

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.:(949) 387-7200
Fax:(949) 387-6697
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff DANIEL LOZANO, individually and
On behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DANIEL G. LOZANO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE HOME DEPOT U.S.A., INC., a Delaware
Corporation, and Does 1 through 50, inclusive,

Defendants.

Case No. 22STCV18980

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Elihu M. Berle]

Date: November 9, 2022
Time: 10:00 a.m.
Dept.: 6

1 This matter came on for hearing on November 9, 2022 at 10:00 AM, upon the Motion for
2 Preliminary Approval of the proposed settlement of this action on the terms set forth in the Joint
3 Stipulation re: Class Action Settlement (the “Settlement” or “Stipulation”), incorporated herein by
4 reference and attached as **Exhibit 1** to the Hawkins Declaration. Having considered the Settlement,
5 all papers and proceedings held herein, and having reviewed the entire record in this action, Case
6 No. 22STCV18980, entitled *Daniel G. Lozano v. Home Depot U.S.A., Inc.* (the “Action”), and good
7 cause appearing, the Court finds that:

8 WHEREAS, plaintiff Daniel G. Lozano (“Plaintiff”) has alleged claims against defendant
9 Home Depot U.S.A., Inc. and HD Supply, Inc. (“Defendants”) on behalf of himself and on behalf of
10 others similarly situated, comprising: “all current and former non-exempt Supply Chain Drivers
11 (specifically, job codes: IBAIN, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC,
12 IBWHDL, HDRVHP) employed by Defendants in California from April 6, 2016 through August 15,
13 2022”; and

14 WHEREAS, Plaintiff has asserted claims against Defendants for (1) Failure to Provide Meal
15 Periods; (2) Failure to Provide Rest Periods; (3) Failure to Timely Pay All Wages During
16 Employment and Termination; (4) Failure to Provide Accurate Wage Statements; (5) Unlawful
17 Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (6) civil penalties under the Labor
18 Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”); and

19 WHEREAS, Defendants expressly deny the allegations of wrongdoing and violations of law
20 alleged in the Action, and further denies any liability whatsoever to Plaintiff or to the Class Members;
21 and

22 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendants
23 (collectively, the “Parties”) determined that it was mutually advantageous to settle the Action and to
24 avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

25 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
26 about October 6, 2022, on the terms and conditions set forth in the Stipulation, subject to the approval
27 of this Court;

28 NOW, therefore, the Court grants preliminary approval of the Settlement, and

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

2 1. To the extent defined in the Joint Stipulation re: Class Action Settlement, attached
3 hereto as **Exhibit 1** and incorporated herein by reference, the terms in this Order shall have the
4 meanings set forth therein.

5 2. The Court has jurisdiction over the subject matter of these Actions, Defendants, and
6 the Class.

7 3. The Class is defined as follows: “all current and former non-exempt Supply Chain
8 Drivers (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR,
9 IBWHDC, IBWHDL, HDRVHP employed by Defendants in California from April 6, 2016 through
10 August 15, 2022”.

11 4. The Court has determined that the intended notice to be given to the Class fully and
12 accurately informs all persons in the Class of all material elements of the proposed Settlement,
13 constitutes the best notice practicable under the circumstances, and constitutes valid, due, and
14 sufficient notice to all Class Members.

15 5. The Court hereby grants preliminary approval of the Settlement and Stipulation as
16 fair, reasonable, and adequate in all respects to the Class Members and Orders the parties to
17 consummate the Settlement in accordance with the terms of the Stipulation.

18 6. The plan of distribution as set forth in the Stipulation providing for the distribution of
19 the Net Settlement Amount to Settlement Class Members is preliminarily approved as being fair,
20 reasonable, and adequate.

21 7. The Court preliminarily appoints as Class Counsel the following attorneys: James
22 Hawkins, Gregory Mauro and Michael Calvo of James Hawkins APLC, 9880 Research Drive, Suite
23 800, Irvine, California 92618, Tel.: 949-387-7200.

24 8. The Court preliminarily approves ILYM Group, Inc. to function as the Claims
25 Administrator, including reasonable costs to be paid from the Total Class Action Settlement Amount.

26 9. This Preliminary Approval Order and the Stipulation, and all papers related thereto,
27 are not, and shall not be construed to be, an admission by Defendants of any liability, claim, or
28 wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or

wrongdoing in these Actions or in any other proceeding.

10. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation, and each party shall retain his or its rights to proceed with litigation of the Actions.

11. Pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

12. The Final Approval Hearing shall be held on March 24, 2023 at 10:00 a.m. in Department 6 of the above captioned Courthouse to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order Granting Preliminary Approval, and to consider the application of Class Counsel for an award of attorneys' fees, costs, and class representative enhancement. The Court may continue the Final Approval Hearing to another date at its discretion

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

Hon. Elihu M. Berle
Los Angeles County Superior Court Judge

EXHIBIT 1

James Hawkins, CA Bar No. 192925
james@jameshawkinsaplc.com
Gregory Mauro, CA Bar No. 222239
greg@jameshawkinsaplc.com
Michael Calvo, CA Bar No. 314986
michael@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 800
Irvine, CA 92618
Tel.: 949.387.7200; Fax: 949.387.6676
Attorneys for Plaintiff
DANIEL G. LOZANO,
individually and on behalf of others similarly situated

EVAN R. MOSES, CA Bar No. 198099
evan.moses@ogletree.com
AARON H. COLE, CA Bar No. 236655
aaron.cole@ogletree.com
MELIS ATALAY, CA Bar No. 301373
melis.atalay@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-239-9800
Facsimile: 213-239-9045

Attorneys for Defendant
HOME DEPOT USA, INC.

LOS ANGELES COUNTY SUPERIOR COURT

DANIEL G. LOZANO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE HOME DEPOT U.S.A., INC., a
Delaware Corporation, and Does 1 through 50,
inclusive

Defendants.

Case No. 22STCV18980

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

Complaint Filed: April 9, 2020

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Stipulation” or
2 “Settlement”) is entered into by and between plaintiff Daniel G. Lozano (“Plaintiff”), individually
3 and on behalf of all others similarly situated and the State of California, as a private attorney general,
4 on the one hand, and defendant Home Depot U.S.A., Inc. and HD Supply, Inc. (collectively,
5 “Defendant”) on the other hand (collectively referred to as “the Parties”).

6 This Settlement shall be binding on Plaintiff, the current and former employees he seeks to
7 represent, on Defendant, and on their respective counsel, subject to the terms and conditions
8 definitions, recitals, and terms set forth herein and to the approval of the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” is defined as *Daniel G. Lozano v. Home Depot, U.S.A., Inc., et al.*,
12 which was initially filed in Los Angeles County Superior Court (Case No. 20STCV13980),
13 subsequently removed to the United States District Court, and which was pending in the Central
14 District of California as Case No. 2:20-cv-06866-FMO-JPR, voluntarily dismissed, and which has
15 been re-filed in Los Angeles County Superior Court (Case No. 22STCV18980), and will be amended
16 consistent with the terms of this Settlement..

17 **2. Class Counsel**

18 “Class Counsel” means James Hawkins, APLC, who, subject to Court approval, shall act as
19 counsel for the Settlement Class.

20 **3. Class Counsel Award**

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

24 **4. Class Information**

25 “Class Information” means information regarding Class Members that Defendant will in
26 good faith compile from Defendant’s internal and currently available electronic timekeeping and
27 HRIS records and provide to the Settlement Administrator. To the extent possible, it shall be
28 formatted as a Microsoft Excel spreadsheet. It shall include: each Class Member’s full name; last

known address; last known home telephone number; social security number; and Compensable Work Weeks.

5. Class Members

“Class Members” means all current and former non-exempt Supply Chain Drivers (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) employed by Home Depot U.S.A., Inc. or HD Supply, Inc. 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 between December 27, 2016 and November 30, 2021 (the “Data Period”) there were approximately 194 Settlement Class Members who worked approximately 26,469 workweeks during that same time period.

6. Class Period

“Class Period” means the period from April 6, 2016 through August 15, 2022.

7. Class Representative

“Class Representative” means Plaintiff Daniel G. Lozano.

8. Class Representative Service Award

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

9. Compensable Work Weeks

“Compensable Work Weeks” means the number of weeks in which Class Member(s) worked as a non-exempt Supply Chain Driver 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.

10. Complaint

“Complaint” means the Proposed First Amended Complaint, which was attached to the second amended PAGA notice that was filed with the LWDA on July 27, 2022, and will be filed in

Los Angeles County Superior Court, as described more fully below in Paragraph II(1).

11. Court

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

12. Defendant

“Defendant” means Defendant Home Depot U.S.A., Inc. and HD Supply, Inc. and includes their 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.

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.

14. Final Approval Hearing

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

1 **15. Final Approval Order**

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

5 **16. Final Judgment**

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

8 **17. Gross Settlement Fund**

9 “Gross Settlement Fund” means the agreed upon settlement amount totaling \$295,000.00
10 (Two-Hundred and Ninety-Five Thousand Dollars and Zero Cents) to be paid by Defendant in full
11 settlement of the Released Claims, and includes without limitation the Class Counsel Award, Class
12 Representative Service Award, Individual Settlement Payments, PAGA Payment, and Settlement
13 Administrator Costs. In no event shall Defendant be liable for more than the Gross Settlement Fund,
14 except that Defendant’s portion of payroll taxes will be paid separately and in addition to the Gross
15 Settlement Fund.

16 **18. Individual Settlement Payment**

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

19 **19. LWDA**

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

21 **20. Net Settlement Fund**

22 “Net Settlement Fund” means the Gross Settlement Fund, less Court-approved Class Counsel
23 Award, Class Representative Service Award, payment to the LWDA, and Settlement Administration
24 Costs.

25 **21. Notice of Class Action Settlement**

26 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
27 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as **Exhibit**
28 **A**, which shall include an estimated individual settlement payment, number of workweeks worked,

1 dates of employment, how to opt-out of the settlement, and how to object to the settlement, and how
2 to dispute the number of estimated workweeks worked.

3 **22. PAGA**

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

6 **23. PAGA Members**

7 “PAGA Members” means all current and former non-exempt Supply Chain Drivers
8 (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC,
9 IBWHDL, HDRVHP) employed by Home Depot U.S.A., Inc. or HD Supply, Inc. in California
10 during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to
11 military service, the person’s legal representative or successor in interest evidenced by reasonable
12 verification).

13 **24. PAGA Payment**

14 “PAGA Payment” means the payment made hereunder to the LWDA and PAGA Members
15 pursuant to PAGA. The Parties will seek approval from the Court for a total PAGA Payment of
16 \$30,000, which shall be allocated and paid as follows: 75% (\$22,500) out of the Gross Settlement
17 Amount to the California Labor and Workforce Development Agency (“LWDA”) as the LWDA’s
18 share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25%
19 (\$7,500) from the Net Settlement Amount paid and distributed to the PAGA Members based on the
20 number of pay periods worked as an PAGA Member during the PAGA Period. If the Court approves
21 a different total PAGA Payment, the amount shall be allocated and paid using the same percentages.

22 **25. PAGA Period**

23 “PAGA Period” means the period from April 7, 2019 through August 15, 2022.

24 **26. Parties**

25 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean Plaintiff or
26 Defendants, individually.

27 **27. Payment Ratio for Settlement Class Members**

28 “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.

28. Plaintiff

“Plaintiff” means Plaintiff Daniel G. Lozano.

29. 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**.

30. 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, or reasonably could have been alleged based on the facts and legal theories of the Complaint during the Class Period, including all of the following claims for relief: (a) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (b) failure to provide rest periods and to properly provide premium pay in lieu thereof; (c) failure to pay all wages timely at the time of termination and/or during employment; (d) failure to provide complete, accurate or properly formatted wage statements; (e) unfair business practices that could have been premised on the claims, causes of action or legal theories based on the Complaint; (f) all claims under the California Labor Code Private Attorneys General Act of 2004 that are alleged in the Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Complaint; (g) all damages, penalties, interest, and other amounts recoverable under each of the preceding claims, causes of action, or legal theories of relief.

31. Released PAGA Claims

“Released PAGA Claims” means any and all claims, causes of action, and factual or legal theories that were alleged in the Complaint, or reasonably could have been alleged based on the facts and legal theories of the Complaint during the PAGA Period for civil penalties pursuant to the PAGA for Defendant’s alleged failure to: (a) provide proper meal periods, and to properly provide premium pay in lieu thereof; (b) provide rest periods and to properly provide premium pay in lieu thereof; (c) pay all wages timely at the time of termination and/or during employment; and (d) failure to provide

complete, accurate or properly formatted wage statements.

32. Released Parties

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

33. 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.

34. 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.

35. Settlement

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

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

36. Settlement Administrator Costs

“Settlement Administrator Costs” means the amount to be paid to the Settlement Administrator from the Gross Settlement Fund for administration of this Settlement, currently estimated at \$10,000.

1 **37. Settlement Class Members**

2 “Settlement Class Members” means those Class Members who did not file a valid and timely
3 Request for Exclusion pursuant to section III, paragraph 11 of this Agreement.

4 **II. RECITALS**

5 **1. Amendment of Complaint**

6 To effectuate this Settlement, Plaintiff will file the Proposed First Amended Complaint,
7 which was attached to the second amended PAGA notice that was filed with the LWDA on July 27,
8 2022 (the “Subsequent Complaint”), to add to the current complaint, which filed on June 9, 2022 in
9 the Los Angeles County Superior Court, all class and PAGA claims and causes of action negotiated
10 during mediation and falling within the definition of “Released Class Claims” and “Released PAGA
11 Claims”. For purposes of this Settlement only, Defendant agrees that the filing of the Subsequent
12 Complaint relates back to the filing of the original complaint in this Action for purposes of the
13 applicable statutes of limitations for the causes of action alleged in the Subsequent Complaint.
14 Defendant will be deemed to have generally denied the allegations of the Subsequent Complaint
15 without the need to file and serve an Answer thereto; and will be deemed to have preserved its right
16 to file a Notice of Removal to federal court. The Court’s approval of the Parties’ stipulation to file
17 the Proposed First Amended Complaint is a material term of this Settlement Agreement. If the Court
18 does not grant leave to file the Proposed First Amended Complaint, the Parties shall work together
19 in good faith to agree on a revised settlement agreement. If the Parties are unable to reach agreement,
20 Plaintiff will immediately dismiss the complaint that was filed in Los Angeles County Superior
21 Court on June 9, 2022 and re-file it in the United States District Court for the Eastern District of
22 California. Moreover, if the Parties are unable to reach an agreement, this Settlement Agreement,
23 and any documents generated to bring it into effect, will be null and void. Any order or judgment
24 entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void
25 from the beginning.

26 **2. Class Certification.**

27 The Parties stipulate to class certification for purposes of settlement only. If the Court does
28 not grant either preliminary or final approval of this Settlement, the Parties shall work together in

1 good faith to agree on a revised settlement agreement to address the Court's concerns. If the Parties
2 are unable to reach agreement, or the Court does not grant either preliminary or final approval of the
3 revised settlement, the Parties agree that this stipulation regarding class certification will be revoked
4 and the Parties will return to a point in litigation prior to the execution of this Agreement.

5 **3. Procedural History**

6 On April 7, 2020, Plaintiff sent the LWDA notice, via online filing, of his intent to file an
7 action against Home Depot to seek civil penalties under PAGA.

8 On April 9, 2020, Plaintiff filed a Class Action Complaint in Los Angeles County Superior
9 Court, Case No. 20STCV13980.

10 On or about June 12, 2020, Plaintiff filed an amended complaint adding a claim for PAGA,
11 which was later removed to the United States District Court for the Central District of California,
12 Case No. 2:20-cv-06866-MCS (JPRx).

13 On or about October 7, 2021, the Parties entered into a Stipulation and Tolling Agreement,
14 that provided, among other things, (a) Plaintiff will dismiss his action in its entirety without
15 prejudice; and (b) Plaintiff would file a Subsequent Complaint, the form of which was agreed upon
16 via the Parties' agreement.

17 Pursuant to the Stipulation and Tolling Agreement, on or about October 14, 2021, Plaintiff
18 filed a request for dismissal of his action.

19 As a part of the Stipulation and Tolling Agreement, the Parties agreed to mediate Plaintiff's
20 class and PAGA claims. The Parties began to engage in informal and formal discovery to understand
21 the nature of the allegations and the scope of potential liability. Defendant provided Plaintiff's
22 counsel with pertinent data for the Class Members, as well as relevant documents, so that the Parties
23 could fully-investigate the claims at issue and understand their strengths and weaknesses. This
24 included a random sample of of time keeping records, payroll records, relevant policies and class
25 data points.

26 On April 18, 2022, the Parties attended a full-day mediation with experienced mediator Louis
27 Marlin. After a full-day's mediation and subsequent further negotiations, the Parties reached an
28 agreement on May 9, 2022, as provided herein, to settle Plaintiff's claims on a class-wide basis.

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

The Class Representative is represented by Class Counsel. Class Counsel conducted an 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.

4. Benefits of Settlement to Class Members.

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff 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. Plaintiff 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, Defendant's financial condition, numerous potential appellate issues, and other risks inherent in litigation.

5. Defendant's Reasons for Settlement.

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

6. Settlement of Disputed Claims.

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

III. TERMS OF AGREEMENT

1. Release as to All Settlement Class Members.

As of the Effective Date, all Settlement Class Members will release the Released Parties from the Released Class Claims, whether known or unknown. To be clear, the scope of this release is

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

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

18 **2. Release as to all PAGA Members**

19 As of the Effective Date, all PAGA Members will release the Released Parties from the
20 Released PAGA Claims, whether known or unknown. To be clear, the scope of this release is limited
21 to the Released PAGA Claims. PAGA Members may later discover facts or legal arguments in
22 addition to or different from those that they now know or currently believe to be true with respect to
23 the claims, causes of action, and legal theories of the Action. Regardless, the discovery of new facts
24 or legal arguments shall in no way limit the scope or definition of the Released PAGA Claims, and
25 by virtue of this Agreement, Plaintiff and PAGA Members shall be deemed to have, and by operation
26 of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released
27 all of the Released PAGA Claims. The Parties understand and specifically agree that the scope of
28 this Release described in this Paragraph is a material part of the consideration for this Agreement,

1 was critical in justifying the agreed upon economic value of the Settlement and without it, Defendant
2 would not have agreed to the consideration provided, and is narrowly drafted and necessary to ensure
3 that Defendant is obtaining peace of mind regarding the resolution of the claims that were or could
4 have been alleged based on facts, causes of action, and legal theories contained in the Action.

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

6 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released
7 Claims during the Class Period. Plaintiff, for himself and his heirs, successors and assigns, further
8 waives, releases, acquits and forever discharges the Released Parties from any and all claims, actions,
9 charges, complaints, grievances and causes of action, of whatever nature, whether known or
10 unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including,
11 but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims,
12 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal
13 injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims,
14 quantum meruit claims, and any and all claims arising under any federal, state or other governmental
15 statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair
16 Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial
17 Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
18 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title
19 VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California
20 Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act,
21 California Business & Professions Code §§17200 et seq., and any and all claims arising under any
22 federal, state or other governmental statute, law, regulation or ordinance.

23 Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code
24 §1542, which provides:

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

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

7 **4. Tax Liability and Medicare.**

8 The Parties make no representations as to the tax treatment or legal effect of the payments
9 called for hereunder, and Settlement Class Members are not relying on any statement or
10 representation by the Parties in this regard. Settlement Class Members understand and agree that they
11 will be responsible for the payment of taxes and penalties assessed on the payments described herein
12 and will hold the Parties free and harmless from and against any claims resulting from treatment of
13 such payments as non-taxable damages, including the treatment of such payment as not subject to
14 withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon
15 a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted
16 responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b),
17 especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance
18 with both state and federal law. The Parties made every effort to adequately protect Medicare's
19 interest and incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare
20 beneficiary as of the date of this Agreement. As such, no conditional payments have been made by
21 Medicare.

22 **5. Circular 230 Disclaimer.**

23 Each Party to this Agreement (for purposes of this section, the "acknowledging party" and
24 each Party to this Agreement other than the acknowledging party, an "other party") acknowledges
25 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
26 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall
27 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
28 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as

1 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
2 independent legal and tax counsel for advice (including tax advice) in connection with this
3 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
4 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
5 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
6 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
7 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
8 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
9 acknowledging party of the tax treatment or tax structure of any transaction, including any
10 transaction contemplated by this Agreement.

11 **6. Preliminary Approval of Settlement.**

12 Promptly upon execution of this Agreement, Plaintiff will move the Court to grant
13 preliminary approval of this Settlement, certifying the Class for settlement purposes only and setting
14 a date for the Final Approval Hearing. All Parties agree to work diligently and cooperatively to have
15 this Settlement presented to the Court for preliminary approval. The proposed preliminary approval
16 order shall provide for the Notice of Class Action Settlement to be sent to Settlement Class Members
17 as specified herein.

18 **7. Settlement Administrator.**

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

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

26 Upon receipt of the Class Information, the Settlement Administrator will perform a search
27 based on the National Change of Address Database to update and correct any known or identifiable
28 address changes. Within thirty (30) calendar days of the Preliminary Approval Date, the Settlement

1 Administrator shall mail copies of the Notice of Class Action Settlement to all Class Members via
2 regular First-Class U.S. Mail with a return postage-paid envelope. The Settlement Administrator
3 shall exercise its best judgment to determine the current mailing address for each Class Member,
4 including performing a skip-trace to identify any updated addresses. The address identified by the
5 Settlement Administrator as the current mailing address shall be presumed to be the best mailing
6 address for each Class Member. A reminder postcard will be mailed out 30 days after the Class
7 Notice is mailed to Class Members.

8 **9. Undeliverable Notices.**

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

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

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

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

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

6 **12. Requests for Exclusion.**

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

27 **13. Objections.**

28 The Notice of Class Action Settlement shall state that Class Members who wish to object to

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

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

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

14. No Solicitation of Settlement Objections or Exclusions.

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

15. Funding and Allocation of Gross Settlement Fund.

No later than 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,

16. Net Settlement Fund.

The Net Settlement Fund will be determined by the Settlement Administrator by subtracting the Court-approved Class Counsel Award, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administrator Costs from the Gross Settlement Fund. The anticipated Net Settlement Fund is \$134,166. The Parties estimate the amount of the Net Settlement Fund as follows:

Gross Settlement Fund:	\$ 295,000
Class Representative Service Award:	\$ 10,000
Class Counsel Fees:	\$ 98,334
Class Counsel Costs:	\$ 20,000 (not to exceed)
PAGA Payment to the LWDA	\$ 22,500
Settlement Administrator Costs:	\$ \$10,000.00
Anticipated Net Settlement Fund	\$ -\$134,166

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

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

1 **17. Individual Settlement Payments.**

2 Individual Settlement Payments to Settlement Class Members and PAGA Members will be
3 paid from the Net Settlement Fund and shall be paid pursuant to the settlement formula set forth
4 herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each
5 Settlement Class Member's last known mailing address within seven (7) calendar days after
6 Defendant makes the final settlement payment. All Individual Settlement Payments to Settlement
7 Class Members will be allocated as follows: twenty percent (20%) as wages and eighty percent (80%)
8 as interest and penalties. All Individual Settlement Payments to PAGA Members will be allocated
9 as one hundred percent (100%) penalties.

10 **18. Settlement Class Member's Payment Ratio.**

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

16 **19. PAGA Member's Individual Settlement Payment and PAGA Ratio**

17 The Parties will seek approval from the Court for a total PAGA Payment of \$30,000, which
18 shall be allocated and paid as follows: 75% (\$22,500) out of the Gross Settlement Amount to the
19 California Labor and Workforce Development Agency ("LWDA") as the LWDA's share of the
20 settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$7,500)
21 from the Net Settlement Amount paid and distributed to the PAGA Members based on the number
22 of pay periods worked as an PAGA Member during the PAGA Period. If the Court approves a
23 different total PAGA Payment, the amount shall be allocated and paid using the same percentages.

24 **20. Payment to Settlement Class Member and PAGA Members.**

25 Checks shall be made payable to each Settlement Class Member and/or PAGA Member for
26 payment of each Settlement Class Member and/or PAGA Member's Individual Settlement Payment
27 as set forth in Paragraph III.16-19 of this Agreement.

28

1 **21. Unclaimed Settlement Payment(s).**

2 After one hundred and eighty (180) calendar days of the mailing of the Individual Settlement
3 Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
4 Payment checks will be transmitted to the State of California Office of the Controller Unclaimed
5 Property Fund in the name of the Settlement Class Members who did not cash his/her Settlement
6 check. The Parties agree to coordinate their efforts to seek Court approval for such an escheatment
7 process of uncashed funds. If, for some reason, the Court does not approve the escheatment of
8 uncashed funds, the Parties agree to meet and confer to identify a mutually-agreeable cy pres
9 recipient(s) for the uncashed funds.

10 **22. Class Representative Service Award.**

11 Plaintiff will request that the Court approve a Class Representative Service Award of up to
12 \$10,000. The Class Representative Service Award shall be paid to Plaintiff from the Gross Settlement
13 Fund within seven (7) calendar days after Defendant provides the Gross Settlement Fund to the
14 Settlement Administrator. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
15 Plaintiff for his respective Class Representative Service Award. Plaintiff shall be solely and legally
16 responsible to pay any and all applicable taxes on his Class Representative Service Award and shall
17 hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest
18 arising as a result of the Class Representative Service Award. The Class Representative Service
19 Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Class
20 Member. Any amount requested by Plaintiff for the Class Representative Service Award and not
21 granted by the Court shall return to the Net Settlement Fund and be distributed to Settlement Class
22 Members as provided in this Agreement.

23 **23. Class Counsel Award.**

24 Class Counsel will request that the Court approves attorneys' fees in the amount of up to
25 thirty-three and one-third percent (33.33%) of the Gross Settlement Fund. This amount is currently
26 anticipated to be \$98,333.33. Class Counsel will request that the Court approve the reimbursement
27 of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from
28 the Gross Settlement Fund not to exceed \$XX. Even in the event that the Court reduces or does not

1 approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to
2 revoke the Settlement and it will remain binding. Class Counsel shall be paid any Court-approved
3 fees and costs no later than seven (7) calendar days after Defendant provides the Gross Settlement
4 Fund to the Settlement Administrator. Class Counsel shall be solely and legally responsible to pay
5 all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
6 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this
7 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular
8 amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel
9 Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to
10 Settlement Class Members as provided in this Agreement.

11 **24. Settlement Administrator Costs.**

12 The Parties agree to allocate up to \$10,000 of the Gross Settlement Fund for Settlement
13 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
14 payments, credits and disbursements to Settlement Class Members in the manner set forth herein,
15 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
16 The Parties agree to cooperate in the Settlement administration process and to make all reasonable
17 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

18 **25. Responsibilities of the Settlement Administrator.**

19 The Settlement Administrator shall be responsible for the following: processing and mailing
20 payments to Plaintiff, Class Counsel, and Settlement Class Members; printing, and mailing the
21 Notice of Class Action Settlement and tax forms to the Settlement Class Members as directed by the
22 Court; receiving and reporting the requests for exclusion and objections submitted by Settlement
23 Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval
24 of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement
25 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the
26 performance of all Settlement Administrator responsibilities. Plaintiff, Class Counsel, Defendant,
27 and Defendant's counsel shall not bear any responsibility for errors or omissions in the calculation
28 or distribution of the settlement payments or development of the list of recipients of settlement

1 payments. Defendant and Defendant's counsel shall not enter into any contractual relationship with
2 the Settlement Administrator.

3 **26. Settlement Administrator Fees.**

4 The Settlement Administrator shall be paid the Settlement Administrator Costs within seven
5 (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement
6 Administrator.

7 **27. Payment to the LWDA.**

8 A total payment of \$30,000 from the Gross Settlement Fund will be allocated as the PAGA
9 Payment to be paid as penalties under the Labor Code Private Attorneys General Act of 2004, to the
10 LWDA. Seventy-five percent (75%) of the PAGA Payment (\$22,500) will be paid to the LWDA and
11 the remaining twenty-five (25%) (\$7,500) shall be included in the Net Settlement Fund distributed
12 to PAGA Members.

13 **28. Final Approval Hearing and Entry of Final Judgment.**

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

18 **29. Final Approval Order.**

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

23 **30. Nullification of Settlement Agreement.**

24 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies
25 final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided herein;
26 or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall
27 be null and void and any order or judgement entered by the Court in furtherance of this Settlement
28 shall be treated as void from the beginning. To the extent the total number of opt outs exceed five

1 percent (5%), Defendant has the option to nullify this settlement prior to the final fairness hearing
2 via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement
3 Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had
4 not been executed, except that any fees already incurred by the Settlement Administrator shall be
5 paid by the party terminating the Settlement or Defendant will be solely responsible for the costs
6 incurred for the settlement administration should it exercise its' option to nullify this agreement. The
7 return of any paid Settlement funds to Defendant shall occur no later than five (5) business days after
8 one or more of the triggering events leading to nullification occurs. In the event an appeal is filed
9 from the Court's Final Judgment, or any other appellate review is sought, administration of the
10 Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any
11 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from
12 the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement
13 Administrator by Defendant within thirty (30) days of said notification.

14 **31. Class and PAGA Period Adjustment.**

15 It is estimated that during between December 27, 2016 and November 30, 2021 (the "Data
16 Period") there were approximately 194 Class Members who worked approximately 26,469
17 workweeks during that same period. If, during settlement administration, it turns out that the actual
18 number of weeks in which Class Members performed work during the Data Period exceeds 8% above
19 the 26,469 estimate (i.e., 28,587 weeks), the percentage above 8% shall be considered the "Overage
20 Factor." For example, if the actual weeks worked by Class Members during the Data Period is
21 determined to be 29,116 (i.e., 10% above 26,469), the Overage Factor is 2%. In the event that the
22 settlement administrator determines there is a Overage Factor greater or equal to 1%, the end date of
23 the Class Period and PAGA Period shall be adjusted so the total number of workweeks during the
24 Class Period and PAGA Period is reduced by the Overage Factor. For example, if there is a 2%
25 Overage Factor and the total workweeks in the Data Period is 32,000, the end date of the Class Period
26 and PAGA Period shall be adjusted back to the date at which the workweeks in the Data Period is
27 equivalent to 31,360 (i.e., a 2% reduction from 32,000).

1 **32. No Effect on Employee Benefits.**

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

6 **33. No Admission by Defendant.**

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

11 **34. Exhibits and Headings.**

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

17 **35. Interim Stay of Proceedings.**

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

21 **36. Amendment or Modification.**

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

24 **37. Entire Agreement.**

25 Apart from the short-form Memorandum of Agreement that was executed on or about May
26 9, 2022, which the Parties specifically agree to integrate herein, this Agreement and any attached
27 Exhibits constitute the entire Agreement among these Parties, and no oral or written representations,
28 warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits

1 other than the representations, warranties, and covenants contained and memorialized in the
2 Agreement and its Exhibits. The Parties are entering in to this Agreement based solely on the
3 representations and warranties herein and not based on any promises, representation, and/or
4 warranties not found herein.

5 **38. Authorization to Enter into Settlement Agreement.**

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

18 **39. Binding on Successors and Assigns.**

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

21 **40. California Law Governs.**

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

24 **41. Counterparts.**

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

27 **42. Jurisdiction of the Court.**

28 The Parties agree that the Court shall retain jurisdiction with respect to the interpretation,

1 implementation and enforcement of the terms of this Agreement and all orders and judgments entered
2 in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the
3 Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this
4 Agreement and all orders and judgments entered in connection therewith.

5 **43. Invalidity of Any Provision.**

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

9 **44. Publicity.**

10 Plaintiff and Class Counsel agree not to disclose or publicize this Settlement, including the
11 fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any
12 manner or form, directly or indirectly, to any person or entity, except potential Settlement Class
13 Members and as shall be contractually required to effectuate the terms of the Settlement. For the
14 avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue press releases,
15 communicate with, or respond to any media or publication entities, publish information in manner
16 or form, whether printed or electronic, on any medium or otherwise communicate, whether by print,
17 video, recording, website or social media post, or any other medium, with any person or entity
18 concerning the Settlement, including the fact of the settlement, its terms or contents and the
19 negotiations underlying the Settlement, except as shall be contractually required to effectuate the
20 terms of the Settlement. However, for the limited purpose of allowing Class Counsel to prove
21 adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in
22 this action and the venue/case number of this action (but not any other settlement details) for such
23 purposes.

24 **45. No Unalleged Claims.**

25 Plaintiff and Class Counsel represent that they, as of the date of execution of this Settlement,
26 (a) are not currently aware of any unalleged claims in addition to, or different from, those which are
27 finally and forever settled and released against the Released Parties by this Settlement, except for the
28 actions *Li Fan v. Home Depot U.S.A., Inc.*, Case No. 1:21-cv-01355 (E.D. Cal.) and *Li Fan v. Home*

Depot U.S.A., Inc., Case No. MCV085736 (Madera County Sup. Ct.) and *Lisa Davey v. The Home Depot USA, Inc.*, Case No. 3:20-cv-02541 (S.D. Cal.), (b) they have no current intention of asserting any other claims against Defendant or any of the Released Parties in any judicial or administrative forum except for the *Fan and Davey* actions enumerated above, and (c) that they do not currently represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant or any of the Released Parties, except for the *Fan and Davey* actions enumerated above. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice.

46. Notice of Settlement to LWDA.

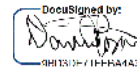
Plaintiff will provide submit this Agreement and proposed settlement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2) at the same time that it is submitted to the Court for preliminary approval.

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

IT IS SO AGREED:

Dated: 10/5/2022

By:



Daniel G. Lozano

Dated: _____

By: _____

THE HOME DEPOT USA, INC.

APPROVED AS TO FORM:

1 DATED: October 5, 2022

JAMES HAWKINS APLC

2
3
4 By: 
James Hawkins,
Gregory Mauro
Michael Calvo

6
7 Attorneys for Plaintiff and Proposed Class

8
9 DATED: October 6, 2022

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

11
12 
13 By: /s/_____
Evan R. Moses
Aaron H. Cole
Melis Atalay
Omar M. Aniff

15 Attorneys for Defendant
16 HOME DEPOT USA, INC.

1 *Depot U.S.A., Inc.*, Case No. MCV085736 (Madera County Sup. Ct.) and *Lisa Davey v. The Home*
2 *Depot USA, Inc.*, Case No. 3:20-cv-02541 (S.D. Cal.), (b) they have no current intention of asserting
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4 forum except for the *Fan and Davey* actions enumerated above, and (c) that they do not currently
5 represent any persons who have expressed any interest in pursuing litigation or seeking any recovery
6 against Defendant or any of the Released Parties, except for the *Fan and Davey* actions enumerated
7 above. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to
8 practice.

9 **46. Notice of Settlement to LWDA.**

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11 Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2) at the same time
12 that it is submitted to the Court for preliminary approval.

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

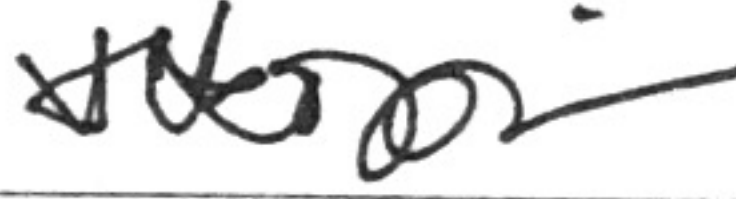
15 **IT IS SO AGREED:**

16
17 Dated: _____

By: _____

18 Daniel G. Lozano

19
20 Dated: 10/5/22

By: 

21 THE HOME DEPOT USA, INC.

22 **APPROVED AS TO FORM:**

Yoko Yagi Okura