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12 Attorneys for Plaintiff LI FAN,
13 individually and on behalf of all others similarly situated

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF MADERA**

17 LI FAN, an individual, and KENNETH
18 CHIARITO, an individual, and on behalf of all
19 others similarly situated,

20 Plaintiffs,

21 v.

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

24 Defendant.
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Case No. MCV084871

Assigned to The Honorable Brian W. Enos,
Dept. 45

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: January 13, 2025
Time: 8:30 AM
Dept.: 45

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1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff LI FAN (hereinafter referred to as “Plaintiff” or “Class Representative”). I submit this declaration in support of the Memorandum Of Points And Authorities In Support Of Motion For Preliminary Approval Of Class Action Settlement. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.
2. Attached hereto as **Exhibit 1** is a true and correct copy of the executed Joint Stipulation of Class Action Settlement and Release of Claims, (“Settlement Agreement”), which the Parties ask the Court to approve. Attached to the Settlement Agreement as **Exhibit A is the Notice Of Class Action Settlement (“Class Notice”)**.
3. On March 29, 2021, Fan sent the LWDA notice, via online filing, of his intent to file an action against Home Depot to seek civil penalties under PAGA.
4. On March 30, 2021, Fan filed the Li Fan Class Action in Madera County Superior Court, Case No. MCV084871.
5. On July 16, 2021, Fan filed the Li Fan PAGA Action in Madera County Superior Court, Case No. MCV085736.
6. On September 9, 2021, Home Depot removed the *Li Fan* Class Action to the United States District Court for the Eastern District of California, Case No. 1:21-cv-01355-WBS-KJN.
7. On November 16, 2022, after briefing and oral argument on Defendant’s Motion to Partially Dismiss the Action in the Li Fan Class Action, the Court issued its Order granting Defendant’s motion and dismissed the Fourth Cause of Action for violations of California’s Unfair Competition Law without prejudice and without leave to amend.
8. The Chiarito and Fan actions allege that Defendant violated various wage-and-hour laws, including: (a) failure to pay all regular wages including overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay at the

1 regular rate of pay in lieu thereof; (d) failure to provide complete, accurate or properly formatted
2 wage statements; (e) failure to maintain complete and accurate payroll records; (f) failure to timely
3 pay wages during employment; (g) failure to reimburse business expenses; (h) waiting time
4 penalties; (i) unfair business practices that could have been premised on the preceding claims; and
5 (j) penalties pursuant to the California Private Attorneys General Act.

6 9. In preparation for the mediations, Defendant provided Class Counsel with time and
7 payroll records for approximately 10% of Class Members, and relevant policies during the Class
8 Period including policies relating to Covid health checks, policies relating to meal period and rest
9 periods, and time keeping policies.

10 10. On November 28, 2023, Home Depot and Fan attended a full-day mediation before
11 mediator Louis Marlin. The matters did not settle during mediation. However, settlement
12 negotiations continued for the next two months, and included additional substantive briefing of the
13 issues, settlement demands, and settlement offers.

14 11. On or around April 17, 2024, the Parties reached a settlement of the Li Fan and
15 Chiarito Actions resolving all actions together.

16 12. Defendant denies any liability or wrongdoing of any kind associated with the
17 claims asserted in Plaintiffs' Action, the Li Fan Actions, and the Chiarito Action, disputes the
18 damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than
19 settlement, Plaintiffs' claims are not appropriate for class or representative action treatment.
20 Defendant asserts that the settlement is a compromise of disputed claims. Defendant contends,
21 among other things, that, at all times, it has complied with all applicable state, federal and local
22 laws related to the Class Members' employment.

23 13. In short, Defendant provided discovery sufficient to enable the Plaintiff and Class
24 Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the
25 potential damages arising from the claims made in this case. As a result of settlement efforts, the
26 Parties agreed to settle this matter for the Gross Settlement Amount of \$3,000,000.00 for
27 approximately 116,544 class members and the terms of which are fully memorialized in the
28 Settlement Agreement. At all times, the Parties' negotiations were adversarial and non-collusive.

1 14. “Class Members” means all current and former non-exempt employees of
2 Defendant who worked in California during the Class Period [March 30, 2020 through March 31,
3 2022]. Defendant represents there are approximately 116,544 Class Members who worked during
4 the Class Period. Defendant also represents that it estimates there will be approximately
5 5,052,837 workweeks during the Class Period.

6 15. Plaintiff’s Counsel conducted a thorough investigation into the factual and legal
7 issues implicated by Plaintiff’s claims and was able to objectively assess the settlement’s
8 reasonableness. Prior to filing the action, Plaintiff contacted Plaintiff’s Counsel to discuss the
9 factual bases for pursuing their actions against Defendant for Labor Code violations. Plaintiff was
10 intimately familiar with Defendant’s labor policies and practices, and over the course of multiple
11 interviews, knowledgeably summarized those policies and practices to Plaintiff’s Counsel. During
12 those conversations, Plaintiff’s Counsel explained how the policies and practices were instituted and
13 provided valuable insight into how they gave rise to the alleged Labor Code violations. Further,
14 formal business records for Plaintiff were requested and received and reviewed.

15 16. During the course of the litigation Plaintiffs received policies, time and pay records
16 during the class period, and relevant data points. Based on these interviews with Plaintiffs, and
17 review of records and relevant policies during the relevant time period, Plaintiff’s Counsel
18 determined that there were legally sufficient grounds for pursuing the Action against Defendant and
19 in preparation for drafting the complaints, Plaintiff’s Counsel conducted their own independent
20 preliminary investigations into the factual bases for Plaintiff’s claims, which entailed, *inter alia*, a
21 careful examination of Plaintiff’s personnel files and associated records.

22 17. In summary, Plaintiff’s Counsel performed a thorough investigation into the claims
23 at issue, which included: (1) determining Plaintiff’s suitability as private attorneys general and
24 subsequent class representative through interviews, background investigations, and analyses of their
25 employment files and related records; (2) evaluating all of Plaintiff’s potential representative claims;
26 (3) researching similar wage and hour class actions as to the claims brought, the nature of the
27 positions, and the type of employer; (4) analyzing employees’ time and wage records and driver
28 manifest; (5) reviewing Defendant’s employment policies and practices; (6) researching settlements

1 in similar cases and the prior settlement in this case; (7) evaluating Plaintiff's claims and estimating
2 Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
3 participating in the mediation.

4 18. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
5 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in
6 the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
7 Members in light of all known facts and circumstances, including the risk of significant delay and
8 uncertainty associated with litigation, and various defenses asserted by Defendant.

9 19. Since the filing of the complaint, the Parties have engaged in numerous discussions
10 regarding the factual and legal issues surrounding this case. Throughout the litigation, Defendant
11 produced hundreds of thousands of lines of data and information in both electronic and pdf
12 formats, including relevant policies, handbooks, and payroll and time records for approximately
13 10% of class members. Defendant also provided Plaintiff's personnel file, and information
14 regarding the number of employees holding these positions during the relevant time period.
15 Defendant also provided substantial information concerning the total number of potential class
16 members, the payroll data at issue, and the applicable hourly rates, workweeks and pay periods,
17 and other summary data related to the alleged class. The Parties have conducted themselves in
18 informed, good faith arms-length negotiations after conducting informal discovery and exchanging
19 extensive evidence and information about the claims and defenses of this lawsuit, and engaging in
20 pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their
21 dispute.

22 20. As a result of the mediation, the Parties agreed to settle this matter for a Gross
23 Settlement Amount ("GSA") of \$3,000,000.00. Plaintiff's counsel balanced the terms of the
24 proposed Settlement against the risk of litigation and probable outcome at the class certification
25 stage, and if any Class were certified, at trial. Based on their own respective independent
26 investigations and evaluations, and after taking into account the sharply disputed factual and legal
27 issues involved in this matter, the risks attending further prosecution of the case, and the monetary
28 benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's

1 counsel is of the opinion that Settlement for the consideration and on the terms set forth in the
2 Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and
3 the Class. Counsel for the Parties investigated the applicable law as applied to the facts
4 discovered regarding the claims of Plaintiff, Defendant's defenses thereto and the damages
5 claimed by Plaintiff on behalf of the Settlement Class.

6 21. I believe that the consideration and terms set forth in the Settlement Agreement are
7 fair, reasonable, and adequate and are in the best interests of the Settlement Classes in light of all
8 known facts and circumstances, including the various defenses asserted by Defendant, and
9 numerous potential appellate issues. In addition, the prospect of a potential adverse summary
10 judgment ruling, as well as the uncertainty of class certification, the difficulties of complex
11 litigation, the lengthy process of establishing specific damages and various possible delays and
12 appeals, were also carefully considered in agreeing to the proposed Settlement. The GSA
13 includes, without limitation,: (1) attorneys' fees in the amount of \$1,000,000.00 ("Class Counsel
14 Fees") and reimbursement of reasonable litigation costs and expenses in the amount of up to
15 \$50,000.00 to Class Counsel; (2) Class Representative's incentive award to each Plaintiffs in the
16 amount of up to \$25,000.00, for a total of \$50,000.00 ("Class Representative Service Award"); (3)
17 fees and expenses of administration of the Settlement to the Settlement Administrator in an
18 amount not to exceed \$340,000.00 ("Settlement Administrator Costs"); (4) \$150,000.00 ("PAGA
19 Payment") with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net
20 Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of
21 \$37,500.00; (5) the seventy-five percent (75%) share of PAGA Penalties in the amount of
22 \$112,500.00 to the California Labor and Workforce Development Agency ("LWDA"); and the
23 remainder to of the Net Settlement Amount to the Class Members; and the remainder to of the Net
24 Settlement Amount to the Settlement Class Members. **The Entire Total Settlement Amount will**
25 **be paid to all Class Members who do not opt out of the Settlement Class, and without the**
26 **need to submit claims for payment.** After deductions, the Net Settlement Amount ("NSA") is
27 estimated to be approximately **\$1,410,000.00**. The Class Members are to be paid based on the
28 NSA on a pro rata basis based upon the weeks each class member worked in comparison to the

1 total work weeks worked by all Class Members.

2 22. Fairness of the Settlement is demonstrated by the uncertainty and risks to Plaintiff
3 involved both in not prevailing on one or more of the causes of action or theories alleged in the
4 operative Complaints and in non-certification, and if successful, Defendant dispute the ability of
5 Plaintiff to certify a class in this case. Defendant also argued it maintained lawful written policies
6 that were provided to the class members and enforced those policies. Yet, despite the defenses
7 proffered by Defendant, the proposed Settlement commits Defendant to pay each Class Member a
8 portion of the NSA. The amount to be paid to the Classes is fair, adequate and reasonable given
9 the significant risk to Plaintiff and the Class in continuing with the litigation and not prevailing on
10 their claims at class certification or at trial or not being paid anything even if trial was successful.

11 23. The Parties investigated relevant law as applied to the facts of the case, potential
12 defenses, and damages claimed by Plaintiff on behalf of himself and the Class. Discovery largely
13 focused on Plaintiff's allegations of Defendant's: failure to pay all minimum wages and overtime
14 compensation including, but not limited to; time spent working off-the-clock; failure to provide
15 and maintain complete and accurate itemized wage statements; failure to keep complete and
16 accurate payroll records; untimely payment of wages during employment and at the time of
17 termination; and unfair competition under Cal. Bus. & Prof. Code §§17200, et seq. Information
18 and data exchanges included significant sampling of Class Members' dates of employment,
19 hourly rates and time and payroll records for approximately % of the Class. The parties
20 conducted their own evaluations of the potential recoveries based on the claims alleged in the
21 Action and the defenses at play.

22 24. Although Plaintiff's Counsel believe the class claims are strong, Plaintiff's Counsel
23 also recognize that if the litigation had continued, they may well have encountered significant legal
24 and factual hurdles that could have prevented the Class from obtaining any recovery. To be sure, a
25 number of cases have found wage and hours actions to be especially amenable to class resolution.
26 However, some courts have gone the other way, finding that some of the very claims at issue here-
27 especially meal period and rest period violations-were not suitable for class adjudication because
28 they raised too many individualized issues. *See Duran v. US. Bank National Association*, 59 Cal.

1 4th 1 , 31 (2014) (reversing a verdict from a class trial); *Ali v. U.S.A. Cab Ltd.*, 176 Cal. App. 4th
2 1333, 1341 (2009) (affirming denial of certification because employees' declarations attesting to
3 having taken meal and rest periods demonstrated that individualized inquiries were required to show
4 harm); *Campbell v. Best Buy Stores, L.P.*, 2013 U.S. Dist. LEXIS 137792, at *30-41 (C.D. Cal.
5 Sept. 20, 2013) (following *Brinker* and denying certification of proposed off-the-clock and rest and
6 meal break classes due to lack of uniform policy); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist.
7 LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (denying motion to certify meal and rest period classes
8 based on employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax*
9 *NA.*, 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*,
10 249 F.R.D.580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims
11 based on the predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 64 I, 645
12 (N.D. Cal. 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.*
13 , 245 F.R.D. 453, 467-68 (S.D. Cal. 2007) (declining to certify class action because individual
14 issues predominated when different employee stations provided different practices with respect to
15 meal periods).

16 25. Some courts have denied certification even when an employer's policies are unlawful
17 on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 2013 U.S. Dist. LEXIS 7868, *35-41
18 (C.D. Cal. Jan. 17, 2013), the court denied certification even though the plaintiff submitted evidence
19 of a facially unlawful policy regarding rest breaks. The *Ordonez* court concluded that the
20 predominance and superiority elements were not met based on the employer's presentation of
21 anecdotal evidence of lawful compliance notwithstanding the unlawful policy. *Id.* at *38-40. And it
22 should be underscored that claims which are amendable to certification can be disposed of by motion
23 for summary judgment. *See Loudv. Eden Med. Ctr.*, 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D.
24 Cal. Aug. 28, 2013) (granting summary judgment on wage statement claim because plaintiff could
25 not show injury due to defects and that incorrect wage information is not willful).

26 26. As the above examples illustrate, the prospect of certifying a wage and hour action
27 is always uncertain, and the risk of being denied class certification militates in favor of settlement.
28 A denial of class certification effectively forecloses continued litigation, as neither the individual

1 nor his or her attorney will have any incentive to proceed with an individual case when such small
2 claims are at stake. *See In re Baycol Cases I & II*, 51 Cal. 4th 751, 758 (2011) (explaining that a
3 dismissal of class claims is effectively the "death knell" of the case, despite survival of individual
4 claims). In other words, for cases where individual damages are relatively small, denial of class
5 certification results in a near-complete loss for Plaintiff as well as no recovery for the employees,
6 who are shut out of the action. Thus, if the putative Class had not been certified, the value of
7 Plaintiff's case would have been reduced to a fraction of the value of this Settlement; indeed,
8 Defendant would likely have offered no money to settle the class-wide claims if certification had
9 been denied.

10 27. Finally, early resolutions save time and money that would otherwise go to litigation.
11 Parties' resources, as well as the Court's, will be further taxed by continued litigation. And if this
12 action had settled following additional litigation, the settlement amount would likely have taken into
13 account the additional costs incurred, and there may have been less available for Class Members.
14 Cost savings is one reason why California policy strongly favors early settlement. *See Nemy v.*
15 *Regents of University of California*, 3 Cal. 4th 273, 277 (1992) (explaining the high value placed on
16 settlements and observing that "[s]ettlement is perhaps most efficient the earlier the settlement
17 comes in the litigation continuum."). This concern also supports settlement.

18 28. Further, beyond the risk of an adverse ruling on the merits or certification, Class
19 Counsel considered the fact that continued litigation would likely take years and would be
20 extremely expensive given the breadth and complexity of the claims. In this case, post-trial and
21 appellate proceedings are likely to occur, which will surely drag the case far into the future even
22 with a positive trial result. When facing a distant and unsure resolution of the allegations in this
23 action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly
24 litigation in favor of more immediate benefits to the Class was a consideration favoring settlement.
25 Given these realities, it is highly likely that the future expense of this litigation, and its likely
26 duration if the settlement is not approved, would be significant and weigh heavily in favor of
27 approval of this settlement.

28 29. The GSA is well within the acceptable range of reasonableness for the claims

1 of the Settlement Class Members. During the negotiations Defendant estimated there are
2 approximately 116,5442 Class Members who worked approximately 5,052,837 Workweeks
3 during the Class Period and approximately during the PAGA Period. The crux of this case
4 surrounded the Covid health checks. The thrust of this case surrounded the health checks claim.
5 The value of the failure to pay wages was valued at approximately **\$2,995,352 to \$5,990,704**
6 assuming a 1 or 2 minute value of underpayment for Health Checks. The 1st Period of Covid
7 Health Checks occurred between March 23, 2020 to July 19, 2020. Defendant asked its
8 employees to take temperature checks at home and Defendant provided the thermometer.
9 Defendant added 1.5 minutes per day for this activity. The second period of health checks was
10 July 20, 2020 to July 11, 2021 where employees took health checks at home, answered a short
11 questionnaire. Defendant paid each employee an additional 4.1 minutes per health check.
12 Thereafter, employees did not require a health check but rather were required to go and walk by
13 the temp scanner. If these activities took longer than 4.1 minutes, Class Members were instructed
14 to notify their supervisor to pay additional time. Based upon these practices, the value of
15 approximately 1 minute added per work shift for the Class Period is reasonable. Between July 12,
16 2021 to March 26, 2022, Defendant no longer performed health checks. This number could
17 increase or decrease if these tasks were determined to take longer or a shorter period of time. For
18 certain, it could be argued Defendant overpaid for certain of these tasks.

19 30. The meal claims lacked merit as Defendant issued a modified written policy during
20 the health check period for Class Members to take their meal periods before the start of 4 hours
21 and 45 minutes instead of before the 5th hour to account for the health check time. Further,
22 records revealed a 97% compliance rate and Defendant paid premiums. Defendant also
23 subsequently issued payments to its employees to true up the paid premiums at a later date during
24 the related *Barragan* action.

25 31. Additionally, case law supports that if the pay stubs themselves are accurate, there
26 is no claim for pay stub violations.

27 32. The failure to timely pay wages could claims could potentially be valued at **39**
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1 million given a 10% chance of success; the PAGA claim was valued at approximately 22
2 million and the LC 226 claim was valued at \$6.4 to \$12.8 million at a rate of 5% to 10% possible
3 chance of recovery given the facially apparent wage statements.. However, I believe that an award
4 of these penalties for failure to timely pay wages, failure to provide accurate itemized wage
5 statements, and PAGA penalties stemming from the health checks claims would be very unlikely
6 to exceed the amount of the underlying alleged unpaid wages by more than double, or \$6-\$12
7 million. It is very possible these penalties would have been \$0 or close to it. Thus, taking the
8 generous assumption that Plaintiffs would recover the \$3 million in unpaid wages *and* twice that
9 amount in penalties (\$6 million) if the case proceeded through trial, I believe the highest realistic
10 outcome for the health check claims and related penalties to be approximately \$9-\$12 million.
11 For certain evidence that Defendant's payment for health checks in the first instance, the
12 modification of its meal and rest period policies to account for the time spent on health checks,
13 and the payment of premiums all support a reasonable conclusion that penalties were very unlikely
14 in this case. No doubt Defendant was in an essential business necessary to support the economy
15 during the Covid shut down.

16 33. Lastly, investigation of the seating claim revealed a lack of merit as seating was
17 provided for certain work stations such as cashiers, seating available in break areas, and other
18 locations around the stores. Further, the nature of Defendant's store operations arguably do not
19 lend themselves to sitting to perform job duties for most positions. Therefore, using an even lower
20 assessment to the seating, if successful, could potentially yield \$1 million to \$11 million.
21 However, I am of the given the nature of the operations, the seating claim would be given little to
22 no value.

23 34. As a result, the GSA of \$3,000,000.00 represents a reasonable recovery of the
24 overall potential value and risks of damages of approximately 30%. The crux of the value of this
25 case rest on the whether the payment for the covid health checks was enough to the time spent
26 undergoing these health screenings. Given Defendant's proactive position on the health checks
27 and recognizing individuals are to be paid for this activity, modifying the meal period policies,
28 support the reasonableness of the settlement. Indeed, as sated above, there is a good likelihood that

1 penalties relating to these claims could result in zero value given the time in the world and given
2 Defendant's modified activities during this time. As a result, the proposed GSA is within the
3 "ballpark of reasonableness" and should be approved. Counsel for Plaintiffs believe that this is a
4 fair and reasonable Settlement in light of the complexities of the case, the state of the law and
5 uncertainties of class certification and litigation, the policies and practices Defendant has had in
6 place or implemented during the purported liability period, and the benefit to be recovered for the
7 Class. Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable and is
8 in the best interests of the Settlement Class, and should be preliminarily approved.

9 35. Based on the estimated Net Settlement Amount of \$1,410,000.00 provides on
10 average each Settlement Class Member with approximately **\$12.15** per Class Member. The
11 highest amount a Settlement Class Member will receive is approximately **\$372.23** based upon
12 \$3.58 per workweek multiplied by approximately 104 possible workweeks a Class Member could
13 work during the Class Period. The lowest payment is estimated to be approximately **\$3.58** for
14 someone who worked only one workweek. The PAGA allocation provides for an average recover
15 of approximately \$3.10 per aggrieved employee. To the extent any amount for Attorneys' Fees,
16 Costs, Claims Administration Costs or Incentives are not awarded, the difference in those amounts
17 will be added to the NSA. This is a guaranteed amount of money paid to Settlement Class
18 Members now, rather than the continued risk of further litigation and receiving no money
19 sometime in the far future and after trial and appeals.

20 36. The Class Representative Fan has provided extensive supporting documents and
21 assisted Class Counsel in developing information necessary to litigate and settle this case.
22 Plaintiff also conducted record review and consultation with counsel in preparation for mediation,
23 and to assist in evaluating and proving the claims. The settlement provides for a Payment to be
24 paid to the Class Representative in the amount of \$25,000.00 subject to Court approval. The
25 purpose is to compensate the Class Representatives an additional incentive payment, taking into
26 consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable
27 information and negotiate and litigate this matter on behalf of all Settlement Class Members who
28 otherwise, would probably not file their own individual claims to recover what may be relatively

1 low damages. Further, the Payment of \$25,000.00 as an Class Representative Service Award to
2 each Class Representative is a very fair and justified as part of the Settlement based on the risks
3 Plaintiff has taken and benefits conferred upon the Settlement Class. Further, Mr. Fan was
4 terminated during this time for alleged cause which Plaintiff Fan disputes.

5 37. Class certification, as requested by the Parties for the purposes of the settlement
6 only, should be granted because Plaintiff allege that the proposed Settlement Class Members'
7 claims all stem from the same alleged conduct, i.e., that Defendant violated California law because
8 of their alleged: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b)
9 failure to provide proper meal periods, and to properly provide premium; pay at the regular rate of
10 pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay
11 at the regular rate of pay in lieu thereof; (d) failure to provide complete, accurate or properly
12 formatted wage statements; (e) failure to maintain complete and accurate payroll records; (f)
13 failure to timely pay wages during employment; (g) failure to reimburse business expenses; (h)
14 waiting time penalties; (i) unfair business practices that could have been premised on the
15 preceding claims; and (j) penalties pursuant to the California Private Attorneys General Act.
16 Under these specific circumstances, the commonality requirement for class certification is
17 satisfied. The typicality requirement for certification is also met as it is alleged that the Class
18 Representatives and the proposed Settlement Class were subjected to similar violations based
19 upon similar conduct, policies and practices of the Defendant regardless of their duties.

20 38. The adequacy requirement for certification is also met. The Class Representative
21 and Class Counsel have prosecuted this action vigorously on behalf of the Settlement Class. The
22 Class Representative will receive a reasonable award for the time and effort spent assisting Class
23 counsel with factual issues surrounding the case. Other than this specific payment to the Class
24 Representative, all of the Settlement Class Members will receive a proportionate share of the
25 NSA, as detailed above provided they do not exclude themselves. Further, all PAGA Members
26 during the PAGA Period will receive their pro rata share of PAGA Penalties. As a result, there is
27 no conflict of interest between the Class Representative and the Settlement Class Members.
28 Further, the NSA will be fairly distributed among Participating Class Members, and no

1 “settlement allocation” questions will be raised.

2 39. Common questions of law and fact predominate over individual questions and
3 class-wide treatment of this dispute is superior to individual litigation. Plaintiff alleges that the
4 proposed Settlement Classes in this case are sufficiently cohesive, since all Settlement Class
5 Members share a common nucleus of facts and potential legal remedies, and since all of the
6 Settlement Class Members and the Class Representative seek compensation for unpaid wages and
7 other civil and statutory penalties from Defendant for the allegations described in the Complaints.
8 Common questions about compensation or lack thereof for work performed by Settlement Class
9 Members and the Settlement Class Members’ potential legal remedies are identical. The
10 alternative method of resolution is individual claims for relatively small amounts of damages, but
11 individual cases would be uneconomical for potential Plaintiff because the cost of litigation dwarfs
12 potential recovery. Therefore, a class action is the preferred method of resolution.

13 40. The class notice plan here calls for the Settlement ILYM Group, Inc., to mail a
14 Notice of Class Action settlement to all known and reasonably ascertainable Settlement Class
15 Members based on Defendant’s records. Further, the Settlement Administrator will conduct a
16 skip-trace and use all reasonable efforts to locate Settlement Class Members and will re-mail all
17 returned envelopes with forwarding addresses. The notice is consistent with the class certification
18 notices approved by numerous state and federal courts, and is the best notice practicable under
19 circumstances of this case. The proposed Settlement Class Members are ascertainable because all
20 of the Settlement Class Members have worked for Defendant during the Class Periods and can be
21 identified through Defendant’s records.

22 41. The Notice also fulfills the neutrality requirement. It summarizes the proceedings
23 to date and the terms and conditions of the Settlement in an informative and coherent manner, and
24 is accurate, objective, and understandable to Settlement Class Members, as is required under
25 prevailing precedent. The Notice clearly states the Settlement does not constitute an admission of
26 liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final
27 settlement approval decision has yet to be made. The Notice also clearly instructs the Settlement
28 Class Members on how to object or exclude themselves from the Settlement. Therefore,

1 Settlement Class Members will have the option to participate or exclude themselves simply by
2 mailing a request to exclude themselves. The Settlement Class consists of non-exempt employees
3 who speak English. Thus, the Notice of Class Action is drafted in a manner that is likely to be
4 readily understood by the Settlement Class. Accordingly, the Notice complies with the standards
5 of fairness, completeness and neutrality required of a Notice of Class Action Settlement. The
6 Notice therefore is neutral, objective and understandable.

7 42. I have a great deal of experience in wage and hour class action litigation. I have
8 obtained certification of several classes, I have been approved as class counsel in many other
9 wage/hour class actions, and I am currently litigating numerous others. Although not an all
10 inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-
11 lead counsel, all of which implicated similar law and facts to those associated with this action:

12 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
13 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium
14 wages for meal period and rest periods and resultant penalties. Class Notice pending.

15 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
16 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-
17 classification of insurance claims adjusters employed by Gallagher Bassett, a third
18 party administrator (TPA) in the State of California. Certification granted. Plaintiff's
19 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds
20 fully distributed.

21 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
22 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
23 overtime and meal and rest break violations for production workers in the State of
24 California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final
25 Approval granted, no objections and funds fully distributed.

26 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
27 Wage and Hour Class Action case seeking past wages for meal and rest period
28 violations for retail employees in the State of California. Plaintiff's counsel appointed

1 co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
2 distributed.

3 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
4 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
5 rest period violations for retail employees in the State of California. Plaintiff's
6 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
7 objections and funds fully distributed.

8 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
9 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
10 wages for overtime, meal and rest break violations for driver employees in the State of
11 California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class.
12 Arbitration Award confirmed. Plaintiff's counsel, lead trial counsel and class counsel.

13 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
14 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
15 overtime, meal and rest breaks violations for production employees in the State of
16 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
17 granted, no objections and funds fully distributed.

18 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
19 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
20 wages for overtime, meal and rest break violations for production employees in the
21 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,
22 Final Approval granted, no objections and funds fully distributed.

23 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
24 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
25 rest break violations for restaurant employees in the State of California. Plaintiff's
26 counsel appointed as lead counsel. Case settled, Final Approval granted and funds
27 fully distributed.

28 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case

1 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal
2 and rest break violations for security officers in the State of California. Plaintiff's
3 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
4 objections and funds fully distributed.

5 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
6 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
7 seeking past wages for meal and rest break violations for security officers employed by
8 Defendant in the State of California. Plaintiff's counsel and co-counsel. Case settled,
9 Final Approval granted and funds fully distributed.

10 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
11 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
12 meal and rest break violations for housekeepers employed by Defendant in the State of
13 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
14 granted, no objections and funds fully distributed.

15 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
16 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
17 rest period violations for non-exempt employees employed by Defendant in the state of
18 California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has
19 petitioned the Court for Lead Counsel.

20 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
21 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
22 for field and branch employees of Defendant in the State of California. Plaintiff's
23 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

24 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
25 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
26 employees of Defendant in the State of California. Plaintiff's counsel appointed as
27 lead counsel. Case settled, Final Approval granted, no objections and funds fully
28 distributed.

1 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
2 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
3 break violations for security guards employed by Defendant in the State of California.
4 Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no
5 objections and funds fully distributed.

6 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
7 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
8 rest break violations for production employees employed by Defendant in the State of
9 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
10 granted, no objections and funds fully distributed.

11 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
12 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
13 break violations for restaurant employees employed by Defendant in the State of
14 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
15 Approval granted, no objections and funds fully distributed.

16 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
17 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
18 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
19 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
20 Approval granted, no objections and funds fully distributed.

21 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
22 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
23 break violations for retail employees employed by Defendant in the State of California.
24 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
25 objections and funds fully distributed.

26 u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
27 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
28 classification of managers employed by Defendant in the State of California.

1 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
2 objections and funds fully distributed.
3 v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
4 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
5 and rest break violations for production workers employed by Defendant in the State of
6 California. Plaintiff's counsel appointed lead counsel. Case settled; final approval
7 granted; no objections and funds fully distributed.
8 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
9 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
10 meal and rest period violations for production employees employed by Defendant in
11 the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
12 Approval granted, no objections and funds fully distributed.

13 43. The Settlement Agreement authorizes Class Counsel to seek from the Court
14 attorneys' fees not to exceed 1/3 of the settlement and reasonable costs. Any amounts not awarded
15 in fees will be added to the Net Settlement Amount—i.e., the Settlement is not dependent on the
16 Court awarding any particular amount to Class Counsel in attorneys' fees, costs, or expenses. Here,
17 the Parties' agreement to pay Class Counsel Fees of 30% of the Gross Settlement Amount is
18 reasonable. Plaintiffs' counsel along with our co counsel have borne the entire risk and cost of this
19 litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my firms
20 and co-counsel's experience and the extensive review and analysis of documents and information
21 by me and others at my firm and our co-counsel. In a complex action such as this, the proposed
22 attorneys' fees are, at the very least, on the average side of the market rate for contingency fees.

23 44. At this juncture, with the addition of more hours due to the administration of the
24 Settlement by Class Counsel, administration of the Settlement, and preparation for final approval,
25 counsel for plaintiff will provide a detailed analysis of its time in advance of the final approval
26 hearing. Plaintiff's counsel will file a motion for Class Counsel Fees to be heard concurrently
27 with the motion for final approval in accordance with the terms of the settlement agreement.

28 45. Despite the complexity of the case, Class Counsel has, through the investment of

1 substantial effort and the resources of my law firm been able to secure an outstanding settlement
2 on behalf of the Settlement Class. Plaintiff would have faced substantial legal and factual
3 obstacles in demonstrating that class certification was appropriate. Plaintiff would also have been
4 required to establish a significant amount of witness testimony, pattern and practice evidence,
5 statistical evidence, sampling evidence, expert testimony, and other evidence in order to present
6 their case both at the class certification stage and trial. Defendant vigorously contested liability,
7 the amount of claimed damages, and the propriety of class certification, and would have continued
8 to do so through trial. Accordingly, I believe the Settlement to be fair, reasonable, and adequate
9 and in the best interests of the Settlement Class. The fairness and adequacy of the Settlement is
10 confirmed by all known facts and circumstances, including the risk of significant delay and
11 uncertainty associated with litigation, the various defenses asserted by Defendant, and numerous
12 potential appellate issues.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 6, 2024 at Irvine, California.

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17 James R. Hawkins
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EXHIBIT 1

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Attorneys for Plaintiff, KENNETH CHIARITO

[Counsel for Defendant on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

Li Fan, an individual, and Kenneth Chiarito, an individual, and on behalf of all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No. MCV084871

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

[Assigned for all purposes to
The Honorable James E. Oakley, Dept. 45]

Action Filed: March 30, 2021
Trial Date: None

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HOME DEPOT U.S.A. INC.
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This Joint Stipulation of Class Action Settlement and Release of Claims (“Stipulation” or “Settlement”) is entered into by and between Plaintiff Li Fan (“Fan”) and Plaintiff Kenneth Chiarito (“Chiarito”) (together the “Plaintiffs”), individually and on behalf of all others similarly situated and the State of California, as private attorneys general, on the one hand, and defendant Home Depot U.S.A., Inc. (“Defendant” or “Home Depot”) on the other hand (collectively referred to with Plaintiffs as the “Parties”).

This Settlement shall be binding on Plaintiffs, the current and former employees they seek to represent, on Defendant, and on their respective counsel, subject to the terms and conditions definitions, recitals, and terms set forth herein and to the approval of the Court.

I. DEFINITIONS

1. Action

“Action” or “Lawsuit” is defined as the consolidated *Li Fan, et al. v. Home Depot, U.S.A., Inc., et al.*, in Madera County Superior Court (Case No. MCV084871). The Action represents the consolidation of three previously-filed actions, the *Li Fan* Actions (as defined below) and the *Chiarito* Action.

Li Fan v. Home Depot, U.S.A., Inc., et al., was originally filed in Madera County Superior Court (Case No. MCV084871), subsequently removed to the United States District Court for the Eastern District of California as Case No. 1:21-cv-01355-WBS-KJN, and was voluntarily remanded to be recommenced in the state court as the instant Action consistent with the terms of this Settlement (“*Li Fan* Class Action”).

Li Fan v. Home Depot, U.S.A., Inc., et al., was originally filed in Madera County Superior Court (Case No. MCV085736) (“*Li Fan* PAGA Action”), and will be consolidated with the *Li Fan* Class Action consistent with the terms of this Settlement (collectively, the “*Li Fan* Actions”).

Kenneth Chiarito v. Home Depot, U.S.A., Inc., et al., was originally filed in Santa Clara County Superior Court (Case No. 22CV394402), subsequently removed to the United States District Court for the Northern District of California, subsequently transferred to the Central District of California, as Case No. 2:22-cv-04662-GW-(SKx), and will be voluntarily remanded to the state court and consolidated with the Action consistent with the terms of this Settlement (the “*Chiarito*

Action”).

2. Class Counsel

“Class Counsel” means James Hawkins, APLC, and Capstone Law APC, who, subject to Court approval, shall act as counsel for the Settlement Class.

3. Class Counsel Award

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

4. Class Members

“Class Members” means all current and former non-exempt employees of Defendant who worked in California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification). Defendant has estimated that during the Class Period, there were approximately 116,544 Settlement Class Members who worked approximately 5,052,837 workweeks during that same time period.

5. Class Period

“Class Period” means the period from and including March 30, 2020 through March 31, 2022.

6. Class Representatives

“Class Representatives” means Plaintiffs Li Fan and Kenneth Chiarito.

7. Class Representative Service Awards

“Class Representative Service Awards” means the amounts that the Court authorizes to be paid to Plaintiffs, in recognition of Plaintiffs’ efforts and risks in assisting with the prosecution of the Lawsuit. The Class Representative Service Awards shall be in addition to the Plaintiffs’ Individual Settlement Payments as a Settlement Class Members.

8. Compensable Work Weeks

“Compensable Work Weeks” means the number of weeks in which Class Member(s) worked as non-exempt employees for Defendant in the State of California during the Class Period based on information from Defendant’s internal and currently available electronic timekeeping and HRIS

records.

9. Compensable Pay Periods

“Compensable Pay Periods” means the number of pay periods in which PAGA Aggrieved Employee(s) worked as non-exempt employees for Defendant in the State of California during the PAGA Period/Seating Claim PAGA Period based on information from Defendant’s internal and currently available electronic timekeeping and HRIS records.

10. Complaint

“Complaint” means the operative complaint that will be filed in Madera County Superior Court, consistent with Paragraph II(1) herein.

11. Court

“Court” means the Madera County Superior Court in the State of California.

12. Defendant

“Defendant” means Defendant Home Depot U.S.A., Inc.

13. Effective Date

“Effective Date” of the Settlement means the date on which the Court’s order granting Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the following events: (i) upon the Court issuing the Final Approval Order granting approval of this Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written objections filed prior to the Final Approval Hearing which are not thereafter withdrawn prior to the hearing, the later of the following events: (a) the day after the last day by which a notice of appeal of the order may be timely filed with an appellate court, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the appellate court’s decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the appellate court, and further review of the appellate court’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the appellate court affirms the Settlement.

1 **14. Excluded Claims**

2 “Excluded Claims” means any claims asserted in *Bell v. Home Depot U.S.A. Inc.*, Case No.
3 2:12-cv-02499-JAM-CKD (E.D. Cal.) and *Henry v. Home Depot U.S.A., Inc.*, 14-cv-04858-JST
4 (N.D. Cal.).

5 **15. Final Approval Hearing**

6 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
7 reasonableness, and adequacy of the Settlement.

8 **16. Final Approval Order**

9 “Final Approval Order” means the proposed order granting final approval of the Parties’
10 settlement and constituting a Final Judgment, in a form substantially similar to the order attached
11 hereto as **Exhibit C**.

12 **17. Final Judgment**

13 “Final Judgment” means a judgment issued by the Court approving this Agreement as binding
14 upon the Parties.

15 **18. Gross Settlement Fund**

16 “Gross Settlement Fund” means the agreed upon settlement amount totaling \$3,000,000.00
17 (Three Million Dollars and Zero Cents) to be paid by Defendant in full settlement of the Released
18 Claims, and includes without limitation the Class Counsel Award, Class Representative Service
19 Awards, Individual Settlement Payments, PAGA Settlement Payment, and Settlement Administrator
20 Costs. In no event shall Defendant be liable for more than the Gross Settlement Fund, except that
21 Defendant’s portion of payroll taxes will be paid separately and in addition to the Gross Settlement
22 Fund.

23 **19. Individual Settlement Payments**

24 “Individual Class Payment” means the amount paid from the Net Settlement Fund to a
25 Settlement Class Member, based upon his/her Compensable Work Weeks.

26 “Individual PAGA Payment” means the amount paid from the PAGA Fund to a PAGA
27 Aggrieved Employee, based upon his/her Compensable Pay Periods.

1 **20. LWDA**

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

3 **21. Net Settlement Fund**

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

7 **22. Notice of Class Action Settlement**

8 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
9 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
10 **Exhibit A**, which shall include an estimated individual settlement payment, number of Compensable
11 Work Weeks and Compensable Pay Periods worked, dates of employment, how to opt-out of the
12 settlement, and how to object to the settlement, and how to dispute the number of estimated
13 Compensable Work Weeks and Compensable Pay Periods worked.

14 **23. PAGA**

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

17 **24. PAGA Aggrieved Employees**

18 “PAGA Aggrieved Employees” means all current and former non-exempt employees of
19 Defendants who worked in California during the PAGA Period.

20 **25. PAGA Settlement Payment**

21 “PAGA Settlement Payment” means the payment made hereunder to the LWDA, PAGA
22 Aggrieved Employees, and Seating Claim PAGA Aggrieved Employees pursuant to PAGA. The
23 Parties will seek approval from the Court for a total PAGA Settlement Payment of One Hundred
24 Fifty-Thousand Dollars and Zero Cents (\$150,000.00), which shall be allocated and paid as follows:
25 75% (\$112,500) out of the Gross Settlement Amount to the California Labor and Workforce
26 Development Agency (“LWDA”) as the LWDA’s share of the settlement of civil penalties paid under
27 this Agreement pursuant to the PAGA and 25% (\$37,500) (“PAGA Fund”) paid and distributed to
28 the PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees based on the

number of Compensable Pay Periods worked as a PAGA Aggrieved Employees and/or Seating Claim PAGA Aggrieved Employees during the PAGA Period and/or Seating Claim PAGA Period. If the Court approves a different total PAGA Settlement Payment, the amount shall be allocated and paid using the same percentages.

26. PAGA Period

“PAGA Period” means the period from November 24, 2020 through March 31, 2022.

27. Parties

“Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean Plaintiffs or Defendants, individually.

28. Payment Ratio for Settlement Class Members

“Payment Ratio” means the respective Compensable Work Weeks during which an employee worked, in proportion to the aggregate number of Compensable Work Weeks worked by all Class Members.

29. Plaintiffs

“Plaintiffs” means Plaintiffs Li Fan and Kenneth Chiarito.

30. Preliminary Approval Date

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

31. Released Claims

“Released Claims” means the Released Class Claims, the Released PAGA Claims, and the Released PAGA Seating Claims together.

32. Released Class Claims

“Released Class Claims” means any and all claims, causes of action, and factual or legal theories that were alleged in the Complaint as defined in Paragraph I(9) herein, or reasonably could have been alleged based on the facts and matters contained therein during the Class Period, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium

1 pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly
2 provide premium pay at the regular rate of pay in lieu thereof; (d) failure to provide complete,
3 accurate or properly formatted wage statements; (e) failure to maintain complete and accurate payroll
4 records; (f) failure to timely pay wages during employment; (g) failure to reimburse business
5 expenses; (h) waiting time penalties; (i) unfair business practices that could have been premised on
6 the preceding claims; and (j) all related damages, penalties (except PAGA civil penalties, which are
7 subject to the separate Released PAGA Claims), interest and other amounts recoverable under said
8 claims. The period of the Released Class Claims shall extend to the limits of the Class Period. The
9 Released Class Claims do not encompass the Excluded Claims.

10 **33. Released PAGA Claims**

11 “Released PAGA Claims” means any and all claims, causes of action, and factual or legal
12 theories for PAGA civil penalties that were alleged in the Complaint as defined in Paragraph I(9)
13 herein and the PAGA Notices of the *Li Fan* Actions and the *Chiarito* Action, or reasonably could
14 have been alleged based on the facts and matters therein, during the PAGA Period, including all of
15 the following claims for PAGA civil penalties premised on: (a) failure to pay all regular wages,
16 minimum wages and overtime wages due; (b) failure to provide proper meal periods, and to properly
17 provide premium pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest
18 periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (d) failure to
19 provide complete, accurate or properly formatted wage statements; (e) failure to maintain accurate
20 payroll records; (f) failure to timely pay wages during employment; (g) failure to reimburse business
21 expenses; and (h) waiting time penalties. The period of the Released PAGA Claims shall extend to
22 the limits of the PAGA Period. Released PAGA Claims do not encompass the Excluded Claims.

23 **34. Released PAGA Seating Claims**

24 “Released PAGA Seating Claims” means any and all claims under PAGA for civil penalties
25 for failure to provide suitable seating in violation of California Wage Order 5-2001, sec. 14 (A)-(B)
26 that were alleged in the operative complaints and PAGA Notices of the *Li Fan* Actions and the
27 *Chiarito* Action or reasonably could have been alleged based on the facts and matters contained
28 therein. The period of the Released PAGA Seating Claims shall extend to the limits of the Seating

Claim PAGA Period. Released PAGA Seating Claims do not encompass the Excluded Claims.

35. Released Parties

“Released Parties” means Defendant and any of its past, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

36. Request for Exclusion

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

37. Response Deadline

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

38. Seating Claim PAGA Aggrieved Employees

“Seating Claim PAGA Aggrieved Employees” means all current and former non-exempt employees of Defendant who worked in California during the Seating Claim PAGA Period.

39. Seating Claim PAGA Period

“Seating Claim PAGA Period” means the period starting on and including December 12, 2020 through July 8, 2024.

40. Settlement

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

41. Settlement Administrator

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

1 ILYM Group, Inc. will agree to comply with Home Depot's data security protocols. In the event that
2 ILYM Group, Inc. does not agree to comply with Home Depot's data security protocols, the Parties
3 will designate another Settlement Administrator.

4 **42. Settlement Administrator Costs**

5 "Settlement Administrator Costs" means the amount to be paid to the Settlement
6 Administrator from the Gross Settlement Fund for administration of this Settlement, currently
7 estimated at \$340,000.

8 **43. Settlement Members**

9 "Settlement Members" means Class Members, PAGA Aggrieved Employees, and Seating
10 Claim PAGA Aggrieved Employees together.

11 **44. Settlement Member Information**

12 "Settlement Member Information" means information regarding Settlement Members that
13 Defendant will in good faith compile from Defendant's internal and currently available electronic
14 timekeeping and HRIS records and provide to the Settlement Administrator. To the extent possible,
15 it shall be formatted as a Microsoft Excel spreadsheet. It shall include: each Settlement Member's
16 full name; last known address; last known home telephone number; social security number; and, as
17 applicable, the number of Compensable Work Weeks worked as a Class Member during the Class
18 Period, and the number of Compensable Pay Periods worked as a PAGA Aggrieved Employee and/or
19 Seating Claim PAGA Aggrieved Employee during the PAGA Period and/or Seating Claim PAGA
20 Period.

21 **45. Settlement Class Members**

22 "Settlement Class Members" means those Class Members who did not file a valid and timely
23 Request for Exclusion pursuant to Paragraph III (11) of this Agreement.

24 **II. RECITALS**

25 **1. Amendment of Complaint**

26 To effectuate this Settlement, Plaintiffs Li Fan and Kenneth Chiarito will jointly file an
27 amended complaint in the *Li Fan* Class Action, which was filed on March 30, 2021 in the Madera
28 County Superior Court, and which will include Kenneth Chiarito as a named plaintiff and all class

1 and PAGA claims and causes of action negotiated during mediation and falling within the definition
2 of “Released Class Claims,” “Released PAGA Claims”, and “Released PAGA Seating Claims.” For
3 purposes of this Settlement only, Defendant agrees that the filing of the amended complaint relates
4 back to the filing of the original complaint in the *Li Fan* Class Action for purposes of the applicable
5 statutes of limitations for the causes of action alleged in the amended complaint. Defendant will be
6 deemed to have generally denied the allegations of the amended complaint without the need to file
7 and serve an answer thereto; and will be deemed to have preserved its right to file a Notice of
8 Removal to federal court. The Court’s approval of the Parties’ stipulation to file the amended
9 complaint is a material term of this Settlement Agreement. If the Court does not grant leave to file
10 the amended complaint, then this Settlement Agreement, and any documents generated to bring it
11 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this
12 Settlement Agreement will likewise be treated as void from the beginning.

13 **2. Class Certification.**

14 The Parties stipulate to class certification for purposes of settlement only. If the Court does
15 not grant either preliminary or final approval of this Settlement, the Parties shall work together in
16 good faith to agree on a revised settlement agreement to address the Court’s concerns. If the Parties
17 are unable to reach agreement, or the Court does not grant either preliminary or final approval of the
18 revised settlement, the Parties agree that this stipulation regarding class certification will be revoked
19 and the Parties will return to a point in litigation prior to the execution of this Agreement.

20 **3. Procedural History**

21 *Li Fan Actions*

22 On March 29, 2021, Fan sent the LWDA notice, via online filing, of her intent to file an
23 action against Home Depot to seek civil penalties under PAGA.

24 On March 30, 2021, Fan filed the *Li Fan* Class Action in Madera County Superior Court,
25 Case No. MCV084871.

26 On July 16, 2021, Fan filed the *Li Fan* PAGA Action in Madera County Superior Court, Case
27 No. MCV085736.

28 On September 9, 2021, Home Depot removed the *Li Fan* Class Action to the United States

District Court for the Eastern District of California, Case No. 1:21-cv-01355-WBS-KJN.

On November 16, 2022, after briefing and oral argument on Defendant's Motion to Partially Dismiss the Action in the *Li Fan* Class Action, the Court issued its Order granting Defendant's motion and dismissed the Fourth Cause of Action for violations of California's Unfair Competition Law without prejudice and without leave to amend.

Chiarito Action

On November 24, 2021, Chiarito sent the LWDA notice, via online filing, of his intent to file an action against Home Depot to seek civil penalties under PAGA.

On February 15, 2022, Chiarito filed the *Chiarito* Action in the Santa Clara County Superior Court, Case No. 22CV394402.

On March 21, 2022, Home Depot removed the *Chiarito* Action to the United States District Court for the Northern District of California.

On May 31, 2022, Home Depot filed a Motion to Transfer Venue, which was granted on July 2, 2022.

On or around July 11, 2022, the *Chiarito* Action was transferred to the United States District Court for the Central District of California, Case No. 2:22-cv-04662-DMG-SK.

On or around July 28, 2022, Home Depot filed a Motion to Dismiss the Sixth Cause of Action for failure to timely pay wages during employment and the associated PAGA penalties under the Eight Cause of Action, Ninth and Tenth Causes of Action of violations of California's Business and Professions Code section 17200 *et seq.* On September 12, 2022, the Court granted Home Depot's Motion to Dismiss and provided Chiarito leave to amend.

On October 27, 2022, Chiarito filed a Motion to Certify the September 12, 2022 Motion to Dismiss Order for appeal. After briefing and oral argument, the Court denied Chiarito's motion.

On December 1, 2022, Chiarito filed a First Amended Complaint adding additional allegations to the Sixth, Ninth, and Tenth Causes of Action.

On December 22, 2022, Home Depot filed a Motion to Partially Dismiss the First Amended Complaint on the same ground as its first Motion to Dismiss. On January 26, 2023, the Court granted the motion in part and dismissed the Sixth Cause of Action for failure to timely pay wages during

1 employment and the associated PAGA penalties under the Eight Cause of Action, but denied the
2 dismissal of the Ninth and Tenth Causes of Action of violations of California's Business and
3 Professions Code section 17200 *et seq.*

4 On February 8, 2023, Chiarito filed his Second Amended Complaint.

5 Again, Home Depot filed a Motion to Dismiss the Sixth Cause of Action and its associated
6 penalties under the Eight Cause of Action on March 15, 2023. On May 11, 2023, the Court granted
7 the motion and dismissed the Sixth Cause of Action and associated penalties under the Eight Cause
8 of Action with prejudice.

9 Home Depot answered the Second Amended Complaint on November 15, 2023.

10 Mediation and Settlement of the *Li Fan* and *Chiarito* Actions

11 On November 28, 2023, Home Depot and Fan attended a full-day mediation before mediator
12 Louis Marlin. The matters did not settle during mediation. However, settlement negotiations
13 continued for the next two months, and included additional substantive briefing of the issues,
14 settlement demands, and settlement offers.

15 On January 11, 2024, Home Depot and Chiarito attended a full-day mediation before
16 mediator Louis Marlin. Similarly, the matter did not settle during mediation.

17 On or around April 17, 2024, the Parties reached a settlement of the *Li Fan* and *Chiarito*
18 Actions resolving all actions together. Defendant denies any liability or wrongdoing of any kind
19 associated with the claims asserted in Plaintiffs' Action, the *Li Fan* Actions, and the *Chiarito* Action,
20 disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose
21 other than settlement, Plaintiffs' claims are not appropriate for class or representative action
22 treatment. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation,
23 no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed
24 or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted
25 in this Action. Defendant contends, among other things, that, at all times, it has complied with all
26 applicable state, federal and local laws related to the Class Members' employment.

27 The Class Representatives are represented by Class Counsel. Class Counsel conducted an
28 investigation into the facts relevant to the Action, including reviewing documents and information

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

Post-Mediation Remand of the *Li Fan* Class Action

After filing a Notice of Settlement in the *Li Fan* Class Action, Home Depot and Fan filed a joint stipulation to remand the action to state court for purposes of the settlement. On May 31, 2024, the Court remanded the *Li Fan* Class Action back to Madera County Superior Court, Case No. MCV084871.

4. Benefits of Settlement to Class Members.

Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the Class Members. Plaintiffs and Class Counsel have also taken into account Defendant's agreement to enter into a settlement that confers substantial relief upon the members of the Class. Based on the foregoing, Class Counsel have concluded that settlement, for the consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, numerous potential appellate issues, and other risks inherent in litigation.

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

2 Defendant has concluded that any further defense of this litigation would be protracted and
3 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have been
4 and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims
5 asserted by Plaintiffs and Class Members. Defendant has also taken into account the risks of further
6 litigation in reaching its decision to enter into this Settlement. Even though Defendant continues to
7 contend that it is not liable for any of the claims set forth by Plaintiffs in this Action, Defendant has
8 agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to
9 rest the claims in the Action. Defendant contends that it has complied with all applicable state,
10 federal, and local laws.

11 **6. Settlement of Disputed Claims.**

12 This Agreement is a compromise of disputed claims. Defendant contends that the Released
13 Class Claims, Released PAGA Claims, and the Released PAGA Seating Claims have no merit and
14 do not give rise to liability. Plaintiffs and Settlement Class Members have claimed and continue to
15 claim that the Released Class Claims, Released PAGA Claims, and the Released PAGA Seating
16 Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise
17 of disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no
18 action taken to carry out this Agreement, may be construed or used as an admission by or against the
19 Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in
20 this Action.

21 **III. TERMS OF AGREEMENT**

22 **1. Release as to All Settlement Class Members.**

23 As of the Effective Date, all Settlement Class Members will release the Released Parties from
24 the Released Class Claims, whether known or unknown. To be clear, the scope of this release is
25 limited to the Released Class Claims. Settlement Class Members may later discover facts or legal
26 arguments in addition to, or different from, those that they now know or currently believe to be true
27 with respect to the Released Class Claims. Regardless, the discovery of new facts or legal arguments
28 shall in no way limit the scope or definition of the Released Class Claims, and by virtue of this

1 Agreement, Plaintiffs and Settlement Class members shall be deemed to have, and by operation of
2 the final judgment approved by the Court, shall have, fully, finally, and forever settled and released
3 all of the Released Class Claims. The Parties understand and specifically agree that the scope of this
4 Release described in this Paragraph is a material part of the consideration for this Agreement, was
5 critical in justifying the agreed upon economic value of the Settlement and without it, Defendant
6 would not have agreed to the consideration provided, and is narrowly drafted and necessary to ensure
7 that Defendant is obtaining peace of mind regarding the resolution of the claims that were or could
8 have been alleged based on facts, causes of action, and legal theories contained in the Action.

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

14 **2. Release as to all PAGA Aggrieved Employees**

15 As of the Effective Date, all PAGA Aggrieved Employees will release the Released Parties
16 from the Released PAGA Claims, whether known or unknown. To be clear, the scope of this release
17 is limited to the Released PAGA Claims. PAGA Aggrieved Employees may later discover facts or
18 legal arguments in addition to, or different from, those that they now know or currently believe to be
19 true with respect to the claims, causes of action, and legal theories of the Action. Regardless, the
20 discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released
21 PAGA Claims, and by virtue of this Agreement, Plaintiffs and PAGA Aggrieved Employees shall
22 be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully,
23 finally, and forever settled and released all of the Released PAGA Claims. The Parties understand
24 and specifically agree that the scope of this Release described in this Paragraph is a material part of
25 the consideration for this Agreement, was critical in justifying the agreed upon economic value of
26 the Settlement and without it, Defendant would not have agreed to the consideration provided, and
27 is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the
28 resolution of the claims that were or could have been alleged based on facts, causes of action, and

1 legal theories contained in the Action.

2 **3. Release as to all Seating Claim PAGA Aggrieved Employees**

3 As of the Effective Date, all Seating Claim PAGA Aggrieved Employees will release the
4 Released Parties from the Released PAGA Seating Claims, whether known or unknown. To be clear,
5 the scope of this release is limited to the Released PAGA Seating Claims. Seating Claim PAGA
6 Aggrieved Employees may later discover facts or legal arguments in addition to or different from
7 those that they now know or currently believe to be true with respect to the claims, causes of action,
8 and legal theories of the Action. Regardless, the discovery of new facts or legal arguments shall in
9 no way limit the scope or definition of the Released PAGA Seating Claims, and by virtue of this
10 Agreement, Plaintiffs and Seating Claim PAGA Aggrieved Employees shall be deemed to have, and
11 by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled
12 and released all of the Released PAGA Seating Claims. The Parties understand and specifically agree
13 that the scope of this Release described in this Paragraph is a material part of the consideration for
14 this Agreement, was critical in justifying the agreed upon economic value of the Settlement and
15 without it, Defendant would not have agreed to the consideration provided, and is narrowly drafted
16 and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of the
17 claims that were or could have been alleged based on facts, causes of action, and legal theories
18 contained in the Action.

19 **4. Release of Claims by Plaintiffs**

20 As of the Effective Date, Plaintiffs, for themselves and their heirs, successors and assigns,
21 further waive, release, acquit and forever discharge the Released Parties from any and all claims,
22 actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or
23 unknown, which exist or may exist on Plaintiffs' behalf as of the date of this Agreement, including,
24 but not limited to, all of the Released Claims during the Class Period, PAGA Period, and Seating
25 Claim PAGA Period, and any and all tort claims, contract claims, wage claims, wrongful termination
26 claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
27 personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims,
28 fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other

governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 *et seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance.

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

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

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiffs expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendant.

5. Tax Liability and Medicare.

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Members are not relying on any statement or representation by the Parties in this regard. Settlement Members understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith

determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiffs warrant that they are not Medicare beneficiaries as of the date of this Agreement. As such, no conditional payments have been made by Medicare.

6. Circular 230 Disclaimer.

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

7. Preliminary Approval of Settlement.

Promptly upon execution of this Agreement, Plaintiffs will move the Court to grant preliminary approval of this Settlement, certifying the Class for settlement purposes only and setting a date for the Final Approval Hearing. All Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for preliminary approval. The proposed preliminary approval

1 order shall provide for the Notice of Class Action Settlement to be sent to Settlement Class Members
2 as specified herein.

3 **8. Settlement Administrator.**

4 Upon the Court granting preliminary approval of this Agreement, Defendant shall provide
5 the Settlement Administrator with the Settlement Member Information within ten (10) business days
6 for purposes of mailing the Notice of Class Action Settlement to the Settlement Members. No later
7 than three (3) business days after receipt of the Settlement Member Information, the Settlement
8 Administrator shall notify counsel for the Parties that the list has been received and state the number
9 of Settlement Members included in the Settlement Member Information.

10 **9. Notice by First Class U.S. Mail.**

11 Upon receipt of the Settlement Member Information, the Settlement Administrator will
12 perform a search based on the National Change of Address Database to update and correct any known
13 or identifiable address changes. Within thirty (30) calendar days of the Preliminary Approval Date,
14 the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all
15 Settlement Members via regular First-Class U.S. Mail with a return postage-paid envelope. The
16 Settlement Administrator shall exercise its best judgment to determine the current mailing address
17 for each Settlement Member, including performing a skip-trace to identify any updated addresses.
18 The address identified by the Settlement Administrator as the current mailing address shall be
19 presumed to be the best mailing address for each Settlement Member.

20 **10. Undeliverable Notices.**

21 Any Notice of Class Action Settlement returned to the Settlement Administrator as
22 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address
23 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly
24 attempt to determine a correct address by use of skip-tracing, or other search using the name, address
25 and/or social security number of the Settlement Members whose notice was undeliverable, and shall
26 then re-mail all returned, undelivered mail within five (5) calendar days of receiving notice that a
27 notice was undeliverable. Settlement Members who receive a re-mailed Notice of Class Action
28 Settlement shall have their Response Deadline extended by the longer of fourteen (14) calendar days

1 from the date of re-mailing or the remaining original Response Deadline period.

2 **11. Disputes Regarding Individual Settlement Payments.**

3 Class Members will have the opportunity, should they disagree with Defendant's records
4 regarding the weeks worked stated on their Notice of Class Action Settlement, to provide
5 documentation and/or an explanation to show contrary information by the Response Deadline. If
6 there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an
7 adjustment is warranted. The Settlement Administrator shall determine the eligibility for and the
8 amounts of any Individual Settlement Payments under the terms of this Agreement. The Settlement
9 Administrator's determination of the eligibility for and amount of any Individual Settlement Payment
10 shall be binding upon the Class Members and the Parties. In the absence of circumstances indicating
11 fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of
12 accuracy.

13 **12. Disputes Regarding Administration of Settlement.**

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

18 **13. Requests for Exclusion.**

19 The Notice of Class Action Settlement shall state that Class Members who wish to exclude
20 themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The
21 Notice will state that the Request for Exclusion: (1) must contain the name, address, and telephone
22 number of the Class Member requesting exclusion; (2) must contain a statement expressing that the
23 Class Member elects to be excluded from the Settlement; (3) must be signed by the Class Member;
24 and (4) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement
25 Administrator at the specified address or fax number. The Request for Exclusion will be deemed
26 invalid if it does not contain a Class Member's name, address, signature, and a statement requesting
27 exclusion. The date of the postmark on the return mailing envelope or fax stamp on the Request for
28 Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been

1 timely submitted. If the Settlement Administration is unsure of the validity of a Request for
2 Exclusion, it must provide a copy of the Request for Exclusion to the Parties to review and make a
3 determination as to its validity. Any Class Member who requests to be excluded from the Settlement
4 Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of
5 the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to
6 submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
7 by all terms of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is
8 approved by the Court. No later than five (5) calendar days after the Response Deadline, the
9 Settlement Administrator shall provide counsel for the Parties with a complete list of all members of
10 the Settlement Class who have timely submitted a Request for Exclusion.

11 **14. Objections.**

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

28 Notwithstanding the above, any Class Member may appear in person or by video or phone,

or otherwise, at the Final Approval to state any objections.

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

15. No Solicitation of Settlement Objections or Exclusions.

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

16. Funding and Allocation of Gross Settlement Fund.

No later than twenty-one (21) calendar days after the Effective Date, Defendant shall provide the Gross Settlement Fund to the Settlement Administrator to fund the Settlement, as set forth in this Agreement, and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement. Within five (5) calendar days of the receipt of the Gross Settlement Fund, the Settlement Administrator shall make the Settlement payments as specified in this Settlement Agreement,

17. Net Settlement Fund.

The Net Settlement Fund will be determined by the Settlement Administrator by subtracting the Court-approved Class Counsel Award, Class Representative Service Award, PAGA Settlement Payment, and Settlement Administrator Costs from the Gross Settlement Fund. The anticipated Net Settlement Fund is \$1.350,000. The Parties estimate the amount of the Net Settlement Fund as follows:

Gross Settlement Fund:	\$ 3,000,000
Class Representative Service Award:	\$ 50,000 (\$25,000 x 2)
Class Counsel Fees:	\$ 1,000,000
Class Counsel Costs:	\$ 50,000 (not to exceed)
PAGA Settlement Payment to the	\$ 150,000
LWDA	

1 Settlement Administrator Costs: \$ \$340,000

2 **Anticipated Net Settlement Fund** \$ \$1,410,000

3
4 This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross
5 Settlement Fund, which includes, the Class Counsel Award, Class Representative Service Award,
6 Individual Settlement Payments, PAGA Settlement Payment, and Settlement Administrator Costs.
7 No portion of the Gross Settlement Fund will revert to Defendant.

8 Defendant's share of payroll taxes due on the portion of the Individual Settlement Payments
9 allocated to wages, including but not limited to Defendant's FICA and FUTA contributions, shall be
10 paid separately from, and in addition to, the Gross Settlement Fund.

11 **18. Individual Settlement Payments.**

12 Individual Settlement Payments to Settlement Class Members and PAGA Aggrieved
13 Employees will be paid from the Net Settlement Fund and PAGA Fund, respectively, shall be paid
14 pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed
15 by regular First-Class U.S. Mail to each Settlement Class Member, PAGA Aggrieved Employee,
16 and/or Seating Claims PAGA Aggrieved Employee's last known mailing address within seven (7)
17 calendar days after Defendant makes the final settlement payment. All Individual Settlement
18 Payments to Settlement Class Members will be allocated as follows: twenty percent (20%) as wages
19 and eighty percent (80%) as interest and penalties. All Individual Settlement Payments to PAGA
20 Aggrieved Employees and Seating Claim PAGA Aggrieved Employees will be allocated one
21 hundred percent (100%) as penalties.

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

23 Settlement Class Members will be paid on a pro-rata basis. A Settlement Class Member's
24 Individual Settlement Payment will be based on the number of Compensable Work Weeks during
25 which s/he worked in proportion to the aggregate number of Compensable Work Weeks worked by
26 all Class Members, reduced as necessary to account for the employee's mandatory payroll
27 withholdings.

1 **20. PAGA Aggrieved Employees’ and Seating Claim PAGA Aggrieved Employees’**
2 **Individual Settlement Payment and PAGA Ratio**

3 The Parties will seek approval from the Court for a total PAGA Settlement Payment of
4 \$150,000, which shall be allocated and paid as follows: 75% (\$112,500) out of the Gross
5 Settlement Amount to the California Labor and Workforce Development Agency (“LWDA”) as the
6 LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the
7 PAGA, and 25% (\$37,500) (“PAGA Fund”) paid and distributed to the PAGA Aggrieved
8 Employees and Seating Claim PAGA Aggrieved Employees based on the number of Compensable
9 Pay Periods worked as a PAGA Aggrieved Employees and/or Seating Claim PAGA Aggrieved
10 Employees during the applicable PAGA Period and Seating Claim PAGA Period. If the Court
11 approves a different total PAGA Settlement Payment, the amount shall be allocated and paid using
12 the same percentages.

13 **21. Payment to Settlement Class Member, PAGA Aggrieved Employees, and/or**
14 **Seating Claim PAGA Aggrieved Employees**

15 Checks shall be made payable to each Settlement Class Member, PAGA Aggrieved
16 Employee, and/or Seating Claim PAGA Aggrieved Employee for payment of each Settlement Class
17 Member’s PAGA Aggrieved Employee’s, and/or Seating Claim PAGA Aggrieved Employee’s
18 Individual Settlement Payment as set forth in Paragraph III.17-20 of this Agreement.

19 **22. Unclaimed Settlement Payment(s).**

20 After one hundred and eighty (180) calendar days of the mailing of the Individual Settlement
21 Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
22 Payment checks will be transmitted 50% to the Homer Fund and 50% to Worksafe.. The Parties
23 agree that this disposition results in no “unpaid residue” under California Civil Procedure Code §
24 384, as the entire Net Settlement Fund will be paid out to Settlement Members, whether or not they
25 all cash their Individual Settlement Payment checks. Therefore, Defendant will not be required to
26 pay any interest on said amounts.

27 **23. Class Representative Service Awards.**

28 Plaintiffs will request that the Court approve Class Representative Service Awards of up to
\$25,000, each, for Chiarito and Fan. The Class Representative Service Awards shall be paid to

1 Plaintiffs from the Gross Settlement Fund within seven (7) calendar days after Defendant provides
2 the Gross Settlement Fund to the Settlement Administrator. The Settlement Administrator shall issue
3 an IRS Form 1099 – MISC to Plaintiffs for their respective Class Representative Service Award.
4 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Class
5 Representative Service Awards and shall hold harmless Defendant and Class Counsel from any claim
6 or liability for taxes, penalties, or interest arising as a result of the Class Representative Service
7 Awards. The Class Representative Service Awards shall be in addition to Plaintiffs' Individual
8 Settlement Payments as Settlement Members. Any amount requested by Plaintiffs for the Class
9 Representative Service Awards and not granted by the Court shall return to the Net Settlement Fund
10 and be distributed to Settlement Class Members as provided in this Agreement.

11 **24. Class Counsel Award.**

12 Class Counsel will request that the Court approves attorneys' fees in the amount of up to one-
13 third (1/3) of the Gross Settlement Fund. This amount is currently anticipated to be \$1,000,000. Class
14 Counsel will request that the Court approve the reimbursement of any litigation costs or expenses
15 associated with Class Counsel's prosecution of the Action from the Gross Settlement Fund not to
16 exceed \$50,000. Even in the event that the Court reduces or does not approve the requested Class
17 Counsel Award and costs, Class Counsel shall not have the right to revoke the Settlement and it will
18 remain binding. Class Counsel shall be paid any Court-approved fees and costs no later than seven
19 (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement
20 Administrator. Class Counsel shall be solely and legally responsible to pay all applicable taxes on
21 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form
22 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement
23 is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees
24 and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by
25 the Court shall return to the Net Settlement Fund and be distributed to Settlement Class Members as
26 provided in this Agreement.

27 **25. Settlement Administrator Costs.**

28 The Parties agree to allocate up to \$340,000 of the Gross Settlement Fund for Settlement

1 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
2 payments, credits and disbursements to Settlement Class Members in the manner set forth herein,
3 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
4 The Parties agree to cooperate in the Settlement administration process and to make all reasonable
5 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

6 **26. Responsibilities of the Settlement Administrator.**

7 The Settlement Administrator shall be responsible for the following: processing and mailing
8 payments to Plaintiffs, Class Counsel, Settlement Class Members, PAGA Aggrieved Employees,
9 and Seating Claim PAGA Aggrieved Employees; printing, and mailing the Notice of Class Action
10 Settlement and tax forms to the Settlement Class Members, PAGA Aggrieved Employees, and/or
11 Seating Claim PAGA Aggrieved Employees as directed by the Court; receiving and reporting the
12 requests for exclusion and objections submitted by Settlement Class Members; providing
13 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
14 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.
15 The Settlement Administrator shall keep the Parties timely apprised of the performance of all
16 Settlement Administrator responsibilities. Plaintiffs, Class Counsel, Defendant, and Defendant's
17 counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of
18 the settlement payments or development of the list of recipients of settlement payments. Defendant
19 and Defendant's counsel, Plaintiffs and Plaintiffs' counsel shall not enter into any contractual
20 relationship with the Settlement Administrator.

21 **27. Settlement Administrator Fees.**

22 The Settlement Administrator shall be paid the Settlement Administrator Costs within seven
23 (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement
24 Administrator.

25 **28. Payment to the LWDA.**

26 A total payment of \$150,000 from the Gross Settlement Fund will be allocated as the PAGA
27 Settlement Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
28 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Settlement Payment (\$112,500) will

be paid to the LWDA and the remaining twenty-five (25%) (\$37,500) shall be distributed to PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees.

29. Final Approval Hearing and Entry of Final Judgment.

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

30. Final Approval Order.

Plaintiffs will request that the Court enter, after the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit C. Plaintiffs will request that the Final Approval Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement.

31. Nullification of Settlement Agreement.

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

Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

32. Class and PAGA Period Adjustment.

It is estimated that there were approximately 116,544 Class Members who worked approximately 5,052,837 workweeks during the Class Period. If, during settlement administration, it turns out that the actual number of weeks in which Class Members performed work during the Class Period exceeds 10% above the 5,052,837 estimate (*i.e.*, 5,558,120 workweeks), the percentage above 10% shall be considered the "Overage Factor." For example, if the actual weeks worked by Class Members during the Class Period is determined to be 5,659,177 (*i.e.*, 12% above 5,052,837), the Overage Factor is 2%. In the event that the settlement administrator determines there is an Overage Factor greater or equal to 1%, Defendant shall increase the Gross Settlement Amount proportionately, or advance the end date of the Class Period, PAGA Period, and Seating Claim PAGA Period to the date on which the total number of workweeks was not in excess of 5,558,120.

33. No Effect on Employee Benefits.

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

34. No Admission by Defendant.

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

35. Exhibits and Headings.

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are

an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

36. Interim Stay of Proceedings.

The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court. Defendant will not be obligated to file an answer to the Complaint.

37. Amendment or Modification.

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

38. Entire Agreement.

Apart from the short-form Memorandum of Agreement that was executed on or about May 9, 2024, which the Parties specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering in to this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

39. Authorization to Enter into Settlement Agreement.

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court

to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

40. Binding on Successors and Assigns.

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

41. California Law Governs.

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

42. Counterparts.

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

43. Jurisdiction of the Court.

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

44. Invalidity of Any Provision.

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

45. Publicity.

Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except Settlement Members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt,

1 this section means Plaintiffs and Class Counsel agree not to issue press releases, communicate with,
2 or respond to any media or publication entities, publish information in manner or form, whether
3 printed or electronic, on any medium or otherwise communicate, whether by print, video, recording
4 or any other medium, with any person or entity concerning the Settlement, including the fact of the
5 Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be
6 contractually required to effectuate the terms of the Settlement. However, for the limited purpose of
7 allowing Plaintiffs' Counsel to prove adequacy as class counsel in other actions, or for purposes of
8 seeking court approval of comparable wage and hour settlements, Plaintiff's Counsel may disclose
9 information in the public record about the case and settlement.

10 **46. Joint Recitals Regarding Related Cases**

11 Apart from the actions entitled *Deborah Clemente v. The Home Depot USA, Inc.*, Case No.
12 2:23-cv-03640-GW-SK (C.D. Cal.), *Kenneth Chiarito v. Home Depot USA, Inc.*, Case No. 2:22-cv-
13 04662 GW-SK (C.D. Cal.), *Li Fan v. Home Depot U.S.A., Inc.*, Case No. MCV084871 (Madera
14 County Sup. Ct.), and *Li Fan v. Home Depot U.S.A., Inc.*, Case No. MCV085736 (Madera County
15 Sup. Ct.), neither the Parties nor their counsel are currently aware of any class, representative or
16 other collective action in any other California court that asserts what they consider to be claims
17 related to the Lawsuit, nor are counsel currently aware of any persons who have expressed any
18 interest in pursuing litigation or seeking any recovery against Defendant, apart from such persons
19 who have claims or causes of action against Defendant that are currently pending before a civil court
20 or arbitrator.

21 **47. Notice of Settlement to LWDA.**

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

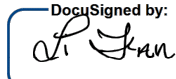
25 WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class members, and
26 Defendant has executed this Agreement as of the dates set forth below.

27 ///

28 ///

1 **IT IS SO AGREED:**

2 Dated: 9/25/2024

By: 
B327334344D444D

Li Fan

4 Dated: _____

By: _____

Kenneth Chiarito

6 Dated: _____

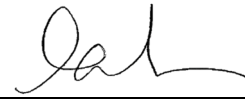
By: _____

David Steele
VP & Deputy General Counsel
THE HOME DEPOT USA, INC.

9 **APPROVED AS TO FORM:**

10 DATED: 9/25/2024, 2024

JAMES HAWKINS APLC

12 By: 

James Hawkins,
Gregory Mauro
Michael Calvo

Attorneys for Plaintiff, LI FAN

16 DATED: _____, 2024

CAPSTONE LAW APC

18 By: _____

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff, KENNETH CHIARITO

20 DATED: _____, 2024

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

22 By: _____

Evan R. Moses
Aaron H. Cole
Omar M. Aniff

Attorneys for Defendant
HOME DEPOT U.S.A. INC.

1 **IT IS SO AGREED:**

2
3 Dated: _____

By: _____

4 Li Fan

5 Dated: _____

By: _____

6 Kenneth Chiarito

7 Dated: 9/25/2024

By: 

8 David Steele

VP & Deputy General Counsel

HOME DEPOT USA, INC.

9 **APPROVED AS TO FORM:**

10
11 DATED: _____, 2024

JAMES HAWKINS APLC

12
13 By: _____

14 James Hawkins,

Gregory Mauro

Michael Calvo

15 Attorneys for Plaintiff, LI FAN

16
17 DATED: _____, 2024

CAPSTONE LAW APC

18
19 By: _____

20 Bevin Allen Pike

Daniel S. Jonathan

Trisha K. Monesi

21 Attorneys for Plaintiff, KENNETH CHIARITO

22
23 DATED: _____, 2024

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

24
25 By: _____

26 Evan R. Moses

Aaron H. Cole

Omar M. Aniff

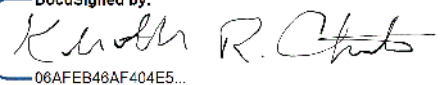
27 Attorneys for Defendant
HOME DEPOT U.S.A. INC.

IT IS SO AGREED:

Dated: _____

By: _____

Dated: 9/25/2024

Li Fan
DocuSigned by:

06AFEB48AF404E5...
Kenneth Chiarito

Dated: _____

By: _____
David Steele
VP & Deputy General Counsel
HOME DEPOT USA, INC.

APPROVED AS TO FORM:

DATED: _____, 2024

JAMES HAWKINS APLC

By: _____
James Hawkins,
Gregory Mauro
Michael Calvo

Attorneys for Plaintiff, LI FAN

DATED: September 26, 2024

CAPSTONE LAW APC

By: 
Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff, KENNETH CHIARITO

DATED: _____, 2024

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

By: _____
Evan R. Moses
Aaron H. Cole
Omar M. Aniff

Attorneys for Defendant
HOME DEPOT U.S.A. INC.

1 **IT IS SO AGREED:**

2 Dated: _____ By: _____

3 Li Fan

4 Dated: _____ By: _____

5 Kenneth Chiarito

6 Dated: _____ By: _____

7 David Steele

8 VP & Deputy General Counsel

9 HOME DEPOT USA, INC.

10 **APPROVED AS TO FORM:**

11 DATED: _____, 2024

JAMES HAWKINS APLC

12 By: _____

13 James Hawkins,

14 Gregory Mauro

15 Michael Calvo

16 Attorneys for Plaintiff, LI FAN

17 DATED: _____, 2024

CAPSTONE LAW APC

18 By: _____

19 Bevin Allen Pike

20 Daniel S. Jonathan

21 Trisha K. Monesi

22 Attorneys for Plaintiff, KENNETH CHIARITO

23 DATED: September 25, 2024

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

26 By: Aaron H. Cole

27 Evan R. Moses

28 Aaron H. Cole

Omar M. Aniff

Attorneys for Defendant

HOME DEPOT U.S.A. INC.

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EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

Li Fan and Kenneth Chiarito, et al. v. Home Depot U.S.A, Inc.
Madera County Superior Court Case No. MCV084871

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a proposed class action lawsuit against *Home Depot U.S.A, Inc.* (“Home Depot”) entitled *Li Fan and Kenneth Chiarito, et al. v. Home Depot U.S.A, Inc.*, Madera County Superior Court Case No. MCV08487 (the “Action”). The Action was filed by former Home Depot employees Li Fan and Kenneth Chiarito (collectively, “Plaintiffs”) and seeks (1) payment of alleged unpaid regular wages, minimum wages and overtime wages, meal and rest premium pay, penalties, and interest on behalf all current and former non-exempt employees of Home Depot who worked in California from March 30, 2020 through March 31, 2022 (the “Class Members”) and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former non-exempt employees of Home Depot in California from November 24, 2020 through March 31, 2022 (the “PAGA Aggrieved Employees”) and/or from December 12, 2020 through July 8, 2024 (the “Seating Claim PAGA Aggrieved Employees”). Home Depot strongly denies violating any laws, and contends it complied with all applicable laws.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Home Depot to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Home Depot to fund Individual PAGA Payments to PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Home Depot’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding); and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. This is just an estimate—the actual amount you receive if the settlement is approved may be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Home Depot’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Periods.)

The above estimates are based on Home Depot’s records showing that **you worked [REDACTED] Work Weeks** from March 30, 2020 through March 31, 2022, **you worked [REDACTED] PAGA Pay Periods** from November 24, 2020 through March 31, 2022 and/or December 12, 2020 through July 8, 2024. If you believe that you worked more Work Weeks and/or PAGA Pay Periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). If the Court finally approves the Settlement, Home Depot will make payments under the Settlement and Class Members who do not opt-out (“Participating Class Members”) and PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees will give up their rights to assert certain claims against Home Depot.

If you worked for Home Depot during the Class Period and/or the PAGA Period and/or the Seating Claim PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert the Released Class Claims, the Released PAGA Claims and the Released PAGA Seating Claims against Home Depot. (See Section 3 of this Notice and Paragraphs _____ of the Settlement Agreement)

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will **not** receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Home Depot, and, if you are a PAGA Aggrieved Employee or Seating Claim PAGA Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Home Depot will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Home Depot that are covered by this Settlement. See Section 3 of this Notice.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Home Depot must pay Individual PAGA Payments to all PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees. All PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees must give up their rights to pursue the Released PAGA Claims and Released PAGA Seating Claims, respectively (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	Participating Class Members can object to any aspect of the proposed Class Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Pay Periods/PAGA Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period and/or Seating Claims PAGA Period, respectively. The number of Work Weeks and number of PAGA Pay Periods you worked according to Home Depot’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.
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1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Home Depot employees. The Action accuses Home Depot of violating California labor laws by (a) failing to pay all regular wages, minimum wages and overtime wages due; (b) failing to provide proper meal periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (d) failing to provide complete, accurate or properly formatted wage statements; (e) failing to maintain complete and accurate payroll records; (f) failing to timely pay wages during employment; (g) failing to reimburse business expenses. Based on the same claims, Plaintiffs have also asserted a claim for unfair competition and business practices under Cal. Bus. & Prof. Code § 17200, *et seq.* and for civil penalties under PAGA. Plaintiffs have also asserted a claim for civil penalties under PAGA for failure to provide suitable seating.

Plaintiffs are represented by the following attorneys in the Action (i.e., Class Counsel): James Hawkins and Gregory Mauro of James Hawkins APLC, and Raul Perez, Bevin Allen Pike, and Daniel S. Jonathan of Capstone Law APC.

Home Depot strongly denies violating any laws, and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Home Depot or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Home Depot hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Settlement Agreement” or “Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Home Depot have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Home Depot does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Home Depot has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Home Depot Will Pay \$3 Million as the Gross Settlement Amount (“Gross Settlement Amount”).

Home Depot has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Awards, Class Counsel's attorney's fees and litigation expenses, the Administrator's expenses, and penalties to be paid to the LWDA.

Assuming the Court grants Final Approval, Home Depot will fund the Gross Settlement Amount not more than 21 calendar days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters the Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement Amount.

At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to \$1,000,000 (1/3 of the Gross Settlement Amount) to Class Counsel for attorneys' fees and up to \$50,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses in the Action without payment.

B. Up to \$25,000 to Plaintiff Li Fan, and \$25,000 to Plaintiff Kenneth Chiarito as Class Representative Service Awards for filing the Action, working with Class Counsel, and representing the Class. The Class Representative Service Awards will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.

C. Up to \$340,000 to the Administrator for services administering the Settlement.

D. Up to \$150,000 for PAGA Penalties, allocated 75% to the LWDA and 25% to the PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Amount Distributed to Participating Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the "Net Settlement Amount") by making Individual Class Payments equal to [REDACTED] % of the Net Settlement Amount (approximately \$ [REDACTED]) to Participating Class Members.

4. Taxes Owed on Payments to Participating Class Members. Plaintiffs and Home Depot are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Home Depot will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Home Depot have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be transmitted 50% to the Homer Fund (<https://corporate.homedepot.com/page/homer-fund-0>) and 50% to Worksafe (<https://worksafe.org/>)

6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Home Depot have agreed that, in either case, the Settlement will be void: Home Depot will not pay any money and Class Members will not release any claims against Home Depot.

7. Administrator. The Court has appointed a neutral company, [REDACTED] (the "Administrator") to send this Notice, calculate and make payments, process Requests for Exclusion, challenges over Work Weeks and/or PAGA Pay Periods, and written objections, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

8. Participating Class Members' Release. After the Judgment is final, Participating Class Members will be legally barred from asserting any of the Class claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Home Depot or any of its past, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (the "Released Parties") for these claims resolved by the Settlement:

Any and all claims, causes of action, and factual or legal theories that were alleged in the Complaint as defined in Paragraph I(9) of the Settlement Agreement, or reasonably could have been alleged based on the facts and matters contained therein during the Class Period, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (d) failure to provide complete, accurate or properly formatted wage statements; (e) failure to maintain complete and accurate payroll records; (f) failure to timely pay wages during employment; (g) failure to reimburse business expenses; (h) waiting time penalties; (i) unfair business practices that could have been premised on the preceding claims; and (j) all related damages, penalties (except PAGA civil penalties, which are subject to the separate Released PAGA Claims), interest and other amounts recoverable under said claims. The period of the Released Class Claims shall extend to the limits of the Class Period. The Released Class Claims do not encompass the Excluded Claims.

9. PAGA Release. After the Judgment is final, the PAGA Aggrieved Employees and the Seating Claim PAGA Aggrieved Employees will be legally barred from asserting PAGA claims against Home Depot, whether or not they exclude themselves from the Settlement. This means that all PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Home Depot or the Released Parties for PAGA claims resolved by the Settlement.

The PAGA Aggrieved Employees will be bound by the release of the following claims:

Any and all claims, causes of action, and factual or legal theories for PAGA civil penalties that were alleged in the Complaint as defined in Paragraph I(9) of the Settlement Agreement and the PAGA Notices of the *Li Fan* Actions and the *Chiarito* Action, or reasonably could have been alleged based on the facts

and matters therein, during the PAGA Period, including all of the following claims for PAGA civil penalties premised on: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (d) failure to provide complete, accurate or properly formatted wage statements; (e) failure to maintain accurate payroll records; (f) failure to timely pay wages during employment; (g) failure to reimburse business expenses; and (h) waiting time penalties. The period of the Released PAGA Claims shall extend to the limits of the PAGA Period. Released PAGA Claims do not encompass the Excluded Claims.

The Seating Claim PAGA Aggrieved Employees will be bound by the release of the following claims:

Any and all claims under PAGA for civil penalties for failure to provide suitable seating in violation of California Wage Order 5-2001, sec. 14 (A)-(B) that were alleged in the operative complaints and PAGA Notices of the Li Fan Actions and the Chiarito Action or reasonably could have been alleged based on the facts and matters contained therein. The period of the Released PAGA Seating Claims shall extend to the limits of the Seating Claim PAGA Period. Released PAGA Seating Claims do not encompass the Excluded Claims.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Class Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Class Member's Work Weeks.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$37,500 by the total number of PAGA Pay Periods worked by all PAGA Aggrieved Employees and/or Seating Claim PAGA Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual PAGA Aggrieved Employee and/or Seating Claim PAGA Aggrieved Employee.

3. Work Week/PAGA Pay Period Challenges. The number of Work Weeks you worked during the Class Period and the number of PAGA Pay Periods you worked, as recorded in Home Depot's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Work Weeks and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email, or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Home Depot's calculation of Work Weeks and/or PAGA Pay Periods based on Home Depot's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel and Home Depot's counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as PAGA Aggrieved Employees and/or Seating Claim PAGA Aggrieved Employees. The single check will combine the Individual Class Payment, and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Aggrieved Employee and/or Seating Claim PAGA Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator’s contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, email address or telephone number, and a simple statement that you do not want to participate in the Class Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Li Fan and Kenneth Chiarito, et al. v. Home Depot U.S.A, Inc.*, and include your identifying information (full name, address, email address or telephone number, and last four digits of social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE CLASS SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Home Depot are asking the Court to approve. At least 16 court days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for attorneys’ fees, litigation expenses, and Class Representative Service Payments stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation expenses; and (ii) the amounts Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator’s Website [REDACTED] (url) or the Court’s website <https://www.roa.sdcourt.ca.gov/roa>.

A Participating Class Member who disagrees with any aspect of the Class Settlement, the Motion for Final Approval, and/or Motion for attorneys’ fees, litigation expenses, and Class Representative Service Payments may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is [REDACTED]**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Li Fan and Kenneth Chiarito, et al. v. Home Depot U.S.A., Inc* and include your name, current address, email address or telephone number, and last four digits of social security number for verification purposes, and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] (time) in Department [REDACTED] of the Moreno County Superior Court, located at [REDACTED]. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from

objectors, Class Counsel, and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Microsoft Teams ([https://\[redacted\]](https://[redacted])). Check the Court’s website for the most current information.

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website [\[redacted\]](#) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Home Depot and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Administrator’s website at [\[redacted\] \(url\)](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to [\[redacted\]](#) and entering the Case Number for the Action, Case No. MCV084871.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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Email: info@homedepot-lawsuit.com

ADMINISTRATOR

Name
Address
Telephone
Fax
Email

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement **before the void date** on the face of the original check. If your check is already void you will not be able to request a replacement.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

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Attorneys for Plaintiff, KENNETH CHIARITO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA

Li Fan, an individual, and Kenneth Chiarito, an individual, and on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No. MCV084871

Date: December 5, 2024
Time: 8:30 AM
Place: Dept. 45

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Brian W. Enos, Dept. 45]

Action Filed: March 30, 2021
Trial Date: None

1 Plaintiff Li Fan's and Plaintiff Kenneth Chiarito's (collectively, "Plaintiffs") Motion for
2 Preliminary Approval of Class Action Settlement came on for hearing before this Court, the
3 Honorable Brian W. Enos presiding. The Court, having considered the papers submitted in support
4 of the motion, HEREBY ORDERS THE FOLLOWING:

5 1. The Court grants preliminary approval to the Joint Stipulation of Class Action
6 Settlement and Release of Claims ("Settlement Agreement" or "Settlement"). This Order
7 incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein
8 shall have the same meaning in this Order as set forth in the Settlement Agreement.

9 2. The Settlement provides for Defendant Home Depot U.S.A., Inc. ("Defendant") to
10 pay the Gross Settlement Fund of \$3,000,000. The Court preliminarily finds that the Settlement is
11 fair, adequate, and reasonable to the Class, and preliminarily approves the terms of the settlement.
12 This preliminary approval is subject to the objections of Class Members and final review by the
13 Court.

14 3. A Final Approval Hearing shall be held before this Court on _____, 2024 at
15 _____ a.m. in Department 45 of the Superior Court of the State of California for the County of
16 Madera, to determine all necessary matters concerning the Settlement, including: whether the
17 proposed settlement of the Action on the terms and conditions provided for in the Settlement is fair,
18 adequate, and reasonable and should be finally approved by the Court; whether the Final Approval
19 Order and Judgment should be entered; whether the distribution contained in the Settlement should
20 be approved as fair, adequate, and reasonable to the Class Members; and whether to finally approve
21 the PAGA Settlement Payment, the Class Counsel Award, the Class Representative Service Awards,
22 and the Settlement Administration Costs. The motion for final approval and the motion for award of
23 attorneys' fees and costs shall be filed no later than sixteen (16) court days before the Final Approval
24 Hearing.

25 4. The Court recognizes that the Plaintiffs and the Defendant stipulate and agree to
26 certification of the Class for settlement purposes only. This stipulation will not be deemed admissible
27 in this or any other proceeding should this Settlement not become final. Whether or not the settlement
28 is finally approved, neither the Agreement, nor any document, statement, proceeding or conduct
related to the Agreement may be admitted in any proceeding as an admission by Defendant or any

of the Released Parties, the Plaintiff, or any person within the definition of the Class.

5. The Class Period is from March 30, 2020 through March 31, 2022. For settlement purposes only, the Court certifies the following Settlement Class: “ all current and former non-exempt employees of Defendant who worked in California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).”

6. The Court appoints and approves Plaintiffs as the representative of the Class, and James Hawkins APLC and Capstone Law APC, as counsel for the Class (“Class Counsel”).

7. The Agreement specifies for an attorneys' fees award not to exceed one-third of the Gross Settlement Fund, an award of litigation expenses incurred, not to exceed \$50,000, and proposed Class Representative Service Awards in an amount not to exceed \$25,000 to each Plaintiff. While these awards appear to be within the range of reasonableness, the Court will not approve the amount of attorneys’ fees and costs until the Final Approval Hearing. Similarly, the Court will not decide the amount of any Class Representative Service Awards until the Final Approval Hearing.

8. The Court hereby approves, as to form and content, the Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached as Exhibit A to the Agreement. The Court finds that the distribution of the Class Notice substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

9. The Court hereby approves on a preliminary basis the Gross Settlement Amount as provided for in the Agreement. It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that: investigation and research have been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions; that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the Action; and that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations before an experienced mediator.

1 10. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. Within
2 ten (10) business days of preliminary approval of this settlement, Defendant will provide the
3 Settlement Member Information to the Settlement Administrator. Within thirty (30) calendar days of
4 preliminary approval of this settlement, the Settlement Administrator will mail a Class Notice to all
5 Settlement Members via regular First-Class U.S. Mail, using the most current, known mailing
6 addresses identified in the Class List. Prior to mailing, the Settlement Administrator will perform a
7 search based on the National Change of Address Database for information to update and correct for
8 any known or identifiable address changes.

9 11. Any Class Member may choose to opt out of and be excluded from the Class as
10 provided in the Class Notice by following the instructions for requesting exclusion from the Class
11 that are set forth in the Class Notice. Settlement Members may not opt out of the PAGA portion of
12 the Settlement. All requests for exclusion must be submitted within forty-five (45) days from the
13 date the Class Notice is first mailed. Any such person who chooses to opt out of and be excluded
14 from the Class will not be entitled to any recovery under the Settlement and will not be bound by the
15 non-PAGA portion of the Settlement or have any right to object, appeal, or comment thereon. Any
16 written request to opt out must comply with the instructions in the Class Notice and be signed by
17 each such person opting out. Class Members who have not validly requested exclusion shall be bound
18 by all determinations of the Court, the Agreement, and the Judgment.

19 12. Any Class Member who has not opted out may appear at the final approval hearing
20 and may object or express their views regarding the Settlement and may present evidence and file
21 briefs or other papers that may be proper and relevant to the issues to be heard and determined by
22 the Court as provided in the Class Notice. Class Members will have 45 days from the date the Class
23 Notices are mailed to postmark their written objections to the Settlement Administrator. Class
24 Members who fail to timely submit objections in the manner specified above shall be deemed to have
25 waived any objections and shall be foreclosed from making any objection (whether by appeal or
26 otherwise) to the Settlement.

27 13. The Settlement is not a concession or admission and shall not be used against
28 Defendant as an admission or indication with respect to any claim of any fault or omission by
Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any

document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage.

14. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement.

15. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

DATED: _____

Honorable Brian W. Enos
Judge of the Superior Court

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EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA

Li Fan, an individual, and Kenneth Chiarito, an individual, and on behalf of all others similarly situated,

Plaintiffs,

vs.

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

Case No. MCV084871

Date:

Time:

Place:

Dept. 45

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

[Assigned for all purposes to
The Honorable Brian W. Enos, Dept. 45]

Action Filed:

March 30, 2021

Trial Date:

None

1 Plaintiff Li Fan's and Plaintiff Kenneth Chiarito's (collectively, "Plaintiffs") Motion for
2 Motion for Final Approval of Class Action Settlement and Motion for a Class Counsel Award, and
3 Class Representative Service Awards (collectively, "Motion for Final Approval") came on for
4 hearing before this Court, the Honorable James E. Oakley presiding. The Court, having considered
5 the papers submitted in support of the motion, HEREBY ORDERS THE FOLLOWING:

6 1. All defined terms contained herein shall have the same meanings as set forth in the
7 Joint Stipulation of Class Action Settlement and Release of Claims filed with this Court (the
8 "Settlement Agreement"), and incorporated by reference.

9 2. The Court has personal jurisdiction over all Settlement Members and that the Court
10 has subject matter jurisdiction to approve the Settlement.

11 3. The terms of the Settlement are fair, just, reasonable, and adequate, to the
12 Settlement Class and to each Settlement Class Member and PAGA Aggrieved Employee and
13 Seating Claim PAGA Aggrieved Employee, and the Settlement is ordered finally approved, and
14 that all terms and provisions of the Settlement should be and hereby are ordered to be
15 consummated.

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

18 5. The Settlement Agreement is binding on Plaintiffs, Participating Class Members,
19 PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved Employees, and the State of
20 California. Specifically, Plaintiffs and Participating Class Members are bound to the Class
21 Settlement, and Plaintiffs, PAGA Aggrieved Employees and Seating Claim PAGA Aggrieved
22 Employees, and the State of California are bound to the PAGA Settlement.

23 6. The Settlement Administrator received XX (XX) timely and properly submitted
24 Requests for Exclusion. The Class Settlement is not binding to those who timely and properly
25 submitted Requests for Exclusion.

26 7. The Settlement Administrator received XX (XX) complete and timely Notices of
27 Objections. The Court considered all written and oral objections and hereby overrules the
28 objections.

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

11 9. The Court finds that the Class Notice and notice methodology implemented
12 pursuant to this Settlement: (a) constituted the best practicable notice; (b) constituted notice that
13 was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the
14 pendency of the Action, their right to object to or exclude themselves from the Class Settlement
15 and their right to appear at the Final Approval Hearing; (c) were reasonable and constituted due,
16 adequate and sufficient notice to all persons entitled to receive notice; and (d) satisfied
17 requirements of law and due process.

18 10. The Settlement Class is hereby made final. The Settlement Class is defined as: all
19 current and former non-exempt employees of Defendant who worked in California from and
20 including March 30, 2020 through March 31, 2022 (or if any such person is incompetent, deceased,
21 or unavailable due to military service, the person's legal representative or successor in interest
22 evidenced by reasonable verification). The following individuals having submitted timely and
23 proper Requests for Exclusion are not included in the Settlement Class:
24

25 11. The Class Period is March 30, 2020 through March 31, 2022.

26 12. The Settlement Agreement is not an admission by Defendant, nor is this Order a
27 finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order,
28 the Settlement, nor any document referred to herein, nor any action taken to carry out the

Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

13. The Court hereby enters Judgment by which, as of the Effective Date and full funding of the Gross Settlement Fund:

(a) Participating Class Members and Plaintiffs, shall be conclusively determined to have given a release of any and all Released Class Claims against the Released Parties, as set forth in the Settlement Agreement and Class Notice.

(b) Aggrieved PAGA Employees, Seating Claims Aggrieved PAGA Employees, Plaintiffs and the State of California, shall be conclusively determined to have given a release of any and all Released PAGA Claims and Released PAGA Seating Claims, as set forth in the Settlement Agreement and Class Notice.

14. The Settlement Agreement provides that the Gross Settlement Fund is \$3,000,000.00. The Net Settlement Fund shall be determined according to the terms of the Settlement Agreement as approved herein. The Court orders the calculations and the payments to be made and administered in accordance with the terms of the Settlement Agreement.

15. The Court hereby finds that Plaintiffs and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement.

16. The Court confirms James Hawkins, APLC, and Capstone Law APC, as Class Counsel.

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

18. The Court finds and determines that the PAGA Payment in the amount of \$150,000 is fair, reasonable, and appropriate. The Court further finds the allocation of the PAGA Payment, seventy-five percent (75%) of the PAGA Payment being allocated to the LWDA in the amount of

1 \$112,500 and the remaining twenty-five percent (25%) in the amount of \$37,500 shall be allocated
2 to the Aggrieved PAGA Employees and Seating Claims Aggrieved PAGA Employees, as fair,
3 reasonable, and appropriate.

4 19. The Court finds and determines that the fees and expenses in administering the
5 Settlement incurred by [REDACTED], in the amount of \$[COSTS] are fair and reasonable. The
6 Court gives final approval to and orders payment of that amount in accordance with the Settlement.

7 20. The Court finds and determines that the Class Representative Service Awards in the
8 sum of \$25,000 each to Plaintiff Li Fan and Plaintiff Kenneth Chiarito are fair and reasonable. The
9 Court hereby orders the Settlement Administrator make this payment to Plaintiffs in accordance
10 with the terms of Settlement Agreement.

11 21. Pursuant to the terms of the Settlement, and the authorities, evidence and argument
12 submitted by Class Counsel, the Court awards Class Counsel attorneys' fees in the sum of
13 \$1,000,000 and litigation costs and expenses of \$[INSERT]. The Court finds such amounts to be
14 fair and reasonable. The Court orders the Settlement Administrator to make these payments in
15 accordance with the terms of the Settlement Agreement.

16 22. Defendants shall have no further liability for costs, expenses, interest, attorneys'
17 fees, or for any other charge, expense, or liability with respect to the Action, except as provided for
18 in the Settlement Agreement.

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

26 24. Nothing in this Order shall preclude any action to enforce the Parties' obligations
27 under the Settlement or under this order, including the requirement that Defendant make payments
28 in accordance with the Settlement.

1 25. Upon completion of administration of the Settlement, the Settlement Administrator
2 will provide written certification of such completion to the Court and counsel for the Parties which
3 shall be filed with the Court on or before _____, 2025.

4 26. The Parties will bear their own costs and attorneys' fees except as otherwise
5 provided by this Court's Order awarding the Class Counsel Award for attorneys' fees and litigation
6 costs and expenses.

7
8
9
10 DATED: _____

Honorable Brian W. Enos
Judge of the Superior Court