

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANA GOLD, et al.,
Plaintiffs,
v.
LUMBER LIQUIDATORS, INC.,
Defendant.

Case No. [14-cv-05373-RS](#)

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

Plaintiffs are a putative nationwide class of individuals who purchased flooring from defendant Lumber Liquidators. They allege that Lumber Liquidators sold defective flooring which would not last its warranted thirty-year lifespan and concealed the defect from consumers. Six complaints, five years, and three judges later, the parties have come to a proposed settlement, which they now present for preliminary approval. *See* ECF No. 270.

At the hearing on the pending motion for preliminary approval, the court expressed skepticism about the proposed settlement. The motion (a) did not provide adequate information regarding the value of the plaintiffs’ claims and the risks should the case proceed to trial and (b) requested attorney fees assuming that the vouchers issued as part of the settlement were not coupons under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1712, among several other issues. The parties were asked to provide additional joint briefing. *See* ECF No. 280.¹

¹ Throughout the briefing process, the parties have provided no fewer than four proposed versions of the Class Notice. The most recent version, ECF No. 285, shall be used, with dates as set forth below. In accordance with the Northern District of California’s Procedural Guidance for Class Action Settlements, the Notice should be modified to direct objectors to send their objections to

1 Among the issues highlighted in that briefing is Lumber Liquidators' dire financial
 2 situation. In particular, the company's stock price has declined precipitously since this case was
 3 filed. While plaintiffs estimate their recovery, if they were to prevail at trial, to be at least \$180
 4 million, the company now has less than \$12 million in cash on hand.² In light of this situation, the
 5 settlement will be preliminarily approved as proposed except as set forth below.

6 The dates of performance are as follows:

Event	Date
Notice to be disseminated	30 days after the date of this Order
Deadline for filing claims (Claims Period)	180 days after notice is sent
Deadline for Settlement Class Members to file and request exclusion	Not less than 45 days after notice is sent
Class Counsel to file motion for attorney fees	Not less than 120 days after the date of this Order, not more than 45 days before conclusion of the claims period
Deadline for Class Members to Object to Settlement	Not less than 35 days after motion for attorney fees is filed
Class Counsel to file motion for final approval	30 days after conclusion of the claims period
Final Approval Hearing	September 17, 2020, 1:30 p.m.

19 Pending the Final Approval Hearing, all proceedings in this action, other than proceedings
 20 necessary to carry out or enforce the settlement and this Order, are stayed. Furthermore,
 21 accompanying the motion for preliminary approval is a motion to file a Sixth Amended
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23 the Court *only*, clearly indicating the case name and number. The Court will then file the
 24 objections on ECF thereby notifying the parties. Objections should not be sent to counsel for
 either party or to the settlement administrator directly.

25 ² The supplemental briefing fails to go into detail about the value of the plaintiffs' claims or even
 26 to explain how the \$180 million figure was computed. It also does not discuss whether Lumber
 27 Liquidators has insurance that would help to satisfy any judgment against it. The parties are
 cautioned that their conclusory statements about the value of the plaintiffs' claims and Lumber
 Liquidators' financial situation will not be sufficient to obtain final approval of the settlement.

1 Complaint, which expands the settlement class nationwide. The parties have shown that such an
2 expansion is appropriate, also in light of Lumber Liquidators' financial situation. The stipulation
3 to file a Sixth Amended Complaint is thus granted.

4 Finally, class counsel is advised that they are unlikely to recover anything close to the
5 suggested \$9.3 million in attorney fees. In the latest briefing, class counsel suggests that both
6 California and federal law mandate the usage of the lodestar method, as opposed to a percentage
7 of the common fund, to calculate attorney fees. Class counsel are advised that neither California
8 nor federal law mandates such a result, and that the district court retains discretion to choose
9 between the percentage-of-fund and lodestar methods. Common practice in the Ninth Circuit,
10 when a common fund is a part of the settlement, is to use the percentage-of-fund method with a
11 25% benchmark as a starting point, and then use the lodestar method as a cross-check. Counsel are
12 further advised that, because the vouchers issued as part of the settlement are coupons under
13 CAFA, the court is unlikely to value the voucher portion of the settlement anywhere near \$14
14 million when computing attorney fees. Counsel will be expected to provide another method for
15 valuing the vouchers in their motion for attorney fees should they expect the vouchers to
16 contribute at all to their recovery.

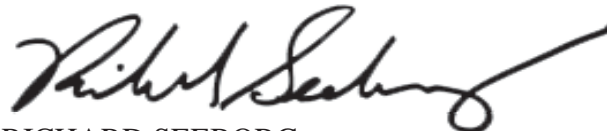
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18 **IT IS SO ORDERED.**

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20 Dated: December 18, 2019

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RICHARD SEEBORG
United States District Judge

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