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Filed
April 21, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV367311
By: rwalker

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10
11 NOE ALCAZAR, individually, and on behalf
of all others similarly situated,

12 Plaintiff,

13
14 vs.

15 QUALITY FIRST HOME IMPROVEMENT,
16 INC., a California corporation; and DOES 1
through 10, inclusive,

17 Defendants.
18

Case No.: 20CV367311

[Hon. Theodore C. Zayner, Dept. 19]

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 19, 2023
Time: 1:30 P.M.

Date Action Filed: June 17, 2020
FAC Filed: August 26, 2020
SAC Filed: May 16, 2022

Trial Date: Not Yet Set

1
2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 Plaintiff LUWANA DIANE MAHLER (“Plaintiff”) and Defendant QUALITY FIRST HOME
4 IMPROVEMENT, INC. (“Defendant”) have reached terms of settlement for a putative class action.

5 Plaintiff has filed a motion for preliminary approval of a class action settlement of the claims
6 asserted against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS
7 ACTION AND PAGA ACTION SETTLEMENT AND RELEASE; (*see* Declaration of Kane Moon In
8 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Moon Decl.”], at
9 Exh. 1). The JOINT STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT AND
10 RELEASE is (“Settlement” or “Agreement”);

11 After reviewing the Agreement, the Notice process, and other related documents, and having heard
12 the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

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

18 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
19 non-collusive arms-length negotiations. The Court further finds that the parties have conducted thorough
20 investigation and research, and the attorneys for the parties are able to reasonably evaluate their respective
21 positions. The Court also finds that settlement at this time will avoid additional substantial costs, as well
22 as avoid the delay and risks that would be presented by the further prosecution of the action. The Court
23 finds that the risks of further prosecution are substantial.

24 3. The parties’ Settlement is granted preliminary approval as it meets the criteria for
25 preliminary settlement approval. The Settlement falls within the range of reasonableness and appears to
26 be presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The
27 Settlement Class meets the requirements for conditional certification for settlement purposes only under
28 Code of Civil Procedure § 382. The Court finds that it is appropriate to notify the members of the proposed

1 settlement Class of the terms of the proposed settlement.

2 4. The parties' proposed notice plan is constitutionally sound because individual notices will
3 be mailed to all Class Members whose identities are known to the parties, and such notice is the best notice
4 practicable. The parties' proposed Class Notice, attached to the Settlement as Exhibit A, is sufficient to
5 inform Class Members of the terms of the Settlement, their rights under the settlement, their rights to object
6 to the Settlement, their right to receive a payment under the settlement or elect not to participate in the
7 settlement, and the processes for doing so, and the date and location of the final approval hearing and are
8 therefore approved.

9 5. The following persons are certified as Class Members solely for the purpose of entering a
10 settlement in this matter:

11 All persons who worked for Defendant in California as an hourly paid, non-exempt
12 employee at any time from June 17, 2016 through July 1, 2022. (Settlement, ¶ 12)

13 6. Plaintiff LUWANA DIANE MAHLER is appointed the Class Representative. The Court
14 finds Plaintiff's counsel are adequate, as they are experienced in wage and hour class action litigation and
15 have no conflicts of interest with absent Settlement Class Members, and that they adequately represented
16 the interests of absent class members in the Litigation. Kane Moon and Lilit Ter-Astvatsatryan of Moon
17 & Yang, APC, are appointed Class Counsel.

18 7. The Court appoints Phoenix Class Action Administration Solutions to act as the Settlement
19 Administrator, pursuant to the terms set forth in the Agreement.

20 8. Defendant is directed to provide the Settlement Administrator the names and most recent
21 known mailing addresses of Class Members and any other information required in accordance with the
22 Agreement.

23 9. The Settlement Administrator is directed to mail the approved Class Notice by first-class
24 mail to the Class Members in accordance with the Agreement.

25 10. Class Members will be bound by the Agreement unless they submit a timely and valid
26 written request to be excluded from the Settlement, postmarked no later than 60 days following mailing
27 of the Notice.

28 11. Any request for exclusion shall be submitted to the Settlement Administrator rather than

1 filed with the Court. Class members are not required to send copies of their exclusion request to counsel.
2 The Settlement Administrator shall file, or provide to Counsel for filing, a declaration authenticating a
3 copy of every Exclusion request received by the Administrator.

4 12. A final approval hearing will be held on **October 18, 2023, at 1:30 p.m., in Department**
5 **19**, to determine whether the settlement should be granted final approval as fair, reasonable, and adequate
6 as to the Class Members. At that time, the Court will hear all evidence and arguments necessary to evaluate
7 the Settlement. Class Members and their counsel may support or oppose the Settlement, if they so desire,
8 in accordance with the procedures set forth in the Class Notice and this Order. The final approval hearing
9 may be conducted telephonically, based upon conditions related to the COVID-19 pandemic at that time.

10 13. Plaintiff shall file a Motion for Final Approval, including any request for an award of fees,
11 costs, and an Enhancement Award to Plaintiff. In conjunction with the filing of the final approval motion,
12 a declaration from the Settlement Administrator on the outcome of the notice process shall be filed with
13 the Court. At that time, the Parties shall also file responses to any written objections received by the
14 Settlement Administrator by the Response Deadline.

15 14. As set forth in the Notice, any Class Member may appear at the final approval hearing in
16 person (which “in person” appearance may be telephonic or by video, as noted above) or by his or her own
17 attorney and show cause why the Court should not approve the settlement, or object to the motion for
18 awards of the Class Representative Enhancement Payment and Attorney’s Fees and Costs. For any written
19 comments or objections to be considered at the hearing, the Class Member must submit a written objection
20 in accordance with the deadlines set forth in the Class Notice, or as otherwise permitted by the Court.

21 15. Any written objection shall be submitted to the Settlement Administrator rather than filed
22 with the Court. Class member are not required to send copies of their written objection to counsel. The
23 Settlement Administrator shall file, or provide to Counsel for filing, a declaration authenticating a copy of
24 every written Objection received by the Administrator.

25 16. The Court reserves the right to continue the date of the final approval hearing without
26 further notice to Class Members.

27 17. Class Counsel shall give notice to any objecting party of any continuance of the hearing of
28 the motion for final approval.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
7 Los Angeles, California 90017. On April 20, 2023, I served the foregoing document described as:

8 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
9 SETTLEMENT**

10 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
11 addressed as follows:

12 David M. Daniels
13 Ryan S. Hanlon
14 **ELGUINDY, MEYER & KOEGEL, APC**
15 2990 Lava Ridge Court, Suite 205
16 Roseville, CA 95661
17 E-mail: ddaniels@emklawyers.com
18 E-mail: rhanlon@emklawyers.com

19 *Attorneys for Defendant Quality First Home Improvement, Inc..*

20 **BY ELECTRONIC TRANSMISSION:** I caused all of the above-entitled
21 document(s) to be served through OneLegal addressed to all parties appear on the
22 OneLegal electronic service list by selection the individual recipients on the OneLegal
23 website on the date executed below. The file transmission was reported as complete
24 and a copy of the filing receipt page will be maintained with the original document(s)
25 in our office.

26 X (State) I declare under penalty of perjury under the laws of the State of
27 California that the above is true and correct.

28 Executed on April 20, 2023, at Los Angeles, California.

29 Karen Castillo 
30 Name Signature