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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 THE ESTATE OF JOHN UTNE THROUGH
15 HIS SUCCESSOR IN INTEREST KAREN
16 UTNE and ALFRED PINTO, on behalf of
themselves, all others similarly situated, and
the general public,

17 Plaintiffs,

18 vs.

19 HOME DEPOT U.S.A., INC., a Delaware
20 Corporation; and DOES 1-50, inclusive,

21 Defendants.

Case No. 3:16-cv-01854-RS

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE**

Judge: Hon. Richard Seeborg

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JOHN UTNE THROUGH HIS
16 *SUCCESSOR IN INTEREST KAREN*
UTNE, and ALFRED PINTO, on behalf of
17 *themselves, all others similarly situated,*
and the general public

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1 **I. INTRODUCTION**

2 1. This joint stipulation is made and entered into by and between the following
3 parties: plaintiffs The Estate of John Utne through his successor in interest Karen Utne and Alfred
4 R. Pinto, individually and as class and PAGA representatives, and defendant Home Depot U.S.A.,
5 Inc. The Parties agree to fully and completely settle all litigation by or among them subject to the
6 terms and conditions set forth below and subject to the approval of the Court. This Joint
7 Stipulation of Class Action and PAGA Settlement and Release, including any attached exhibits is
8 legally binding on the Parties, and supersedes any and all prior email correspondence and/or
9 memoranda of understanding.

10 **II. RECITALS**

11 2. **Procedural History.**

- 12 a. On March 8, 2016, Plaintiff John H. Utne filed a putative class action
13 against Home Depot in the Superior Court of California, County of
14 Alameda, Case No. RG16806847, alleging (1) failure to pay hourly
15 employees wages and overtime under Cal. Lab. Code §§ 223, 510, 1194,
16 1197, 1198; (2) failure to provide accurate written “wage statements” under
17 Cal. Lab. Code § 226; (3) termination “waiting time” payment claims under
18 Cal. Lab. Code§ 201-203; and (4) violation of California’s Unfair
19 Competition Law (“*UCL*”), Cal. Bus. & Prof. Code § 17200 *et seq.*
20 b. The complaint raised allegations that Home Depot hourly employees were
21 required to wait off-the-clock following their closing shifts while the store
22 was locked.
23 c. On April 7, 2016, Mr. Utne filed a First Amended Complaint in Alameda
24 County adding an additional representative claim for Private Attorney
25 General Act (PAGA) civil penalties under Cal. Lab. Code § 2698 *et seq.*
26 d. Home Depot removed the case to the United States District Court for the
27 Northern District of California on April 8, 2016.
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- 1 e. On November 30, 2016, Mr. Utne filed a Second Amended Complaint
2 raising allegations relating to “rounding” of employee time.
- 3 f. Mr. Utne filed a Third Amended Complaint on September 19, 2017, raising
4 additional allegations of unpaid work relating to the time spent walking in
5 the store while off the clock, obtaining and donning employee aprons and
6 waiting to clock-in.
- 7 g. On December 4, 2017, the Court granted judgment in Home Depot’s favor
8 with respect to the rounding claim, after which plaintiff filed a request to
9 immediately appeal, which was denied.
- 10 h. On March 30, 2018, the Court granted plaintiff’s motion to certify two
11 classes: the “**Lock-In Class**” consisting of “all individuals employed by
12 Home Depot in hourly-paid or non-exempt positions in Home Depot stores
13 in California at any time since March 8, 2012, and who worked at least one
14 shift ending after the time that the Home Depot store was scheduled to close
15 to the public for the evening,” and the “**Hourly Employee Class**” consisting
16 of “all individuals employed by Home Depot in hourly-paid or non-exempt
17 positions in California at any time since March 8, 2012.” The Court
18 appointed Mr. Utne as class representative and Setareh Law Group as class
19 counsel.
- 20 i. On July 11, 2019, the Court granted judgment in Home Depot’s favor on
21 plaintiff’s waiting time and wage statement claims to the extent premised on
22 time spent walking in the store while off the clock, obtaining and donning
23 employee aprons and waiting to clock in.
- 24 j. On March 31, 2022, Mr. Utne filed his Fourth Amended Complaint to re-
25 plead the PAGA claim following the apparent inadvertent dismissal of that
26 claim.
- 27 k. On May 6, 2022, the Court granted judgment in Home Depot’s favor on the
28 UCL claim, without any limitation on re-filing the UCL claim in state court.

1 On May 17, 2022, John H. Utne re-filed the UCL claim in the Superior
2 Court in Alameda County, California, Case No. 22CV011360. The state
3 court action is currently stayed.

- 4 l. On May 6, 2022, Home Depot's motion to decertify the Lock-in and Hourly
5 Employee classes was denied.
- 6 m. On July 26, 2022, the Court granted Home Depot's motion to dismiss, and
7 dismissed plaintiff's claim for waiting time penalties under Cal. Lab. Code
8 §§ 201-203.
- 9 n. On September 13, 2022, the Court appointed Alfred R. Pinto as an
10 additional class representative.
- 11 o. On September 16, 2022, plaintiffs filed a Fifth Amended Complaint
12 formally adding Mr. Pinto as an additional named plaintiff.
- 13 p. On November 10, 2022, the Court granted portions of Plaintiffs' and Home
14 Depot's motions to exclude expert witnesses.
- 15 q. The Court set a trial date for April 17, 2023.
- 16 r. This case has been aggressively litigated by both sides in both state and
17 federal court over the course of the past seven (7) years.

18 3. **Home Depot Denies Liability and Asserts Strong Defenses.**

19 Home Depot denies Named Plaintiffs' claims, and asserts that, during all relevant times,
20 Class Members were properly paid for all hours worked, and received all overtime wages to which
21 they were entitled, in accordance with California law. Home Depot also asserts that, at all times,
22 Class Members received wage statements that were compliant with the Labor Code, were timely
23 paid all wages as required under the Labor Code, and that Class Members who ended their
24 employment with Home Depot during the Class Period were properly compensated for all wages
25 due as required by California law. Consequently, Home Depot does not believe that any liability to
26 the Plaintiffs or Class Members exists, or that the Plaintiffs or Class Members are entitled to any
27 recovery. In addition, Home Depot contends the Plaintiffs' claims are not suitable for class or
28 representative treatment. Nonetheless, without admitting any liability or wrongdoing and without

1 admitting that class certification or representative treatment is appropriate for any purpose other
2 than for settlement purposes, Home Depot has agreed to settle the matter on the terms set forth in
3 this Settlement Agreement, to avoid the burden, expense, and uncertainty of litigation.

4 4. **Mediation and Negotiated Settlement.**

5 This Agreement comes after the Parties completed extensive fact and expert discovery and
6 multiple rounds of motion practice. The Parties also participated in a number of arms-length
7 negotiations with experienced mediators—first in 2019 with Antonio Piazza, and again in
8 November 2022 with Hunter R. Hughes III. After months of follow-up negotiations involving Mr.
9 Hughes, the Parties each accepted a mediator’s proposal to reach a global settlement.

10 5. **The Parties Desire Resolution.**

11 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
12 all disputes and claims against the Releasees as provided herein. As long as there are no changes
13 to the material terms of this Settlement Agreement (*e.g.* the amount of money to be paid, the class
14 definitions, and/or the scope of the negotiated releases), the Court may make non-material changes
15 to the terms of this Settlement Agreement as appropriate and/or necessary to approve the
16 Settlement (*i.e.*, procedural matters such as the language contained in the claim form and length of
17 notice to the class).

18 6. **Settlement Value.**

19 Class Counsel represent that they have conducted a thorough investigation into the facts of
20 the Action. Based on the fact and expert discovery conducted and their own independent
21 investigation, analysis and evaluation, Class Counsel and the Plaintiffs are of the opinion that the
22 Settlement Agreement is fair, adequate and reasonable, and is in the best interest of the Classes in
23 light of all known facts and circumstances.

24 **III. SETTLEMENT DEFINITIONS**

25 7. “**Action**” means and refers to the lawsuit titled *The Estate of John Utne Through*
26 *His Successor in Interest Karen Utne v. Home Depot U.S.A., Inc.*, United States District Court for
27 the Northern District of California, Case No. 3:16-cv-1854-RS. The Action is a certified class
28 action and a PAGA representative action.

1 8. **"Affiliates"** of Home Depot means and refers to each individual or entity that prior
2 to the date of Preliminary Approval: (1) was Home Depot's subsidiary, related company or entity,
3 division, parent company, sister company, affiliate, predecessor or successor; (2) directly or
4 indirectly controlled or owned Home Depot; (3) was directly or indirectly controlled or owned by
5 Home Depot, and/or (4) was directly or indirectly under common control or ownership with Home
6 Depot.

7 9. **"Agreement"** or **"Settlement Agreement"** means and refers to this Joint
8 Stipulation of Class Action and PAGA Settlement and Release, including any attached exhibits.

9 10. **"Class"** means all Class Members.

10 11. **"Class Counsel"** or **"Plaintiffs' Counsel"** means Shaun Setareh and Thomas Segal
11 of the Setareh Law Group and Karen Gold and Marissa Mayhood of Marlin & Saltzman LLP.

12 12. **"Class Member(s)"** means any member of the Post-Shift Class, Hourly Employee
13 Class, and/or the Rounding Class.

14 13. **"Class Period"** means March 8, 2012, through the Date of Preliminary Approval.

15 14. **"Class Representatives"**, **"PAGA Representatives"** and/or **"Named Plaintiffs"**
16 means John H. Utne or the Estate of John Utne Through His Successor in Interest Karen Utne (as
17 applicable), and/or Alfred R. Pinto.

18 15. **"Class Settlement Fund"** means ninety-five percent (95%) of the Net Settlement
19 Fund.

20 16. **"Closing Shift(s)"** means any shift scheduled to end after the Home Depot store
21 where the shift is performed was scheduled to close to the public for the evening.

22 17. **"Complaint(s)"** means any complaint or amended complaint filed in the Action or
23 the UCL Action.

24 18. **"Court"** means the United States District Court for Northern District of California
25 presiding over the Action.

26 19. **"Cy Pres Recipient"** means The Homer Fund or another appropriate 501(c)(3)
27 organization agreed to by the Parties and approved by the Court.

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1 20. **“Date of Preliminary Approval”** means the date the Court issues an order
2 preliminarily approving the Settlement Agreement.

3 21. **“Deficient Request for Exclusion”** means a Request for Exclusion that fails to
4 include one or more of the following: (a) the Class Member’s signature or the signature of
5 someone authorized to sign on his or her behalf; (b) the Class Member’s full legal name; (c) a
6 statement that the Class Member desires to exclude himself or herself from the case; and/or (d) the
7 last four digits of the Class Member’s social security number or complete Home Depot employee
8 ID number.

9 22. **“Deficient Op-Out”** means: (1) a Request for Exclusion that was not submitted
10 within the time required by this Settlement Agreement, and/or (2) a Deficient Request for
11 Exclusion that was not cured of its deficiencies by the submitting Class Member or someone
12 authorized to act on his or her behalf within the time required by this Settlement Agreement.

13 23. **“Defendant”** means defendant Home Depot.

14 24. **“Defendant’s Counsel”** means Quinn Emanuel Urquhart & Sullivan, LLP.

15 25. **“Depository Bank”** means the financial institution where Home Depot will deposit
16 the Gross Settlement Amount. The Depository Bank must be a Tier 1 bank, and the Parties and the
17 Settlement Administrator must consent to the Depository Bank.

18 26. **“Estimated Aggregate Class Shifts”** means Home Depot’s good faith estimate of
19 the total number of shifts worked by individuals employed by Home Depot in retail stores in
20 hourly-paid or non-exempt positions in California at any time between March 8, 2012 through
21 March 10, 2023.

22 27. **“Estimated Aggregate Closing Shifts”** means Home Depot’s good faith estimate
23 of the total number of Closing Shifts worked by individuals employed by Home Depot in retail
24 stores in hourly-paid or non-exempt positions in California at any time between March 8, 2012
25 through March 10, 2023.

26 28. **“Estimated Aggregate Hourly Employee Class”** means Home Depot’s good faith
27 estimate of the total number of individuals employed by Home Depot in retail stores in hourly-
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1 paid or non-exempt positions in California at any time between March 8, 2012 through March 10,
2 2023.

3 29. **“Estimated Aggregate Post-Shift Class”** means Home Depot’s good faith
4 estimate of the total number of individuals employed by Home Depot in retail stores in hourly-
5 paid or non- exempt positions in California who worked one or more Closing Shifts at any time
6 between March 8, 2012 through March 10, 2023.

7 30. **“Estimated Aggregate PAGA Group”** means Home Depot’s good faith estimate
8 of the total number of hourly-paid and non-exempt employees employed by Home Depot in
9 California in retail stores at any time between March 8, 2015 through March 10, 2023.

10 31. **“Estimated Aggregate PAGA Pay Periods”** means Home Depot’s good faith
11 estimate of the total number of Pay Periods worked by hourly-paid and non-exempt employees
12 employed by Home Depot in California in retail stores at any time between March 8, 2015 through
13 March 10, 2023.

14 32. **“Estimated Aggregate Rounding Class”** means Home Depot’s good faith
15 estimate of the total number of individuals employed by Home Depot who worked one or more
16 shifts in retail stores in hourly-paid or non-exempt positions in California at any time between
17 March 8, 2012 through March 10, 2023 and who were paid less than their actual clock-in and
18 clock-out time for his or her total hours worked as a result of Home Depot’s practice of rounding
19 time to the nearest quarter hour, including persons hired after notice of class certification.

20 33. **“Final Approval Date”** means the date on which the Court enters the Final
21 Approval Order

22 34. **“Final Approval Hearing”** means the hearing to be scheduled by the Court after
23 granting preliminary approval of the Settlement Agreement.

24 35. **“Final Approval Order”** means the Court’s order granting final approval of the
25 Settlement Agreement at or after the Final Approval Hearing.

26 36. **“General Release”** means the Named Plaintiffs’ release of the General Released
27 Claims.

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1 37. **“General Released Claims”** means the general release of claims set out in
2 Paragraph 130 below.

3 38. **“Gross Settlement Amount”** means \$72,500,000.00 agreed by the Parties as the
4 total all-in amount payable under this Settlement Agreement by Home Depot. The Gross
5 Settlement Amount is inclusive of all payments contemplated in this Settlement Agreement
6 including Settlement Payment(s), Class Counsel’s attorneys’ fees and actual litigation costs as
7 approved by the Court, Settlement Administration Expenses as approved by the Court, a Reserve
8 Fund, the LWDA Penalty Amount as approved by the Court, Service Enhancement to the Class
9 Representatives as approved by the Court, and all taxes, including Home Depot’s share of taxes
10 associated with Settlement Payment(s). The Gross Settlement Amount shall in no event increase,
11 except as provided in Paragraph 97 of this Agreement. This amount must be paid in full pursuant
12 to the terms of this Agreement if approved by the Court.

13 39. **“Home Depot”** means Home Depot U.S.A., Inc., doing business as “The Home
14 Depot,” and its direct and indirect subsidiaries that employ hourly and non-exempt employees in
15 California.

16 40. **“Hourly Employee Class”** means all individuals employed by Home Depot who
17 worked one or more shifts in retail stores in hourly-paid or non-exempt positions in California
18 during the Class Period, including persons hired after notice of class certification.

19 41. **“Hourly Employee Class Member Settlement Amount”** means an individual’s
20 Hourly Employee Class Member Share multiplied by the Hourly Employee Class Member Fund,
21 subject to reduction for all employee and employer withholdings and taxes.

22 42. **“Hourly Employee Class Member Fund”** means forty-one percent (41%) of the
23 Class Settlement Fund.

24 43. **“Hourly Employee Class Member Share”** means the shifts worked by an
25 individual Hourly Employee Class member during the Class Period divided by the aggregate
26 number of shifts worked by the Hourly Employee Class during the Class Period.

27 44. **“Judgment”** means the Court’s entry of final judgment following issuance of the
28 Final Approval Order.

1 45. **“Late Request for Exclusion”** means a Request for Exclusion that is submitted to
2 the Settlement Administrator after the end of the Response Period.

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

4 47. **“LWDA Penalty Amount”** is 75% of the PAGA Settlement Fund.

5 48. **“Net Settlement Fund”** is the portion of the Gross Settlement Amount eligible for
6 distribution to Settlement Class Members. It equals the Gross Settlement Amount less Class
7 Counsel’s attorneys’ fees and actual litigation costs as approved by the Court, Settlement
8 Administration Expenses as approved by the Court, the Reserve Fund, and Service Enhancement
9 to the Class Representatives as approved by the Court.

10 49. **“PAGA”** means the California Labor Code Private Attorneys General Act,
11 California Labor Code §§ 2698 *et seq.*

12 50. **“PAGA Group”** means all PAGA Group Members.

13 51. **“PAGA Group Member(s)”** means hourly-paid and non-exempt employee
14 employed by Home Depot in California during the PAGA Period.

15 52. **“PAGA Group Member Settlement Amount”** means the PAGA Group Member
16 Share multiplied by the PAGA Group Payment.

17 53. **“PAGA Settlement Fund”** means 5% of the Net Settlement Fund.

18 54. **“PAGA Group Member Share”** means the Pay Periods worked by the PAGA
19 Group Member during the PAGA Period divided by the aggregate number of Pay Periods worked
20 by the PAGA Group during the PAGA Period.

21 55. **“PAGA Group Payment”** is 25% of the PAGA Settlement Fund.

22 56. **“PAGA Period”** means March 8, 2015, through the date of Preliminary Approval.

23 57. **“PAGA Released Claims”** refers to any civil penalty claims under PAGA, whether
24 known or unknown, that has accrued or will accrue prior to the date of Preliminary Approval, and
25 that were or could have been asserted based on the facts alleged in any Complaint or any notice
26 provided to the LWDA by any Named Plaintiff, including but not limited to claims based on
27 employee Walking Time and/or Waiting Time, and excluding the PAGA claims referenced in
28 Paragraph 132 “Exclusion of Specific Lawsuits.”.

1 58. **“PAGA Settlement”** means all provisions in this Settlement Agreement relating to
2 PAGA, including the amount of the PAGA Settlement Fund, any amounts paid to the LWDA, the
3 PAGA Group Member Settlement Amount paid to PAGA Group Members and the PAGA
4 Released Claims.

5 59. **“Pay Period(s)”** means actual pay periods worked by a PAGA Group Member.

6 60. **“Post-Shift Class”** means all individuals employed by Home Depot in hourly-paid
7 or non-exempt positions in Home Depot stores in California during the Class Period, including
8 persons hired after notice of class certification, who worked at least one Closing Shift.

9 61. **“Post-Shift Class Member Fund”** means fifty percent (50%) of the Class
10 Settlement Fund.

11 62. **“Post-Shift Class Member Settlement Amount”** means an individual’s Post-Shift
12 Class Member Share multiplied by the Post-Shift Class Member Fund, subject to reduction for all
13 employee and employer withholdings and taxes.

14 63. **“Post-Shift Class Member Share”** means the Closing Shifts worked by an
15 individual Post-Shift Class member during the Class Period divided by the aggregate number of
16 Closing Shifts worked by the Post-Shift Class during the Class Period.

17 64. **“Preliminary Approval”** means the Court’s preliminary approval of the terms of
18 this Settlement Agreement.

19 65. **“Qualified Settlement Fund”** or **“QSF”** means the Qualified Settlement Fund
20 created under Internal Revenue Code Section 468B and US Treasury Regulation Section 46B-1, to
21 be overseen by the Settlement Administrator.

22 66. **“Released Class Claims”** means any claims, rights, liabilities, demands for
23 restitution, penalties, civil penalties, fees, costs, damages, or any other form of relief, of every
24 nature and description, of any and all kinds, whether arising in law, equity, contract or otherwise,
25 whether known or unknown, that accrued or will accrue prior to the date of Preliminary Approval,
26 that were or could have been asserted based on the facts alleged in any Complaint or any notice
27 provided to the LWDA by any Named Plaintiff, and including but not limited to claims based on
28 employee Walking Time and/or Waiting Time and rounding, but excluding the claims specifically

1 set forth in Paragraph 132 “Exclusion of Specific Lawsuits.” The Released Class Claims include,
2 but are not limited to, claims for or predicated on: (1) violations of the California Labor Code ; (2)
3 violations of the Fair Labor Standards Act (29 U.S.C. Section 20, *et seq.*); (2) unpaid wages; (3)
4 California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200, *et seq.*; (4) claims
5 under Labor Code Section 2698 *et seq.*; and/or (5) claims under the applicable Wage Order. The
6 Released Class Claims shall apply to all Class Members who do not timely file a valid Request for
7 Exclusion.

8 67. “**Releasees**” means Home Depot, its Affiliates, predecessors, successors, assigns,
9 current and former direct and indirect parents, subsidiaries, divisions, and related business entities,
10 and each of their current and former officers, directors, shareholders, employees, agents,
11 representatives, insurers, attorneys, and employee benefit programs (including the trustees,
12 administrators, fiduciaries, and insurers of such programs).

13 68. “**Request for Exclusion**” means a request from a Class Member to be excluded
14 from the non-PAGA portion of this Settlement Agreement. A valid Request for Exclusion must
15 contain: (a) the Class Member’s full legal name; (b) a statement that the Class Member desires to
16 exclude himself or herself from the case; (c) the last four digits of the Class Member’s social
17 security number and/or complete Home Depot employee ID; and (d) the Class Member’s signature
18 or the signature of someone authorized to sign documents on his or her behalf.

19 69. “**Reserve Fund**” means the portion of the Gross Settlement Amount reserved for
20 payment of disputed, untimely, and self-identified claims, after the end of the Response Period, in
21 the amount of Ten Thousand U.S. Dollars (\$10,000). Any unused funds remaining in the Reserve
22 Fund one year after Final Approval shall be distributed to the Cy Pres Recipient(s).

23 70. “**Response Period**” shall mean the period of sixty (60) days following the mailing
24 of the Settlement Notice Documents by the Settlement Administrator. If the 60th day falls on a
25 Sunday or holiday, the Response Period shall end on the next business day that is not a Sunday or
26 holiday.

27 71. “**Rounding Claim Member Fund**” means nine percent (9%) of the Class
28 Settlement Fund.

1 72. **“Rounding Claim Settlement Amount”** means the Rounding Claim Member
2 Fund divided equally by the number of individual Rounding Claimants and paid to each individual
3 Rounding Claimant subject to reduction for all employee and employer withholdings and taxes.

4 73. **“Rounding Claimant”** means an individual Rounding Class member.

5 74. **“Rounding Class”** means all individuals employed by Home Depot who worked
6 one or more shifts in retail stores in hourly-paid or non-exempt positions in California during the
7 Class Period and who were paid less than their actual clock-in and clock-out time for his or her
8 total hours worked during the Class Period as a result of Home Depot’s practice of rounding time
9 to the nearest quarter hour, including persons hired after notice of class certification.

10 75. **“Settlement Administration Expenses”** are those reasonable expenses incurred by
11 the Settlement Administrator in administering the Settlement Agreement, not to exceed \$750,000.

12 76. **“Settlement Administrator”** means and refers to the entity that will, among other
13 things, provide the Settlement Notice Documents to the Settlement Class Members, distribute
14 Settlement Payments, and administer matters as described in this Settlement Agreement. The
15 Parties will mutually agree to a Settlement Administrator prior to filing a motion for Preliminary
16 Approval. The Settlement Administrator must certify and agree to the data security protocols
17 required by the Parties and by the Northern District of California.

18 77. **“Settlement Class”** means all Settlement Class Members.

19 78. **“Settlement Class Member(s)”** means Class Member(s) who: (1) do not submit a
20 valid Request for Exclusion, or (2) rescind their Request for Exclusion in a timely manner.
21 Settlement Class Member(s) exclude individuals who have previously opted-out of the Class.

22 79. **“Settlement Effective Date”** means (i) in the event that the Settlement has received
23 final approval by the Court and there were no timely objections filed, or that any timely objections
24 have been withdrawn, then thirty (30) days after the Court’s Final Approval Order; (ii) in the
25 event that one or more timely objections has/have been filed and not withdrawn, then upon the
26 passage of the applicable date for an objector to seek appellate review of the trial court’s order of
27 final approval of the Settlement, without a timely appeal having been filed; or (iii) in the event that
28 a timely appeal of the Court’s order of final approval has been filed, then the Settlement shall be

1 final when the applicable appellate court has rendered a final decision or opinion affirming the
2 trial court's final approval without material modification, and the applicable date for seeking
3 further appellate review has passed, or the date that any such appeal has been either dismissed or
4 withdrawn by the appellant.

5 80. **"Settlement Notice Documents"** means the Notice of Settlement of PAGA and
6 Class Action Lawsuit, attached hereto as Exhibit A.

7 81. **"Settlement Payment(s)"** means, where applicable, the Hourly Employee Class
8 Member Settlement Amount(s), Post-Shift Class Member Settlement Amount(s) and Rounding
9 Claim Settlement Amount, paid to Settlement Class Member(s), subject to reduction for all of the
10 employee's and employer's share of withholdings and taxes, and the PAGA Group Member
11 Settlement Amount(s) paid to the PAGA Group Member(s).

12 82. **"Service Enhancement(s)"** means the incentive payments to The Estate of John
13 Utne Through His Successor in Interest Karen Utne of up to \$25,000 and Alfred R. Pinto of up to
14 \$7,500, subject to approval by the Court. Failure of the Court to approve the full amount of the
15 Service Enhancements will not render the Settlement Agreement unenforceable.

16 83. **"UCL Action"** means *Utne v. Home Depot U.S.A., Inc.*, filed in Alameda County
17 Superior Court, Case No. 22CV011360 on May 17, 2022.

18 84. **"Walking Time"** means any time spent by Class Members and/or PAGA Group
19 Members during the Class Period or PAGA Period, respectively, for which they were not paid,
20 and during which time they were walking to or from the entrance of the Home Depot store to or
21 from the time clock or break room; donning, removing or putting away required work equipment,
22 including their apron; and/or waiting in line to clock-in or out at the time clock.

23 85. **"Waiting Time"** means any time spent by Class Members and/or PAGA Group
24 Members during the Class Period or PAGA Period, respectively, for which they were not paid,
25 and during which time they were waiting as a result of locked doors at a Home Depot store after it
26 was closed to the public for the night.

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1 **IV. SETTLEMENT TERMS**

2 86. **Estimated Class Size and PAGA Employee Data.** Based on the information
3 reasonably available to Home Depot, the Estimated Aggregate Hourly Employee Class is 272,386
4 employees, the Estimated Aggregate Post-Shift Class is 235,934 employees, the Estimated
5 Aggregate Rounding Class is 149,551 employees, the Estimated Aggregate PAGA Group is
6 227,139 employees, the Estimated Aggregate Class Shifts are 95,382,113, the Estimated
7 Aggregate Closing Shifts are 25,491,919, and the Estimated Aggregate PAGA Pay Periods are
8 8,796,000.

9 87. **Dismissal of Other Lawsuits.** Within five (5) court days after the Settlement
10 Effective Date, the Parties will stipulate to lift the stay and dismiss the UCL Action with
11 prejudice. If the UCL Action is not dismissed with prejudice, this Agreement is null and void. The
12 Parties further agree to take any necessary steps to ensure the UCL Action remains stayed until the
13 Parties receive a Final Approval Order and during the pendency of any appeals of such Order.

14 88. **Jurisdiction Over Settlement.** This Court has jurisdiction over the Parties and the
15 subject matter of this Action. This Court will have continuing jurisdiction over the terms and
16 conditions of this Settlement Agreement, until all payments, obligations, and/or other terms and
17 conditions as provided for herein have been fully satisfied.

18 89. **No Admission of Liability.** Nothing in this Settlement Agreement shall be
19 construed to be or deemed an admission by Home Depot of any liability, culpability, negligence,
20 or wrongdoing toward the Named Plaintiffs, the Class Members, or any other person, and Home
21 Depot specifically disclaims any liability, culpability, negligence, or wrongdoing toward the
22 Named Plaintiffs, the Class Members, PAGA Group Members, or any other person, or that class
23 certification or representative treatment is appropriate. Each of the Parties have entered into this
24 Settlement Agreement with the intention to avoid further disputes and litigation with the attendant
25 inconvenience, expenses, and contingencies. This Settlement Agreement and any related court
26 documents or orders between the Parties may not be cited or otherwise admitted as evidence of
27 liability or that class certification is appropriate or that a representative action could ever be
28

1 manageably tried before a court. This provision will survive regardless of whether the other terms
2 of this Settlement Agreement are otherwise voided.

3 90. **Full and Complete Settlement.** This Settlement Agreement shall resolve the
4 entirety of the Action and the UCL Action.

5 91. **Class Certification.** The Court previously certified this case as a class action,
6 including two classes: (1) the Hourly Employee Class, and (2) the Lock-In Class. Home Depot
7 subsequently moved to decertify the classes, which the Court denied. If for any reason the Court
8 does not approve this Settlement Agreement, fails to enter the Final Approval Order, or fails to
9 enter the Judgment, or if this Settlement Agreement is lawfully terminated for any other reason,
10 the Parties shall return to their pre-Agreement positions relating to certification of the various
11 claims in dispute, and Home Depot shall retain any rights to dispute the propriety of class
12 certification, move to decertify, and/or dispute the ability of this action to proceed as a class or
13 representative action on all applicable grounds that exist in law or fact. Nothing in this Settlement
14 Agreement shall be construed to expand Home Depot's rights to challenge class certification as
15 they exist as of the date the Parties entered into this Settlement Agreement, unless those rights are
16 expanded by the Court.

17 92. **Class Counsel and Representatives.** The Court previously appointed Class
18 Counsel and Class representatives. Home Depot's agreement to this Settlement shall not be
19 construed as an admission or acknowledgment of any kind that (1) Class Representatives are
20 adequate or typical; (2) Class Counsel is adequate; (3) any class should be certified; or (4) any
21 Released Class Claim is amenable to class resolution.

22 93. **Court's Failure to Approve.** In the event that this Settlement Agreement is not
23 approved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the
24 Courts to any material terms of this Settlement Agreement (*e.g.* the amount of money paid, the
25 class definitions, and/or the scope of the negotiated releases):

- 26 a. The Settlement Agreement shall have no force or effect, other than the
27 confidentiality and no publicity provisions of Paragraphs 105, 146 and 147
28 and the non-admission provisions in Paragraph 89;

- 1 b. The Settlement Agreement shall not be admissible in any judicial,
2 administrative, or arbitral proceeding for any purpose or with respect to any
3 issue, substantive or procedural; and
- 4 c. The Parties to this Settlement Agreement will not be deemed to have
5 waived any claim, objection, defense, or argument with respect to the issue
6 of class certification or the merits of Named Plaintiffs' claims.

7 94. **Gross Settlement Allocations.** Home Depot agrees to pay the Gross Settlement
8 Amount and no more to the Depository Bank. Under no circumstance will this Settlement
9 Agreement be construed or interpreted to require payment of more than the Gross Settlement
10 Amount, except as provided in Paragraph 97. Payment of the Gross Settlement Amount to the
11 Depository Bank fully and completely satisfies Home Depot's financial obligations under this
12 Agreement, except as provided in Paragraph 97. Failure of the Settlement Administrator to
13 perform its obligations will not impact the enforceability of this Settlement Agreement or its
14 releases. The Settlement Administrator shall distribute the Gross Settlement Amount pursuant to
15 the order of the Court. The Parties agree, subject to Court approval, to the following allocations to
16 be paid from the Gross Settlement Amount:

- 17 a. Class Counsel shall be allocated Class Counsel attorneys' fees and costs as
18 approved by the Court. Home Depot will not oppose a request for a
19 maximum of one-third (33.33%) of the Gross Settlement Amount, or
20 \$24,166,666.66 in attorneys' fees, plus costs not to exceed actual out-of-
21 pocket costs incurred; which shall not exceed \$3,500,000.
- 22 b. The Settlement Administrator shall be allocated Settlement Administration
23 Expenses as approved by the Court.
- 24 c. Named Plaintiffs shall be allocated Service Enhancements as approved by
25 the Court.
- 26 d. The Reserve Fund will be established to reserve for disputed, untimely, and
27 self-identified claims. Any unused amounts of the Reserve Fund that remain
28

one year after Final Approval will be distributed to the Cy Pres Recipient(s).

- e. If the Court approves a lesser amount of attorneys' fees, litigation costs, Settlement Administration Expense, or Service Enhancements than those sought by Named Plaintiffs or Class Counsel, any amounts not approved will be reallocated to Settlement Class Members as part of the Net Settlement Fund, and the amounts awarded will not affect approval of the Settlement Agreement.

95. **Net Settlement Fund Allocations.**

The Net Settlement Fund (the portion of the Gross Settlement Amount remaining after allocations (92(a) through 92(d) above), shall be distributed by the Settlement Administrator to the Settlement Class Members, PAGA Group Members (including withholding and payment of all employee and employer side taxes associated with the wage portion of such payments) and the LWDA as follows:

- a. Settlement Class Members who are a member of the Hourly Employee Class shall receive his or her Hourly Employee Class Member Settlement Amount;
- b. Settlement Class Members who are a member of the Post-Shift Class shall receive his or her Post-Shift Class Member Settlement Amount;
- c. Settlement Class Members who are a member of the Rounding Class shall receive his or her Rounding Claim Settlement Amount;
- d. Each PAGA Group Member shall receive his or her PAGA Group Member Settlement Amount; and
- e. The LWDA shall receive the LWDA Penalty Amount. In connection with settlement approval, the LWDA shall also be notified of the existence of the Settlement Agreement by Class Counsel

1 96. **Approval of Allocations.** The Court's approval of the allocations in Paragraph 94
2 in the amount requested, and LWDA approval of the LWDA Penalty Amount, are not material
3 terms of this Agreement. If the Court approves a lesser amount of attorneys' fees, litigation costs,
4 Settlement Administration Expense, or Service Enhancements than those sought by Named
5 Plaintiffs or Class Counsel, any amounts not approved will be reallocated to Settlement Class
6 Members as part of the Net Settlement Fund. Should the LWDA object to the LWDA Penalty
7 Amount, the Parties agree to work in good faith to negotiate another agreeable amount and to
8 adjust the proportions of the Net Settlement Fund allocated to the Class Settlement Fund and
9 PAGA Settlement Fund accordingly.

10 97. **Escalation Clause.** If, prior to the date of the Final Approval Order, the Parties
11 agree, or the Court determines, that the actual number of individuals employed by, or the number
12 of shifts worked by individuals employed by, Home Depot in retail stores in hourly-paid or non-
13 exempt positions in California at any time between March 8, 2012 through March 10, 2023, is
14 more than 110%, respectively of the Estimated Aggregate Hourly Employee Class or the
15 Estimated Aggregate Class Shifts, at Home Depot's option, either: (1) the Gross Settlement
16 Amount shall be increased by the average proportion that the actual amount exceeds the estimated
17 amount over the 110% threshold, or (2) the end date of the Class Period and/or PAGA Period shall
18 be adjusted back to ensure that the actual amounts do not exceed 110% of the estimated amounts.
19 By way of illustration, if the actual number of individuals employed by, and/or the number of
20 shifts worked by individuals employed by, Home Depot in retail stores in hourly-paid or non-
21 exempt positions in California at any time between March 8, 2012 through March 10, 2023 is
22 115%, respectively, of the Estimated Aggregate Hourly Employee Class or the Estimated
23 Aggregate Class Shifts, the average proportion over 110% being 5%, at Home Depot's option,
24 either the Gross Settlement Amount shall increase by 5%, or the end date of the Class Period
25 and/or PAGA Period shall be adjusted to reduce the length of the Class Period and/or PAGA
26 Period to reduce the actual amounts by 5%.

27 98. **Exclusions (Opt-Outs).** PAGA Group Members cannot opt-out of (exclude
28 themselves from) the PAGA component of this Settlement Agreement. All PAGA Group

1 Members shall be bound by this Settlement Agreement and will release the PAGA Released
2 Claims. Class Members who wish to “opt-out” of and be excluded from the non-PAGA portion of
3 this Settlement Agreement must submit a written Request for Exclusion from the Settlement
4 Agreement bearing a post-mark during the Response Period. Requests for Exclusion that are not
5 post-marked within the Response Period are Deficient Opt-Out(s) unless the Parties agree in
6 writing to accept the untimely Request for Exclusion. Class Members who opt-out of this
7 Settlement Agreement release the PAGA Released Claims even if they submit a valid Request for
8 Exclusion, and will receive a check for their PAGA Group Member Settlement Amount if they are
9 a PAGA Group Member. If a Class Member submits a Deficient Request for Exclusion, the
10 Settlement Administrator shall notify the Class Member of the deficiency within five (5) business
11 days of receipt. The Class Member shall have until the end of the Response Period or five (5)
12 business days after the close of the Response Period if the notice of deficiency is sent by the
13 Settlement Administrator within five (5) business days of the end of the Response Period to cure
14 the deficiency or deficiencies. Uncured deficiencies result in a Deficient Opt-Out. Class Members
15 submitting Deficient Opt-Outs shall be bound by the Settlement Agreement and its releases and
16 will be considered Settlement Class Members for settlement distribution purposes. Class Members
17 shall be permitted to rescind their Request for Exclusion in writing by submitting a rescission
18 statement to the Settlement Administrator not later than one (1) business day prior to the Final
19 Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall not
20 accept untimely Requests for Exclusion without the written authorization of the Parties or the
21 Court.

22 99. **Objections.** Only Settlement Class Members (*i.e.*, Class Members who do not
23 submit a valid Request for Exclusion) may object to the Settlement Agreement. Class Members
24 who submit valid Requests for Exclusion are not eligible to object. All written objections must be
25 sent no later than sixty (60) days after the Settlement Administrator’s mailing of the Settlement
26 Notice Documents, and such deadline applies notwithstanding any assertion regarding non-receipt
27 of the Settlement Notice Documents. Settlement Class Members may also appear at the final
28 approval hearing to object, even if they do not send a written objection. Settlement Class Members

1 who either fail to send timely written objections, or do not appear at the final approval hearing to
2 object, waive any objections to this Settlement Agreement, and are foreclosed from filing any
3 appeal from any Final Approval Order issued by the Court. The Parties may file a response to any
4 objections submitted by objecting Settlement Class Members at or prior to the Final Approval
5 Hearing. Settlement Class Members shall be permitted to withdraw their objections in writing by
6 submitting a withdrawal statement to the Settlement Administrator not later than one (1) business
7 day prior to the Final Approval Hearing, or as otherwise ordered by the Court. Any objection shall
8 provide the following information to be a valid objection; name, address, last four digits of
9 objectors telephone number, explanation of the reason(s) for objecting, signed and dated by the
10 objector and/or his or her counsel.

11 **100. Settlement Class Member Released Claims.** Upon the Settlement Effective Date,
12 each Settlement Class Member and the Plaintiffs shall be deemed to have fully, finally, and
13 forever released Releasees from Released Class Claims as more fully set forth in Paragraph 127
14 below.

15 **101. PAGA Released Claims.** Upon the Settlement Effective Date, all PAGA Group
16 Members, the Plaintiffs, and the LWDA (including the State of California) shall be deemed to
17 have fully, finally, and forever released Releasees from the PAGA Released Claims as more fully
18 set forth in Paragraphs 128-129 below. Plaintiffs will submit a supplemental letter to the LWDA:
19 (1) adding Mr. Pinto as a representative plaintiff, (2) adding additional factual allegations
20 pertaining to off-the-clock work for Walking Time, and (3) adding additional statutory code
21 sections and/or Wage Orders to correspond to the scope of the releases herein. Upon expiration of
22 the required time for doing so, Plaintiffs will amend their operative complaint accordingly.

23 **102. General Released Claims.** Upon the Settlement Effective Date the Named
24 Plaintiffs shall be deemed to have generally released Releasees from the General Released Claims
25 as more fully set forth in Paragraphs 130-131 below.

26 **103. Entry of Judgment.** At the Final Approval Hearing, the Parties will request that
27 the Court, among other things: (a) enter a Final Approval Order in accordance with the terms of
28 this Settlement Agreement; (b) approve the Settlement Agreement as fair, adequate, reasonable,

1 and binding on all Settlement Class Members; (c) approve the requested fees, costs, and incentive
2 awards, and (d) enter Judgment as required pursuant to the terms of this Agreement.

3 **V. DATA AND NOTICES TO CLASS MEMBERS AND PAGA GROUP MEMBERS**

4 104. **Home Depot's Delivery of Data.** Within thirty (30) days after the date of
5 Preliminary Approval by the Court, Home Depot shall provide to the Settlement Administrator for
6 each Class Member: (a) the total number of shifts worked during the Class Period, (b) the total
7 number of Closing Shifts worked during the Class Period, (c) the PAGA Pay Periods worked
8 during the PAGA Period, and (d) whether the Class Member is also a Rounding Claimant. For
9 each Class Member Home Depot shall also provide name(s), last known residence addresses,
10 Social Security numbers, and Home Depot employee ID numbers. Home Depot shall submit this
11 information in electronic format as specified by the Settlement Administrator. Home Depot shall
12 thereafter, during the notice, approval, opt-out, and payment processes, assist the Settlement
13 Administrator as necessary or as requested to use, correct, or update this information to enable the
14 Settlement Administrator to locate and contact Class Members. Home Depot shall also provide
15 information as needed or requested by the Settlement Administrator, such as selected individuals'
16 timekeeping and payroll files, in order for the Settlement Administrator to make determinations on
17 Class Members' challenges or as needed to perform a reasonable, randomized check against the
18 list provided by Home Depot.

19 105. **Employee Data Confidentiality.** Employee data shall only be used by the
20 Settlement Administrator for the purpose of calculating Settlement Payments and finding and
21 notifying Class Members of the Settlement Agreement and Settlement Payment. Class data for
22 Class Members shall not be disclosed to the Plaintiffs, Class Counsel, or any other Class Members
23 without the written consent of Defendant and will be subject to the Settlement Administrator's
24 confidentiality agreement.

25 106. **Contact Information Confirmation.** Prior to mailing the Settlement Notice
26 Documents, the Settlement Administrator will update the addresses for the Class Members using
27 the National Change of Address database and other available resources deemed suitable by the
28 Settlement Administrator. Any returned envelopes from the initial mailing with forwarding

1 addresses will be used by the Settlement Administrator to locate Class Members and re-mail the
2 Settlement Notice Documents to the correct or updated address. The Settlement Administrator will
3 use all appropriate tracing methods, including skip tracing, to ensure that the Settlement Notice
4 Documents are received by Class Members. The Settlement Administrator shall also take
5 reasonable steps including skip tracing to locate any Class Member whose Settlement Notice
6 Document is returned as undeliverable.

7 107. **Mailing of Notices.** Within thirty (30) days of receiving the employee data from
8 Home Depot and after it has completed all of the address updates for Class Members, the
9 Settlement Administrator shall mail the Settlement Notice Document to Class Members and the
10 PAGA Group Members. At least fifteen (15) business days prior to this mailing, the Settlement
11 Administrator shall provide Home Depot with a report listing the estimated Settlement Payment
12 amounts and shifts, Closing Shifts, and Pay Periods worked as to each Class Member, and whether
13 the Class Member is also a Rounding Claimant, and provide the same list to Class Counsel with
14 unique identifiers, but not names or addresses.

15 108. **Content of Notices.** All Notices shall comply with all publications issued by the
16 Northern District of California regarding the content of such notices. Each Settlement Notice
17 Document mailed to a Class Member will identify the dates of employment and/or number of
18 compensable shifts and Closing Shifts that Home Depot's records indicate the individual worked,
19 respectively, as an Hourly Employee Class member, as a Post-Shift Class member, and PAGA
20 Group Member, whether the Class Member is also a Rounding Claimant, each Class Member's
21 estimated Settlement Payment and, where applicable, the estimated PAGA Pay Periods and PAGA
22 Group Member Settlement Amount. Each Notice shall also include: (1) the Gross Settlement
23 Amount; (2) the full amount of the proposed Class Counsel fee and costs payments; (3) the full
24 amount of the proposed Service Enhancements; (4) the terms of the PAGA Released Claims and
25 Released Class Claims in this Agreement; (5) the procedure to opt out of the Settlement
26 Agreement through a Request for Exclusion; (6) the procedure to object to the Settlement
27 Agreement; and (7) the date of the Final Approval Hearing. No claim form will be required to
28 receive a Settlement Payment.

1 109. **Timing of Requests for Exclusions or Objections.** Class Members shall have
2 sixty (60) days from the date of mailing of the Settlement Notice Documents to submit a Request
3 for Exclusion or to object to the Settlement Agreement. If the 60th day falls on a Sunday or
4 holiday, the deadline will be the next business day that is not a Sunday or holiday. Requests for
5 Exclusion or objections that are not postmarked on or before the compliance deadline of this
6 paragraph are deficient, null and void unless otherwise agreed to by the Parties.

7 110. **Data and Calculation Challenges.** Class Members shall have the right to
8 challenge the dates of employment and/or number of Shifts, Closing Shifts and/or Pay Periods
9 worked as shown on the Settlement Notice Document, and whether the Class Member is a
10 Rounding Claimant, but will bear the burden to prove that Home Depot's data or the Settlement
11 Administrator's calculations are incorrect. Challenges to the dates of employment and/or number
12 of Shifts, Closing Shifts and Pay Periods listed on the Settlement Notice Document, and whether
13 the Class Member is a Rounding Claimant, must be sent directly to the Settlement Administrator
14 at the address indicated on the Settlement Notice Document. Any challenge must be made during
15 the Response Period. The Settlement Administrator will inform Class Counsel and Defendant's
16 Counsel in writing of any challenges. The Shifts, Closing Shifts, Pay Periods, and whether the
17 Class Member is a Rounding Claimant, as listed on the Settlement Notice Document are presumed
18 to be accurate unless the Settlement Class Member submits documentation demonstrating
19 otherwise (*i.e.*, a Settlement Class Member who fails to provide written proof will have his or her
20 challenge denied). In the event of any dispute over a Class Member's number of Shifts, Closing
21 Shifts, Pay Periods, and/or whether the Class Member is a Rounding Claimant, Defendant's
22 Counsel, after consultation with Plaintiffs' Counsel, will investigate the challenge and determine
23 whether any additional amount is owed to the Settlement Class Member making the challenge.
24 The Settlement Administrator will decide whether the Settlement Class Member's challenge shall
25 be accepted. The Settlement Administrator's decision is final and binding without a right of
26 objection and/or appeal.

27 111. **Requests for Exclusion.** The Settlement Administrator shall (a) date stamp all
28 original Requests for Exclusion that it receives; (b) serve copies on Class Counsel and

1 Defendant's Counsel no later than five (5) business days after receipt, or immediately if received
2 within five (5) business days of the Final Approval Hearing; and (c) attach copies of the date-
3 stamped Requests for Exclusion to the Settlement Administrator declaration in support of Final
4 Approval, which Class Counsel shall file with any personal identifying information other than the
5 names redacted.

6 112. **Rescission of Requests for Exclusion.** The Settlement Administrator shall (a) date
7 stamp all original rescissions of Requests for Exclusion, it receives; (b) serve copies on Class
8 Counsel and Defendant's Counsel no later than five (5) business days after receipt, or immediately
9 if received within five (5) business days of the Court's Final Approval Hearing; and (c) attach
10 copies of the date-stamped rescissions of Requests for Exclusion to the Settlement Administrator
11 declaration in support of Final Approval, which Class Counsel shall file with any personal
12 identifying information other than the names redacted.

13 113. **Information Tracking and Updates.** The Settlement Administrator shall (a)
14 provide to Class Counsel and Defendant's Counsel a weekly report of activity; (b) establish a toll
15 free telephone line and respond to inquiries and requests for information or assistance from Class
16 Members; and (c) establish a website to provide information and documents to Class Members.
17 The URL for the website shall be www.utnesettlement.com, or another URL mutually agreed
18 upon by the parties.

19 **VI. SETTLEMENT ADMINISTRATION**

20 114. **Payment of Gross Settlement Amount.** No later than twenty-one (21) business
21 days after the Settlement Effective Date or twenty-one (21) business days after dismissal of the
22 UCL Action occurs as described in Paragraph 87, whichever occurs later, Home Depot shall pay
23 by wire transfer or otherwise transmit to the Depository Bank the Gross Settlement Amount in an
24 account titled in the name of "Home Depot Wage and Hour Settlement Fund." The account will be
25 organized and exist under the laws of the State of California, intended by the Parties to be a
26 "Qualified Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986,
27 as amended, and Treas. Reg. Section 1.468B- 1, *et seq.* The monies so transferred, together with
28 any interest subsequently earned thereon, shall constitute the Qualified Settlement Fund. The

1 Qualified Settlement Fund by Home Depot shall constitute the total cash outlay by Home Depot to
2 the Named Plaintiffs, Settlement Class, PAGA Group, the LWDA, Class Counsel, tax payments,
3 and Cy Pres Recipient payments in connection with the resolution of this matter and this
4 Settlement Agreement.

5 115. **Trustee.** The Settlement Administrator shall serve as Trustee of the Qualified
6 Settlement Fund and shall act as a fiduciary with respect to the handling, management, and
7 distribution of the Qualified Settlement Fund, including with regard to payment of valid claims
8 and reporting and paying taxes on such awards. The Settlement Administrator shall act in a
9 manner necessary to qualify the Qualified Settlement Fund as a “Qualified Settlement Fund”
10 under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section
11 1.468B-1, *et seq.*, and to maintain that qualification.

12 116. **Calculation of Settlement Payments.** The Settlement Administrator shall be
13 responsible for (a) calculating the Settlement Payment(s); (b) reporting to Class Counsel,
14 Defendant’s Counsel, and the Court regarding the completion of the tasks identified in this
15 paragraph; and (c) carrying out other related tasks including the proper maintenance of the QSF
16 and reporting required for that account, in accordance with the terms of this Settlement
17 Agreement.

18 117. **Dispute Resolution.** All disputes relating to the Settlement Administrator’s ability
19 and need to perform its duties shall be referred to the Court, if necessary, which will have
20 continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all
21 payments and obligations contemplated by the Settlement Agreement have been fully executed.

22 118. **Tax Allocation.** Except for the Service Enhancement described above to be paid to
23 the Class Representatives, all Settlement Payments shall be allocated as follows: Thirty-five
24 percent (35%) of each Hourly Employee Class Member Settlement Amount and the Rounding
25 Claim Settlement Amount as wages, and sixty-five percent (65%) as penalties and interest under
26 the California Labor Code; ten percent (10%) of each Lock-In Class Member Settlement Amount
27 as wages, and ninety percent (90%) as penalties and interest under the California Labor Code, and
28 all PAGA Group payments as penalties. The Service Enhancement to the Class Representatives

1 shall be treated as compensation for non-wage related claims, injuries, and reimbursement. The
2 allocations attributable to wages only are subject to reduction for employee and employer
3 withholdings and taxes.

4 119. **Employee and Employer Taxes.** The Settlement Administrator shall only
5 withhold employer and employee-side taxes for those portion(s) of the settlement allocated to
6 wages. When final checks are mailed to the Settlement Class Members, they shall include a notice
7 stating that the settlement funds may be taxable, and that the Settlement Class Members should
8 consult with their tax professional to determine the tax consequences of receiving settlement
9 funds. The Settlement Administrator shall be responsible for the timely calculation of the amount
10 of employer payroll tax and payment of these taxes from the Net Settlement Fund, as well as the
11 withholding of employee-side taxes. All Parties represent that they have not received, and shall not
12 rely on, advice or representations from other Parties or their agents or attorneys regarding the tax
13 treatment of Settlement Payments under federal, state, or local law. Named Plaintiffs and/or
14 Settlement Class Members are personally responsible for ensuring the proper legal and tax
15 treatment of any and all money received in connection with this Settlement. To the extent any
16 Settlement Payment results in any overpayment of unemployment benefits to the Named Plaintiffs
17 and/or any Settlement Class Members, the amount of any such overpayment shall be the
18 responsibility of the individual Plaintiff and/or Settlement Class Member.

19 120. **Gross Settlement Allocation Payment.** Within seven (7) days of receipt of the
20 Gross Settlement Amount, the Settlement Administrator shall pay Class Counsel's approved fees
21 and costs, and the approved Service Enhancements. On or before the Settlement Effective Date,
22 Class Counsel shall transmit instructions to the Settlement Administrator as to how any approved
23 attorneys' fees and costs shall be allocated among them and paid. Class Counsel may, at their
24 option, elect to have all or part of the approved fees and costs allocated to a separate third-party
25 structure qualified settlement fund.

26 121. **Dissolution of QSF.** After all payments have been disbursed from the QSF, the
27 Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS.
28

1 **VII. CALCULATION OF SETTLEMENT PAYMENTS AND DISTRIBUTION OF NET**
2 **SETTLEMENT FUND**

3 122. **Eligibility for Settlement Payments.** Only Settlement Class Members and/or
4 PAGA Group Members will be eligible to receive a Settlement Payment.

5 123. **Final Calculations of Settlement Payments.** Within fourteen (14) days after the
6 Settlement Effective Date, the Settlement Administrator shall make the final calculation of the Net
7 Settlement Fund, prepare the final list of all Settlement Class members with their individual
8 Settlement Payments and all tax payments, and provide this list to Home Depot. The Settlement
9 Administrator shall also provide Class Counsel with a redacted copy of the report (with personal
10 identifying information redacted).

11 124. **Settlement Payments.** Within twenty (20) business days after receipt of the Gross
12 Settlement Amount, the Settlement Administrator shall distribute and pay Settlement Payment
13 checks to all Settlement Class Members, issue and mail a check to the LWDA for the LWDA
14 Penalty Amount, and make all tax payments.

15 125. **Tax Documents.** The Settlement Administrator shall be responsible for issuing and
16 mailing any necessary tax reporting forms to Settlement Class Members, the Plaintiffs, PAGA
17 Group Members, Class Counsel, and Home Depot. The Settlement Administrator shall provide a
18 declaration of payment, which will be filed with the Court and served on Class Counsel and
19 Defendant's Counsel within thirty (30) days after mailing the payments to Settlement Class
20 Members, the PAGA Group Members, the Plaintiffs, and Class Counsel.

21 126. **Uncashed Settlement Checks.** Settlement Class Members who are sent Settlement
22 Payments and PAGA Group Members who are sent PAGA Group Payments shall have one
23 hundred and twenty (120) calendar days after mailing by the Settlement Administrator to cash
24 their checks, and will be so advised of such deadline. The Settlement Administrator shall send out
25 a postcard to any Settlement Class Members and/or PAGA Group Members who have not yet
26 cashed their checks thirty (30) days before this deadline, reminding them to cash their checks. If
27 such Settlement Class Members and/or PAGA Group Members do not cash their checks or
28 replacement checks within the period required, those checks will become void and a stop payment

1 will be placed on the uncashed checks. Within thirty (30) days after the expiration date of the
2 settlement checks, the Settlement Administrator shall provide to Class Counsel and Defendant's
3 Counsel a verification/declaration signed under penalty of perjury that it had mailed the Settlement
4 Payment and PAGA Group Payment checks and replacement checks to the Settlement Class
5 Members and/or PAGA Group Members, but that the checks were uncashed within the required
6 timeframe. Replacement checks will be issued upon request until thirty (30) days after mailing of
7 the reminder postcards to Settlement Class Members and PAGA Group Members. Settlement
8 Class Members and PAGA Group Members shall have sixty (60) days to cash such replacement
9 checks at which point they will be null and void. Any unclaimed amounts remaining ninety (90)
10 days after mailing of the replacement postcards will be sent to California's unclaimed property
11 fund. Such submission shall be made within one hundred and twenty (120) days following mailing
12 of the reminder postcards.

13 **VIII. RELEASE BY SETTLEMENT CLASS MEMBERS**

14 127. **Settlement Class Released Claims.** Settlement Class Members for themselves,
15 their respective former and present spouses, representatives, agents, attorneys (including Class
16 Counsel), heirs, administrators, successors, and assigns, release and discharge Releasees from all
17 Released Class Claims that accrued prior to Preliminary Approval.

18 128. **PAGA Released Claims.** Named Plaintiffs and the PAGA Group Members for
19 themselves, their respective former and present spouses, representatives, agents, attorneys
20 (including Class Counsel), heirs, administrators, successors, and assigns, release and discharge
21 Releasees from all PAGA Released Claims that accrued prior to Preliminary Approval.

22 129. **Release by Named Plaintiffs on Behalf of the LWDA (and State of California):**
23 In their capacity as a private attorneys general, Named Plaintiffs acting on behalf of themselves
24 and as proxy or agent of the LWDA and State of California, release and discharge Releasees from
25 all PAGA Released Claims. Upon approval, Named Plaintiffs, the LWDA, the State of California,
26 and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA
27 and/or the State shall be barred from asserting any of the PAGA Released Claims in any future
28 litigation, arbitration, or other legal forum. Any party to this Agreement may use the Agreement to

1 assert that this Agreement and the Judgment bars or limits any pending or later-filed action
2 asserting any of the PAGA Released Claims of the PAGA Group Members against any of the
3 Releasees. The provisions of this paragraph apply regardless of whether Plaintiffs and/or the
4 PAGA Group Members cash their checks for the PAGA Group Member Settlement Amounts.

5 130. **Named Plaintiffs' General Release.** As of the Settlement Effective Date, in
6 consideration of the mutual covenants, Named Plaintiffs, for themselves, their respective former
7 and present spouses, representatives, agents, attorneys (including Class Counsel), heirs,
8 administrators, successors, and assigns, generally release and discharge Releasees from any and all
9 claims, liabilities, and causes of action of every nature, kind, and description, in law, equity, or
10 otherwise, which have arisen, occurred, or existed at any time prior to the Settlement Effective
11 Date, including but not limited to, all claims, liabilities, and causes of action arising out of or
12 relating to Plaintiffs' employment with Home Depot or the cessation of that employment, claims
13 for wrongful discharge, breach of contract, breach of the covenant of good faith and fair dealing,
14 fraud, violation of public policy, defamation, discrimination, physical injury, emotional distress,
15 claims under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in
16 Employment Act, the Americans With Disabilities Act, the Federal Rehabilitation Act, the Family
17 and Medical Leave Act, the California Fair Employment and Housing Act, the Equal Pay Act of
18 1963, the California Family Rights Act, the provisions of the California Labor Code (including all
19 claims for wages, hours, conditions of work, pay, and benefits), the Fair Labor Standards Act, and
20 any other federal, state, or local laws and regulations relating to employment, conditions of
21 employment (including wage and hour laws), and/or employment discrimination. Named Plaintiffs
22 each acknowledge that they have not made any claims or allegations related to discrimination,
23 retaliation, or harassment, including sexual harassment, or sexual abuse, and none of the payments
24 set forth as consideration in this Agreement are related to such discrimination, retaliation, or
25 harassment, including sexual harassment or sexual abuse. The release in this paragraph does not
26 extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
27 unemployment benefits, disability benefits, social security benefits, or workers' compensation
28 benefits.

1 131. **Named Plaintiffs' Release of Unknown Claims.** Named Plaintiffs acknowledge
2 that they may discover facts or law different from, or in addition to, the facts or law that they now
3 know or believe to be true, but agree, nonetheless, that the General Release shall be and remain
4 effective in all respects, notwithstanding such different or additional facts or Named Plaintiffs'
5 discovery of them. For purposes of the General Release, Named Plaintiffs expressly waive and
6 relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
7 which reads

8 **A general release does not extend to claims that the creditor or releasing**
9 **party does not know or suspect to exist in his or her favor at the time of**
10 **executing the release and that, if known by him or her, would have**
11 **materially affected his or her settlement with the debtor or released party.**

12 132. **Exclusion of Specific Lawsuits.**

13 For the avoidance of doubt, the above Releases do not release Home Depot from the claims
14 asserted in *Henry v. Home Depot USA, Inc.*, Alameda Superior Court Case No. RG14741264 or
15 *Bell v. Home Depot USA, Inc.*, Sacramento Superior Court Case No. 34-2012-0012821.
16 Notwithstanding, to the extent permitted by law, this Settlement is intended to have preclusive
17 effect on PAGA claims in these excluded cases to the extent the PAGA penalty claims in those
18 cases are predicated on the same Labor Code violations and cover the same pay period as those
19 included in the PAGA Released Claims here.

20 **IX. DUTIES OF THE PARTIES**

21 133. **CAFA Notice.** The Settlement Administrator shall give any required notice(s)
22 pursuant to the U.S. Class Action Fairness Act of 2005.

23 134. **LWDA Notice.** Class Counsel shall submit this Agreement to the LWDA in
24 accordance with the applicable provisions of the PAGA.

25 135. **Preliminary Approval.** Class Counsel shall prepare a draft motion for Preliminary
26 Approval of this Settlement Agreement and shall provide such draft to Home Depot's Counsel for
27 review and comment seven (7) days prior to filing the motion. The motion shall seek an order that
28 includes the following:

- a. Preliminarily approving the Settlement Agreement;

- b. Approving the PAGA Settlement;
- c. Approving as to form and content the proposed Settlement Notice Documents;
- d. Directing the mailing of the Settlement Notice Documents by first class mail to Class Members;
- e. Confirming Named Plaintiffs and Plaintiffs' Counsel as representatives of the Settlement Class Members;
- f. Preliminarily approving settlement administration services to be provided by the Settlement Administrator;
- g. Preliminarily approving the proposed Service Enhancement payments to Named Plaintiffs as Class Representatives;
- h. Preliminarily approving the application for payment of reasonable attorneys' fees and costs to Class Counsel;
- i. Scheduling a Final Approval Hearing.

136. **Dismissal of Other Lawsuits.** No less than five (5) court days after the Settlement Effective Date, Class Counsel and Named Plaintiffs will seek dismissal of the UCL Action with prejudice.

137. **Cooperation.** The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to opt out of or object to the Settlement Agreement in every way necessary and appropriate to assure effective communication to individual Class Members of information concerning their rights and obligations under this Settlement Agreement. However, the Parties agree not to encourage any Class Members to opt out of the Settlement Agreement. Further, no Party shall be compelled or required to waive the timing and notice requirements contained in this Agreement.

138. **Final Approval.** Class Counsel shall provide the Court at least five business (5) days prior to the Final Approval Hearing a declaration by the Settlement Administrator of due diligence and proof of mailing of the Settlement Notice Documents required to be mailed to Class

Members by this Settlement Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

X. DUTIES OF THE PARTIES AFTER PRELIMINARY APPROVAL

139. Class Counsel shall prepare and file a Motion for Attorneys' Fees, Costs, and Incentive Awards in accordance with the requirements set forth in *In re Mercury Interactive Corp. Sec. Litig.* ("*In re: Mercury*"), 618 F.3d 988, 990 (9th Cir. 2010). For purposes of this case, the Parties agree that the motion for attorneys' fees and costs must be filed no later than fourteen (14) days prior to the deadline for submitting an objection or opt-out to be in compliance with *In re: Mercury* and Federal Rule of Civil Procedure 26(h). The Settlement Administrator shall publish the motion for attorneys' fees and costs on the class website within two (2) days of it being filed with the Court.

140. Class Counsel shall prepare and file a Motion for Final Approval of the Settlement Agreement, and shall use its best efforts to provide Home Depot the opportunity to review the brief seven (7) days before filing. The Parties will submit a proposed Final Approval Order, attached as Exhibit B, which shall include the following findings and orders:

- a. Approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing that its terms and provisions be carried out;
- b. Releasing and extinguishing all claims as provided by this Agreement including Released Class Claims, PAGA Released Claims, release by Plaintiffs on behalf of the LWDA and the State of California, and the General Release;
- c. Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement Agreement and the Court's orders; and
- d. Providing the names of any Class Members who are not Settlement Class Members.

1 141. Following entry of the Court's Final Approval Order, the Parties will each act to
2 assure its timely execution and the fulfillment of all its provisions, including but not limited to the
3 following:

- 4 a. Should an appeal be taken from the Final Approval Order by anyone
5 objecting to the Settlement, all Parties will support the approval order on
6 appeal;
- 7 b. Class Counsel and Defendant's Counsel will assist the Settlement
8 Administrator as needed or requested in the process of identifying and
9 locating Settlement Class Members and PAGA Group Members entitled to
10 payments and assuring delivery of such payments;
- 11 c. Class Counsel and Defendant's Counsel will assist the Settlement
12 Administrator as needed or requested in responding to late requests for
13 payments and the fair administration of that payment;
- 14 d. Class Counsel and Defendant's Counsel will cooperate with each other and
15 assist the Settlement Administrator as needed;
- 16 e. The Parties and Class Counsel will certify to the Court completion of all
17 payments required to be made by this Settlement Agreement.

18 **XI. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT**

19 142. The schedule for notice, approval, and payment procedures carrying out this
20 Settlement Agreement is set forth below. The schedule may be modified depending on whether
21 and when the Court grants necessary approvals and orders notice to the class and sets further
22 hearings. In the event of such modification, the Parties shall cooperate in order to complete the
23 settlement approval procedures as expeditiously as reasonably practicable.

24 7 days prior to 25 filing preliminary approval motion	Plaintiffs to send draft Motion for Preliminary Approval to Defendants	¶135
26 30 days after 27 preliminary approval.	Defendant to provide to the Settlement Administrator information in electronic format regarding Class Members, including name(s), last known residence addresses, Social Security numbers, total Closing Shifts worked, total 28 number of Shifts worked as Class Members during the	¶ 104

1		Class Period, PAGA Pay Periods, and whether the Class Member is also a Rounding Claimant.	
2			
3	At least 15 business days prior to mailing Settlement Notice Documents	The Settlement Administrator shall provide Parties with a report listing the estimated Settlement Payments, shifts worked during the Class Period, Closing Shifts worked, PAGA Pay Periods worked, and whether the Class Member is also a Rounding Claimant, but shall not distribute this list with names or addresses to Plaintiffs' Counsel.	¶ 107
4			
5			
6	30 days after receipt of class data from Defendant	Settlement Administrator to complete address updates, and mail the Settlement Notice Documents.	¶ 107
7			
8			
9	7 days before filing final approval and fees motion(s)	Class Counsel shall prepare and file a Motion for Final Approval of the Settlement Agreement, and shall use its best efforts to provide Home Depot the opportunity to review the brief	¶ 140
10			
11	No later than 14 days prior to the deadline for submitting an objection or opt-out	The motion for attorneys' fees and costs must be filed by Class Counsel.	¶ 139
12			
13			
14			
15	Within 2 days of motion for attorneys' fees being filed with the Court.	The Settlement Administrator shall publish the motion for attorneys' fees and costs on the class website	¶ 139
16			
17			
18	60 days after mailing Settlement Notice Documents.	Last day for Class Members to submit Requests for Exclusion or Object to the Settlement Agreement. PAGA Group Members cannot object to or exclude themselves from the PAGA component. If the 60th day falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday.	¶¶ 70, 99, 109
19			
20			
21	5 business days prior to the Final Approval Hearing.	Plaintiffs' Counsel to provide to the Court a declaration by the Settlement Administrator of due diligence and proof of mailings of the Settlement Notice Documents, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.	¶ 138
22			
23			
24	1 business day prior to the Final Approval Hearing.	Last day to rescind Requests for Exclusion.	¶ 98
25			
26			
27	30 days after the Court's Final Approval Order	Settlement Effective Date if no objections, or objections withdrawn, and no appeal.	¶ 79
28			

1	5 court days after the Settlement Effective Date.	The Parties to stipulate to lift the stay and dismiss the UCL Action with prejudice	¶ 87
2			¶ 136
3	21 business days after the Settlement Effective Date or 21 business days after dismissal of the UCL Action as described in Paragraph 87, whichever occurs later.	Defendant to fund the Qualified Settlement Fund.	¶ 114
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9	14 days after Settlement Effective Date.	Settlement Administrator to make the final calculation of Settlement Payments from the Net Settlement Fund to be distributed to the Settlement Class Members and provide Defendant's counsel with a report listing the amount of all payments to be made to each Settlement Class Member and/or PAGA Group Member.	¶ 123
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11			
12			
13	No later than seven (7) days after the date the Qualified Settlement Fund is funded.	Settlement Administrator to distribute and pay Service Enhancements, Class Counsel attorney's fees and costs approved by the Court.	¶ 120
14			
15			
16	No later than twenty business (20) days after the date the Qualified Settlement Fund is funded.	Settlement Administrator to distribute and pay Settlement Payments, and the LWDA Penalty Amount.	¶ 124
17			
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19			
20	30 days after distribution.	Settlement Administrator to provide a declaration of payment, which will be filed with the Court and served on Class Counsel and Defendant's Counsel.	¶ 125
21			
22	120 days after mailing of check cashing reminder notice.	Unclaimed settlement payments transferred to the California Unclaimed Property Fund.	¶ 126
23			
24	30 days after expiration of all checks and replacement checks.	Settlement Administrator to provide Class Counsel and Defendant's Counsel with a verification/declaration signed under penalty of perjury that it had mailed the Settlement Payment and PAGA Group Payment checks to the Settlement Class Members and/or PAGA Group Members, the checks that were uncashed within the time specified herein, and the status of escheatment to California Unclaimed Property Fund.	¶ 126
25			
26			
27			
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1 2 3	One year after Final Approval.	Any unused funds in the Reserve Fund will be distributed to the Cy Pres Recipient.	¶ 69
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4 XII. MISCELLANEOUS

5 143. **Right to Withdraw.** Home Depot has the right to withdraw from the Settlement
6 Agreement if: (a) more than 10% of Class Members exclude themselves from the Settlement
7 Agreement; (b) the Settlement Agreement is construed in such a fashion that Home Depot is
8 required to pay more than the Gross Settlement Amount, other than as set forth in Paragraph 97;
9 (c) the Court does not approve any part of the PAGA Settlement after the Parties' good faith
10 efforts to address any concerns raised by the LWDA and/or the Court; (d) the Court does not
11 approve the release of claims as provided by this Agreement, including the Released Class Claims,
12 PAGA Released Claims, release by Named Plaintiffs on behalf of the LWDA and the State of
13 California, and the General Release; (e) the UCL Action is not dismissed in full and with
14 prejudice; (f) Named Plaintiffs or their counsel materially breach this Settlement Agreement; or
15 (g) the LWDA or any other state or government agency successfully intervenes in the action
16 and/or commences an enforcement action. Home Depot will work with Plaintiffs' Counsel in good
17 faith to appropriately revise the Settlement Agreement if the Court requires non-material changes.
18 Home Depot must provide Plaintiffs' Counsel with notice of its intent to withdraw within fifteen
19 (15) business days after receiving notice that the triggering event has occurred. In the event of
20 Home Depot's withdrawal, Home Depot will pay the costs already incurred by the Settlement
21 Administrator. This Court shall have jurisdiction concerning the Right to Withdraw as set forth
22 herein.

23 144. **Consequence of Withdrawal.** If Home Depot exercises its right to withdraw from
24 the Settlement Agreement, this Settlement Agreement and any related settlement documents will
25 be null and void, other than the confidentiality and non-disclosure provisions of Paragraphs 105,
26 146 and 147, and the non-admission provisions in Paragraph 89. In such an event, neither this
27 Settlement Agreement, nor the settlement documents, nor the negotiations leading to the
28 Settlement Agreement may be used as evidence for any purpose, and Home Depot shall retain the

1 right to challenge all claims and allegations in the action, to assert all applicable defenses, and to
2 dispute the propriety of class certification on all applicable grounds.

3 145. **Modification.** The Court may change, alter, or modify the non-material terms of
4 this Settlement Agreement as needed to enforce its material terms (which include the total amount
5 paid by Defendant, the class definition and/or the scope of the releases). Any changes agreed to by
6 the Parties must be in writing and signed by counsel for the Parties hereto, and approved by the
7 Court. This Settlement Agreement may not be discharged except by performance in accordance
8 with its terms, as interpreted or amended by the Court or by a writing signed by the Parties.

9 146. **Confidentiality.** Names of Settlement Class Members and their allocation amounts
10 shall be kept strictly confidential by the Settlement Administrator, who will not release such
11 information to Class Counsel and will only file such information under seal if necessary. The
12 Settlement Administrator may share sufficient individual data with Class Counsel to help resolve
13 individual Class Members' questions and issues regarding the distribution of Settlement
14 Payments, should they arise. Class Counsel agrees that any information they receive or have
15 received in connection with this Settlement Agreement may be used for purposes of the Action
16 only and may not be used for any other purpose or in any other action or proceeding. This
17 confidentiality provision will survive regardless of whether the other terms of this Settlement
18 Agreement are voided.

19 147. **No Publicity.** Plaintiffs and Class Counsel agree not to publicize or publicly
20 disclose the terms of this settlement except as necessary on the Settlement Administrator's
21 website, in court papers to effectuate the terms of the settlement, or if required by legal process.
22 Named Plaintiffs and Class Counsel agree that they shall not issue a press release, hold a press
23 conference, publish information about the settlement on any website other than the Settlement
24 Administrator's website, over social media, or otherwise publicize the settlement. Named
25 Plaintiffs and Class Counsel agree not to respond to press inquiries except to refer reporters to the
26 papers filed with the Court. Plaintiffs and Class Counsel agree not to publicize the Gross
27 Settlement Amount, Net Settlement Fund or any Settlement Payment(s), except as otherwise
28 required by this Settlement Agreement or the Court. No expert witness or consultant shall be

1 permitted to publish any documents or information pertaining to this case in any way unless
2 otherwise already publicly-available. This no publicity provision will survive regardless of
3 whether the other terms of this Settlement Agreement are voided.

4 148. **Returns and/or Destruction of Confidential Settlement Materials.** Plaintiffs and
5 Class Counsel agree to return, or at Home Depot's option destroy, all confidential documents
6 produced to them for settlement purposes in this action after the Settlement Administrator submits
7 the final declaration of distributions.

8 149. **Authority to Enter Into Settlement.** The signatories represent and warrant that
9 they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms
10 and conditions of this Agreement.

11 150. **Service.** Unless otherwise specifically provided, all notices, demands, or other
12 communications given shall be in writing and shall be sent by both email and United States mail.
13 Notices will be deemed to have been duly given as of the third business day after mailing by
14 United States registered or certified mail addressed as follows:

15 To Plaintiffs' Counsel:

16 SETAREH LAW GROUP
17 Shaun Setareh
18 9665 Wilshire Boulevard, Suite 430
19 Beverly Hills, California 90212
20 shaun@setarehlaw.com

21 MARLIN & SALTZMAN, LLP
22 Alan S. Lazar
23 Cody R. Kennedy
24 Karen I. Gold
25 Marissa Mayhood
26 29800 Agoura Road, Suite 210
27 Agoura Hills, California 91301
28 alazar@marlinsaltzman.com
ckennedy@marlinsaltzman.com
kgold@marlinsaltzman.com
mmayhood@marlinsaltzman.com

25 To Defendant's Counsel:

26 QUINN EMANUEL URQUHART & SULLIVAN, LLP
27 Shon Morgan
28 John W. Baumann
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-2543

shonmorgan@quinnemanuel.com
jackbaumann@quinnemanuel.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party shall notify all other Parties of said change in writing.

151. **Captions and Titles.** Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference. Headings do not define, limit, extend, or describe the scope of this Settlement Agreement or any Agreement provision. Each term of this Settlement Agreement is contractual and not merely a recital.

152. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties. Neither party shall be considered the “drafter” of the Settlement Agreement for purposes of having terms construed against that party, and this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Settlement Agreement.

153. **Extensions of Time.** If a Party or the Settlement Administrator cannot reasonably comply with an obligation under this Settlement Agreement by the deadline applicable to that obligation, the Parties may stipulate to an extension of the time period. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

154. **Governing Law.** The rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of California, without regard to principles of conflict of laws.

155. **No Impact on Benefit Plans.** Neither the settlement nor any amounts paid under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Releasees. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Releasees’ sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or prospectively, as salary, earnings, wages, or any other form of compensation for the purposes of

1 any Releasees' benefit plan, policy, or bonus program. Releasees retain the right to modify the
2 language of Releasees' benefit plans, policies and bonus programs to effect this intent, and to
3 make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours
4 worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable
5 plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any
6 other purpose, and that additional contributions or benefits are not required by this Settlement
7 Agreement.

8 156. **Integration.** This Settlement Agreement, along with attached exhibits, contains the
9 entire agreement between the Parties relating to the settlement, and no prior or contemporaneous
10 agreements, understandings, representations, or statements, whether oral or written and whether by
11 a Party or such Party's legal counsel, shall survive execution of this Settlement Agreement. No
12 rights created by this Agreement may be waived except in writing.

13 157. **No Prior Assignments.** This Settlement Agreement shall be binding upon and
14 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, and
15 successors. The Parties represent, covenant, and warrant that they have not directly or indirectly,
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
17 entity any portion of any liability, claim, demand, action, cause of action, or rights released or
18 discharged by this Agreement.

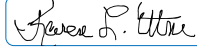
19 158. **Class Member Signatories.** It is agreed that because the members of the Class are
20 so numerous, it is impossible or impractical to have each member of the Class execute this
21 Settlement Agreement. The Settlement Notice Documents attached hereto will advise all Class
22 Members of the binding nature of the releases contained in this Agreement and such shall have the
23 same force and effect as if this Settlement Agreement were executed by each member of the Class.

24 159. **Counterparts.** This Settlement Agreement may be executed in counterparts with
25 signatures transmitted by facsimile or as an electronic image of the original signature. When each
26 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
27 original, and, when taken together with other signed counterparts, shall constitute one Settlement
28

Agreement, which shall be binding upon and effective as to all Parties. An electronic signature shall have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

SO AGREED:



The Estate of John Utne Through His Successor in Interest Karen Utne

DATED: June 16, 2023



Plaintiff, Alfred R. Pinto

DATED: June 20, 2023

HOME DEPOT U.S.A., INC.

DATED: _____, 2023

By: Teresa Wynn Roseborough
Its: Executive Vice President – General Counsel & Corporate Secretary

APPROVED AS TO FORM:

DATED: _____, 2023

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Shon Morgan
William Price
Duane Lyons
Joseph C. Sarles
John W. Baumann
Attorneys for Defendant Home Depot U.S.A., Inc.

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DATED: 6-16, 2023

SETAREH LAW GROUP



Shaun Setareh
Thomas Segal
Farrah Grant
Tyson J. Gibb
Attorneys for Plaintiffs

DATED: _____, 2023

MARLIN & SALTZMAN

Alan S. Lazar
Cody R. Kennedy
Karen I. Gold
Marissa A. Mayhood
Attorneys for Plaintiffs

1 Agreement, which shall be binding upon and effective as to all Parties. An electronic signature
2 shall have the same force and effect as the original signature.

3 **READ CAREFULLY BEFORE SIGNING**

4 SO AGREED:

The Estate of John Utne Through His Successor in
Interest Karen Utne

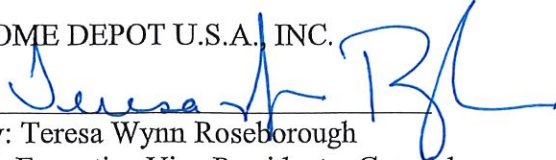
6 DATED: _____, 2023

Plaintiff, Alfred R. Pinto

8 DATED: _____, 2023

HOME DEPOT U.S.A., INC.

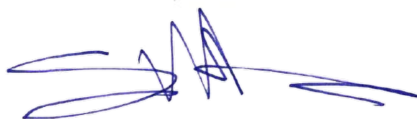
10 DATED: June 19, 2023

By: 
Teresa Wynn Roseborough
Its: Executive Vice President – General
Counsel & Corporate Secretary

13 **APPROVED AS TO FORM:**

14 DATED: June 20, 2023

QUINN EMANUEL URQUHART &
SULLIVAN, LLP



Shon Morgan
William Price
Duane Lyons
Joseph C. Sarles
John W. Baumann
Attorneys for Defendant Home Depot U.S.A., Inc.

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DATED: _____, 2023

SETAREH LAW GROUP

Shaun Setareh
Thomas Segal
Farrah Grant
Tyson J. Gibb
Attorneys for Plaintiffs

DATED: June 20, 2023

MARLIN & SALTZMAN


Alan S. Lazar
Cody R. Kennedy
Karen I. Gold
Marissa A. Mayhood
Attorneys for Plaintiffs