
11 LITTLER MENDELSON
12 50 West San Fernando Street, 7th Fl.
13 San Jose, CA 95113**

14 **Attorneys for Defendant
15 Lumber Liquidators, Inc.**

16 4. I caused such envelope(s) with postage thereon fully prepaid to be placed int eh
17 United States mail in Los Angeles, California. I am "readily familiar" with the firm's practice of
18 collection and processing correspondence for mailing. Under that practice, it would be deposited
19 with the U.S. Postal Service on the same day with postage fully prepaid at Los Angeles, California,
20 in the ordinary course of business. I am fully aware that on motion of the party served, service is
21 presumed invalid if the postal cancellation date or postage meter date is more than one day after
22 the date of deposit for mailing an affidavit.

23 5. I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 DATED: September 17, 2019

26 

27 _____
28 Dominic J. Messiha