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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 24 2021

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE COUNTY – CIVIL COMPLEX CENTER**

JOSHUA BILLBERRY, an individually and
on behalf of all other persons similarly
situated,

Plaintiff,

v.

HARDY WINDOW COMPANY, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2019-01065525-CU-OE-CXC
Judge: Hon. Kirk Nakamura
Dept.: CX103

**~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ATTORNEY'S FEES, COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Complaint Filed: November 15, 2018
Trial Date: None Set

PETRONELLI LAW GROUP, PC
295 REDONDO AVENUE, SUITE 201
LONG BEACH, CA 90803

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All former and current installers and foremen classified as “non-exempt” who are or were employed in any position in California by Defendant from November 15, 2014 through December 9, 2019.

4. The Court finds that Plaintiff and Class Counsel adequately represented the Class for the purpose of entering into and implementing the Settlement and achieved a very good result for the Class.

5. The Court finds that zero (0) objections and one (1) request for exclusion was submitted to the Settlement. The one request for exclusion was received from Mehran M. Rezaei, who is therefore excluded from the Settlement and not bound by the terms of the Settlement Agreement.

6. The Court adjudges that upon the Effective Date Plaintiff and the Class Members have fully, finally, and conclusively compromised, settled, discharged, dismissed, and released any and all Released Claims as provided in the Settlement Agreement. Nothing in this Final Order nor any aspect of this Settlement is to be offered as evidence of, or construed or deemed as an admission of, liability, culpability, negligence, or wrongdoing on the party of any Defendants or their employees, agents or any related entity. Without limiting the generality of the foregoing, nothing about this Final Order or the settlement shall be offered or construed as an admission or evidence of the propriety or feasibility of certifying a class in this lawsuit or any other action for adversarial, rather than settlement, purposes and nothing herein shall be offered or construed as an admission or evidence of impropriety or wrongdoing by Defendants.

7. The Court approves the payment to Class Counsel of attorney’s fees in the total amount of \$199,980.00 payable to Petronelli Law Group, PC and reimbursement of litigation costs in the amount of \$9,068.08 payable to Petronelli Law Group, PC. The Settlement was carefully and professionally prepared and is in all respects in the interests of the Class. Counsel’s very good efforts are reflected in the percentage fee award. The attorney’s fees and litigation expenses shall be paid in accordance with the terms of the Settlement. The Parties are to bear their own attorney’s fees and costs except as otherwise provided in this paragraph. The

1 Court further approves payment of service awards in an amount of \$5,000 to Joshua Billberry in
2 recognition of his services on behalf of the Class in this Action which are in addition to their
3 payment as participating claimants. The service awards shall be paid in accordance with the
4 terms of the Settlement.

5 8. The Court approves the payment of Claims Administrator's expenses of \$15,000
6 from the Gross Settlement Amount to Atticus Administration.

7 9. The Court approves the payments to Participating Class Members according to
8 the terms set forth in the Settlement Agreement and in accordance with the terms of the
9 Settlement. All payroll taxes are to be paid by the Claims Administrator in accordance with the
10 terms of the Settlement Agreement, and paid not later than the time specified by law or agency
11 regulation.

12 10. Without affecting the finality of the Final Order for purposes of appeal, the Court
13 reserves jurisdiction over the Parties as to all matters relating to the administration,
14 consummation, enforcement, and interpretation of the terms of the Settlement Agreement and
15 the Final Order and for any other necessary purposes.

16 11. Per CRC 3.771(b) and according to the Supplemental Declaration of Chris
17 Longley on Notice and Settlement Administration filed herein, the notice of the final Judgment
18 will be given to Class Members by posting a copy of the final Judgment on the Atticus
19 Administration website www.atticusadmin.com and the cover letter sent to Class Members with
20 their settlement checks will include instructions to Class Members on how they can navigate the
21 Atticus Administration website to view the final judgment.

22 12. A Final Accounting will be scheduled for January 20, 2022, at 2:00pm in
23 Department CX103.

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IT IS SO ORDERED.

Dated: 6/24/21



Hon. Kirk Nakamura
Orange County Superior Court Judge

EXHIBIT "A"

NOTICE OF CLASS ACTION SETTLEMENT

Joshua Billberry, et al. v. Hardy Window Company
Orange County Superior Court Case No. 30-2019-01065525-CU-OE-CXC

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

If you worked for Hardy Window Company in California as a non-exempt, hourly employee any time from November 15, 2014 through [date of preliminary approval], a class action lawsuit may affect your rights.

- You have been identified as a Class Member in a lawsuit brought by a former employee of Hardy Window Company
- The Court has preliminarily approved a class action settlement, which will affect all employees who worked as installers or foreman as hourly-paid, non-exempt employees for Hardy Window Company from November 15, 2014 through [date of preliminary approval].
- If the Court grants final approval of the settlement, there will be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class and will collect a settlement award as detailed below. But you give up certain rights to sue Hardy Window Company separately about the legal claims raised in this lawsuit.
OBJECT TO THE SETTLEMENT	Stay in this lawsuit. May give up certain rights. If you object to the settlement, you will remain a member of the Class, and if the Court approves the settlement, you will be bound by the terms of the settlement in the same way as settlement Class Members who do not object.
ASK TO BE EXCLUDED	Get out of this lawsuit. Keep rights. If you ask to be excluded from the settlement, you won't share in the settlement. But you keep any rights you may have to sue Hardy Window Company separately about the legal claims raised or that could have been raised in this lawsuit.

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BASIC INFORMATION

1. Why have I received this notice?

The records of Hardy Window Company show that you currently work, or previously worked for Hardy Window Company in California on one or more days from November 15, 2014 to **[date of preliminary approval]**. This notice explains that the Court has given preliminary approval to a settlement in a conditionally certified class action lawsuit that may affect you. You have legal rights and options that you may exercise as part of this settlement. Judge William Claster, Department CX-104 of the Superior Court of the State of California, County of Orange, is overseeing this class action.

2. What is this lawsuit about?

This lawsuit is about whether Hardy Window Company (“Defendant”) paid wages and overtime, including minimum wage, provided meal periods, provided rest breaks, paid all wages owed upon termination of employment, provided proper wage statements, reimbursed business expenses incurred by hourly, non-exempt employees as required by applicable California laws and engaged in unfair business practices. The settlement involves the claims asserted by Plaintiff Joshua Billberry on behalf of himself and all Class Members. Plaintiff seeks a monetary recovery for the members of the class. The money sought includes damages, restitution, penalties, interest, costs, attorneys’ fees, and other relief. Defendant expressly denies that it did anything wrong or that it violated the law and asserts that it has no liability for any of Plaintiff’s or the Class Members’ claims under any statute, wage order, common law, or equitable theory.

The Court has not decided whether the lawsuit has merit. In other words, the Court has not determined whether Defendant has violated any law; it has not decided in favor of either Plaintiff or Defendant. Instead, both sides have agreed to resolve the lawsuit with no decision or admission regarding who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called a “Class Representative” sues on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The person who is the Class Representative is also called the Plaintiff. The company sued (in this case Hardy Window Company) is called the Defendant. One court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is this lawsuit a class action?

As part of the settlement with Defendant, Plaintiff and Defendant agreed to conditionally certify the class with respect to all of the claims Plaintiff alleged against Defendant as a class action, for settlement purposes only, and to move towards Court approval of the settlement. The Court has not ruled on the merits of these claims, and the decision to certify the agreed-upon Class for settlement purposes should not be viewed as a prediction that Plaintiff or the Class would ultimately prevail on the merits of the action or as any admission by Defendant that Plaintiff’s claims have merit.

5. What are the terms of the proposed settlement?

Defendant has agreed to pay \$600,000.00 for payments to the Class, less an incentive award to the Class Representative, administration costs, and attorneys’ fees and litigation costs.

The major terms of the settlement are as follows:

1. Defendant has agreed to pay \$600,000.00 to settle the claims made in this lawsuit. This is also known as the Gross Settlement Amount. Defendant will pay the first \$450,000 within 30 days of the Court’s final approval of the settlement and will pay the remaining \$150,000 within six (6) months after making the initial payment of \$450,000.
2. Plaintiff has agreed to release all of his claims against Defendant.

3. Plaintiff seeks the following deductions from the \$600,000.00 Gross Settlement Amount:
- a. Not to exceed one-third of the Gross Settlement Amount (which is currently equal to \$199,980.00) for Class Counsel's attorneys' fees.
 - b. Up to a maximum amount of \$10,000.00 for reimbursement of Class Counsel's litigation costs.
 - c. An incentive award of \$8,500 to Plaintiff Joshua Billberry for having filed this action, work performed, and risks undertaken.
 - d. Up to a maximum amount of \$15,000.00 to cover the costs of the Settlement Administrator.

If the Court approves each of the requested amounts from the Gross Settlement Amount, the Parties estimate there will be approximately \$366,520.00 remaining. The remaining funds will be referred to as the Net Settlement Amount. The Net Settlement Amount will be distributed to Class Members who do not request exclusion ("Participating Class Members") and according to the following formula:

After the time to object or opt out of the settlement has passed and after final approval by the Court, Participating Class Members will be paid a pro rata share of the Net Settlement Amount based on their individual weeks worked for Defendant during the period of November 15, 2014 through [date of preliminary approval] (the "Class Period").

Your estimated individual settlement payment is listed in section 7 of the Notice, and will be received in two separate checks. One check will be for your portion of the initial \$450,000 payment and one check for your portion of the second payment of \$150,000. Payroll deductions will be made to a portion of your individual settlement payment for state and federal withholding taxes and any other applicable payroll deductions owed by you. For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows: (1) 10% as W-2 wages; (2) 70% as penalties; and (3) 20% as interest

WHO IS IN THE CLASS?

6. Am I part of this Class?

The Class includes: All current or former employees who worked as installers or foreman as hourly-paid, non-exempt employees for Defendant from November 15, 2014 through [date of preliminary approval] (the "Class Period").

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded from the settlement, and you have to decide this by no later than [] [60 days from the date of Notice mailing].

7. What is my approximate settlement payment?

According to payroll records maintained by Defendant, the total number of weeks you served as an hourly-paid, non-exempt employee for Defendant during the Class Period is [].

Based on information provided above and anticipated court-approved deduction, it is estimated your share of the settlement proceeds will be \$ _____, less applicable taxes, withholding and employee garnishments.

You need not do anything further to receive your Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. You will have one hundred and eighty (180) calendar days to cash your settlement check or the check will be deemed void. After 180 days from the mailing, the amount of any settlement checks that has not been cashed will be returned to the Settlement Administrator and will be turned over to California's Unclaimed Property Fund in your name so that you can later claim those funds in accordance with California's law on Unclaimed Property.

If you believe your total weeks worked during the Class Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct. You may also send any documents or other information that supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendant's records and any information you provide. Please be advised that the number of weeks you worked during the Class Period is presumed to be correct unless the documents you submit are company records from Defendant.

Any dispute regarding settlement must be mailed or faxed to the Settlement Administrator no later than _____ [60 days from the date of Notice mailing].

8. What rights am I releasing if I participate in the settlement?

Upon final approval by the Court, the claims released by Class Members (the "Released Claims") are all claims, demands, rights, liabilities and causes of action arising during the Class Period that were asserted in the operative complaint in the lawsuit or that could have been asserted based on the factual allegations in the operative complaint in the lawsuit. Each Settlement Class Member will be deemed to have released the Released Parties from the Released Claims, and covenants not to sue any of the Released Parties for any Released Claims.

The Released Parties are Defendant, its past or present officers, directors, shareholders, employees, owners, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, payroll administrators, parents and attorneys.

To the extent that any taxing authority imposes tax liability on any Class Member with respect to his or her Individual Settlement Payment, that Class Member shall be solely responsible for the amount imposed (including any interest and/or penalties thereon), if any.

9. How do I object to the settlement?

If you are a member of the Class above and would like to object to the settlement, you must not submit a request for exclusion (i.e., must not opt out). Also, no later than _____, 2019 [60 days from the date of Notice mailing], you must mail or fax a written statement to the Settlement Administrator (at the address or fax number in section 18 below) setting forth the grounds of objection, signed by you or your attorney, along with any supporting papers. Your objection should state a specific reason for the objection, and your name, address, and dates of employment with Defendant, include any supporting papers, and must be signed by you as the objecting party or your authorized representative, such as your attorney.

10. Why would I ask to be excluded?

You have the right to exclude yourself from the settlement. If you exclude yourself—sometimes called "opting-out" of the Class—you won't get any money or benefits from the settlement. However, you may then be able to sue or continue to sue Defendant for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's disposition of this class action. If you exclude yourself, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

11. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class ("opt out") you need to submit a written statement requesting exclusion from the Class containing your name, address, telephone number, and your signature or the signature of your authorized representative. This request must be returned to the Settlement Administrator at the address or fax number below, and it must be postmarked or faxed on or before _____, 2019 [60 days from the date of Notice mailing]. The date of the postmark on the return mailing envelope or the date indicated on the fax that the fax was received by the Settlement Administrator shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who opts out of the Class will not be entitled to any recovery under the settlement and will not be bound by the settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before _____, 2019 [60 days from the date of Notice mailing] shall be bound by all terms of the settlement and any final disposition entered in this Class Action if the settlement is approved by the Court.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court decided that the law firm of Petronelli Law Group, PC is qualified to represent you and all Class Members. The law firm is called "Class Counsel." The law firm's attorneys are experienced in handling similar cases against other employers. More information about this law firm, its practice, and its lawyers' experience is available at www.petronellilaborlaw.com.

13. How will the lawyers be paid?

As part of the settlement with Defendant, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to \$199,980.00) in attorneys' fees, plus costs not to exceed \$10,000.00, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs.

14. How will the Named Plaintiff be paid?

As part of the settlement with Defendant, Class Counsel has requested an enhancement of up to \$8,500.00 to be paid to Plaintiff Joshua Billberry for his efforts in this matter during initial investigation, discovery, mediation and the like, while serving as a Class Representative and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

Atticus Administration
34 13th Avenue N.E., Suite 112
Minneapolis, MN 55413
(888) _____

16. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for _____, 2021 in Department CX-104 of the Superior Court of the State of California, County of Orange, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701. You do not need to attend the hearing to be a part of the settlement. However, if you wish to object to the settlement, you may appear at the hearing to object.

17. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be paid in two installments – one larger first check and one smaller second check. The first will be paid within approximately 45 days after the Court grants Final Approval of the settlement, or, if there is any objection to the settlement that is not withdrawn or if an appeal is filed, then after all rights to appeal are exhausted (assuming Court approval stands). The second payment will be paid to you approximately six (6) months after the initial payment.

GETTING MORE INFORMATION

18. Are more details available?

You may contact the Settlement Administrator:

Atticus Administration
34 13th Avenue N.E., Suite 112
Minneapolis, MN 55413
(888) 219-1511

You may contact Class Counsel:

PETRONELLI LAW GROUP, PC
Christian J. Petronelli, Esq.
christian@petronellilaw.com
Dayna C. Carter, Esq.
dayna@petronellilaw.com
295 Redondo Ave., Suite 201
Los Angeles, CA 90803
Telephone: (888) 855-3670
Fax: (888) 449-9675

Counsel for Defendant is:

Nancy Rader Whitehead, Esq.
SCOTT & WHITEHEAD
4675 MacArthur Court, Suite 1240
Newport Beach, California 92660
Telephone: (949) 222-0166
Fax: (949) 222-0113

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed above, toll free. Please refer to the *Billberry v. Hardy Window Company* Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 700 Civic Center Drive West, Santa Ana, California 92701, Monday through Friday, or may ask for a free copy from Class Counsel listed in Section 18 above.

PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT, OR TO ANY OF DEFENDANT'S MANAGERS, SUPERVISORS, OR ATTORNEYS WITH QUESTIONS.

PETRONELLI LAW GROUP, PC
295 REDONDO AVE., SUITE 201
LONG BEACH, CA 90803

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PROOF OF SERVICE

Joshua Billberry v. Hardy Window Company, Inc. et al.

Orange County Superior Court Case No. 30-2019-01065525-CU-OE-CXC

I, Jennifer M. Reyes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 295 Redondo Ave., Suite 201, Long Beach, CA 90803. On June 2, 2021, I served the within document(s):

[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEY'S FEES, COSTS, AND CLASS REPRESENTATIVE ENHANCEMENT PAYMENT

E-MAIL: By transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

REGULAR U.S. MAIL: Each such envelope was deposited with the U.S. Postal Service at Long Beach, California, with first class postage thereon fully prepaid.

Nancy Rader Whitehead
Scott & Whitehead
4675 MacArthur Court, Suite 1240
Newport Beach, California 92660
Email: nwhitehead@employerlaw.com
amorales@employerlaw.com

Attorney for Defendant Hardy Window Company, Inc.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 2, 2021, at Long Beach, California.



Jennifer M. Reyes
Paralegal
PETRONELLI LAW GROUP, PC