

# Exhibit 2

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INC.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

JORGE ALMANZAR, an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a Delaware  
Corporation,

Defendants.

Case No. 2:20-cv-00699-TLN-KJN

**REVISED JOINT STIPULATION OF  
CLASS AND REPRESENTATIVE ACTION  
SETTLEMENT AND RELEASE OF  
CLAIMS**

Complaint Filed: April 3, 2020

Trial Date: None

District Judge: Hon. Troy L. Nunley  
Courtroom 15, Sacramento

Magistrate Judge: Hon. Kendall J. Newman  
Courtroom 8, Sacramento

Case No. 2:20-cv-00699-TLN-KJN

**REVISED JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND  
RELEASE OF CLAIMS**

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Attorneys for Plaintiff on behalf of himself and all others similarly situated

1 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims  
2 is entered into by and between Plaintiff JORGE ALMANZAR, individually and on behalf of the  
3 Settlement Class and the State of California, as a private attorney general, on the one hand, and  
4 Defendant HOME DEPOT USA, INC. on the other hand.

5 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims  
6 shall be binding on Plaintiff, the current and former employees he seeks to represent, the  
7 Settlement Class, and on Defendant, and subject to the definitions, recitals, and terms set forth  
8 herein and the approval of the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the United States District Court’s  
12 Eastern District of California, entitled *JORGE ALMANZAR. On behalf of himself, all others*  
13 *similarly situated, PLAINTIFFS, v. HOME DEPOT USA, INC, DEFENDANTS*, Case No. 2:20-cv-  
14 00699-TLN-KJN.

15 **2. Class Counsel**

16 “Class Counsel” means The Markham Law Firm, and United Employees Law Group, PC  
17 who, subject to Court approval, shall act as counsel for the Settlement Class.

18 **3. Class Counsel Award**

19 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution  
20 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this  
21 Lawsuit.

22 **4. Class Information**

23 “Class Information” means information regarding Settlement Class Members that  
24 Defendant will in good faith compile from their records and provide to the Settlement  
25 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each  
26 Settlement Class Member’s full name; last known address; last known home telephone number;  
27 social security number; email, if available; dates of employment as a Class Member during the  
28 Class Period, and Compensable Work Weeks.

1           **5. Class Members or Settlement Class Members**

2           “Class Members” or “Settlement Class Members” means all persons who are employed or  
3 have been employed by HOME DEPOT USA, INC. in California as a non-exempt, hourly Night  
4 Team Merchandising Execution Associate during the CLASS PERIOD.

5           **6. Class Period**

6           “Class Period” means the period from April 3, 2016 to November 1, 2021.

7           **7. Class Representative**

8           “Class Representative” means Plaintiff JORGE ALMANZAR.

9           **8. Class Representative Service Award**

10          “Class Representative Service Award” means the amount that the Court authorizes to be  
11 paid to Plaintiff, in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of  
12 the Lawsuit. The Class Representative Service Award shall be in addition to the Plaintiff’s  
13 Individual Settlement Payment as a Settlement Class Member.

14          **9. Compensable Work Weeks**

15          “Compensable Work Weeks” means the number of weeks in which Settlement Class  
16 Member(s) performed work for Defendant in the State of California during the Class Period based  
17 on Defendant’s records.

18          **10. Complaint**

19          “Complaint” means the operative complaint filed in the Action.

20          **11. Court**

21          “Court” means the United States District Court, Eastern District of California

22          **12. Defendant**

23          “Defendant” means Defendant HOME DEPOT USA, INC.

24          **13. Effective Date**

25          “Effective Date” of the Settlement means the date on which the Court’s order granting Final  
26 Approval of this Joint Stipulation becomes final. Such order becomes final upon the following  
27 events: (i) upon the Court issuing the Final Approval Order granting approval of this Settlement  
28 Agreement if no objections to the settlement are filed, or if an objection is filed but is withdrawn

prior to the Court's Final Approval Hearing; or (ii) in the event there are written objections filed prior to the Final Approval Hearing which are not thereafter withdrawn prior to the hearing, the later of the following events: (a) the day after the last day by which a notice of appeal of the order may be timely filed with an appellate court, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the appellate court's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the appellate court, and further review of the appellate court's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the appellate court affirms the Settlement.

**14. Final Approval Hearing**

"Final Approval Hearing" means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

**15. Final Approval Order**

"Final Approval Order" means the proposed order granting final approval of the Parties' settlement and constituting a Final Judgment, in a form substantially similar to the order attached hereto as **Exhibit C**.

**16. Final Judgment**

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment binding the Parties within the meaning and for purposes of the Federal Rules of Civil Procedure and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4<sup>th</sup> 969 (2009).

**17. Gross Settlement Fund**

"Gross Settlement Fund" means the agreed upon settlement amount totaling \$750,000.00 (Seven-Hundred and Fifty Thousand Dollars and Zero Cents) to be paid by Defendant in full settlement of the Released Claims, and includes without limitation the Class Counsel Award, Class Representative Service Award, Individual Settlement Payments, PAGA Payments, and Settlement Administrator Costs. The employer's share of payroll taxes due on the portion of the Individual

Settlement Payments that is allocated to wages shall be paid by Defendant separately and in addition to the Gross Settlement Fund.

**18. Individual Settlement Payment**

“Individual Settlement Payment” means the amount paid from the Net Settlement Fund to a Participating Class Member, based upon his/her Waiting Time Penalties Subclass Allocation, as applicable, and then as a determined by his/her Compensable Work Weeks.

**19. LWDA**

“LWDA” means the California Labor and Workforce Development Agency.

**20. Net Settlement Fund**

“Net Settlement Fund” means the Gross Settlement Fund, less Court-approved Class Counsel Award, Class Representative Service Award, PAGA Payments, and Settlement Administration Costs.

**21. Notice of Class and Representative Action Settlement**

“Notice of Class and Representative Action Settlement” means the Notice of Pendency of Class and Representative Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as **Exhibit A**, which shall include an approximation of each Settlement Class Member’s anticipated Individual Settlement Payment, and each PAGA Settlement Member’s anticipated PAGA Payment. It is the notice approved by the Parties and subject to Court approval explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

**22. PAGA**

“PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2699 et seq.

**23. PAGA Payment to LWDA**

“PAGA Payment to LWDA” means the payment made hereunder to the LWDA pursuant to PAGA.

**24. PAGA Payments to PAGA Settlement Members**

“PAGA Payments to PAGA Settlement Members” means the payments made to PAGA

Settlement Members based on the PAGA Pay Periods worked during the PAGA Period, and collectively with the PAGA Payment to LWDA, are the “PAGA Payments.”

**25. PAGA Period**

“PAGA Period” means the period from one year prior to Plaintiff’s PAGA letter (dated May 19, 2020), or May 19, 2019, to November 1, 2021.

**26. PAGA Pay Periods**

“PAGA Pay Periods” means the number of pay periods which PAGA Settlement Member(s) performed work for Defendant in the State of California during the PAGA Period based on Defendant’s records.

**27. PAGA Period Information**

“PAGA Period Information” means information regarding PAGA Settlement Members that Defendant will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each PAGA Settlement Member’s full name; last known address; last known home telephone number; social security number; email, if available; dates of employment as a PAGA Settlement Member during the PAGA Period, and PAGA Pay Periods.

**28. PAGA Released Claims**

“PAGA Released Claims” means all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories asserted in the operative complaint and which could have been asserted based on the facts alleged in the operative complaint, which are or could be the basis of claims for: (1) failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage statements; (7) and failure to reimburse business expenses

**29. PAGA Settlement Members**

1 “PAGA Settlement Members” means all persons who are employed or have been employed  
2 by HOME DEPOT USA, INC. in California as a non-exempt, hourly Night Team Merchandising  
3 Execution Associate during the PAGA PERIOD.

4 **30. Participating Class Members**

5 “Participating Class Members” means those Class Members who did not file a valid and  
6 timely Request for Exclusion from the class action settlement pursuant to section III, paragraph 12  
7 of this Agreement.

8 **31. Parties**

9 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean Plaintiff or  
10 Defendant, individually.

11 **32. Payment Ratio – Class**

12 “Payment Ratio - Class” means first, the Settlement Class Member’s Waiting Time  
13 Penalties Allocation, as applicable, and second, the respective Compensable Work Weeks during  
14 which an employee worked, in proportion to the aggregate number of Compensable Work Weeks  
15 worked by all Settlement Class Members.

16 **33. Payment Ratio – PAGA**

17 “Payment Ratio – PAGA” means the respective PAGA Pay Periods during which an  
18 employee worked, in proportion to the aggregate number of PAGA Pay Periods worked by all  
19 PAGA Settlement Members.

20 **34. Plaintiff**

21 “Plaintiff” means Plaintiff JORGE ALMANZAR.

22 **35. Preliminary Approval Date**

23 “Preliminary Approval Date” means the date on which the Court issues an order granting  
24 preliminary approval of the proposed order in a form substantially similar to the order attached  
25 hereto as **Exhibit B**.

26 **36. Released Claims**

27 “Released Claims” means any and all claims that are asserted in the operative complaint  
28 and which could have been asserted based on the facts alleged in the complaint, which are or could

be the basis of claims for: (1) failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage statements; (7) failure to reimburse business expenses, (8) unfair business practices that could have been premised on the claims, causes of actions or legal theories of relief described above or any of the claims, causes of actions or legal theories of relief that were pleaded in the operative complaint; (9) any other claims or penalties under the wage and hour laws pleaded in the Action; and (10) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief.

**37. Released Parties**

“Released Parties” means Defendant and any of its former and present parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents, successors, assigns, or legal representatives.

**38. Request for Exclusion**

“Request for Exclusion” means a letter setting forth a Class Member’s name, present address, and a simple statement electing to be excluded from the class action Settlement.

**39. Response Deadline**

“Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement. If the forty-fifth (45<sup>th</sup>) day falls on a Sunday or Federal holiday, then the deadline is extended to the next day that the U.S. Postal Service is open.

**40. Settlement**

“Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to this Joint Stipulation of Class and Representative Action Settlement and Release of Claims.

1           **34.    Settlement Administrator**

2           “Settlement Administrator” means the third-party company that is responsible for  
3 administering the Settlement. This Settlement Administrator is CPT Group, Inc.

4           **41.    Settlement Administrator Costs**

5           “Settlement Administrator Costs” means the amount to be paid to the Settlement  
6 Administrator from the Gross Settlement Fund for administration of this Settlement, currently  
7 estimated at \$14,250.

8           **42.    Waiting Time Penalties Subclass**

9           “Waiting Time Penalties Subclass” means all members of the Settlement Class  
10 whose employment with Defendant ended at any time from and after April 3, 2017 through  
11 November 1, 2021.

12           **43.    Waiting Time Penalties Subclass Allocation**

13           “Waiting Time Penalties Subclass Allocation” means the portion of the Net Settlement  
14 Amount allocated to the members of the Waiting Time Penalties Subclass. The Waiting Time  
15 Penalties Subclass Settlement Allocation is 10% of the Net Settlement Amount, and will be  
16 distributed equally between members of the Waiting Time Penalties Subclass.

17 **II.    RECITALS**

18           **1.    Amendment of Complaint**

19           To effectuate this Settlement, Plaintiff will file an amended complaint (the “Second  
20 Amended Complaint”), attached hereto as **Exhibit D**, for settlement purposes only, to add to the  
21 current complaint all class and PAGA claims and causes of action falling within the definition of  
22 “Released Claims” and “PAGA Released Claims.” For purposes of this Settlement only,  
23 Defendant agrees that the filing of the Second Amended Complaint relates back to the filing of the  
24 original Complaint in this Action for purposes of the applicable statutes of limitations for the  
25 causes of action alleged in the Second Amended Complaint. Further, Defendant will be deemed to  
26 have generally denied the allegations of the Second Amended Complaint without the need to file  
27 and serve an Answer thereto. The Court’s approval of the Parties’ stipulation to file an amended  
28 complaint is a material term of this Settlement Agreement. If the Court does not grant leave to file

1 the amended complaint, the Parties shall work together in good faith to agree on a revised  
2 settlement agreement. If the Parties are unable to reach agreement, this Settlement Agreement, and  
3 any documents generated to bring it into effect, will be null and void. Any order or judgment  
4 entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void  
5 from the beginning.

6 **2. Class Certification.**

7 The Parties stipulate to class certification for purposes of settlement only. If the Court does  
8 not grant either preliminary or final approval of this Settlement, the Parties shall work together in  
9 good faith to agree on a revised settlement agreement to address the Court's concerns. If the  
10 Parties are unable to reach agreement, or the Court does not grant either preliminary or final  
11 approval of the revised settlement, the Parties agree that this stipulation regarding class  
12 certification will be revoked and the Parties will return to a point in litigation prior to the execution  
13 of this Agreement.

14 **3. Procedural History**

15 On April 3, 2020, Plaintiff Jorge Almanzar filed a Class Action Complaint in the Eastern  
16 District of California of the United States District Court.

17 On May 19, 2020, Plaintiff sent the LWDA notice, via online filing, of his intent to file an  
18 action seeking civil penalties under PAGA.

19 On July 24, 2020, Plaintiff amended his Class Action Complaint to include a cause of  
20 action for PAGA penalties and filed his First Amended Class Action Complaint. The Complaint  
21 alleges claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure  
22 to pay overtime wages; (4) failure to reimburse business expenses; (5) failure to furnish timely and  
23 accurate wage statements; (6) failure to pay all wages due upon termination; (7) violation of  
24 California's Unfair Competition Law; and (8) violation of PAGA.

25 After the matter was at issue, the Parties began to engage in informal and formal discovery  
26 to understand the nature of the allegations and the scope of potential liability. The Parties began to  
27 discuss the possibility of mediation and ultimately stayed formal discovery to focus their efforts on  
28 potential resolution. Defendant provided Plaintiff's counsel with pertinent data for the Class

Members so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses.

On August 4, 2021, the Parties attended a full-day mediation with experienced mediator Louis Marlin. After a full-day's mediation, the Parties reached a settlement that day, as provided herein, to settle Plaintiff's claims on a class-wide basis.

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other things, that, at all times, it has complied with all applicable state, federal and local laws related to the Settlement Class Members' employment.

The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies liability, Defendant is agreeing to this Settlement solely to avoid the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth herein.

**4. Benefits of Settlement to Class Members.**

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also

1 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties  
2 and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of  
3 proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in  
4 response to Defendant's defenses thereto, and the difficulties in establishing damages for the  
5 Settlement Class Members. Plaintiff and Class Counsel have also taken into account Defendant's  
6 agreement to enter into a settlement that confers substantial relief upon the members of the  
7 Settlement Class. Based on the foregoing, Class Counsel have concluded that settlement for the  
8 consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and  
9 adequate and is in the best interest of the putative class in light of all known facts and  
10 circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's  
11 financial condition, numerous potential appellate issues, and other risks inherent in litigation.

12 **5. Defendant's Reasons for Settlement.**

13 Defendant has concluded that any further defense of this litigation would be protracted and  
14 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have  
15 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the  
16 claims asserted by Plaintiff and Settlement Class Members. Defendant has also taken into account  
17 the risks of further litigation in reaching its decision to enter into this Settlement. Even though  
18 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in this  
19 Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in  
20 this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied  
21 with all applicable state, federal, and local laws.

22 **6. Settlement of Disputed Claims.**

23 This Agreement is a compromise of disputed claims. Defendant contends that the Released  
24 Claims have no merit and do not give rise to liability. Plaintiff and Settlement Class Members  
25 have claimed and continue to claim that the Released Claims have merit and give rise to liability on  
26 the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in  
27 this Agreement, no documents referred to herein, and no action taken to carry out this Agreement,  
28 may be construed or used as an admission by or against the Settlement Class Members or Class

Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

### **III. TERMS OF AGREEMENT**

#### **1. Release as To All Participating Class Members.**

As of the Effective Date, the Participating Class Members, including Plaintiff, release the Released Parties from the Released Claims for the Class Period.

The period of release shall extend to the limits of the Class Period. Defendant shall be entitled to a release of Released Claims which occurred during the Class Period only during such time that the Settlement Class Member was classified as non-exempt, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period.

#### **2. Release as to All PAGA Settlement Members**

As of the Effective Date, the PAGA Settlement Members, including Plaintiff, release the Released Parties from the PAGA Released Claims for the PAGA Period.

The period of release shall extend to the limits of the PAGA Period. Defendant shall be entitled to a release of PAGA Released Claims which occurred during the PAGA Period only during such time that the PAGA Settlement Member was classified as non-exempt, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the PAGA Period.

#### **3. Release of Claims by Plaintiff**

As of the Effective Date, Plaintiff releases the Released Parties from all of the Released Claims during the Class Period and PAGA Released Claims during the PAGA Period. Plaintiff, for himself and his heirs, successors and assigns, further waives, releases, acquits and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit

1 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional  
2 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit  
3 claims, and any and all claims arising under any federal, state or other governmental statute, law,  
4 regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor  
5 Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial  
6 Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age  
7 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title  
8 VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the  
9 California Family Rights Act, the Family Medical Leave Act, California's Whistleblower  
10 Protection Act, California Business & Professions Code §§17200 et seq., and any and all claims  
11 arising under any federal, state or other governmental statute, law, regulation or ordinance.

12 Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code  
13 §1542, which provides:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
15 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**  
16 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
17 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
18 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
19 **DEBTOR OR RELEASED PARTY.**

20 Plaintiff may hereafter discover claims or facts in addition to, or different from, those which  
21 he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle  
22 and release any and all claims against the Released Parties, known or unknown, suspected or  
23 unsuspected, which exist or may exist on behalf of or against the other at the time of execution of  
24 this Agreement, including, but not limited to, any and all claims relating to or arising from  
25 Plaintiff's employment with Defendant.

26 **4. Tax Liability and Medicare.**

27 The Parties make no representations as to the tax treatment or legal effect of the payments  
28 called for hereunder, and Settlement Class Members are not relying on any statement or  
representation by the Parties in this regard. Participating Class Members understand and agree that  
they will be responsible for the payment of taxes and penalties assessed on the payments described

herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare beneficiary as of the date of this Agreement. As such, no conditional payments have been made by Medicare.

**5. Circular 230 Disclaimer.**

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

1           **6. Preliminary Approval of Settlement.**

2           Promptly upon execution of this Agreement, Plaintiff will move the Court to grant  
3 preliminary approval of this Settlement, certifying the Settlement Class for settlement purposes  
4 only and setting a date for the Final Approval Hearing. All Parties agree to work diligently and  
5 cooperatively to have this Settlement presented to the Court for preliminary approval. The  
6 proposed preliminary approval order shall provide for the Notice of Class and Representative  
7 Action Settlement to be sent to Settlement Class Members and PAGA Settlement Members as  
8 specified herein.

9           **7. Settlement Administrator.**

10           Upon the Court granting preliminary approval of this Agreement, Defendant shall provide  
11 the Settlement Administrator with the Class and PAGA Period Information within seven (7)  
12 business days for purposes of mailing the Notice of Class and Representative Action Settlement to  
13 the Settlement Class Members and PAGA Settlement Members. No later than three (3) business  
14 days after receipt of the Class and PAGA Period Information, the Settlement Administrator shall  
15 notify counsel for the Parties that the list has been received and state the number of Settlement  
16 Class Members and PAGA Settlement Members included in the Class and PAGA Period  
17 Information.

18           **8. Notice by First Class U.S. Mail.**

19           Upon receipt of the Class and PAGA Period Information, the Settlement Administrator will  
20 perform a search based on the National Change of Address Database to update and correct any  
21 known or identifiable address changes. Within thirty (30) calendar days of the Preliminary  
22 Approval Date, the Settlement Administrator shall mail copies of the Notice of Class and  
23 Representative Action Settlement to all Settlement Class Members via regular First-Class U.S.  
24 Mail. The Settlement Administrator shall exercise its best judgment to determine the current  
25 mailing address for each Settlement Class Member, including performing a skip-trace to identify  
26 any updated addresses. The address identified by the Settlement Administrator as the current  
27 mailing address shall be presumed to be the best mailing address for each Settlement Class  
28 Member.

1           **9. Undeliverable Notices.**

2           Any Notice of Class Action Settlement returned to the Settlement Administrator as  
3 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding  
4 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall  
5 promptly attempt to determine a correct address by use of skip-tracing, or other search using the  
6 name, address and/or social security number of the Settlement Class Member whose notice was  
7 undeliverable, and shall then re-mail all returned, undelivered mail within five (5) calendar days of  
8 receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-  
9 mailed Notice of Class Action Settlement shall have their Response Deadline extended by the  
10 longer of fourteen (14) calendar days from the date of re-mailing or the remaining original  
11 Response Deadline period.

12           **10. Disputes Regarding Individual Settlement Payments.**

13           Settlement Class Members will have the opportunity, should they disagree with  
14 Defendant's records regarding the dates of employment stated on their Notice of Class and  
15 Representative Action Settlement, to provide documentation and/or an explanation to show  
16 contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator  
17 will consult with the Parties to determine whether an adjustment is warranted. The Settlement  
18 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement  
19 Payments under the terms of this Agreement. The Settlement Administrator's determination of the  
20 eligibility for and amount of any Individual Settlement Payment shall be binding upon the  
21 Settlement Class Members and the Parties. In the absence of circumstances indicating fraud,  
22 manipulation or destruction, Defendant's records will be given a rebuttable presumption of  
23 accuracy.

24           **11. Disputes Regarding Administration of Settlement.**

25           Any disputes not resolved by the Settlement Administrator concerning the administration of  
26 the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any  
27 such involvement of the Court, counsel for the Parties will confer in good faith to resolve the  
28 disputes without the necessity of involving the Court.

1           **12. Requests for Exclusion.**

2           The Notice of Class and Representative Action Settlement shall state that Settlement Class  
3 Members who wish to exclude themselves from the class action portion of the Settlement must  
4 submit a Request for Exclusion by the Response Deadline. The Notice will state that the Request  
5 for Exclusion: (1) must contain the name, address, and telephone number of the Settlement Class  
6 Member requesting exclusion; (2) must contain a statement expressing that the Settlement Class  
7 Member elects to be excluded from the Settlement; (3) must be signed by the Settlement Class  
8 Member; and (4) must be postmarked or fax stamped by the Response Deadline and returned to the  
9 Settlement Administrator at the specified address or fax number. The Request for Exclusion will  
10 be deemed invalid if it does not contain a Settlement Class Member's name, address, signature, and  
11 a statement requesting exclusion. The date of the postmark on the return mailing envelope or fax  
12 stamp on the Request for Exclusion shall be the exclusive means used to determine whether a  
13 Request for Exclusion has been timely submitted. If the Settlement Administration is unsure of the  
14 validity of a Request for Exclusion, it must provide a copy of the Request for Exclusion to the  
15 Parties to review and make a determination as to its validity. Any Settlement Class Member who  
16 requests to be excluded from the Settlement Class will not be entitled receive an Individual  
17 Settlement Payment from the class action portion of the Settlement and will not be bound by the  
18 terms of the class action Settlement or have any right to object, appeal, or comment thereon.  
19 Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or  
20 before the Response Deadline shall be bound by all terms of the Settlement and any Final  
21 Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than seven  
22 (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel  
23 for the Parties with a complete list of all members of the Settlement Class who have timely  
24 submitted a Request for Exclusion. PAGA Settlement Members may not exclude themselves from  
25 the PAGA portion of the settlement and will have released the PAGA Released Claims even if they  
26 exclude themselves from the Settlement Class.

27           **13. Objections.**

28           The Notice of Class and Representative Action Settlement shall state that Settlement Class

Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written objection (“Notice of Objection”) must be mailed or faxed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope or the date of the fax transmission shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the basis for the objection; and (3) if the Settlement Class Member intends to appear at the Final Approval Hearing. The Settlement Administration must provide a copy of written objections to the Parties within three (3) calendar days of receipt. Class Counsel will ensure that any Notices of Objection received by the Settlement Administrator by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties may file a responsive document to any objection at least ten (10) court days before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Deadline. Class Counsel shall not represent any Settlement Class Members with respect to any such objections.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

An individual who submits a valid Request for Exclusion may not object to the Settlement.

**14. No Solicitation of Settlement Objections or Exclusions.**

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written objections to the Settlement or requests for exclusion from the Settlement, or to appeal from the Court’s Final Judgment.

**15. Funding and Allocation of Gross Settlement Fund.**

No later than fourteen (14) calendar days after the Effective Date, Defendant shall provide the Gross Settlement Fund to the Settlement Administrator to fund the Settlement, as set forth in

this Agreement, and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement. Within seven (7) calendar days of the receipt of the Gross Settlement Fund, the Settlement Administrator shall make the Settlement payments as specified in this Settlement Agreement,

**16. Net Settlement Fund.**

The Net Settlement Fund will be determined by the Settlement Administrator by subtracting the Court-approved Class Counsel Award, Class Representative Service Award, PAGA Payments, and Settlement Administrator Costs from the Gross Settlement Fund. The anticipated Net Settlement Fund is \$403,250. The Parties estimate the amount of the Net Settlement Fund as follows:

|                                        |                                                                      |
|----------------------------------------|----------------------------------------------------------------------|
| Gross Settlement Fund:                 | \$ 750,000                                                           |
| Class Representative Service Award:    | \$ 15,000                                                            |
| Class Counsel Fees:                    | \$ 250,000                                                           |
| Class Counsel Costs (NTE):             | \$ 30,000                                                            |
| PAGA Payments                          | \$ 37,500                                                            |
|                                        | <i>(\$28,125 to the LWDA and \$9,375 to PAGA Settlement Members)</i> |
| Settlement Administrator Costs:        | \$ 14,250                                                            |
| <b>Anticipated Net Settlement Fund</b> | <b>\$ 403,250</b>                                                    |

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Fund, which includes, the Class Counsel Award, Class Representative Service Award, Individual Settlement Payments, PAGA Payments, and Settlement Administrator Costs. No portion of the Gross Settlement Fund will revert to Defendant.

Defendant's share of payroll taxes due on the portion of the Individual Settlement Payments allocated to wages, including but not limited to Defendant's FICA and FUTA contributions, shall

be paid separately from, and in addition to, the Gross Settlement Fund.

**17. Individual Settlement Payments.**

Individual Settlement Payments will be paid from the Net Settlement Fund and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within seven (7) calendar days after Defendant makes the final settlement payment. All Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages, forty percent (40%) as interest, and forty percent (40%) as statutory penalties.

**18. PAGA Settlement Member Payments.**

PAGA Payments to PAGA Settlement Members will be paid pursuant to the formula set forth herein. PAGA Payments to PAGA Settlement Members shall be mailed by regular First-Class U.S. Mail to each PAGA Settlement Member's last known mailing address within seven (7) calendar days after Defendant makes the final settlement payment. All PAGA Payments to PAGA Settlement Members will be allocated as one hundred percent (100%) statutory penalties.

**19. Class Member's Payment Ratio.**

Participating Class Members will be paid first for their portion of Applicable Waiting Time Penalties, if applicable, and then second, on a pro-rata basis. The Settlement Administrator will equally distribute \$40,325 (10% of the Net Settlement Amount) among participating Waiting Time Penalty Subclass Members. The Settlement Administrator will distribute the \$362,925 (90% of the Net Settlement Amount) among Participating Class Members on a pro rata basis based on the number of Compensable Work Weeks during which s/he worked in proportion to the aggregate number of Compensable Work Weeks worked by all Settlement Class members, reduced as necessary to account for the employee's mandatory payroll withholdings.

**20. PAGA Settlement Member's Payment Ratio.**

PAGA Settlement Members will be paid on a pro-rata basis. PAGA Payments to PAGA Settlement Members will be based on the number of PAGA Pay Periods during which s/he worked in proportion to the aggregate number of PAGA Pay Periods worked by all PAGA Settlement Members.

1           **21. Payment to Class Members and PAGA Settlement Members.**

2           Checks shall be made payable to each Participating Class Member and PAGA Settlement  
3 Member for payment of each Participating Class Member's Individual Settlement Payment, and  
4 each PAGA Settlement Member's PAGA Payment, respectively, as set forth in Paragraph III.19-20  
5 of this Agreement.

6           **22. Form of Payment to Class Members and PAGA Settlement Members.**

7           The Individual Settlement Payment amount due to each Participating Class Member, and  
8 the PAGA Payment due to each PAGA Settlement Member, shall be paid in the form of a check to  
9 each Participating Class Member and PAGA Settlement Member, respectively.

10          **23. Unclaimed Settlement Payment(s).**

11          After one hundred and eighty (180) calendar days of the mailing of the Individual  
12 Settlement Payment checks, and PAGA Payments to PAGA Settlement Members, funds  
13 attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks and/or  
14 PAGA Payments to PAGA Settlement Members, will be transmitted to the State of California  
15 Office of the Controller Unclaimed Property Fund in the name of the Participating Class Members  
16 and/or PAGA Settlement Members who did not cash his/her Settlement check. The Parties agree  
17 to coordinate their efforts to seek Court approval for such an escheatment process of uncashed  
18 funds. If, for some reason, the Court does not approve the escheatment of uncashed funds, the  
19 Parties agree to meet and confer to identify a mutually-agreeable cy pres recipient(s).

20          **24. Class Representative Service Award.**

21          Plaintiff will request that the Court approve a Class Representative Service Award of up to  
22 \$15,000. The Class Representative Service Award shall be paid to Plaintiff from the Gross  
23 Settlement Fund within seven (7) calendar days after Defendant provides the Gross Settlement  
24 Fund to the Settlement Administrator. The Settlement Administrator shall issue an IRS Form 1099  
25 – MISC to Plaintiff for his respective Class Representative Service Award. Plaintiff shall be solely  
26 and legally responsible to pay any and all applicable taxes on his Class Representative Service  
27 Award and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,  
28 penalties, or interest arising as a result of the Class Representative Service Award. The Class

Representative Service Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Class Member and PAGA Payment as a PAGA Settlement Member. Any amount requested by Plaintiff for the Class Representative Service Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Participating Class Members as provided in this Agreement.

**25. Class Counsel Award.**

Class Counsel will request that the Court approves attorneys' fees in the amount of up to thirty-three and one-third percent (33.33%) of the Gross Settlement Fund. This amount is currently anticipated to be \$250,000.00. Class Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement Fund not to exceed \$30,000. Class Counsel shall be paid any Court-approved fees and costs no later than seven (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement Administrator. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Participating Class Members as provided in this Agreement.

**26. Settlement Administrator Costs.**

The Parties agree to allocate up to \$14,250 of the Gross Settlement Fund for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

**27. Responsibilities of the Settlement Administrator.**

The Settlement Administrator shall be responsible for the following: processing and

1 mailing payments to Plaintiff, Class Counsel, Participating Class Members, and PAGA Settlement  
2 Members; printing, and mailing the Notice of Class and Representative Action Settlement and tax  
3 forms to the Participating Class Members as directed by the Court; receiving and reporting the  
4 requests for exclusion and objections submitted by Settlement Class Members; providing  
5 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and  
6 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to  
7 perform. The Settlement Administrator shall keep the Parties timely apprised of the performance  
8 of all Settlement Administrator responsibilities.

9 **28. Settlement Administrator Fees.**

10 The Settlement Administrator shall be paid the Settlement Administrator Costs within  
11 seven (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement  
12 Administrator.

13 **29. Payment to the LWDA.**

14 A total payment of \$37,500 from the Gross Settlement Fund will be allocated as the PAGA  
15 Payment to be paid as penalties under the Labor Code Private Attorneys General Act of 2004, to  
16 the LWDA. Seventy-five percent (75%) of the PAGA Payment (\$28,125) will be paid to the  
17 LWDA and the remaining twenty-five (25%) (\$9,375) shall be distributed to PAGA Settlement  
18 Members.

19 **30. Final Approval Hearing and Entry of Final Judgment.**

20 Upon expiration of the Response Deadline, with the Court's permission, the Final Approval  
21 Hearing shall be conducted to determine final approval of the Settlement along with the amount  
22 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Service Award;  
23 (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA  
24 Payments.

25 **31. Final Approval Order.**

26 Plaintiff will request that the Court enter, after the Final Approval Hearing, a Final  
27 Approval Order in the form attached hereto as **Exhibit B**. Plaintiff will request that the Final  
28 Approval Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in

the best interests of the Class; and require the Parties to carry out the provisions of this Agreement.

**32. Nullification of Settlement Agreement.**

In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. To the extent the total number of opt outs exceed ten percent (10%), Defendant has the option to nullify this settlement prior to the final fairness hearing via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or Defendant will be solely responsible for the costs incurred for the settlement administration should it exercise its' option to nullify this agreement. The return of any paid Settlement funds to Defendant shall occur no later than five (5) business days after one or more of the triggering events leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

**33. Increase in Compensable Work Weeks.**

It was represented to Class Counsel that the Compensable Work Weeks through April 22, 2021 is estimated to be 97,121. The parties will have their experts extrapolate this number of workweeks through August 4, 2021. To the extent the number of Compensable Work Weeks increases by more than ten percent (10%) beyond the number of workweeks (as extrapolated from April 22, 2021 through August 4, 2021), it will trigger an escalator provision where the Gross Settlement Fund shall increase by one percent (1%) for every one percent (1%) increase in

Compensable Work Weeks over the ten percent (10%) threshold. If the increase causes an increase of the cost of Settlement Administration beyond the amount that has been approved by the Court, Defendant shall separately bear the increased cost of Settlement Administration outside of the Gross Settlement Fund. If Defendant fails to increase the Gross Settlement Fund proportionately or remit payment of the increased cost of Settlement Administration, the Parties shall work together in good faith to resolve any dispute regarding the increase of the Gross Settlement Fund or increased cost of Settlement Administration. If the Parties are unable to reach agreement, Plaintiff shall have the right to terminate this Agreement and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

**34. No Effect on Employee Benefits.**

Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class members.

**35. No Admission by Defendant.**

Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing whatsoever. This Agreement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

**36. Exhibits and Headings.**

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**37. Interim Stay of Proceedings.**

The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by

1 the Court.

2 **38. Amendment or Modification.**

3 This Agreement may be amended or modified only by a written instrument signed by  
4 counsel for all Parties or their successors-in-interest.

5 **39. Entire Agreement.**

6 Apart from the written mediator's proposal, which the Parties specifically agree to integrate  
7 herein, this Agreement and any attached Exhibits constitute the entire Agreement among these  
8 Parties, and no oral or written representations, warranties, or inducements have been made to any  
9 Party concerning this Agreement or its Exhibits other than the representations, warranties, and  
10 covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering  
11 in to this Agreement based solely on the representations and warranties herein and not based on  
12 any promises, representation, and/or warranties not found herein.

13 **40. Authorization to Enter into Settlement Agreement.**

14 Counsel for all Parties warrant and represent they are expressly authorized by the Parties  
15 whom they represent to negotiate this Agreement and to take all appropriate actions required or  
16 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to  
17 execute any other documents required to effectuate the terms of this Agreement. The Parties and  
18 their counsel will cooperate with each other and use their best efforts to effect the implementation  
19 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of  
20 any document needed to implement the Settlement, or on any supplemental provisions that may  
21 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of  
22 the Court to resolve such disagreement. The persons signing this Agreement on behalf of  
23 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of  
24 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that  
25 he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

26 **41. Binding on Successors and Assigns.**

27 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns  
28 of the Parties hereto, as previously defined.

1           **42. California Law Governs.**

2           All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted  
3 according to the laws of the State of California.

4           **43. Counterparts.**

5           This Agreement may be executed in one or more counterparts. All executed counterparts  
6 and each of them shall be deemed to be one and the same instrument.

7           **44. Jurisdiction of the Court.**

8           The Parties agree that the Court shall retain jurisdiction with respect to the interpretation,  
9 implementation and enforcement of the terms of this Agreement and all orders and judgments  
10 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction  
11 of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in  
12 this Agreement and all orders and judgments entered in connection therewith.

13           **45. Invalidity of Any Provision.**

14           Before declaring any provision of this Agreement invalid, the Court shall first attempt to  
15 construe the provisions valid to the fullest extent possible consistent with applicable precedents so  
16 as to define all provisions of this Agreement valid and enforceable.

17           **46. Publicity.**

18           Plaintiff and Class Counsel agree not to disclose or publicize this Settlement, including the  
19 fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any  
20 manner or form, directly or indirectly, to any person or entity, except potential Settlement Class  
21 Members and as shall be contractually required to effectuate the terms of the Settlement. For the  
22 avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue press releases,  
23 communicate with, or respond to any media or publication entities, publish information in manner  
24 or form, whether printed or electronic, on any medium or otherwise communicate, whether by  
25 print, video, recording or any other medium, with any person or entity concerning the Settlement,  
26 including the fact of the settlement, its terms or contents and the negotiations underlying the  
27 Settlement, except as shall be contractually required to effectuate the terms of the Settlement.  
28 However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in

other actions, Class Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes.

**47. No Unalleged Claims.**

Plaintiff and Class Counsel represent that they, as of the date of execution of this Settlement, are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement, (b) they have no current intention of asserting any other claims against Defendant or any of the Released Parties in any judicial or administrative forum, and (c) that they do not currently represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant or any of the Released Parties. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice.

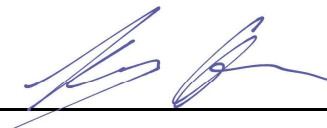
**48. Notice of Settlement to LWDA.**

Plaintiff will provide submit this Agreement and proposed settlement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2) at the same time that it is submitted to the Court for preliminary approval.

WHEREFORE, Plaintiff, on behalf of himself and the Settlement Class members, and Defendant has executed this Agreement as of the dates set forth below.

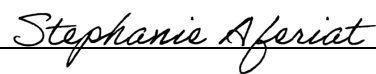
**IT IS SO AGREED:**

Dated: Sep 6, 2022

By: 

JORGE ALMANZAR

Dated: 9/9/2022

By: 

THE HOME DEPOT USA, INC.

1                   **APPROVED AS TO FORM:**

2

3   DATED: September 6, 2022

THE MARKHAM LAW FIRM

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6                   By: /s/ David R. Markham

David R. Markham

Maggie Realin

Lisa Brevard

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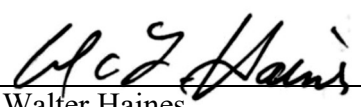
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9   DATED: September 6, 2022

UNITED EMPLOYEES LAW GROUP

10

11

12                  By: 

Walter Haines

13                  Attorneys for Plaintiff and Proposed Class

14

15   DATED: October 11, 2022

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

16

17

18                  By: 

Evan R. Moses

Aaron H. Cole

Melis Atalay

19                  Attorneys for Defendant HOME DEPOT USA,  
20                  INC.

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EXHIBIT “A”

1 [CLASS MEMBER NAME]

2  
3 **JORGE ALMANZAR v. HOME DEPOT USA, INC.**

4 **United States District Court, Eastern District of California**  
5 **Case No.: 2:20-cv-00699-TLN-KJN**

6 If you are a current or former employee of HOME DEPOT USA, INC. (“Defendant”), a  
7 class and representative action lawsuit may affect your rights and you may be entitled to benefits  
8 under the settlement.

9 You are not being sued. A court authorized this notice. This is not a solicitation from a  
10 lawyer.

11 **PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT**  
12 **INFORMATION ABOUT YOUR RIGHTS.**

- 13 • This lawsuit involves a class defined as: all persons who are employed or have been  
14 employed by HOME DEPOT USA, INC (“Home Depot”) as non-exempt, hourly Night  
15 Team Merchandising Execution Associate employees in the State of California during the  
16 CLASS PERIOD. These individuals are referred to as “Class Members” or “Settlement  
17 Class Members”. The “Class Period” means the time period from April 3, 2016 to  
18 November 1, 2021.
- 19 • You are a member of the Waiting Time Penalties Sub-Class if your employment with Home  
20 Depot ended at any time from and after April 3, 2017 through November 1, 2021.
- 21 • This lawsuit also involves a claim under the Private Attorneys Generals Act of 2004  
22 (“PAGA”). The PAGA Settlement includes all persons who are employed or have been  
23 employed by Home Depot as non-exempt, hourly Night Team Merchandising Execution  
24 Associate employees in the State of California during the PAGA Period. These individuals  
25 are referred to as “PAGA Settlement Members.” The “PAGA Period” means the time  
26 period from May 19, 2019 to November 1, 2021.
- 27 • You are receiving this Notice because the records reflect that you may be a Settlement  
28 Class Member and/or a PAGA Settlement Member.
- Plaintiff in this class and representative action alleges claims against Defendant for: (1)  
failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to

properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage statements; (7) failure to reimburse business expenses, (8) unfair business practices that could have been premised on the claims, causes of actions or legal theories of relief described above or any of the claims, causes of actions or legal theories of relief that were pleaded in the operative complaint; (9) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (10) any other claims or penalties under the wage and hour laws pleaded in the Action; and (11) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief.

- Defendant denies these allegations and contends that it has complied with the requirements of California law.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendant's defenses.
- You will not be penalized or retaliated against by Defendant for participating in this class action settlement. If you are currently employed by Defendant, your employment will not be affected in any way. Current employees of Defendant who choose to participate in the settlement will not be required to resign and can continue to work for Defendant.
- You have several options available to you:

|                                     |                                                                                                                                                                                                      |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b>                   | By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for claims pled in the Complaint during the Class and PAGA Periods.             |
| <b>ASK TO BE EXCLUDED (OPT OUT)</b> | Exclude yourself from this the Class Action lawsuit. Keep your rights to file a separate claim against Defendant.<br><br>If you ask to be excluded, you <b>will not</b> receive a share of the Class |

|                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                         | <p>Action settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant for the same legal claims in this lawsuit.</p> <p>If you request exclusion from the Class portion of the Settlement, you will not receive money from the Class portion of the Settlement. You will still receive your share of civil penalties under the PAGA portion of the Settlement. You will release claims for penalties under PAGA for the legal claims in this lawsuit during the PAGA Period.</p> |
| <b>OBJECT</b>                                           | Object to the terms of this Settlement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>DISPUTE THE INFORMATION CONTAINED IN THIS NOTICE</b> | You may dispute the number of workweeks as shown in Paragraph 5 of this notice, by following the procedures stated in Paragraph 6 of this Notice.                                                                                                                                                                                                                                                                                                                                                                       |

**Your options are explained in this notice.**  
**To opt out, object, or dispute your employment dates, you must act by [REDACTED].**

**1. Why did I get this notice?**

A proposed settlement has been reached in a class and representative action lawsuit that was brought on behalf of a group of Defendant's Night Team Merchandising Execution Associate employees. You have received this notice because Defendant's records indicate that you are a "Class Member" and/or a "PAGA Settlement Member." This means you are eligible to receive a payment from this settlement.

**2. What is this lawsuit about?**

This lawsuit was filed on April 3, 2020 on behalf of all persons who are employed or have been employed as an hourly Night Team Merchandising Execution Associate employee by Defendant in the State of California during the Class Period. The operative complaint asserts the following allegations on behalf of all proposed class members: (1) failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage statements; (7) failure to reimburse business expenses, (8) violation of California's Unfair Competition Law; and (9) violation of PAGA.

**3. Has the Court decided who is right?**

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

**4. Why did this case settle?**

The Parties reached a settlement in order to avoid the risk and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of all Class Members given the outcome of their investigation, the time and resources required in connection with further litigation, the risks as to the outcome, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and maintains that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

**5. What are the terms of the settlement and how much will I receive?**

The Gross Settlement Fund is \$750,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

|                                        |                                                                                             |
|----------------------------------------|---------------------------------------------------------------------------------------------|
| Class Representative Service Award:    | not to exceed \$15,000                                                                      |
| Class Counsel Fees:                    | not to exceed \$250,000                                                                     |
| Class Counsel Costs:                   | not to exceed \$30,000                                                                      |
| PAGA Payments                          | \$37,500 (75%, or \$28,125, to the LWDA and 25%, or \$9,375 to the PAGA Settlement Members) |
| <u>Settlement Administrator Costs:</u> | <u>\$14,250</u>                                                                             |
| Anticipated Net Settlement Fund        | \$403,250                                                                                   |

After these deductions, it is anticipated that there will be available \$403,250 available to be divided amongst the Class Members receiving this notice ("Net Settlement Fund").

Each Participating Class Member's Individual Settlement Payments shall be determined first based on the Participating Class Member's share of Waiting Time Penalties for members of the Waiting Time Penalties Sub-Class. 10% of the Net Settlement Fund will be distributed equally to Participating Class Members who are also a member of the Waiting Time Penalties Sub-Class. The remaining 90% of the Net Settlement Fund will be distributed to Participating Class Members on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class Members. This means that, after any allocation for Waiting Time Penalties, your anticipated payment is "pro rata" and will be based upon the number of weeks you worked for Defendant during the time period from April 3, 2016 to November 1, 2021.

All Individual Settlement Payments will be allocated as follows: twenty percent (20%) to settlement of wage claims, forty percent (40%) to settlement of claims for interest, and forty percent (40%) to settlement of claims for statutory penalties.

Additionally, individuals who are or previously were employed by Home Depot as an hourly Night Team Merchandising Execution Associate in California at any time during the period of May 19, 2019 to November 1, 2021 ("PAGA Period"), will receive a pro rata payment of the \$9,375 allocated to these PAGA Settlement Members based on their respective number of pay periods during the PAGA Period. This payment is being provided to these individuals because it releases claims for civil penalties belonging to the State of California for alleged violations of the California Labor Code and IWC Wage Order provisions identified in the PAGA Notice sent to the LWDA and further identified in the operative complaint that are alleged to have occurred during the PAGA Period.

All PAGA Payments will be allocated as one hundred percent (100%) settlement of claims for statutory penalties.

According to Defendant's records, your employment dates as an hourly Night Team Merchandising Execution Associate employee by Defendant in the State of California during the relevant time period (April 3, 2016 to November 1, 2021) are: [REDACTED] to [REDACTED].

According to Defendant's records, the total number of workweeks that you worked as a Settlement Class Member *during the relevant time period* is [REDACTED].

If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these workweeks, your estimated class settlement amount is \$[INSERT]. Please note this is an estimated amount and may change based on the Settlement Administrator's final calculation of the Net Settlement Fund.

**6. What if I disagree with the number of workweeks shown above?**

If you believe the information in the notice is incorrect regarding the number of work weeks attributed to you, you will need to write a letter setting forth the number of workweeks that you believe are correct. You may attach any relevant documentation in support thereof such as W2s, timesheets, work schedules, etc. You must mail, fax or e-mail your letter to:

Settlement Administrator  
c/o <<Name.of.Claims.Admin>>  
fax number  
e-mail address

You must submit such information by XXXX. Class Counsel, Defendant's Counsel, and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

#### **7. What do I have to do to receive a share of the settlement?**

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, please make sure the Settlement Administrator always has your current home address on file to ensure you receive your settlement share. If you move, call or e-mail the Settlement Administrator to provide your new address at the contact information provided in section 13, below.

You will have 180 days after issuance to cash your settlement check. If you do not cash your check within this time period, then the Settlement Administrator will send the funds represented by the unredeemed check in your name to the California Controller's Office Unclaimed Property Division. In no event will any of the funds revert to Defendant.

#### **8. What rights am I giving up?**

The claims you will Release by doing nothing are: "[A]ny and all claims that are asserted in the operative complaint and which could have been asserted based on the facts alleged in the complaint, which are or could be the basis of claims for: (1) failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage statements; (7) failure to reimburse business expenses, (8) unfair business practices that could have been premised on the claims, causes of actions or legal theories of relief described above or any of the claims, causes of actions or legal theories of relief that were pleaded in the operative complaint; (9) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (10) any other claims or penalties under the wage and hour laws pleaded in the Action; and (11) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief."

In the event you exclude yourself from the Class Action Settlement by following the procedures in Paragraph 9 below, you will still release the PAGA claims during the PAGA Period. The PAGA released claims means all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories asserted in the operative complaint and which could have been asserted based on the facts alleged in the complaint, which are or could be the basis of claims for: (1) failure to pay all regular wages, overtime wages, and minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at the time of termination; (6) failure to provide complete, accurate, or properly formatted wage

statements; (7) and failure to reimburse business expenses.

## **9. What if I do not wish to be involved?**

Anyone not wishing to participate in the class action portion of the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing or faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, <<Name.of.Claims.Admin>>, by XXXX.

Settlement Administrator  
c/o <<Name.of.Claims.Admin>>  
[address, telephone & fax numbers]

The Request for Exclusion: (1) must contain your name, address, and telephone number; (2) a statement expressing that you want to be excluded from the Class Action Settlement, in substance stating that "I wish to opt out of the settlement class in *Almanzar v. Home Depot*, Case No. 2:20-cv-00699-TLN-KJN. I understand that by opting out of the settlement class I will not be bound by any class judgment in this action and will not be entitled to receive a payment from the class action portion of the settlement."; (3) must be signed by you; and (4) must be postmarked or fax stamped by \_\_\_\_\_ and returned to the Settlement Administrator at the specified address or fax number above. The Request for Exclusion will be deemed invalid if it does not contain your name, address, signature, and a statement requesting exclusion.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive a payment from the class action settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit, except for PAGA penalties. Any individual who opts-out of the Settlement will still be a PAGA Settlement Member, and will receive a PAGA settlement payment. PAGA Settlement Members will be bound by the release of PAGA claims as stated in Paragraph 8, above.

An individual who submits a valid Request for Exclusion may not object to the Settlement.

## **10. What if I have an objection to the settlement?**

A Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by U.S. Mail or fax no later than XXXX.

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the basis for the objection; and (3) if the Settlement Class Member intends to appear at the Final Approval Hearing. The Settlement Administration must provide a copy of written objections to the Parties within three calendar (3) days of receipt.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval and Fairness Hearing will be held in Dept. 15 of the United States District Court, Eastern District of California located at 501 I Street, Suite 4-200 Sacramento, California 95814 on \_\_\_\_\_, 2022, at XX (a.m./p.m.) (Pacific Time).

Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Deadline.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>Class Counsel:</u></p> <p><b>THE MARKHAM LAW FIRM</b><br/> DAVID R. MARKHAM (SBN 071814)<br/> dmarkham@markham-law.com<br/> MAGGIE REALIN, (SBN 263639)<br/> mrealin@markham-law.com<br/> LISA BREVARD (SBN 323391)<br/> lbrevard@markham-law.com<br/> 888 Prospect Street, Suite 200<br/> La Jolla, CA 92037<br/> Tel: 619.399.3995, Fax 619.615.2067</p> <p><b>UNITED EMPLOYEES LAW GROUP</b><br/> WALTER HAINES (SBN 071075)<br/> walter@uelglaw.com<br/> 5500 Bolsa Avenue, Suite 201<br/> Huntington Beach, CA 92649<br/> Tel: 888.474.727; Fax: 562.256.1006</p> | <p><u>Counsel for HOME DEPOT USA, INC.</u></p> <p><b>OGLETREE, DEAKINS, NASH, SMOAK &amp; STEWART, P.C.</b><br/> EVAN R. MOSES, CA Bar No. 198099<br/> evan.moses@ogletree.com<br/> AARON H. COLE, CA Bar No. 236655<br/> aaron.cole@ogeltree.com<br/> MELIS ATALAY, CA Bar No. 301373<br/> melis.atalay@ogletree.com<br/> OGLETREE, DEAKINS, NASH, SMOAK &amp; STEWART, P.C.<br/> 400 South Hope Street, Suite 1200<br/> Los Angeles, CA 90071<br/> Telephone: 213-239-9800<br/> Facsimile: 213-239-9045</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### 11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

#### 12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 15 of the United States District Court, Eastern District of California located at 501 I Street, Suite 4-200, Sacramento, California 95814 on \_\_\_\_\_, 2022, at XX (a.m./p.m.) (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Service Award, the PAGA Payments, and the costs of Settlement administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

#### 13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also email or telephone the Settlement Administrator, <<Name.of.Claims.Admin>> at (INSERT address, e-mail, fax numbers), or Class Counsel (listed above). You may also visit the settlement website at \_\_\_\_\_ for more information and documents relating to the settlement.

**Please do not telephone the Court, the Office of the Clerk, or Defendant's counsel for information regarding this settlement**

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**EXHIBIT “B”**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JORGE ALMANZAR, an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a Delaware  
Corporation,

Defendants.

Case No. 2:20-cv-00699-TLN-KJN

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

Complaint Filed: April 3, 2020

Trial Date: None

District Judge: Hon. Troy L. Nunley  
Courtroom 15, Sacramento

Magistrate Judge: Hon. Kendall J. Newman  
Courtroom 8, Sacramento

1 The Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement  
2 Agreement”), a copy of which is attached to the Declaration of David Markham in support of  
3 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement as Exhibit “1”, came  
4 before this Court on [REDACTED], 2021. The Court, having considered the papers submitted in  
5 support of the motion of the parties, **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the Settlement Agreement and the  
7 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The  
8 Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class when  
9 balanced against the possible risks of further litigation, including issues relating to class  
10 certification, liability, calculating damages, and potential appeals. The Court finds that: (a)  
11 significant investigation, research, and litigation have been conducted, such that the Parties are able  
12 to fairly evaluate their respective positions; (b) settlement at this time will avoid the substantial  
13 cost, delay and risk presented by further litigation of the action; (c) the Agreement resulted from  
14 extensive, informed, non-collusive arm’s length negotiations by experienced counsel with the  
15 assistance of a reputable mediator; and (d) the Agreement is sufficient to warrant notice of the  
16 Settlement to persons in the Settlement Class and a full hearing on the final approval of the  
17 Settlement.

18 2. For purposes of this Settlement, Plaintiff is ordered to file the Second Amended  
19 Complaint attached to the Settlement Agreement as **Exhibit D** (the “SAC”). Defendant will be  
20 deemed to have generally denied the allegations of the SAC without the need to file and serve an  
21 Answer thereto. Should, for whatever reason, the settlement set forth in this Settlement Agreement  
22 not become final, the SAC shall be deemed stricken without further order of the Court.

23 3. The Court conditionally certifies and approves, for settlement purposes only, the  
24 following Settlement Class as set forth in the Settlement Agreement:

25 All current and former non-exempt, hourly Night Team Merchandising Execution Associates  
26 who worked for Home Depot in California between April 3, 2016 and [the date the Court grants  
preliminary approval, or November 1st, 2021, whichever date is earlier] (the “Class Period”).

27 4. The Settlement falls within the range of reasonableness and appears to be  
28 presumptively valid, subject only to any objections that may be raised at the final fairness hearing  
and final approval by this Court.

1           5.       The Court makes the following preliminary findings for settlement purposes  
2 only:  
3           A.       The Settlement Class, which consists of over one thousand persons, is so  
4           B.       There appear to be questions of law or fact common to the Settlement  
5           C.       Plaintiff's claims appear to be typical of the claims being resolved through  
6           D.       Plaintiff appears to be capable of fairly and adequately protecting the  
7           E.       Common questions of law and fact appear to predominate over questions  
8           F.       Certification of the Settlement Class appears to be superior to other  
9                    available methods for the fair and efficient resolution of the claims of the  
10                   Settlement Class.  
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14           6.       The Court approves, as to form and content, the Notice to Class Members in  
15 substantially the form attached to the Settlement Agreement as Exhibit A.  
16

17           7.       The Court approves the procedure for Settlement Class Members to request  
18 exclusion from the Settlement as set forth in the Notice to Class Members.  
19

20           8.       The Court approves the procedure for Settlement Class Members to object to the  
21 Settlement as set forth in the Class Notice to Class Members.  
22

23           9.       The Court directs the mailing of the Notice to Class Members by U.S. first class  
24 mail to the Settlement Class Members in accordance with the Implementation Schedule set forth  
25 below. The Court finds that the dates selected for the mailing and distribution of the Notice to  
26 Class Members, as set forth in the Implementation Schedule, meet the requirements of due process  
27 and provide the best notice practicable under the circumstances and shall constitute due and  
28 sufficient notice to all persons entitled thereto.

          10.       The Court confirms The Markham Law Firm and United Employees Law Group as  
Class Counsel.

          11.       The Court confirms JORGE ALMANZAR. as the Class Representative.

12. The Court approves CPT Group, Inc. as the Settlement Administrator.

13. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

14. The Court orders the following Implementation Schedule for further proceedings:

|    |                                                                                  |                                                                                                                               |
|----|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| a. | Preliminary Approval                                                             | XXXX                                                                                                                          |
| b. | Deadline for Plaintiff to File SAC                                               | 2 court days from Preliminary Approval (by _____, 2022)                                                                       |
| c. | Deadline for Defendant to Provide Class Information to Settlement Administrator. | 7 business days from Preliminary Approval (by _____, 2022)                                                                    |
| d. | Deadline to Mail Notice to Class Members                                         | 30 calendar days from Preliminary Approval (by _____, 2022)                                                                   |
| e. | Deadline for Class Members to Postmark and/or Fax Any Request for Exclusion      | 45 calendar days from mailing of Notice (judged by postmark / fax stamp date), unless extended by re-mailing (by _____, 2022) |
| f. | Deadline for Class Members to Postmark and/or Fax Any Objection                  | 45 calendar days from mailing of Notice (judged by postmark / fax stamp date) (by _____, 2022)                                |
| g. | Deadline for Class Counsel to file Motion for Final Approval of Class Settlement | (by _____, 2022)                                                                                                              |

|    |                                                                                           |                                                                                                                          |
|----|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| h. | Deadline for Class Counsel to file Motion for Class Counsel Award                         | at least 14 calendar days before Class Members' deadline to file an objection to the Settlement expires (by _____, 2022) |
| i. | Deadline for Class Counsel and/or Defendant's Counsel to file a response to any objection | No later than 10 court days before the Final Approval Hearing (by _____, 2022).                                          |
| j. | Final Approval Hearing                                                                    | _____, 2022                                                                                                              |

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Kendall J. Newman  
United States Magistrate Judge

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

JORGE ALMANZAR, an individual, on  
behalf of himself and all others similarly  
situated,  
  
Plaintiff,  
  
v.  
  
HOME DEPOT U.S.A., INC., a Delaware  
Corporation,  
  
Defendants.

Case No. 2:20-cv-00699-TLN-KJN

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND FINAL JUDGMENT**

Complaint Filed: April 3, 2020  
Trial Date: None  
District Judge: Hon. Troy L. Nunley  
Courtroom 15, Sacramento  
Magistrate Judge: Hon. Kendall J. Newman  
Courtroom 8, Sacramento

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The Motion for Final Approval of Class Action Settlement came before this Court on

3 \_\_\_\_\_.

4 **WHEREAS**, the Court granted preliminary approval of the Joint Stipulation of Class  
5 Action Settlement and Release of Claims (“Settlement Agreement”), attached to the concurrently-  
6 filed Declaration of David R. Markham as Exhibit “1”, on \_\_\_\_\_.

7 **WHEREAS**, Plaintiff JORGE ALMANZAR has applied to the Court for an order granting  
8 final approval of the Settlement Agreement.

9 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed  
10 Settlement and for entry of an order of final approval and entry of final judgment thereon. The  
11 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action  
12 Settlement; Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of  
13 David R. Markham, Walter L. Haines, Plaintiff JORGE ALMANZAR and \_\_\_\_\_ of CPT Group,  
14 Inc., and the supporting documents annexed thereto, now finds:

15 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

16 1. All defined terms contained herein shall have the same meanings as set forth in the  
17 Settlement Agreement filed with this Court, which is attached hereto as **Exhibit** and incorporated  
18 by reference.

19 2. The Court has personal jurisdiction over all Settlement Class Members and that the  
20 Court has subject matter jurisdiction to approve the Settlement.

21 3. The terms of the Settlement are fair, just, reasonable, and adequate, to the  
22 Settlement Class and to each Settlement Class Member and the Settlement is ordered finally  
23 approved, and that all terms and provisions of the Settlement should be and hereby are ordered to  
24 be consummated.

25 4. The Parties are hereby directed to perform the terms of the Settlement as described  
26 in the Settlement Agreement according to its terms and provisions.

1           5.       The Settlement Agreement is binding on Plaintiff and all other Settlement Class  
2 Members, except those who timely and properly submitted Requests for Exclusions, as well as  
3 their heirs, executors, and administrators, successors, and assigns.

4           6.       There are XX (XX) valid requests for exclusion.

5           7.       There are XX (XX) objections.

6           8.       It is ordered that the Settlement Class is certified for settlement purposes only. The  
7 Court finds that with respect to the Settlement Class and for purposes of approving this Settlement  
8 only that: (a) the members of the Settlement Class are ascertainable and so numerous that joinder  
9 of all members is impracticable; (b) there are questions of law or fact common to the Settlement  
10 Class with respect to the subject matter of the Action; (c) the claims of Class Representative  
11 Plaintiff Jorge Almanzar are typical of the claims of the members of the Settlement Class; (d) the  
12 Class Representative have fairly and adequately protected the interests of the members of the  
13 Settlement Class; (e) a class action is superior to other available methods for an efficient  
14 adjudication of this controversy; and (f) the Class Counsel are qualified to serve as counsel for  
15 Plaintiff in his individual and representative capacities for the Class.

16           9.       The Court finds that the Notice and notice methodology implemented pursuant to  
17 this Settlement: (i) constituted the best practicable notice; (ii) constituted notice that was  
18 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the  
19 pendency of the Action, their right to object to or exclude themselves from the proposed Settlement  
20 and their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due,  
21 adequate and sufficient notice to all persons entitled to receive notice; and (iv) satisfied  
22 requirements of law and due process.

23           10.      The Settlement Class is hereby made final. The Settlement Class is defined as: all  
24 persons who are employed or have been employed by HOME DEPOT USA, INC. as non-exempt,  
25 hourly Night Team Merchandising Execution Associate employees in the State of California during  
26 the Class Period.

27           11.      The Class Period is April 3, 2016 to November 1, 2021.

1           12.     The Settlement Agreement is not an admission by Defendant, nor is this Final Order  
2 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final  
3 Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the  
4 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or  
5 wrongdoing on the part of Defendant.

6           13.     Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and  
7 each Settlement Class Member shall fully release and discharge the Released Parties pursuant to  
8 the following release, which provides: any and all claims that are asserted in the operative  
9 complaint and which could have been asserted based on the facts alleged in the complaint, which  
10 are or could be the basis of claims for: (1) failure to pay all regular wages, overtime wages, and  
11 minimum wages; (2) failure to properly calculate premium pay; (3) failure to provide proper meal  
12 periods, and to properly provide premium pay in lieu thereof; (4) failure to provide proper rest  
13 periods, and to properly provide premium pay in lieu thereof; (5) failure to pay all wages timely at  
14 the time of termination; (6) failure to provide complete, accurate, or properly formatted wage  
15 statements; (7) failure to reimburse business expenses, (8) unfair business practices that could have  
16 been premised on the claims, causes of actions or legal theories of relief described above or any of  
17 the claims, causes of actions or legal theories of relief that were pleaded in the operative complaint;  
18 (9) all claims under the California Labor Code Private Attorneys General Act of 2004 that could  
19 have been premised on the claims, causes of action or legal theories described above or any of the  
20 claims, causes of action or legal theories described above or any of the claims, causes of action or  
21 legal theories of relief pleaded in the operative complaint; (10) any other claims or penalties under  
22 the wage and hour laws pleaded in the Action; and (11) all damages, penalties, interest and other  
23 amounts recoverable under said claims, causes of action or legal theories of relief.

24           14.     Plaintiff and all Settlement Class Members who have not been timely and properly  
25 excluded from the Settlement Class, and any person acting on their behalf, are permanently barred  
26 and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class  
27 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any  
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1 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any  
2 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members  
3 into a separate class for purposes of pursuing as a purported class action (including by seeking to  
4 amend a pending complaint to include class allegations, or by seeking class certification in a  
5 pending action) any lawsuit based on or relating to the Released Claims;

6 15. The Settlement Agreement provides that the Gross Settlement Fund is \$750,000.  
7 The Net Settlement Fund shall be determined according to the terms of the Settlement Agreement  
8 as approved herein. The Court orders the calculations and the payments to be made and  
9 administered in accordance with the terms of the Settlement Agreement.

10 16. The Court hereby finds that Plaintiff and Class Counsel adequately represented the  
11 Settlement Class for purposes of entering into and implementing the settlement.

12 17. The Court confirms The Markham Law Firm and United Employees Law Group as  
13 Class Counsel.

14 18. The Court finds and determines that the Individual Settlement Payments to be paid  
15 to Participating Class Members as provided by the Settlement Agreement are fair and reasonable.  
16 The Court gives final approval to and orders payment of those amounts to be made to Participating  
17 Class Members in accordance with the Settlement Agreement.

18 19. The Court finds and determines that the PAGA Payment in the amount of \$37,500 is  
19 fair, reasonable, and appropriate. The Court further finds the allocation of the PAGA payment,  
20 seventy-five percent (75%) of the PAGA Penalties being allocated to the LWDA in the amount of  
21 \$28,125 and the remaining twenty-five percent (25%) in the amount of \$9,375 shall be allocated to  
22 the PAGA Settlement Members, as fair, reasonable, and appropriate. Any PAGA Settlement  
23 Member who opt-outs of the Class Settlement will still be bound by the release of the PAGA  
24 claims during the PAGA Period.

25 20. The Court finds and determines that the fees and expenses in administering the  
26 Settlement incurred by CPT Group, Inc., in the amount of \$14,250 are fair and reasonable. The  
27 Court gives final approval to and orders payment of that amount in accordance with the Settlement.

1           21.     The Court finds and determines that the Class Representative Service Award in the  
2 sum of \$15,000 to Plaintiff Jorge Almanzar is fair and reasonable. The Court hereby orders the  
3 Settlement Administrator make this payment to Mr. Almanzar in accordance with the terms of  
4 Settlement Agreement.

5           22.     Pursuant to the terms of the Settlement, and the authorities, evidence and argument  
6 submitted by Class Counsel, the Court awards Class Counsel attorneys' fees in the sum of  
7 \$250,000 and litigation costs of \$[INSERT]. The Court finds such amounts to be fair and  
8 reasonable. The Court orders the Settlement Administrator to make these payments in accordance  
9 with the terms of the Settlement Agreement.

10          23.     If a Settlement Class Member and/or PAGA Settlement Member does not cash his  
11 or her settlement check within 180 calendar days, the Settlement Administrator shall send the  
12 unclaimed monies to the State of California Office of the Controller Unclaimed Property Fund in  
13 the name of the Participating Class Members who did not cash his/her Settlement check.

14          24.     Defendant shall have no further liability for costs, expenses, interest, attorneys' fees,  
15 or for any other charge, expense, or liability, except as provided for in the Settlement Agreement.

16          25.     The Parties are authorized, without further approval from the Court, to agree to and  
17 to adopt such amendments, modifications and expansions of this Stipulation and all exhibits  
18 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of  
19 Settlement Class Members under the Stipulation.

20          26.     With the consent of the Parties, without affecting the finality of the Final Judgment,  
21 the Court shall retain continuing jurisdiction over the Action, the Parties, and the Settlement Class,  
22 as well as the administration and enforcement of the Settlement. Any disputes or controversies  
23 arising with respect to the interpretation, consummation, enforcement, or implementation of the  
24 Settlement shall be presented by motion to the Court; provided however, that nothing in this  
25 Paragraph shall restrict the ability of the Parties to exercise their rights to terminate the Settlement  
26 pursuant to the terms of the Settlement Agreement.

1           27.     Nothing in this order shall preclude any action to enforce the Parties' obligations  
2 under the Settlement or under this order, including the requirement that Defendant make payments  
3 to the participating Settlement Class Members in accordance with the Settlement.

4           28.     Upon completion of administration of the Settlement, the Settlement Administrator  
5 will provide written certification of such completion to the Court and counsel for the Parties which  
6 shall be filed with the Court on or before \_\_\_\_\_, 2023.

7           29.     This Final Order shall constitute a final judgment.

8           30.     Except as provided in paragraph 26, above, the Court hereby dismisses the action  
9 (including all individual claims and Released Claims presented thereby) with prejudice, without  
10 fees or costs to any party except as provided in the Settlement Agreement.

11          31.     The Parties will bear their own costs and attorneys' fees except as otherwise  
12 provided by this Court's Order awarding Class Counsels' Award for attorneys' fees and litigation  
13 costs.

14  
15 DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Kendall J. Newman  
United States Magistrate Judge

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EXHIBIT “D”

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Attorneys for Plaintiff on behalf of himself and all others similarly situated

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JORGE ALMANZAR, an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a  
Delaware Corporation

Defendant.

**CASE NO.: 2:20-cv-00699-TLN-KJN  
CLASS ACTION**

**SECOND AMENDED COMPLAINT FOR:**

- 1) FAILURE TO PROVIDE MEAL PERIODS;**
- 2) FAILURE TO PROVIDE REST PERIODS;**
- 3) FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES;**
- 4) FAILURE TO REIMBURSE NECESSARILY INCURRED BUSINESS EXPENSES;**
- 5) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 6) FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
- 7) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), BUS. & PROF. CODE § 17200 *et seq.***
- 8) VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA) (Lab. Code §2698, *et seq.*)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff JORGE ALMANZAR (“Plaintiff”), by and through his attorneys of  
2 record, brings this Class Action Complaint against Defendant HOME DEPOT U.S.A.  
3 Inc., a Delaware Corporation, (“HOME DEPOT” or “Defendant”). Plaintiff hereby  
4 alleges, on information and belief, except for information based on personal knowledge,  
5 which allegations are likely to have evidentiary support after further investigation and  
6 discovery, as follows:

### 7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of  
9 Defendant’s failure to pay wages for all time worked, pay wages for all time worked at a  
10 correct rate, failure to provide timely and uninterrupted meal and rest periods, failure to  
11 reimburse necessarily incurred business expenses, and for derivative claims.

12 2. As more fully set forth below, Defendant failed to provide timely and  
13 uninterrupted meal and rest periods to its California non–exempt Night Team  
14 Merchandising Execution Associates in violation of California Labor Code §§ 512 and  
15 226.7, and the applicable Industrial Wage Order; failed to pay its employees one hour of  
16 pay at the regular rate of compensation for each instance that Defendant failed to provide  
17 statutorily mandated rest periods and timely off–duty meal periods; failed to pay them  
18 overtime for work in excess of eight hours a day or 40 hours a week; failed to reimburse  
19 incurred necessary business expenses; failed to furnish timely and accurate wage  
20 statements; failed to pay all wages due upon termination; and, is in violation of  
21 California’s Unfair Competition Law (“UCL”), and Private Attorneys General Act of  
22 2004 (“PAGA”).

23 3. Plaintiff seeks to represent and prosecute claims against Defendant in class  
24 action proceedings on behalf of all those similarly situated who are or were residents of  
25 the State of California.

### 26 **JURISDICTION AND VENUE**

27 4. This Court has diversity jurisdiction over this action, under 28 U.S.C. §  
28

1 1332. Plaintiff is a citizen of California and Defendant is a citizen of Georgia.

2 5. In addition, this Court also has original jurisdiction over this action pursuant  
3 to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). CAFA grants  
4 federal district courts original jurisdiction over civil class action lawsuits filed under  
5 federal or state law in which there are at least 100 members of the class, and any member  
6 of a class of plaintiffs is a citizen of a state different from any defendant, and the matter  
7 in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

8 6. This case meets each of the CAFA requirements because (1) Plaintiff alleges  
9 on information and belief there are hundreds if not thousands of class members in  
10 California, (2) there is diversity between at least one putative class member and the  
11 named Defendant; and (3) Plaintiff alleges and believes the aggregate claims for wages  
12 and penalties exceed the jurisdictional \$5,000,000.00 amount. As such, this Court has  
13 original jurisdiction pursuant to 28 U.S.C. § 1332(d). This Court also has supplemental  
14 jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

15 7. Venue is proper because upon information and belief, Defendant conducts  
16 substantial business—including employing class members within this District, and  
17 maintains numerous stores in this District.

### 18 **PARTIES**

19 8. Plaintiff JORGE ALMANZAR is currently a resident of Canyon Country,  
20 California. Plaintiff was employed by Defendant as a non-exempt, hourly-paid Night  
21 Team Merchandising Execution Associate (“Night Team MEA”) in Los Angeles,  
22 California, from approximately June 2018 to April 2020.

23 9. Plaintiff is informed and believes, and on that basis alleges, that HOME  
24 DEPOT is a Delaware Corporation with a principal place of business at 2455 Paces Ferry  
25 Road, Atlanta, Georgia 30339. Defendant is in the business of supplying tools and  
26 construction products and services throughout California. Plaintiff is informed and  
27 believes, and on that basis alleges, that HOME DEPOT is, and at all relevant times

1 alleged herein was, a Delaware corporation authorized to and conducts business in  
2 California, including but not limited to the Eastern District of California. Defendant  
3 employs Plaintiff at several of its Los Angeles, California, locations and  
4 employs/employed other Night Team Merchandising Execution Associates throughout  
5 California.

### 6 **FACTS**

7 10. From June 2018 to April 2020, Plaintiff was employed by Defendant as a  
8 non-exempt, hourly-paid Night Team Merchandising Execution Associate in Los  
9 Angeles, California.

10 11. In his role as a non-exempt, hourly-paid Night Team Merchandising  
11 Execution Associate (“Night Team MEA”), Plaintiff worked 10-hour shifts four days a  
12 week, with three to four shifts per week spent traveling between multiple of Defendant’s  
13 stores in the North Los Angeles area, and working with a traveling team of nine people.  
14 Plaintiff’s duties included merchandising projects, planogram maintenance, overhead  
15 organization, and display/signage maintenance designed to enhance the customer  
16 experience at the store. Plaintiff would ensure that the products were stocked and  
17 properly merchandised. Plaintiff would perform his duties utilizing his own vehicle.

18 12. During the relevant time period, Defendant failed to provide Plaintiff and  
19 other class members with timely and off-duty meal periods, in violation of California  
20 law. Since Plaintiff and other class members worked overnight shifts at multiple of  
21 Defendant’s locations, Plaintiff’s direct supervisor was supposed to have the keys to the  
22 particular store they are working in; however, this was usually not the case. When it was  
23 time for Plaintiff’s meal period, Plaintiff had to locate the manager of the store he was  
24 working in to come unlock the doors so he may leave. Due to the difficulty of locating  
25 the store manager, Plaintiff’s and other class members’ meal periods were often taken  
26 after the end of their fifth hour of work.

27 13. Further, Defendant failed to provide Plaintiff and other class members with  
28

1 timely and off-duty meal periods on shifts over 10 hours, in violation of California law.  
2 Plaintiff and other class members that worked shifts of over 10 hours are entitled to a  
3 second 30-minute uninterrupted meal period. However, Plaintiff and other class members  
4 were told by their managers that Defendant's policy states that every employee working a  
5 10-hour shift is required to take one meal period and waive the second, and that  
6 adherence to this policy was a condition of Plaintiff's and class members' employment,  
7 despite the fact that Plaintiff and class members did not sign a meal waiver nor any other  
8 similar document. Plaintiff and other class members were not paid meal period premiums  
9 for each day a second uninterrupted and timely meal period was not provided.

10 14. Additionally, Defendant's policies and practices regarding work conditions  
11 and expectations for its non-exempt, hourly-paid Night Team MEAs, caused Plaintiff and  
12 other class members to miss one or more rest breaks, and/or receive late, short or  
13 interrupted rest breaks. Plaintiff and other class members faced disciplinary action when  
14 projects were not completed on time. When Plaintiff and class members were able to take  
15 their rest breaks, they were frequently interrupted by their supervisors or managers with  
16 work-related issues, like inquiring about the status of projects.

17 15. Further, because Plaintiff and other class members would travel to multiple  
18 of Defendant's locations, the average commute time was 30 minutes. Plaintiff and other  
19 class members worked 10 hour shifts not including their commute; however, the  
20 commute time is paid at the regular rate, even though this time is in excess of 8 hours in a  
21 day or 40 hours in a workweek. Plaintiff and other class members were required to  
22 submit a mileage matrix to Defendant as well as input all mileage into an App called  
23 "Concur." The managers would then enter this time into Kronos under an "OT Travel"  
24 pay code; however, they were compensated only at their regular rate. This practice  
25 applied to all of the nine traveling team members. Thus, Defendant failed to properly  
26 compensate Plaintiff and class members for all hours worked at the appropriate overtime  
27 rate for time that Plaintiff and class members spent traveling from one location to  
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1 another.

2 16. During the relevant time period, upon information and belief, Defendant  
3 willfully, and on a systematic and company-wide basis, maintained and implemented a  
4 non-compliant practice and/or policy for the payment of overtime, and failed to pay all  
5 overtime wages owed to Plaintiff and class members. Defendant would edit Plaintiff's  
6 and class members' shift end time in the system, rounding it to the nearest 15-minute, to  
7 avoid addition of overtime. Upon information and belief, Defendant would delete 2.5  
8 hours of overtime every week.

9 17. Furthermore, during the relevant time period Plaintiff and class members  
10 were required to travel in their own vehicles to each Home Depot location in performance  
11 of their job duties as Night Team MEAs but were not reimbursed for all actual mileage  
12 expenses they incurred. Defendant reimbursed Plaintiff and class members for incurred  
13 mileage expenses at a rate of 40 cents per mile, instead of the standard rate of 57 cents  
14 per mile set by the Internal Revenue Service. Defendant only recently started paying  
15 Plaintiff and other class members 40 cents per mile for mileage reimbursement. Prior to  
16 November 2019, the rate was approximately 15 cents.

17 18. Also, during the relevant time period, Plaintiff and other class members were  
18 required to use their personal cellphones for work purposes. Managers would call  
19 Plaintiff and class members on their personal cellphones, instead of using the paging  
20 system in the store. Plaintiff and class members would be asked to send the managers text  
21 messages with pictures of the status of projects, with questions about the projects, or  
22 inquiring about where they are in the store. Sometimes, Plaintiff would already be home  
23 from his shift and would receive calls from his manager asking work-related questions.  
24 Plaintiff and class members have never been reimbursed for all cellphone expenses.

25 19. Defendant claims to have an open-door policy and that complaints are  
26 anonymous, however, Plaintiff and other class members fear retaliation if they make a  
27 complaint. After instances of Plaintiff complaining to managers, Plaintiff experienced  
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1 retaliation from supervisors. He would be assigned projects that were meant for two  
2 people to complete and an unreasonable deadline in which to complete it. If Plaintiff and  
3 other class members did not complete their assigned projects, they faced a verbal or  
4 written warning that could result in termination.

5 20. Upon information and belief, the above-mentioned unlawful employment  
6 practices by Defendant were applied the same to all non-exempt, hourly-paid Night Team  
7 Merchandising Execution Associates throughout Defendant's stores in California.

8 21. Defendant's conduct, as alleged here, caused Plaintiff and other class  
9 members damages including, but not limited to, loss of wages and compensation.  
10 Defendant is liable to Plaintiff and the class for failing to pay meal and rest break  
11 premiums; failing to pay meal and rest break premiums at the regular rate of pay; failing  
12 to pay all regular and/or overtime wages owed for each pay period; failing to reimburse  
13 for business-related expenses, including all incurred mileage while traveling from one  
14 location to another and personal cellphone usage in performance of their job duties;  
15 failing to provide timely and accurate wage statements; failure to pay all wages due upon  
16 termination; and violation of California's unfair competition law, and Private Attorneys  
17 General Act of 2004 ("PAGA").

18 22. Plaintiff is member of, and seeks to be a representative for, the class of  
19 similarly situated employees who all have been exposed to, have suffered, and/or were  
20 permitted to work under Defendant's unlawful employment practices as alleged in this  
21 complaint.

### 22 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

23 23. Plaintiff Almanzar exhausted the notice requirement by filing a complaint  
24 with the Labor and Workforce Development Agency ("LWDA") in his letter dated May  
25 19, 2020, as required under the California Labor Code Private Attorneys General Act  
26 ("PAGA"). A true and correct copy of Plaintiff's letter is attached hereto as Exhibit A.  
27 The LWDA did not assume jurisdiction over the applicable penalty claims alleged;

1 therefore, Plaintiff has exhausted the procedural requirement under PAGA to pursue any  
2 and all penalty claims as provided under PAGA.

3 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

4 24. Plaintiff brings this action on behalf of himself and on behalf of all others  
5 similarly situated, and as members of the Class they seek to represent. The Class Period  
6 is from four years prior to the filing of the Complaint in this action until the trial of this  
7 action (“Class Period”). The Class is defined as:

8 *All current and former non–exempt, hourly-paid Night Team*  
9 *Merchandising Execution Associates employed by Defendant in*  
*California during the Class Period.*

10 25. Further, Plaintiff brings this action on behalf of himself and all other  
11 similarly situated persons in Subclasses of the Plaintiff’s Class, defined as:

12 **a. Meal Period Subclass**

13 All current and former non–exempt, hourly-paid Night Team Merchandising  
14 Execution Associates employed by Defendant in California during the Class  
15 Period, who worked at least one shift longer than five hours in a workday and/or  
16 who worked at least one shift longer than ten hours in a workday.

17 **b. Rest Period Subclass**

18 All current and former non–exempt, hourly-paid Night Team Merchandising  
19 Execution Associates employed by Defendant in California during the Class  
20 Period, who worked at least one shift longer than three and a half hours in a  
21 workday.

22 **c. Overtime Subclass**

23 All current and former non–exempt, hourly-paid Night Team Merchandising  
24 Execution Associates employed by Defendant in California during the Class  
25 Period, who worked at least one shift longer than eight hours in a workday and/or  
26 worked more than 40 hours during the workweek.

27 **d. Itemized Wage Statement Subclass**

1 All current and former non-exempt, hourly-paid Night Team Merchandising  
2 Execution Associates employed by Defendant in California during the Class Period  
3 who received at least one wage statement from Defendant within the statute of  
4 limitations period applicable to claims under Section 226 of the California Labor  
5 Code.

6 **e. UCL Subclass**

7 All current and former non-exempt, hourly-paid Night Team Merchandising  
8 Execution Associates employed by Defendant in California during the Class  
9 Period, regarding whom Defendant have engaged in unlawful, unfair and/or  
10 fraudulent business acts or practices prohibited by Business & Professions Code §  
11 17200 *et. seq.* as specifically described herein.

12 26. Plaintiff reserves the right to amend or otherwise alter the class definition, or  
13 to propose or eliminate subclasses, in response to facts learned through discovery, legal  
14 arguments advanced by Defendant or otherwise.

15 27. **Numerosity/Impracticability of Joinder:** The members of the Class are so  
16 numerous that individual joinder is impracticable. The members of the class are so  
17 numerous that joinder of all members would be unfeasible and impracticable. Plaintiff  
18 estimates, on information and belief, that there are hundreds of current and former non-  
19 exempt, hourly-paid store manager employees of Defendant employed, or formerly  
20 employed, at Defendant's stores in California during the Class Period. The identity of  
21 individuals qualifying for class membership is readily ascertainable via inspection of the  
22 personnel records and other documents maintained by Defendant in the normal course of  
23 business. Class members may be notified of the pendency of this action by mail,  
24 electronic mail, the Internet, or published notice.

25 28. **Commonality and Predominance:** Common questions of law and fact exist  
26 as to all members of the Class. These questions predominate over any questions affecting  
27 only individual class members such that a class action is superior to other forms of action.

1 The claims of the named Plaintiff are typical of those of every other member of the  
2 Plaintiff Class. All Class Members were treated in a similar fashion and suffered similar  
3 harm as a consequence of Defendant's conduct, as alleged. Common legal and factual  
4 questions include, but are not limited to:

- 5 a. Whether Defendant engaged in a pattern or practice of impeding Plaintiff and  
6 the members of the class from taking statutory off-duty meal periods on a  
7 timely basis;
- 8 b. Whether Defendant had a policy or practice of not paying meal or rest period  
9 premium wages;
- 10 c. Whether Defendant had a policy or practice of not paying meal or rest period  
11 premium wages at the regular rate of pay;
- 12 d. Whether Defendant violated Labor Code §510 and the applicable California  
13 Industrial Welfare Commission Order by failing to pay Plaintiff and class  
14 members overtime wages;
- 15 e. Whether Defendant violated Labor Code §2802, by failing to reimburse  
16 Plaintiff and class members incurred necessary business expenses;
- 17 f. Whether Defendant failed to maintain accurate and itemized wage statements;
- 18 g. Whether Defendant conducted and engaged in unfair business practices and  
19 violated California Business and Professions Code § 17200;
- 20 h. Whether Defendant violated Labor Code § 201-203 by failing to pay all wages  
21 due upon termination to all Class members who were terminated or voluntarily  
22 quit; and
- 23 i. The nature and extent of class-wide injury and the measure of damages or  
24 restitution for the injury.

25 29. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
26 class he seeks to represent because Plaintiff, as non-exempt, hourly paid Night Team  
27 Merchandising Execution Associate employed by Defendant, was exposed and subjected  
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1 to the same unlawful business practices and conduct as other non-exempt, hourly paid  
2 Night Team Merchandising Execution Associates employed by Defendant during the  
3 class period. Named Plaintiff's claims arise from the same practices and course of  
4 conduct that give rise to the claims of the members of the class and are based on the same  
5 legal theories. Plaintiff and the members of the class he seeks to represent sustained the  
6 same types of damages and losses.

7 30. **Adequacy:** Plaintiff is an adequate representative of the class he seeks to  
8 represent because his interests do not conflict with the interests of the members of the  
9 class Plaintiff seeks to represent. There is a well-defined community of interest in the  
10 questions of law and fact affecting the class of persons that Plaintiff represents as a  
11 whole. Plaintiff retained counsel competent and experienced in complex class action  
12 litigation, and Plaintiff intends to prosecute this action vigorously. Neither Plaintiff nor  
13 his attorneys have any interests contrary to or in conflict with the Class. The interests of  
14 the members of the Class will be fairly and adequately protected by Plaintiff and his  
15 counsel.

16 31. Plaintiff does not anticipate any difficulty managing this litigation.

17 32. **Superiority and Substantial Benefit:** The class action is superior to other  
18 available means for the fair and efficient adjudication of Plaintiff's and the Class  
19 members' claims. Individual employees such as Plaintiff have a difficult time prosecuting  
20 an individual action against large corporate employers such as Defendant. The damages  
21 suffered by each individual class member may be limited. Damages of such magnitude  
22 are small given the burden and expense of individual prosecution of the complex and  
23 extensive litigation necessitated by Defendant's conduct. Further, it would be virtually  
24 impossible for the class members to redress the wrongs done to them on an individual  
25 basis. Even if members of the Class themselves could afford such individual litigation,  
26 the court system could not. Individualized litigation increases the delay and expense to all  
27 parties and the court system due to the complex legal and factual issues of the case. By  
28

1 contrast, the class action device presents far fewer management difficulties and provides  
2 the benefits of single adjudication, economy of scale, and comprehensive supervision by  
3 a single court.

4 33. The Class should also be certified because:

- 5 a. The prosecution of separate actions by individual members of the Class  
6 would create a risk of inconsistent or varying adjudications with respect  
7 to individual class members which would establish incompatible  
8 standards of conduct for Defendant;
- 9 b. The prosecution of separate actions by individual members of the Class  
10 would create a risk of adjudication with respect to them, which would, as  
11 a practical matter, be dispositive of the interests of the other class  
12 members not parties to the adjudications, or substantially impair or  
13 impede their ability to protect their interests; and
- 14 c. Defendant acted or refused to act on grounds generally applicable to the  
15 Class, and/or the general public, thereby making appropriate final and  
16 injunctive relief with respect to the Class as a whole.

17 **FIRST CAUSE OF ACTION**  
18 **FAILURE TO PROVIDE MEAL PERIODS**  
19 **(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**  
20 **(Against all defendants)**

21 34. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
22 forth herein.

23 35. California Labor Code § 226.7(b) provides, “An employer shall not require  
24 an employee to work during a meal or rest period mandated pursuant to an applicable  
25 order of the Industrial Welfare Commission”.

26 36. IWC Order No. 7-2001(11)(A) provides, in pertinent part: “[n]o employer  
27 shall employ any person for a work period of more than five (5) hours without a meal  
28 period of not less than 30 minutes, except that when a work period of not more than six

1 (6) hours will complete the day's work the meal period may be waived by mutual consent  
2 of the employer and the employee."

3 37. § 512(a) of the California Labor Code provides, in pertinent part: "[a]n  
4 employer may not employ an employee for a work period of more than five hours per day  
5 without providing the employee with a meal period of not less than 30 minutes, except  
6 that if the total work period per day of the employee is no more than six hours, the meal  
7 period may be waived by mutual consent of both the employer and employee. An  
8 employer may not employ an employee for a work period of more than 10 hours per day  
9 without providing the employee with a second meal period of not less than 30 minutes,  
10 except that if the total hours worked is no more than 12 hours, the second meal period  
11 may be waived by mutual consent of the employer and the employee only if the first meal  
12 period was not waived."

13 38. As alleged herein, Defendant failed to authorize and permit timely and  
14 uninterrupted meal periods during the Class Period. Plaintiff and members of the Class  
15 were routinely required to work without a timely and uninterrupted meal period at the  
16 direction of Defendant and/or with Defendant's knowledge and acquiescence.  
17 Additionally, there was no signed waiver waiving meal periods on shifts of no more than  
18 six hours or waiving the second meal period on shifts over 10 hours, but less than 12.

19 39. By its actions in requiring its employees to work through meal periods  
20 and/or its failure to relieve the employees of their duties for their off-duty meal periods,  
21 Defendant has violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage  
22 Order No. 7-2001, and is liable to Plaintiff and the class.

23 40. As a result of the unlawful acts of Defendant, Plaintiff and the class have  
24 been deprived of timely off-duty meal periods and are entitled to recovery under Labor  
25 Code §§ 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one  
26 additional hour of pay at the employee's regular rate of compensation for each  
27 workday in which Defendant failed to provide its employees with timely statutory off-

1 duty meal periods. *See Ferra v. Loews Hollywood Hotel, LLC*---P.3d---2021 WL  
2 2965438 (July 15, 2021).

3 41. Plaintiff, and the other members of the class, are entitled to seek and recover  
4 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

5 **SECOND CAUSE OF ACTION**  
6 **FAILURE TO PROVIDE REST PERIODS**  
7 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**  
8 **(Against all defendants)**

9 42. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
10 forth herein.

11 43. California Labor Code § 226.7(b) provides, "An employer shall not require  
12 an employee to work during a meal or rest period mandated pursuant to an applicable  
13 order of the Industrial Welfare Commission".

14 44. IWC Order No. 7-2001(12)(A) provides, in pertinent part: "[e]very employer  
15 shall authorize and permit all employees to take rest periods, which insofar as practicable  
16 shall be in the middle of each work period. The authorized rest period time shall be based  
17 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
18 hours or major fraction thereof. However, a rest period need not be authorized for  
19 employees whose total daily work time is less than three and one-half (3 ½) hours.  
20 Authorized rest period time shall be counted as hours worked for which there shall be no  
21 deduction from wages".

22 45. IWC Order No. 7-2001(12)(B) further provides: "[i]f an employer fails to  
23 provide an employee with a rest period in accordance with the applicable provisions of  
24 this order, the employer shall pay the employee one (1) hour of pay at the employee's  
25 regular rate of compensation for each workday that the rest period is not provided." . *See*  
26 *Ferra v. Loews Hollywood Hotel, LLC*---P.3d---2021 WL 2965438 (July 15, 2021).

27 46. As alleged herein, Defendant failed to authorize and permit rest breaks  
28 during the Class Period. Plaintiff and members of the class were routinely interrupted

1 during rest periods or were required to work through rest periods due to press of business  
2 at the direction of Defendant and/or with Defendant's knowledge and acquiescence.

3 47. By its actions in requiring its employees during the Class Period to work  
4 through rest periods and/or its failure to relieve the employees of their duties for their rest  
5 periods, Defendant violated § 12 of IWC Wage Order No. 7-2001 and California Labor  
6 Code § 226.7 and is liable to Plaintiff and the class.

7 48. Defendant's unlawful conduct alleged herein occurred in the course of  
8 employment of Plaintiff and all others similarly situated and such conduct has continued  
9 through the filing of this complaint.

10 49. As a direct and proximate result of Defendant's unlawful action, Plaintiff  
11 and the class have been deprived of timely rest periods and/or were not paid for rest  
12 periods taken during the Class period and are entitled to recovery under Labor Code §  
13 226.7(c) in the amount of one additional hour of pay at the employee's regular rate of  
14 compensation for each workday in which Defendant failed to provide employees with  
15 timely and/or paid rest periods.

16 50. Plaintiff, and the other members of the class, are entitled to seek and recover  
17 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7.

### 18 **THIRD CAUSE OF ACTION**

#### 19 **FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES** 20 **(Violation of Labor Code § 216, 218.5, 510, 1194, 1198, and the applicable Wage** 21 **Order)** 22 **(Against all defendants)**

23 51. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
24 forth herein.

25 52. California Labor Code establishes the fundamental right of all employees in  
26 the State of California to be paid wages for their work in a timely fashion.

27 53. Pursuant to the applicable Wage Order, Defendant is required to pay  
28 Plaintiff for all hours worked, meaning all the time in which an employee is subject to the

1 control of the employer.

2 54. Plaintiff and other class members are required to respond to calls and texts  
3 regarding the status of projects, including during meal and rest periods or while off the  
4 clock after the shift has already ended for the day. Further, the press of business deprives  
5 Plaintiff and class members of the opportunity to take uninterrupted 30-minute meal  
6 breaks or 10-minute rest breaks. As a result, Plaintiff and other class members worked  
7 hours they were not paid for. Plaintiff and the Class Members therefore seek unpaid  
8 wages and penalties.

9 55. Defendant's pattern, practice, and uniform administration of corporate  
10 policy regarding illegal employee compensation as described herein is unlawful, and  
11 entitles Plaintiff to recover, pursuant to Labor Code section 218, the unpaid balance of  
12 the straight time compensation owed to him.

13  
14 56. Labor Code § 510 and the applicable Wage Order provide that employees in  
15 California shall not be employed more than eight hours in any workday or forty hours in  
16 a workweek unless they receive additional compensation beyond their regular wages in  
17 amounts specified by law. Specifically, Labor Code § 510(a) requires that: Any work in  
18 excess of eight hours in one workday and any work in excess of 40 hours in any one  
19 workweek and the first eight hours worked on the seventh day of work in any one  
20 workweek shall be compensated at the rate of no less than one and one-half times the  
21 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be  
22 compensated at the rate of no less than twice the regular rate of pay for an employee.

23 57. Labor Code § 1194 establishes an employee's right to recover unpaid  
24 overtime compensation, and interest thereon, together with the costs of suit, and  
25 attorneys' fees. Labor Code §1198 makes employment of an employee for longer hours  
26 than the IWC set or under conditions the IWC prohibits unlawful.

27 58. During the class period, Plaintiff and other class members have worked  
28

1 more than eight hours in a workday, and/or more than forty hours in a workweek.

2 59. During the class period, Defendant has failed to pay Plaintiff, and other class  
3 members the overtime compensation premium for those unpaid hours they have worked  
4 in excess of the maximum hours permissible by law as required by Labor Code § 510 and  
5 1198, and the applicable Wage Order.

6 60. By virtue of Defendant's unlawful failure to pay for all wages earned and all  
7 hours worked and failure to pay the lawful overtime rate of compensation to the Plaintiff  
8 and other class members, Plaintiff and other class members have suffered, and will  
9 continue to suffer, damages in amounts which are presently unknown to them, but which  
10 exceed the jurisdictional limits of this Court and will be ascertained according to proof at  
11 trial.

12 61. Defendant acted and is acting intentionally and oppressively toward Plaintiff  
13 and other class members with a conscious disregard of their rights, or the consequences  
14 to them, with the intent of depriving them of property and legal rights and otherwise  
15 causing them injury.

16 62. Plaintiff and other class members request recovery of regular and/or  
17 overtime compensation according to proof, interest, attorneys' fees, expenses, and costs  
18 pursuant to Labor Code § 218.5, 218.6, 1194(a), and Civil Code §§3287(b) and 3289, as  
19 well as the assessment of any statutory penalties against Defendant, in a sum as provided  
20 by the Labor Code, the applicable Wage Orders, and/or other statutes.

21 **FOURTH CAUSE OF ACTION**  
22 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**  
23 **(Violation of Labor Code § 2802, *et seq.*)**  
24 **(Against all defendants)**

25 63. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
26 forth herein.

27 64. California Labor Code section 2802 provides that an employer must  
28 reimburse employees for all necessary expenditures.

1           65. At all relevant times during the class period, Plaintiff and other members of  
2 the class incurred necessary business-related expenses and costs that were not fully  
3 reimbursed by Defendant, including, but not limited to, work related travel and mileage  
4 expenses and personal cellphone usage.

5           66. Defendant has intentionally and willfully failed to fully reimburse Plaintiff  
6 and class members for necessary business-related expenses and costs. Defendant's  
7 conduct violates California Labor Code Section 2802.

8           67. Plaintiff and class members are entitled to recover from Defendant their  
9 business-related expenses incurred during the course and scope of their employment, plus  
10 interest, pursuant to California Labor Code section 2802.

11                                   **FIFTH CAUSE OF ACTION**  
12                   **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**  
13                                   **(Violation of Labor Code §§ 201-203)**  
14                                   **(Against all defendants)**

15           68. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
16 forth herein.

17           69. California Labor Code §§ 201-203 provide that if an employer discharges an  
18 employee, the wages earned and unpaid at the time of discharge are due and payable  
19 immediately, and that if an employee voluntarily leaves his or her employment, his or her  
20 wages shall become due and payable not later than seventy-two hours thereafter, unless  
21 the employee has given seventy-two hours prior notice of his or her intention to quit in  
22 which case the employee is entitled to his or her wages at the time of quitting.

23           70. During the Class period, Defendant willfully failed to pay Plaintiff and Class  
24 members who are no longer employed by Defendant all their earned wages, specifically,  
25 meal and rest period premiums not paid for missed or interrupted meal and rest periods,  
26 and wages for all hours worked, either at the time of discharge or within seventy-two  
27 hours of their leaving Defendant's employ in violation of California Labor Code §§ 201,  
28 202, and 203.

1           71. Therefore, Plaintiff and members of the Class are entitled to waiting time  
2 penalties for each day that has passed that they have not received all wages owed to them,  
3 up to 30 days.

4                                   **SIXTH CAUSE OF ACTION**  
5           **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**  
6                                   **(Violation of Labor Code §226)**  
7                                   **(Against all defendants)**

8           72. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
9 forth herein.

10          73. California Labor Code § 226(a) provides: “[e]very employer shall,  
11 semimonthly or at the time of each payment of wages, furnish each of his or her  
12 employees, either as a detachable part of the check, draft, or voucher paying the  
13 employee’s wages, or separately when wages are paid by personal check or cash, an  
14 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
15 worked by the employee [...], (3) the number of piece-rate units earned and any  
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
17 provided that all deductions made on written orders of the employee may be aggregated  
18 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
19 which the employee is paid, (7) the name of the employee and only the last four digits of  
20 his or her social security number, [...], (8) the name and address of the legal entity that is  
21 the employer, and (9) all applicable hourly rates in effect during the pay period and the  
22 corresponding number of hours worked at each hourly rate by the employee...”.

23          74. Labor Code § 226(e) provides that an employee suffering injury as a result  
24 of a knowing and intentional failure by an employer to comply with subdivision (a) is  
25 entitled to recover the greater of all actual damages or \$50 for the initial pay period in  
26 which a violation of § 226 occurs and \$100 for each subsequent pay period.

27          75. Plaintiff is informed, believes and thereon alleges that at all times relevant,  
28 Defendant knowingly and intentionally failed to furnish, and continues to knowingly and

1 intentionally fail to furnish, Plaintiff and each Class member with timely and accurate  
2 itemized statements showing the name and address of the employer, all applicable hourly  
3 rates in effect and corresponding number of hours, and gross wages earned by Plaintiff  
4 and each Class member, as required by Labor Code § 226(a), in that the premiums owed  
5 to Plaintiff and the members of the Class for untimely or interrupted meal and rest  
6 periods were not included in gross wages earned by Plaintiff and the Class.

7 76. Defendant's failure to provide Plaintiff and members of the Class with  
8 accurate itemized wage statements during the Class period has caused Plaintiff and  
9 members of the Class to incur economic damages in that they were not aware that they  
10 were owed and not paid compensation for missed rest periods and on-duty meal periods,  
11 and for all hours worked at the appropriate rate. In addition, Defendant provided  
12 inaccurate information regarding hours worked, which masked its underpayment of  
13 wages to Plaintiff and the Class.

14 77. As a result of Defendant's issuance of inaccurate itemized wage statements  
15 to Plaintiff and members of the Class in violation of Labor Code § 226(a), Plaintiff and  
16 the members of the Class are each entitled to recover actual damages or penalties  
17 pursuant to § 226(e) of the Labor Code.

18 **SEVENTH CAUSE OF ACTION**  
19 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
20 **(Violation of California's Unfair Competition Law,**  
21 **Bus. & Prof. Code § 17200 *et seq.*)**  
22 **(Against all defendants)**

23 78. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
24 forth herein.

25 79. § 17200 of the California Business and Professions Code (the "UCL")  
26 prohibits any unlawful, unfair, or fraudulent business practices.

27 80. Through its action alleged herein, Defendant has engaged in unfair  
28 competition within the meaning of the UCL. Defendant's conduct, as alleged herein,  
constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

1           81. Defendant's unlawful conduct under the UCL includes, but is not limited to,  
2 failure to pay class members wages and compensation they earned through labor  
3 provided and failing to otherwise compensate class members for non-compliant meal and  
4 rest periods as alleged herein. Defendant's fraudulent conduct further includes, but is not  
5 limited to, issuing wage statements containing false and/or misleading information about  
6 the time the class members worked and the amount of wages or compensation due.

7           82. Plaintiff has standing to assert this claim because he has suffered injury in  
8 fact and has lost money as a result of Defendant's conduct.

9           83. Plaintiff and the Class seek restitutionary disgorgement from Defendant of  
10 monies owed for all hours worked and for unpaid meal and rest period premiums.

11           84. Plaintiff has assumed the responsibility of enforcement of the laws and public  
12 policies specified here by suing on behalf of himself and other similarly situated Class  
13 members previously or presently working for Defendant in California. Plaintiff's success  
14 in this action will enforce important rights affecting the public interest. Plaintiff will incur  
15 a financial burden in pursuing this action in the public interest. Therefore, an award of  
16 reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure  
17 section 1021.5.

18                                   **EIGHTH CAUSE OF ACTION**  
19                   **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)**  
20                   **(Cal. Lab. Code §§2698 and 2699, et. seq.)**  
21                   **(Against all defendants)**

22           85. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
23 forth herein.

24           86. Labor Code sections 2698 and 2699 (The California Private Attorneys  
25 General Act of 2004, or "PAGA"), expressly establish that any provision of the  
26 California Labor Code which provides for a civil penalty to be assessed and collected by  
27 The Labor and Workforce Development Agency ("LWDA"), or any of its departments,  
28 divisions, commissions, boards, agencies or employees for a violation of the California

1 Labor Code, may be recovered through a civil action brought by an aggrieved employee  
2 on behalf of himself or herself, and other current or former employees.

3 87. Whenever the LWDA, or any of its departments, divisions, commissions,  
4 boards, agencies or employees has discretion to assess a civil penalty, a fact-finder in a  
5 civil action is authorized to exercise the same discretion, subject to the same limitations  
6 and conditions, to assess a civil penalty.

7 88. Plaintiff is an “aggrieved employee” as defined by Labor Code section 2699,  
8 because he is an employee of Defendant, and one or more of the Labor Code violations  
9 was committed against him.

10 89. Plaintiff asserts all of his claims in this Complaint against Defendant on  
11 behalf of himself, and all other members of the Class and/or on behalf of all aggrieved  
12 employees, as well as the general public, in his capacity as “private attorney general”,  
13 and seek all statutory penalties available under the Labor Code.

14 90. By reason of the above and pursuant to Labor Code section 2699, Plaintiff  
15 Almanzar on behalf of himself, and all other members of the Class and/or on behalf of all  
16 aggrieved employees, as well as the general public, are entitled to payment of a penalty  
17 of \$100 per pay period for each employee for the initial violation, and \$200 per pay  
18 period for each employee for each subsequent violation, plus interest.

19 91. In addition, Plaintiff Almanzar, on behalf of himself, and all other members  
20 of the Class and/or behalf of all aggrieved employees, as well as the general public, seeks  
21 and is entitled to have 75% of all recovered penalties and interest allocated to the LWDA  
22 and 25% to the Plaintiff Class. Further, Plaintiff is entitled to seek and recover reasonable  
23 attorneys’ fees, expenses and costs pursuant to Labor Code section 2699, and any other  
24 applicable statutes.

25 92. Plaintiff complied with the notice requirements of Labor Code section  
26 2699.3(a)(1) prior to commencing this action. A copy of the letter submitted to the  
27 California LWDA on May 19, 2020, via online filing, and copied to Defendants’ Agent  
28

1 for Service of Process in California on the same date, via certified mail, in accordance  
2 with section 2699.3(a)(1), is attached hereto, as Exhibit A, and by reference incorporated  
3 herein.

4 93. As of today's date, the LWDA has not responded to Plaintiff's notice.

5 94. Plaintiff and the Plaintiff Class are also entitled to reasonable attorneys' fees  
6 and costs, pursuant to California Labor Code section 2699(g)(1).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,  
9 pray for judgment against Defendant as follows:

10 A. An order that this action may proceed and be maintained as a class action;

11 B. An order appointing Plaintiff as representative for the Class and Subclasses;

12 C. An order appointing Plaintiff's counsel as counsel for the Class and Subclasses;

13 D. For one hour of wages due to Plaintiff and each class member for each work period  
14 of more than three and one-half (3 ½) hours when they did not receive an  
15 uninterrupted ten (10) minute rest period for each four (4) hours or major fraction  
16 thereof worked;

17 E. For one hour of wages due to Plaintiff and each Class member for each work  
18 period of more than five (5) hours when they did not receive an uninterrupted  
19 thirty (30) minute meal period;

20 F. For one hour of wages due to Plaintiff and each Class member for each work  
21 period of more than ten (10) hours when they did not receive an uninterrupted  
22 thirty (30) minute meal period;

23 G. For all straight-time wages owed to Plaintiff and each Class Member for  
24 all hours worked;

25  
26 H. For all overtime wages owed to Plaintiff and each Class member for all hours  
27 worked;

- I. For other compensatory damages and/or statutory damages and statutory penalties resulting from improper compensation according to proof;
- J. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
- K. For actual damages or statutory penalties under Labor Code § 226(e);
- L. For waiting time penalties pursuant to Labor Code § 203;
- M. For liquidated damages pursuant to Labor Code § 1194.1;
- N. For restitutionary disgorgement pursuant to the UCL;
- O. Prejudgment and post-judgment interest at the maximum legal rate;
- P. Reasonable attorney's fees;
- Q. General, special and consequential damages, to the extent allowed by law;
- R. Costs of suit;
- S. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;
- T. For penalties for each violation of the Private Attorneys General Act ("PAGA"); and
- U. Such other equitable relief as the Court may deem just and proper.

Dated: \_\_\_\_\_, 2021

By: /s/ David R. Markham

David R. Markham  
Maggie Realin  
Lisa Brevard

**UNITED EMPLOYEES LAW GROUP**  
Walter L. Haines  
Attorneys for Plaintiff

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a jury trial with respect to all issues triable of right by jury.

Dated: \_\_\_\_\_, 2021

By: /s/ David R. Markham

David R. Markham  
Maggie Realin  
Lisa Brevard

**UNITED EMPLOYEES LAW GROUP**  
Walter L. Haines  
Attorneys for Plaintiff

# EXHIBIT A

# THE MARKHAM LAW FIRM

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• 750 B Street, Suite 1950 • San Diego, California 92101 •  
• Phone: (619) 399-3995 • Fax: (619) 615-2067 •  
• EMAIL: MREALIN@MARKHAM-LAW.COM

May 19, 2020

**Via Online Filing:**

<https://dir.tfaforms.net/260>  
Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, California 94612

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3**

Re: Wage/Hour Claims of Jorge Almanzar (“The Aggrieved Employee”) against Home Depot U.S.A., Inc., a Delaware Corporation, (“Employer” or “Home Depot”)  
To: PAGA Administrator, California Labor and Workforce Development Agency (“LWDA”)  
From: Jorge Almanzar, who was subjected to the wage and hour practices set forth below

The Aggrieved Employee submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3 subdivisions (a) and (f), and allege as follows:

JORGE ALMANZAR is a resident of Canyon Country, California and a former employee of Home Depot. Within the relevant time period, he worked as a non-exempt, hourly-paid Night Team Merchandising Execution Associate (“MEA”) at multiple of Employer’s locations, in the North Los Angeles, California, area.

Employer employs Night Team Merchandising Execution Associates among other employees with similar job titles and/or job duties, throughout California. During the relevant time period, the Employers utilized consistent policies and procedures regarding the Aggrieved Employee and other similarly aggrieved employees, in violation of Labor Code sections 201-203, 226, 226(a), 226.3, 226.7, 510, 512, 1194, 1198 and 2802. The following is a summary of the violations. For a more detailed explanation, see Attachment A (the Aggrieved Employee’s proposed Amended Complaint).

During the relevant time period, Employer failed to provide the Aggrieved Employee and other aggrieved employees with timely and off-duty meal periods, in violation of California law. Aggrieved Employee’s direct supervisor is supposed to have the keys to the particular store they are working in; however, this is usually not the case. When it is time for Aggrieved Employee’s meal period, he has to locate the manager of the store he is working in to come unlock the doors so he may leave. Due to the difficulty of locating

the store manager, the Aggrieved Employee's and other aggrieved employees' meal periods are often taken after the end of their fifth hour of work.

Further, Employer failed to provide the Aggrieved Employee and other aggrieved employees with timely and off-duty meal periods on shifts over 10 hours, in violation of California law. The Aggrieved Employee and other aggrieved employees that work shifts of over 10 hours are entitled to a second 30-minute uninterrupted meal period. However, the Aggrieved Employee and other aggrieved employees are told by their managers that it is Employer's policy that every employee working a 10-hour shift is required to take one meal period and waive the second, and that adherence to this policy is a condition of the Aggrieved Employee's and other aggrieved employees' employment, despite the fact that they did not sign a meal waiver nor any other similar document.

Additionally, Employer's policies and practices regarding work conditions and expectations for its non-exempt, hourly-paid Night Team MEAs, caused the Aggrieved Employee and other aggrieved employees to miss one or more rest breaks, and/or receive late, short or interrupted rest breaks. The Aggrieved Employee and other aggrieved employees face disciplinary action when projects are not completed on time. When the Aggrieved Employee and other aggrieved employees are able to take their rest breaks, they are frequently interrupted by their supervisors or managers with work-related issues, such as inquiring about the status of projects.

The press of business and duties imposed on the Aggrieved Employee and other aggrieved employees by the Employers prevented them from taking timely and uninterrupted meal and rest breaks as prescribed by the California law. The Aggrieved Employee and other aggrieved employees were not paid meal period premiums for each day an uninterrupted and timely 30-minute meal break was not provided. This unlawful practice occurred systematically and was always done with the full knowledge and consent of the Employers.

Further, as part of their work duties, Aggrieved Employee and other aggrieved employees would travel to Employer's different locations. The average commute time was 30 minutes. The Aggrieved Employee and other aggrieved employees typically work 10 hour shifts not including their commute; however, the commute time is paid at the regular rate, even though this time is in excess of 8 hours in a day or 40 hours in a workweek. The Aggrieved Employee and other aggrieved employees were not paid for this time at the appropriate overtime rate.

Also, Employer willfully, and on a systematic and company-wide basis, maintained and implemented a non-compliant practice and/or policy for the payment of overtime and failed to pay all overtime wages owed to the Aggrieved Employee and other aggrieved employees. Employer would edit the Aggrieved Employee and other aggrieved employees' shift end time in the system, rounding it to the nearest 15-minute, to avoid addition of overtime. Upon information and belief, Employer would delete 2.5 hours of overtime every week.

Furthermore, during the relevant time period, the Aggrieved Employee and other aggrieved employees were required to travel in their own vehicles to each Home Depot location in performance of their job duties, but were not reimbursed for all actual mileage expenses they incurred. Employer reimbursed the Aggrieved Employee and other aggrieved employees for incurred mileage expenses at a rate of 40 cents per mile, instead of the standard Internal Revenue Service's rates per mile during the relevant time period, such as 57.5 cents in 2020 and 58 cents in 2019. In addition, Employer only recently started paying the

Aggrieved Employee and other aggrieved employees 40 cents per mile for mileage reimbursement. Prior to November 2019, the rate was approximately 15 cents.

In addition, the Aggrieved Employee and other aggrieved employees were required to use their personal cellphones for work purposes. Managers would call the Aggrieved Employee and other aggrieved employees on their personal cellphones, instead of using the paging system in the store. The Aggrieved Employee and other aggrieved employees would be asked to send the managers text messages with pictures of the status of projects, with questions about the projects, or inquiring about where they are in the store. Sometimes, the Aggrieved Employee would already be home from his shift and would still receive calls from his manager asking work-related questions. The Aggrieved Employee and other aggrieved employees were not reimbursed for all necessary business expenses incurred.

Employer failed to pay the Aggrieved Employee and other aggrieved employees for all hours worked, including overtime, and meal and rest break premiums owed to them. Therefore, the Aggrieved Employees' wage statements incorrectly state their gross and net wages. As a result, the Aggrieved Employee and other aggrieved employees were provided with statements that failed to comply with California Labor Code section 226.

Because the Aggrieved Employee and other aggrieved employees were not paid for all hours worked, and premium meal and rest break wages owed to them, they were not paid all wages due to them at the termination of their employment.

#### **FAILURE TO PROVIDE MEAL BREAKS AND REST BREAKS—Violation of California Labor Code Sections 226.7 and 512**

California Labor Code section 512 provides no employer shall employ any person for a work period of more than five (5) hours without a duty-free meal period of not less than 30 minutes or for a work period of more than ten (10) hours without a second duty-free meal period of not less than 30 minutes. Under IWC Wage Orders, California Code of Regulations, and California Labor Code section 226.7, if an employer fails to provide an employee a duty-free meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the meal period is not provided.

During the applicable time period, due to the press of business, and Employers' policies and procedures, Home Depot intentionally and improperly denied and failed to provide timely, uninterrupted and duty-free meal periods to the Aggrieved Employee and other aggrieved employees. Employer did this systematically and failed to pay its employees, one hour of pay at the regular rate of compensation for each instance that they failed to provide statutorily mandated and timely, uninterrupted, and off-duty meal periods.

Similarly, applicable IWC Wage Orders and California Code of Regulations require employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. The Wage Orders, Labor Code section 226.7 and Regulations also state if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period was not provided. These remedies are codified under California Labor Code section 226.7.

During the applicable time period, due to the pressure of the business, and Employers' policies and procedures, the Aggrieved Employee and other aggrieved employees were not able to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. Thus, Employers did not relieve the Aggrieved Employee and other aggrieved employees from their duties. The Aggrieved Employee and other aggrieved employees were not paid rest break premiums for each workday that the rest break was not provided, in violation of Labor Code section 226.7(c).

Further, as a result of Employers' failure to provide meal and rest periods, the Aggrieved Employee and all other aggrieved employees whose employment with Home Depot terminated within the applicable time period, were not paid all meal and rest premium wages due to them at termination of their employment, in violation of Labor Code sections 201-203.

The Aggrieved Employee and other aggrieved employees are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 218.5, 218.6, and 1194, and penalties pursuant to California Labor Code sections 203, 226.7, and 558.

### **FAILURE TO PAY OVERTIME WAGES—Violation of California Labor Code Section 510 and 1198**

Under section 510(a) and 1198 of the California Labor Code, and an applicable Wage Order, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek and 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours per workday. Regular rate of pay includes all remuneration for employment paid to or on behalf of the employee including commissions and non-discretionary bonuses.

Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

IWC Wage Order 5-2001(2)(G) defines hours worked as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

During the relevant time period, Home Depot willfully, and on a systematic and company-wide basis, maintained and implemented a non-compliant practice and/or policy for the payment of overtime, and failed to pay all overtime wages owed to Employees.

The Aggrieved Employee and other aggrieved employees are entitled to recover those unpaid wages, as well as civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

### **FAILURE TO REIMBURSE BUSINESS EXPENSES—Violation of Labor Code Section 2802**

California Labor Code § 2802 provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his

or duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

During the applicable statutory period, the Aggrieved Employee and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Home Depot. Expenses include but are not limited to mileage and cellphone usage reimbursement. Employer did not reimburse these expenditures or losses to the Aggrieved Employee and other aggrieved employees. Employer has failed to fully reimburse employees for necessary business-related expenses and losses.

The Aggrieved Employee and other aggrieved employees are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code § 2802.

### **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS—Violation of California Labor Code Sections 226 and 1174**

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, “gross wages earned,” (§226(a)(1)), “net wages earned” (§226(a)(5)), “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...” (§226(a)(9)) and “the inclusive dates of the period for which the employee is paid.” (§226(a)(6).) Labor Code Section 226(e) provides if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any subsequent pay period, not to exceed \$4,000 per employee. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, Home Depot knowingly and intentionally provided the Aggrieved Employee and other aggrieved employees with uniform, incomplete wage statements. Because the Employers failed to pay the Aggrieved Employee and other aggrieved employees all overtime wages, the correct amount of gross wages earned, net wages earned, and the correct number of hours at the correct hourly rates were not listed.

Furthermore, Employers failed to pay the Aggrieved Employee and other aggrieved employees meal and rest premium wages owed to them. Therefore, the Aggrieved Employee and other aggrieved employees’ wage statements incorrectly state their gross and net wages, and the correct hourly rates of pay. As a result, the Aggrieved Employee and other aggrieved employees were provided with statements that failed to comply with California Labor Code section 226. Employer’s payroll system is believed to operate in the same way as to all aggrieved employees.

### **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**

California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than

seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice of his or her intention to quit in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, Home Depot willfully failed to pay the Aggrieved Employee and other aggrieved employees who are no longer employed by Employer all their earned wages, specifically, meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all overtime hours worked, either at the time of discharge or within seventy-two hours of their leaving Home Depot's employ in violation of California Labor Code §§ 201, 202, and 203.

Therefore, the Aggrieved Employee and other aggrieved employees are entitled to waiting time penalties for each day that has passed that they have not received all wages owed to them, up to 30 days.

The Aggrieved Employee and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

The Aggrieved Employee, as an individual and on behalf of all other current or former Home Depot employees, seek all penalties or remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3(a/c)(2)(A). Please advise within sixty (60) calendar days of the filing/postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the filing/postmark date of this Notice that the LWDA intends to investigate these allegations, the Aggrieved Employees may immediately thereafter amend his complaint to add the PAGA cause of action pursuant to Labor Code §2699.

The Aggrieved Employee and other aggrieved employees are represented in this matter by David R. Markham, Maggie Realin, and Lisa Brevard of The Markham Law Firm and Walter L. Haines of the United Employees Law Group.

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham  
Maggie Realin  
Lisa Brevard

**cc: (via Certified Mail)**

Corporation Service Company Which Will  
Do Business in California as CSC –  
Lawyers Incorporating Service  
Agent for Service of Process for  
Home Depot U.S.A., Inc.  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

**cc: (via Certified Mail)**

Home Depot U.S.A., Inc.  
Corporate Office  
Attn: Legal Department  
2455 Paces Ferry Road  
Atlanta, GA 30339

**cc: (via Electronic Mail)**

Walter L. Haines  
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# Attachment A

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Attorneys for Plaintiff on behalf of himself and all others similarly situated

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JORGE ALMANZAR, an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a  
Delaware Corporation

Defendant.

**CASE NO.: 2:20-cv-00699-TLN-KJN**  
**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR:**

- 1) FAILURE TO PROVIDE MEAL PERIODS;**
- 2) FAILURE TO PROVIDE REST PERIODS;**
- 3) FAILURE TO PAY OVERTIME WAGES;**
- 4) FAILURE TO REIMBURSE NECESSARILY INCURRED BUSINESS EXPENSES;**
- 5) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 6) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), BUS. & PROF. CODE § 17200 *et seq.***
- 7) VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA) (Lab. Code §2698, *et seq.*)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff JORGE ALMANZAR (“Plaintiff”), by and through his attorneys of  
2 record, brings this Class Action Complaint against Defendant HOME DEPOT U.S.A.  
3 Inc., a Delaware Corporation, (“HOME DEPOT” or “Defendant”). Plaintiff hereby  
4 alleges, on information and belief, except for information based on personal knowledge,  
5 which allegations are likely to have evidentiary support after further investigation and  
6 discovery, as follows:

### 7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of  
9 Defendant’s failure to pay wages for all time worked, failure to provide timely and  
10 uninterrupted meal and rest periods and failure to reimburse necessarily incurred business  
11 expenses.

12 2. As more fully set forth below, Defendant failed to provide timely and  
13 uninterrupted meal and rest periods to its California non-exempt Traveling  
14 Merchandisers in violation of California Labor Code §§ 512 and 226.7, and the  
15 applicable Industrial Wage Order; failed to pay its employees one hour of pay at the  
16 regular rate of compensation for each instance that Defendant failed to provide statutorily  
17 mandated rest periods and timely off-duty meal periods; failed to pay them overtime for  
18 work in excess of eight hours a day or 40 hours a week, failed to reimburse incurred  
19 necessary business expenses, failed to furnish timely and accurate wage statements, and,  
20 is in violation of California’s Unfair Competition Law (“UCL”).

21 3. Plaintiff seeks to represent and prosecute claims against Defendant in class  
22 action proceedings on behalf of all those similarly situated who are or were residents of  
23 the State of California.

### 24 **JURISDICTION AND VENUE**

25 4. This Court has diversity jurisdiction over this action, under 28 U.S.C. §  
26 1332. Plaintiff is a citizen of California and Defendant is a citizen of Georgia.

27 5. In addition, this Court also has original jurisdiction over this action pursuant  
28 to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). CAFA grants

1 federal district courts original jurisdiction over civil class action lawsuits filed under  
2 federal or state law in which there are at least 100 members of the class, and any member  
3 of a class of plaintiffs is a citizen of a state different from any defendant, and the matter  
4 in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

5 6. This case meets each of the CAFA requirements because (1) Plaintiff alleges  
6 on information and belief there are hundreds if not thousands of class members in  
7 California, (2) there is diversity between at least one putative class member and the  
8 named Defendant; and (3) Plaintiff alleges and believes the aggregate claims for wages  
9 and penalties exceed the jurisdictional \$5,000,000.00 amount. As such, this Court has  
10 original jurisdiction pursuant to 28 U.S.C. § 1332(d). This Court also has supplemental  
11 jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

12 7. Venue is proper because upon information and belief, Defendant conducts  
13 substantial business—including employing class members within this District, and  
14 maintains numerous stores in this District.

### 15 PARTIES

16 8. Plaintiff JORGE ALMANZAR is currently a resident of Canyon Country,  
17 California. Plaintiff has been employed by Defendant as a non-exempt, hourly-paid Night  
18 Team Merchandising Execution Associate ("Night Team MEA") in Los Angeles,  
19 California, from approximately June 2018 to present.

20 9. Plaintiff is informed and believes, and on that basis alleges, that HOME  
21 DEPOT is a Delaware Corporation with a principal place of business at 2455 Paces Ferry  
22 Road, Atlanta, Georgia 30339. Defendant is in the business of supplying tools and  
23 construction products and services throughout California. Plaintiff is informed and  
24 believes, and on that basis alleges, that HOME DEPOT is, and at all relevant times  
25 alleged herein was, a Delaware corporation authorized to and conducts business in  
26 California, including but not limited to the Eastern District of California. Defendant  
27 employs Plaintiff at several of its Los Angeles, California, locations and  
28 employs/employed other Night Team Merchandising Execution Associates throughout

1 California.

2 **FACTS**

3 10. Plaintiff is currently employed by Defendant as a non-exempt, hourly-paid  
4 Night Team Merchandising Execution Associate in Los Angeles, California.

5 11. In his role as a non-exempt, hourly-paid Night Team Merchandising  
6 Execution Associate (“Night Team MEA”), Plaintiff works 10-hour shifts four days a  
7 week, with three to four shifts per week spent traveling between multiple of Defendant’s  
8 stores in the North Los Angeles area, and working with a traveling team of nine people.  
9 Plaintiff’s duties include merchandising projects, planogram maintenance, overhead  
10 organization, and display/signage maintenance designed to enhance the customer  
11 experience at the store. Plaintiff would ensure that the products were stocked and  
12 properly merchandised. Plaintiff would perform his duties utilizing his own vehicle.

13 12. During the relevant time period, Defendant failed to provide Plaintiff and  
14 other class members with timely and off-duty meal periods, in violation of California  
15 law. Since Plaintiff and other class members work overnight shifts at multiple of  
16 Defendant’s locations, Plaintiff’s direct supervisor is supposed to have the keys to the  
17 particular store they are working in; however, this is usually not the case. When it is time  
18 for Plaintiff’s meal period, Plaintiff has to locate the manager of the store he is working  
19 in to come unlock the doors so he may leave. Due to the difficulty of locating the store  
20 manager, Plaintiff’s and other class members’ meal periods are often taken after the end  
21 of their fifth hour of work.

22 13. Further, Defendant failed to provide Plaintiff and other class members with  
23 timely and off-duty meal periods on shifts over 10 hours, in violation of California law.  
24 Plaintiff and other class members that work shifts of over 10 hours are entitled to a  
25 second 30-minute uninterrupted meal period. However, Plaintiff and other class members  
26 were told by their managers that it is Defendant’s policy that every employee working a  
27 10-hour shift is required to take one meal period and waive the second, and that  
28 adherence to this policy is a condition of Plaintiff’s and class members’ employment,

1 despite the fact that Plaintiff and class members did not sign a meal waiver nor any other  
2 similar document. Plaintiff and other class members were not paid meal period premiums  
3 for each day a second uninterrupted and timely meal period was not provided.

4 14. Additionally, Defendant's policies and practices regarding work conditions  
5 and expectations for its non-exempt, hourly-paid Night Team MEAs, caused Plaintiff and  
6 other class members to miss one or more rest breaks, and/or receive late, short or  
7 interrupted rest breaks. Plaintiff and other class members face disciplinary action when  
8 projects are not completed on time. When Plaintiff and class members are able to take  
9 their rest breaks, they are frequently interrupted by their supervisors or managers with  
10 work-related issues, like inquiring about the status of projects.

11 15. Further, because Plaintiff and other class members would travel to multiple  
12 of Defendant's locations, the average commute time was 30 minutes. Plaintiff and other  
13 class members work 10 hour shifts not including their commute; however, the commute  
14 time is paid at the regular rate, even though this time is in excess of 8 hours in a day or 40  
15 hours in a workweek. Plaintiff and other class members are required to submit a mileage  
16 matrix to Defendant as well as input all mileage into an App called "Concur." The  
17 managers then enter this time into Kronos under an "OT Travel" pay code; however, they  
18 are compensated only at their regular rate. This practice applied to all of the nine  
19 traveling team members. Thus, Defendant failed to properly compensate Plaintiff and  
20 class members for all hours worked at the appropriate overtime rate for time that Plaintiff  
21 and class members spent traveling from one location to another.

22 16. During the relevant time period, upon information and belief, Defendant  
23 willfully, and on a systematic and company-wide basis, maintained and implemented a  
24 non-compliant practice and/or policy for the payment of overtime, and failed to pay all  
25 overtime wages owed to Plaintiff and class members. Defendant would edit Plaintiff and  
26 class members' shift end time in the system, rounding it to the nearest 15-minute, to  
27 avoid addition of overtime. Upon information and belief, Defendant would delete 2.5  
28 hours of overtime every week.

1           17. Furthermore, during the relevant time period Plaintiff and class members  
2 were required to travel in their own vehicles to each Home Depot location in performance  
3 of their job duties as Night Team MEAs but were not reimbursed for all actual mileage  
4 expenses they incurred. Defendant reimbursed Plaintiff and class members for incurred  
5 mileage expenses at a rate of 40 cents per mile, instead of the standard rate of 57 cents  
6 per mile set by the Internal Revenue Service. Defendant only recently started paying  
7 Plaintiff and other class members 40 cents per mile for mileage reimbursement. Prior to  
8 November 2019, the rate was approximately 15 cents.

9           18. Also, during the relevant time period, Plaintiff and other class members were  
10 required to use their personal cellphones for work purposes. Managers would call  
11 Plaintiff and class members on their personal cellphones, instead of using the paging  
12 system in the store. Plaintiff and class members would be asked to send the managers text  
13 messages with pictures of the status of projects, with questions about the projects, or  
14 inquiring about where they are in the store. Sometimes, Plaintiff would already be home  
15 from his shift and would receive calls from his manager asking work-related questions.  
16 Plaintiff and class members have never been reimbursed for all cellphone expenses.

17           19. Defendant claims to have an open-door policy and that complaints are  
18 anonymous, however, Plaintiff and other class members fear retaliation if they make a  
19 complaint. After instances of Plaintiff complaining to managers, Plaintiff experienced  
20 retaliation from supervisors. He would be assigned projects that were meant for two  
21 people to complete and an unreasonable deadline in which to complete it. If Plaintiff and  
22 other class members did not complete their assigned projects, they faced a verbal or  
23 written warning that could result in termination.

24           20. Upon information and belief, the above-mentioned unlawful employment  
25 practices by Defendant were applied the same to all non-exempt, hourly-paid Night Team  
26 Merchandising Execution Associates throughout Defendant's stores in California.

27           21. Defendant's conduct, as alleged here, caused Plaintiff and other class  
28 members damages including, but not limited to, loss of wages and compensation.

1 Defendant is liable to Plaintiff and the class for failing to pay meal and rest break  
2 premiums; failing to pay all overtime wages owed for each pay period; failing to  
3 reimburse for business-related expenses, including all incurred mileage while traveling  
4 from one location to another and personal cellphone usage in performance of their job  
5 duties; failing to provide timely and accurate wage statements; and violation of  
6 California's unfair competition law.

7 22. Plaintiff is member of, and seeks to be a representative for, the class of  
8 similarly situated employees who all have been exposed to, have suffered, and/or were  
9 permitted to work under Defendant's unlawful employment practices as alleged in this  
10 complaint.

### 11 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

12 23. Plaintiff Almanzar exhausted the notice requirement by filing a complaint  
13 with the Labor and Workforce Development Agency ("LWDA") in his letter dated May  
14 19, 2020, as required under the California Labor Code Private Attorney General Act  
15 ("PAGA"). A true and correct copy of Plaintiff's letter is attached hereto as Exhibit A.  
16 The LWDA did not assume jurisdiction over the applicable penalty claims alleged;  
17 therefore, Plaintiff has exhausted the procedural requirement under PAGA to pursue any  
18 and all penalty claims as provided under PAGA.

### 19 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

20 24. Plaintiff brings this action on behalf of himself and on behalf of all others  
21 similarly situated, and as members of the Class they seek to represent. The Class Period  
22 is from four years prior to the filing of the Complaint in this action until the trial of this  
23 action ("Class Period"). The Class is defined as:

24 *All current and former non-exempt, hourly-paid Night Team*  
25 *Merchandising Execution Associates employed by Defendant in*  
*California during the Class Period.*

26 25. Further, Plaintiff brings this action on behalf of himself and all other  
27 similarly situated persons in Subclasses of the Plaintiff's Class, defined as:  
28

1                   **a. Meal Period Subclass**

2           All current and former non–exempt, hourly-paid Night Team Merchandising  
3           Execution Associates employed by Defendant in California during the Class  
4           Period, who worked at least one shift longer than five hours in a workday and/or  
5           who worked at least one shift longer than ten hours in a workday.

6                   **b. Rest Period Subclass**

7           All current and former non–exempt, hourly-paid Night Team Merchandising  
8           Execution Associates employed by Defendant in California during the Class  
9           Period, who worked at least one shift longer than three and a half hours in a  
10          workday.

11                  **c. Overtime Subclass**

12          All current and former non–exempt, hourly-paid Night Team Merchandising  
13          Execution Associates employed by Defendant in California during the Class  
14          Period, who worked at least one shift longer than eight hours in a workday and/or  
15          worked more than 40 hours during the workweek.

16                  **d. Itemized Wage Statement Subclass**

17          All current and former non–exempt, hourly-paid Night Team Merchandising  
18          Execution Associates employed by Defendant in California during the Class Period  
19          who received at least one wage statement from Defendant within the statute of  
20          limitations period applicable to claims under Section 226 of the California Labor  
21          Code.

22                  **e. UCL Subclass**

23          All current and former non–exempt, hourly-paid Night Team Merchandising  
24          Execution Associates employed by Defendant in California during the Class  
25          Period, regarding whom Defendant have engaged in unlawful, unfair and/or  
26          fraudulent business acts or practices prohibited by Business & Professions Code §  
27          17200 *et. seq.* as specifically described herein.

28          26. Plaintiff reserves the right to amend or otherwise alter the class definition, or

1 to propose or eliminate subclasses, in response to facts learned through discovery, legal  
2 arguments advanced by Defendant or otherwise.

3 27. **Numerosity/Impracticability of Joinder**: The members of the Class are so  
4 numerous that individual joinder is impracticable. The members of the class are so  
5 numerous that joinder of all members would be unfeasible and impracticable. Plaintiff  
6 estimates, on information and belief, that there are hundreds of current and former non-  
7 exempt, hourly-paid store manager employees of Defendant employed, or formerly  
8 employed, at Defendant's stores in California during the Class Period. The identity of  
9 individuals qualifying for class membership is readily ascertainable via inspection of the  
10 personnel records and other documents maintained by Defendant in the normal course of  
11 business. Class members may be notified of the pendency of this action by mail,  
12 electronic mail, the Internet, or published notice.

13 28. **Commonality and Predominance**: Common questions of law and fact exist  
14 as to all members of the Class. These questions predominate over any questions affecting  
15 only individual class members such that a class action is superior to other forms of action.  
16 The claims of the named Plaintiff are typical of those of every other member of the  
17 Plaintiff Class. All Class Members were treated in a similar fashion and suffered similar  
18 harm as a consequence of Defendant's conduct, as alleged. Common legal and factual  
19 questions include, but are not limited to:

- 20 a. Whether Defendant engaged in a pattern or practice of impeding Plaintiff and  
21 the members of the class from taking statutory off-duty meal periods on a  
22 timely basis;
- 23 b. Whether Defendant had a policy or practice of not paying meal or rest period  
24 premium wages;
- 25 c. Whether Defendant violated Labor Code §510 and the applicable California  
26 Industrial Welfare Commission Order by failing to pay Plaintiff and class  
27 members overtime wages;
- 28 d. Whether Defendant violated Labor Code §2802, by failing to reimburse

- 1 Plaintiff and class members incurred necessary business expenses;
- 2 e. Whether Defendant failed to maintain accurate and itemized wage statements;
- 3 f. Whether Defendant conducted and engaged in unfair business practices and
- 4 violated California Business and Professions Code § 17200;
- 5 g. Whether Defendant violated Labor Code § 201-203 by failing to pay all wages
- 6 due upon termination to all Class members who were terminated or voluntarily
- 7 quit; and
- 8 h. The nature and extent of class-wide injury and the measure of damages or
- 9 restitution for the injury.

10 29. **Typicality:** Plaintiff's claims are typical of the claims of the members of the

11 class he seeks to represent because Plaintiff, as non-exempt, hourly paid Night Team

12 Merchandising Execution Associate employed by Defendant, was exposed and subjected

13 to the same unlawful business practices and conduct as other non-exempt, hourly paid

14 Night Team Merchandising Execution Associates employed by Defendant during the

15 class period. Named Plaintiff's claims arise from the same practices and course of

16 conduct that give rise to the claims of the members of the class and are based on the same

17 legal theories. Plaintiff and the members of the class he seeks to represent sustained the

18 same types of damages and losses.

19 30. **Adequacy:** Plaintiff is an adequate representative of the class he seeks to

20 represent because his interests do not conflict with the interests of the members of the

21 class Plaintiff seeks to represent. There is a well-defined community of interest in the

22 questions of law and fact affecting the class of persons that Plaintiff represents as a

23 whole. Plaintiff retained counsel competent and experienced in complex class action

24 litigation, and Plaintiff intends to prosecute this action vigorously. Neither Plaintiff nor

25 his attorneys have any interests contrary to or in conflict with the Class. The interests of

26 the members of the Class will be fairly and adequately protected by Plaintiff and his

27 counsel.

28 31. Plaintiff does not anticipate any difficulty managing this litigation.

1           32. **Superiority and Substantial Benefit:** The class action is superior to other  
2 available means for the fair and efficient adjudication of Plaintiff's and the Class  
3 members' claims. Individual employees such as Plaintiff have a difficult time prosecuting  
4 an individual action against large corporate employers such as Defendant. The damages  
5 suffered by each individual class member may be limited. Damages of such magnitude  
6 are small given the burden and expense of individual prosecution of the complex and  
7 extensive litigation necessitated by Defendant's conduct. Further, it would be virtually  
8 impossible for the class members to redress the wrongs done to them on an individual  
9 basis. Even if members of the Class themselves could afford such individual litigation,  
10 the court system could not. Individualized litigation increases the delay and expense to all  
11 parties and the court system due to the complex legal and factual issues of the case. By  
12 contrast, the class action device presents far fewer management difficulties and provides  
13 the benefits of single adjudication, economy of scale, and comprehensive supervision by  
14 a single court.

15           33. The Class should also be certified because:

- 16           a. The prosecution of separate actions by individual members of the Class  
17           would create a risk of inconsistent or varying adjudications with respect  
18           to individual class members which would establish incompatible  
19           standards of conduct for Defendant;  
20           b. The prosecution of separate actions by individual members of the Class  
21           would create a risk of adjudication with respect to them, which would, as  
22           a practical matter, be dispositive of the interests of the other class  
23           members not parties to the adjudications, or substantially impair or  
24           impede their ability to protect their interests; and  
25           c. Defendant acted or refused to act on grounds generally applicable to the  
26           Class, and/or the general public, thereby making appropriate final and  
27           injunctive relief with respect to the Class as a whole.  
28

**FIRST CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**  
**(Against all defendants)**

34. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

35. California Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission”.

36. IWC Order No. 7-2001(11)(A) provides, in pertinent part: “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

37. § 512(a) of the California Labor Code provides, in pertinent part: “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

38. As alleged herein, Defendant failed to authorize and permit timely and uninterrupted meal periods during the Class Period. Plaintiff and members of the Class were routinely required to work without a timely and uninterrupted meal period at the direction of Defendant and/or with Defendant’s knowledge and acquiescence. Additionally, there was no signed waiver waiving meal periods on shifts of no more than

1 six hours or waiving the second meal period on shifts over 10 hours, but less than 12.

2 39. By its actions in requiring its employees to work through meal periods  
3 and/or its failure to relieve the employees of their duties for their off-duty meal periods,  
4 Defendant has violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage  
5 Order No. 7-2001, and is liable to Plaintiff and the class.

6 40. As a result of the unlawful acts of Defendant, Plaintiff and the class have  
7 been deprived of timely off-duty meal periods and are entitled to recovery under Labor  
8 Code §§ 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one  
9 additional hour of pay at the employee's regular rate of compensation for each  
10 workday in which Defendant failed to provide its employees with timely statutory off-  
11 duty meal periods.

12 41. Plaintiff, and the other members of the class, are entitled to seek and recover  
13 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

14 **SECOND CAUSE OF ACTION**  
15 **FAILURE TO PROVIDE REST PERIODS**  
16 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**  
**(Against all defendants)**

17 42. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
18 forth herein.

19 43. California Labor Code § 226.7(b) provides, "An employer shall not require  
20 an employee to work during a meal or rest period mandated pursuant to an applicable  
21 order of the Industrial Welfare Commission".

22 44. IWC Order No. 7-2001(12)(A) provides, in pertinent part: "[e]very employer  
23 shall authorize and permit all employees to take rest periods, which insofar as practicable  
24 shall be in the middle of each work period. The authorized rest period time shall be based  
25 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
26 hours or major fraction thereof. However, a rest period need not be authorized for  
27 employees whose total daily work time is less than three and one-half (3 ½) hours.  
28

1 Authorized rest period time shall be counted as hours worked for which there shall be no  
2 deduction from wages”.

3 45. IWC Order No. 7-2001(12)(B) further provides: “[i]f an employer fails to  
4 provide an employee with a rest period in accordance with the applicable provisions of  
5 this order, the employer shall pay the employee one (1) hour of pay at the employee’s  
6 regular rate of compensation for each workday that the rest period is not provided”.

7 46. As alleged herein, Defendant failed to authorize and permit rest breaks  
8 during the Class Period. Plaintiff and members of the class were routinely interrupted  
9 during rest periods or were required to work through rest periods due to press of business  
10 at the direction of Defendant and/or with Defendant’s knowledge and acquiescence.

11 47. By its actions in requiring its employees during the Class Period to work  
12 through rest periods and/or its failure to relieve the employees of their duties for their rest  
13 periods, Defendant violated § 12 of IWC Wage Order No. 7-2001 and California Labor  
14 Code § 226.7 and is liable to Plaintiff and the class.

15 48. Defendant’s unlawful conduct alleged herein occurred in the course of  
16 employment of Plaintiff and all others similarly situated and such conduct has continued  
17 through the filing of this complaint.

18 49. As a direct and proximate result of Defendant’s unlawful action, Plaintiff  
19 and the class have been deprived of timely rest periods and/or were not paid for rest  
20 periods taken during the Class period and are entitled to recovery under Labor Code §  
21 226.7(c) in the amount of one additional hour of pay at the employee’s regular rate of  
22 compensation for each workday in which Defendant failed to provide employees with  
23 timely and/or paid rest periods.

24 50. Plaintiff, and the other members of the class, are entitled to seek and recover  
25 reasonable attorneys’ fees and costs pursuant to Labor Code §§ 226.7.

26 **THIRD CAUSE OF ACTION**  
27 **FAILURE TO PAY OVERTIME WAGES**  
28 **(Violation of Labor Code § 510, 1194, 1198, and the applicable Wage Order)**  
**(Against all defendants)**

1           51. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
2 forth herein.

3           52. Labor Code § 510 and the applicable Wage Order provide that employees in  
4 California shall not be employed more than eight hours in any workday or forty hours in  
5 a workweek unless they receive additional compensation beyond their regular wages in  
6 amounts specified by law. Specifically, Labor Code § 510(a) requires that: Any work in  
7 excess of eight hours in one workday and any work in excess of 40 hours in any one  
8 workweek and the first eight hours worked on the seventh day of work in any one  
9 workweek shall be compensated at the rate of no less than one and one-half times the  
10 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be  
11 compensated at the rate of no less than twice the regular rate of pay for an employee.

12           53. Labor Code § 1194 establishes an employee's right to recover unpaid  
13 overtime compensation, and interest thereon, together with the costs of suit, and  
14 attorneys' fees. Labor Code § 1198 makes employment of an employee for longer hours  
15 than the IWC set or under conditions the IWC prohibits unlawful.

16           54. During the class period, Plaintiff and other class members have worked  
17 more than eight hours in a workday, and/or more than forty hours in a workweek.

18           55. During the class period, Defendant has failed to pay Plaintiff, and other class  
19 members the overtime compensation premium for those unpaid hours they have worked  
20 in excess of the maximum hours permissible by law as required by Labor Code § 510 and  
21 1198, and the applicable Wage Order.

22           56. By virtue of Defendant's unlawful failure to pay the lawful overtime rate of  
23 compensation to the Plaintiff and other class members, Plaintiff and other class members  
24 have suffered, and will continue to suffer, damages in amounts which are presently  
25 unknown to them, but which exceed the jurisdictional limits of this Court and will be  
26 ascertained according to proof at trial.

27           57. Defendant acted and are acting intentionally and oppressively toward  
28 Plaintiff and other class members with a conscious disregard of their rights, or the

1 consequences to them, with the intent of depriving them of property and legal rights and  
2 otherwise causing them injury.

3 58. Plaintiff and other class members request recovery of overtime  
4 compensation according to proof, interest, attorneys' fees, expenses, and costs pursuant  
5 to Labor Code § 1194(a), and Civil Code §§3287(b) and 3289, as well as the assessment  
6 of any statutory penalties against Defendant, in a sum as provided by the Labor Code, the  
7 applicable Wage Orders, and/or other statutes.

8 **FOURTH CAUSE OF ACTION**  
9 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**  
10 **(Violation of Labor Code § 2802, *et seq.*)**  
11 **(Against all defendants)**

12 59. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
13 forth herein.

14 60. California Labor Code section 2802 provides that an employer must  
15 reimburse employees for all necessary expenditures.

16 61. At all relevant times during the class period, Plaintiff and other members of  
17 the class incurred necessary business-related expenses and costs that were not fully  
18 reimbursed by Defendant, including, but not limited to, work related travel and mileage  
19 expenses and personal cellphone usage.

20 62. Defendant has intentionally and willfully failed to fully reimburse Plaintiff  
21 and class members for necessary business-related expenses and costs. Defendant's  
22 conduct violates California Labor Code Section 2802.

23 63. Plaintiff and class members are entitled to recover from Defendant their  
24 business-related expenses incurred during the course and scope of their employment, plus  
25 interest, pursuant to California Labor Code section 2802.

26 **FIFTH CAUSE OF ACTION**  
27 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**  
28 **(Violation of Labor Code §226)**  
**(Against all defendants)**

64. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set

1    forth herein.

2            65.    California Labor Code § 226(a) provides: “[e]very employer shall,  
3    semimonthly or at the time of each payment of wages, furnish each of his or her  
4    employees, either as a detachable part of the check, draft, or voucher paying the  
5    employee’s wages, or separately when wages are paid by personal check or cash, an  
6    accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
7    worked by the employee [...], (3) the number of piece–rate units earned and any  
8    applicable piece rate if the employee is paid on a piece–rate basis, (4) all deductions,  
9    provided that all deductions made on written orders of the employee may be aggregated  
10   and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
11   which the employee is paid, (7) the name of the employee and only the last four digits of  
12   his or her social security number, [...], (8) the name and address of the legal entity that is  
13   the employer, and (9) all applicable hourly rates in effect during the pay period and the  
14   corresponding number of hours worked at each hourly rate by the employee...”.

15            66.    Labor Code § 226(e) provides that an employee suffering injury as a result  
16   of a knowing and intentional failure by an employer to comply with subdivision (a) is  
17   entitled to recover the greater of all actual damages or \$50 for the initial pay period in  
18   which a violation of § 226 occurs and \$100 for each subsequent pay period.

19            67.    Plaintiff is informed, believes and thereon alleges that at all times relevant,  
20   Defendant knowingly and intentionally failed to furnish, and continues to knowingly and  
21   intentionally fail to furnish, Plaintiff and each Class member with timely and accurate  
22   itemized statements showing the name and address of the employer, all applicable hourly  
23   rates in effect and corresponding number of hours, and gross wages earned by Plaintiff  
24   and each Class member, as required by Labor Code § 226(a), in that the premiums owed  
25   to Plaintiff and the members of the Class for untimely or interrupted meal and rest  
26   periods were not included in gross wages earned by Plaintiff and the Class.

27            68.    Defendant’s failure to provide Plaintiff and members of the Class with  
28   accurate itemized wage statements during the Class period has caused Plaintiff and

1 members of the Class to incur economic damages in that they were not aware that they  
2 were owed and not paid compensation for missed rest periods and on-duty meal periods,  
3 and for all hours worked at the appropriate rate. In addition, Defendant provided  
4 inaccurate information regarding hours worked, which masked its underpayment of  
5 wages to Plaintiff and the Class.

6 69. As a result of Defendant's issuance of inaccurate itemized wage statements  
7 to Plaintiff and members of the Class in violation of Labor Code § 226(a), Plaintiff and  
8 the members of the Class are each entitled to recover actual damages or penalties  
9 pursuant to § 226(e) of the Labor Code.

10 **SIXTH CAUSE OF ACTION**  
11 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
12 **(Violation of California's Unfair Competition Law,**  
13 **Bus. & Prof. Code § 17200 *et seq.*)**  
14 **(Against all defendants)**

15 70. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
16 forth herein.

17 71. § 17200 of the California Business and Professions Code (the "UCL")  
18 prohibits any unlawful, unfair, or fraudulent business practices.

19 72. Through its action alleged herein, Defendant has engaged in unfair  
20 competition within the meaning of the UCL. Defendant's conduct, as alleged herein,  
21 constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

22 73. Defendant's unlawful conduct under the UCL includes, but is not limited to,  
23 failure to pay class members wages and compensation they earned through labor  
24 provided and failing to otherwise compensate class members for non-compliant meal and  
25 rest periods as alleged herein. Defendant's fraudulent conduct further includes, but is not  
26 limited to, issuing wage statements containing false and/or misleading information about  
27 the time the class members worked and the amount of wages or compensation due.

28 74. Plaintiff has standing to assert this claim because he has suffered injury in  
fact and has lost money as a result of Defendant's conduct.

75. Plaintiff and the Class seek restitutionary disgorgement from Defendant of

monies owed for all hours worked and for unpaid meal and rest period premiums.

76. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified here by suing on behalf of himself and other similarly situated Class members previously or presently working for Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)**  
**(Cal. Lab. Code §§2698 and 2699, et. seq.)**  
**(Against all defendants)**

77. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

78. Labor Code sections 2698 and 2699 (The California Private Attorney General Act of 2004, or "PAGA"), expressly establish that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by The Labor and Workforce Development Agency ("LWDA"), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

79. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

80. Plaintiff is an "aggrieved employee" as defined by Labor Code section 2699, because he is an employee of Defendant, and one or more of the Labor Code violations was committed against him.

81. Plaintiff asserts all of his claims in this Complaint against Defendant on

1 behalf of himself, and all other members of the Class and/or on behalf of all aggrieved  
2 employees, as well as the general public, in his capacity as “private attorney general”,  
3 and seek all statutory penalties available under the Labor Code.

4 82. By reason of the above and pursuant to Labor Code section 2699, Plaintiff  
5 Almanzar on behalf of himself, and all other members of the Class and/or on behalf of all  
6 aggrieved employees, as well as the general public, are entitled to payment of a penalty  
7 of \$100 per pay period for each employee for the initial violation, and \$200 per pay  
8 period for each employee for each subsequent violation, plus interest.

9 83. In addition, Plaintiff Almanzar, on behalf of himself, and all other members  
10 of the Class and/or behalf of all aggrieved employees, as well as the general public, seek  
11 and are entitled to have 75% of all recovered penalties and interest allocated to the  
12 LWDA and 25% to the Plaintiff Class. Further, Plaintiff is entitled to seek and recover  
13 reasonable attorneys’ fees, expenses and costs pursuant to Labor Code section 2699, and  
14 any other applicable statutes.

15 84. Plaintiff complied with the notice requirements of Labor Code section  
16 2699.3(a)(1) prior to commencing this action. A copy of the letter submitted to the  
17 California LWDA on May 19, 2020, via online filing, and copied to Defendants’ Agent  
18 for Service of Process in California on the same date, via certified mail, in accordance  
19 with section 2699.3(a)(1), is attached hereto, as Exhibit A, and by reference incorporated  
20 herein.

21 85. As of today’s date, the LWDA has not responded to Plaintiff’s notice.

22 86. Plaintiff and the Plaintiff Class are also entitled to reasonable attorneys’ fees  
23 and costs, pursuant to California Labor Code section 2699(g)(1).

#### 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,  
26 pray for judgment against Defendant as follows:

27 A. An order that this action may proceed and be maintained as a class action;  
28

- 1 B. An order appointing Plaintiff as representative for the Class and Subclasses;
- 2 C. An order appointing Plaintiff's counsel as counsel for the Class and Subclasses;
- 3 D. For one hour of wages due to Plaintiff and each class member for each work period
- 4 of more than three and one-half (3 ½) hours when they did not receive an
- 5 uninterrupted ten (10) minute rest period for each four (4) hours or major fraction
- 6 thereof worked;
- 7 E. For one hour of wages due to Plaintiff and each Class member for each work
- 8 period of more than five (5) hours when they did not receive an uninterrupted
- 9 thirty (30) minute meal period;
- 10 F. For one hour of wages due to Plaintiff and each Class member for each work
- 11 period of more than ten (10) hours when they did not receive an uninterrupted
- 12 thirty (30) minute meal period;1
- 13 G. For all overtime wages owed to Plaintiff and each Class member for all hours
- 14 worked;
- 15 H. For reimbursement of incurred necessary business expenses under Labor Code §
- 16 2802;
- 17 I. For actual damages or statutory penalties under Labor Code § 226(e);
- 18 J. For waiting time penalties pursuant to Labor Code § 203;
- 19 K. For liquidated damages pursuant to Labor Code § 1194.1;
- 20 L. For restitutionary disgorgement pursuant to the UCL;
- 21 M. Prejudgment and post-judgment interest at the maximum legal rate;
- 22 N. Reasonable attorney's fees;
- 23 O. General, special and consequential damages, to the extent allowed by law;
- 24 P. Costs of suit;
- 25 Q. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;
- 26 R. For penalties for each violation of the Private Attorneys General Act ("PAGA");
- 27 and
- 28 S. Such other equitable relief as the Court may deem just and proper.

1 Dated: \_\_\_\_\_, 2020  
2 \_\_\_\_\_

By:

/s/ David R. Markham  
David R. Markham  
Maggie Realin  
Lisa Brevard

**UNITED EMPLOYEES LAW GROUP**  
Walter L. Haines

Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a jury trial with respect to all issues triable of right by jury.

11 Dated: \_\_\_\_\_, 2020  
12 \_\_\_\_\_

By:

/s/ David R. Markham  
David R. Markham  
Maggie Realin  
Lisa Brevard

**UNITED EMPLOYEES LAW GROUP**  
Walter L. Haines

Attorneys for Plaintiff

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