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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,

v.

THE HOME DEPOT USA, INC., a Delaware Corporation, HD SUPPLY, INC. and DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV18980

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Elihu M. Berle
DEPT: 6

DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

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 Daniel Lozano (hereinafter referred to as "Plaintiff" or "Class Representative"), who commenced this class and PAGA action on behalf of the Class Members and Aggrieved Employees on or about November 18, 2019. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. 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 as **Exhibit A** to the Settlement Agreement is a true and correct copy of the proposed Notice of Class Action Settlement to be mailed to Settlement Class Members.

3. On April 7, 2020, Plaintiff sent the LWDA notice, via online filing, of his intent to file an action against Home Depot to seek civil penalties under PAGA. On April 9, 2020, Plaintiff filed a Class Action Complaint in Los Angeles County Superior Court, Case No. 20STCV13980. On or about June 12, 2020, Plaintiff filed an amended complaint adding a claim for PAGA, which was later removed to the United States District Court for the Central District of California, Case No. 2:20-cv-06866-MCS (JPRx). On or about October 7, 2021, the Parties entered into a Stipulation and Tolling Agreement, that provided, among other things, (a) Plaintiff will dismiss his action in its entirety without prejudice; and (b) Plaintiff would file a Subsequent Complaint, the form of which was agreed upon via the Parties' agreement.

4. Pursuant to the Stipulation and Tolling Agreement, on or about October 14, 2021, Plaintiff filed a request for dismissal of his action. As a part of the Stipulation and Tolling Agreement, the Parties agreed to mediate Plaintiff's class and PAGA claims. The Parties began to engage in informal discovery to understand the nature of the allegations and the scope of

potential liability. Defendant provided Plaintiff's counsel with pertinent data for the Class Members, as well as relevant documents, so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses. This included a random sample of time keeping and payroll records for a majority of the class members, relevant policies and class data points.

5. On April 18, 2022, the Parties attended a full-day mediation with experienced mediator Louis Marlin. After a full-day's mediation and subsequent further negotiations, the Parties reached an agreement on May 9, 2022, as provided herein, to settle Plaintiff's claims on a class-wide basis for $295,000 and the terms of which are fully memorialized in the Settlement Agreement.

6. Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiffs' claims, and were able to objectively assess the settlement's reasonableness. For example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing their actions against Defendant for Labor Code violations. Plaintiff was intimately familiar with Defendant's labor policies and practices, and over the course of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's Counsel. During those conversations, Plaintiff's Counsel explained how the policies and practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendant. And in preparation for drafting the complaints, Plaintiff's Counsel conducted their own independent preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiffs' personnel files and associated records.

7. Plaintiff's Counsel received a considerable number of documents and data, including employee demographic data, time and pay records, and Defendant's policies and procedures manuals which covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime & premium pay, etc. and sampled time and pay records for approximately 25% of the Class

Members. The document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make an independent assessment of the reasonableness of the settlement's terms.

8. In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability as private attorneys general and class representatives through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records; (5) reviewing Defendant's employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation.

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

10. Defendants deny any wrongdoing and deny liability with respect to the matters alleged in the Complaint and believe that they have valid defenses to all of Plaintiff's claims. Defendants further contend that they complied with all wage and hour laws applicable to the employment of Plaintiff and other Class Members. To date, no class has been certified and no court has made any findings that Defendants engaged in any wrongdoing or in any wrongful conduct, or otherwise acted improperly or in violation of any law, rule or regulation with respect to any of the issues presented in this action.

11. The Settlement Class Members worked for Home Depot as supply chain drivers delivering goods to other Home Depot stores and its customers driving vehicles governed by the

DOT as well as smaller box truck type vehicle. All of the non-exempt employees performing these duties work under as supply chain drivers and are all within the Settlement Class.

12. Since the filing of the complaint, the Parties have exchanged extensive informal discovery and engaged in numerous discussions regarding the factual and legal issues surrounding this case. Throughout the litigation, Defendant produced thousands of pages of information and thousands of lines of data, including policies, handbooks, payroll and time records for most of the class members in the class. Defendants also provided Plaintiff's personnel file, records regarding documents identifying the job duties and information regarding the number of employees holding these positions during the relevant time period. Defendant also provided substantial information concerning the total number of potential class members, the payroll data at issue, and the applicable hourly rates, workweeks and pay periods, and other summary data related to the alleged class. The Parties have conducted themselves in informed, good faith arms-length negotiations after conducting discovery and exchanging extensive evidence and information about the claims and defenses of this lawsuit through informal discovery, and engaging in pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their dispute.

13. In preparation for the mediations, Plaintiff reviewed the entire discovery produced. The information had to be extrapolated and processed to figure out the amount of compensation Plaintiff contends are due to the Class. The evidence and information gathered and reviewed by counsel provided a factual framework for a comprehensible and reliable damage model pertaining to all Settlement Class Members. The mediation included discussions and examination of the proposed Class and the Parties' respective positions on the legal and factual issues raised in the Complaint.

14. As a result of the mediation, the Parties agreed to settle this matter for a Gross Settlement Fund ("GSF") of $295,000.00. There are approximately 200 Class Members through mediation and approximately 34,080 workweeks though the class period. The settlement value is approximately **$8.65 per workweek** before fees and costs and about **$3.93 per work week** after fees and costs. Class Members can expect to receive on average $670, with a high

payment of approximately $1,241.88, and a low payment of $3.93.

15. Plaintiff's counsel balanced the terms of the proposed Settlement against the risk of litigation and probable outcome at the class certification stage, and if any Class were certified, at trial. Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and the Class. Counsel for the Parties investigated the applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendants' defenses thereto and the damages claimed by Plaintiff on behalf of the Settlement Class.

16. I believe that the consideration and terms set forth in the Settlement Agreement are fair, reasonable, and adequate and are in the best interests of the Settlement Class in light of all known facts and circumstances, including the various defenses asserted by Defendant, and numerous potential appellate issues. In addition, the prospect of a potential adverse summary judgment ruling, as well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered in agreeing to the proposed Settlement.

17. The GSF includes, without limitation, (1) attorneys' fees in the amount of up to $98,334 and reimbursement of litigation costs and expenses in the amount of up to $20,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (2) service award to Plaintiff in the amount of up to $10,000.00 ("Enhancement Award"); (3) fees and expenses of administration of the Settlement to the Settlement Administrator ILYM Group, Inc. in an amount not to exceed $10,000.00 ("Settlement Administration Costs"); (4) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of $7,500.00; and (5) the seventy-five percent (75%) share of PAGA Penalties ("LWDA Payment") in the amount of $22,500.00 to the

California Labor and Workforce Development Agency ("LWDA"). The employer's portion of the payroll taxes will be paid separate and apart from the GSF. This is a non-reversion settlement. After deductions, the Net Settlement Amount is estimated to be approximately $134,166.00

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

19. The predominant claims in this action arise from alleged violations of California law with respect to Defendants' failure to provide meal breaks and failing to pay all wages earned and due upon separation. Plaintiff alleges that these practices resulted directly from the implementation and enforcement of Defendants' own policies and practices.

20. Plaintiff analyzed approximately 119,113 shifts for approximately 192 class members and identified approximately 99.2% meal break compliance rate for shifts greater than 6 hours and recorded before the fifth hour and approximately 98% compliance rate for shifts greater than 12 hours. However, for shifts between 10 and 12 hours, the compliance rate fell. As a result of the various components of meal period violations for late, short and unrecorded meals, coupled with the approximately $503,078 in meal period premiums paid by Defendant during the Class Period, Plaintiff valued the Meal period claim at $52,255 which is the difference between meal premiums paid ($503,078) by Defendant and meal period premiums owed ($555,333). Defendant had a policy in place to automatically pay meal period premiums for when a meal was recorded late, short or unrecorded. As a result, Defendant argued that the

meal period premiums were over paid. Based upon the apparent facial compliance of the meal period and rest period policies, along with the number of premiums paid and high compliance rate for meal periods, Plaintiff provided little to no value of the rest break claims.

21. Defendants argued that the employees were instructed both verbally and in written policies to take meal and rest periods timely, that employees were not permitted to perform any work during the meal and rest periods and that employees were instructed to let Defendant know if employees did not take a meal or rest period. Defendant argued that these individuals were generally in the field and were authorized and permitted to take breaks and lunches according to California law.

22. Defendant also argued that notwithstanding its apparently compliant meal break and rest break policies regarding the timing and length, that Plaintiff and Class Members are subject to IWC Wage Order 9-2001 as it relates to the transportation industry. Defendant also argued Plaintiff's meal and rest break claims fail because California's meal and rest break provisions are expressly preempted by federal law, pursuant to the Federal Motor Carrier Safety Administration's December 2018 Determination of Preemption. [Docket No. FMCSA-2018-0304]. Plaintiff countered that the exemption if applicable, would not be retroactive and argued that counsel for Plaintiff currently had an appeal pending in the 9th Circuit regarding this very issue. Notwithstanding these arguments, Plaintiff was able to secure a reasonable and favorable settlement.

23. The Labor Code section 203 and LC 226 claim were uncertain given the defenses asserted for the underlying meal and rest break claims and a lack of evidence of the "willfulness" prong necessary for a Labor Code §203 claim based upon the apparent facial compliance of the meal and rest break policies and payment of meal period premiums. Further, at the time of mediation, California's Second District Court of Appeals in *Gustavo Naranjo, et al. v. Spectrum Security Services, Inc*. held that unpaid premium wages for meal break violations do not entitle employees to additional remedies under the California Labor Code for inaccurate wage statements or waiting time penalties. However, after the Parties settled the case, on May 24, 2022 the California Supreme Court reversed that decision, and this case was part of the discussion and provided

for risks on both sides.

24. Class certification was somewhat uncertain given the numerous hurdles necessary under the California Supreme Court decision in *Brinker Restaurant Corp. v. Superior Court*. Plaintiffs also considered Defendants' arguments that subsequent decisions citing and relying on the U.S. Supreme Court decision in *Wal-Mart v. Dukes*, 564 U.S. 338 (2011) arguably made it more difficult to certify a class in this case based upon the need to demonstrate that common issues are superior and could be dealt with in "one stroke" and that the "trial by formula" (*Duran v. U.S. Bank* (2014) 59 Cal.4th 1172) could not satisfy such requirements based upon due process grounds. However, Plaintiff disagreed that the subsequent decisions citing *Walmart*, applied to the facts in this case. Additionally, Plaintiff believes the cases denying certification are distinguishable and that the facts in this case are more akin to the facts in cases where certification had been granted, Class Counsel recognize the risk of an adverse finding on certification and considered and weighed this risk in determining to settle and compromise these claims. Lastly, Plaintiffs believe the decisions in *Sav-On Drug Stores, Inc. v Sup. Ct*, (2004) 34 Cal. 4th 319, 340 and *Bell v Famers Ins. Exchange*, (2004) 115 Cal. App. 4th 715 provide the applicable framework for class certification trial by formula plans. See also *Duran v. Superior Court*, 2014 Cal. LEXIS 5569 (Cal. Aug. 13, 2014).

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

26. The GSF is well within the acceptable range of reasonableness for the claims of the Settlement Class Members. After analysis and review of Defendants' time and pay record production and other payroll data, Class counsel estimates the overall value of the claims at approximately **$782,528**.

27. There are an estimated 34,080 workweeks through the Class Period and approximately 9,212 pay periods during the PAGA Period. Plaintiff valued the Meal period claim at **$52,255** which is the difference between meal premiums paid ($503,078) by Defendant and meal period premiums owed ($555,333). Defendants owe to the class members approximately **$63,200 in wage statement violations** (9,212 pay periods x $50 for first violation and $100 for each subsequent with a $4,000 cap = ($632,000 X .90 compliance)). Based upon approximately a 90% compliance rate for paying meal period premiums, arguably 90% of the wage statements were thus complaint. Defendants owe to class members approximately **$206,473 in waiting time penalties** (73 termed employees x 8 hours per day x 30 days x **$23.57** avg. hourly rate/2). The LC 203 penalty was reduced based upon the willfulness prong for penalties compared to Defendants practices as evidenced it the written policies and time and pay records. Lastly, Defendants owe to class members approximately **$460,600 in PAGA penalties** (9,212 pay periods x $50). Again, Plaintiff valued the PAGA using the $50 figure to account for the Defendants high compliance rates paying meal period premiums, the apparently facial policies, and the Court's discretion in awarding such penalties. Lastly, as discussed above, the rest period claim provides little to no value.

28. As a result, the GSF of $295,000 represents a reasonable recovery and approximately 37% of the overall potential value. This recovery percentage could easily be much higher if at trial PAGA penalties were reduced or damages for certain pay periods or workweeks could not be proven for certain individuals. The proposed GSF is within the "ballpark of reasonableness" and should be approved. Counsel for Plaintiff believe that this is a fair and reasonable Settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, the policies and practices Defendants has had in place or implemented during the purported liability period, and the benefit to be recovered for

the Class. Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable and is in the best interests of the Settlement Class, and should be preliminarily approved.

29. Based on the estimated Net Settlement Amount of **$134,166.00**, Class Members to expect to receive on average $670, with a high payment of approximately $1,241.88, and a low payment of $3.93. To the extent any amount for Attorneys' Fees, Costs, Claims Administration Costs or Enhancements are not awarded, the difference in those amounts will be added to the NSA. This is a guaranteed amount of money paid to Settlement Class Members now, rather than the continued risk of further litigation and receiving no money sometime in the far future and after trial and appeals.

30. The Class Representative has provided extensive supporting documents and assisted Class Counsel in developing information necessary to litigate and settle this case. Plaintiff also conducted record review and consultation with counsel in preparation for discovery and eventual mediation, and to assist in evaluating and proving the claims. The settlement provides for a payment to be paid to the Class Representative in the amount of $10,000.00 subject to Court approval. The purpose is to compensate the Class Representative an additional enhanced payment, taking into consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Settlement Class Members who otherwise, would probably not file their own individual claims to recover what may be relatively low damages. Further, the Payment of $10,000.00 as a Service Enhancement to the Class Representative is a very fair and justified as part of the Settlement based on the risks Plaintiff has taken and benefits conferred upon the Settlement Class.

31. Class certification, as requested by the Parties for the purposes of the settlement only, should be granted because Plaintiff allege that the proposed Settlement Class Members' claims all stem from the same alleged conduct, i.e., that Defendant violated California law because they: (1) failed to provide rest periods and meal periods; (2) failed to timely pay wages; (3) engaged in unfair competition; and (4) PAGA and wage statement violations. In addition to compensatory damages, Plaintiffs and the Settlement Class seek attorneys' fees, costs, and

interest. Under these specific circumstances, the commonality requirement for class certification is satisfied. The typicality requirement for certification is also met as it is alleged that the Class Representatives and the proposed Settlement Class were subjected to similar violations based upon similar conduct, policies and practices.

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

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

34. The class notice plan here calls for the Settlement ILYM Group, Inc., to mail a Notice of Proposed Class Action Settlement to all known and reasonably ascertainable

Settlement Class Members based on Defendants' records. Further, the Settlement Administrator will conduct a skip-trace and use all reasonable efforts to locate Settlement Class Members and will re-mail all returned envelopes with forwarding addresses. The notice is consistent with the class certification notices approved by numerous state and federal courts, and is the best notice practicable under circumstances of this case. The proposed Settlement Class Members are ascertainable because all of the Settlement Class Members have worked for Defendant during the Class Period and can be identified through Defendants' records.

35. The Notice also fulfills the neutrality requirement. It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner, and is accurate, objective, and understandable to Settlement Class Members, as is required under prevailing precedent. The Notice clearly states the Settlement does not constitute an admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final settlement approval decision has yet to be made. The Notice also clearly instructs the Settlement Class Members on how to object or exclude themselves from the Settlement. Therefore, Settlement Class Members will have the option to participate or exclude themselves simply by mailing a request to be excluded from the settlement. The Settlement Class consists of non-exempt employees who speak English. Thus, the Notice of Class Action is drafted in a manner that is likely to be readily understood by the Settlement Class. Accordingly, the Notice complies with the standards of fairness, completeness and neutrality required of a Notice of Class Action Settlement. The Notice therefore is neutral, objective and understandable.

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

a. *Aguilar v. 7-Eleven, Inc*., et. al., Orange County Superior Court- Case No.: 30-

2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium wages for meal period and rest periods and resultant penalties. Class Notice pending.

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

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

d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiffs' counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

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

f. *West v Iron Mountain Information Management, Inc, et. al*.; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Settlement for "binding arbitration." Arbitration Award for

Plaintiff Class. Arbitration Award confirmed. Plaintiffs' counsel, lead trial counsel and class counsel.

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

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

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

j. *Padron v. Universal Protection Service, et al,* Orange County Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for security officers in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

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

l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc*. et al., Riverside Superior

Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

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

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

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

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

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

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

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

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

u. *Willems v. Diedrich Coffee, Inc.*, et al., Orange County Superior Court, Case No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

v. *Davila, et al. v. Beckman Coulter, Inc*., et al., Orange County Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production workers employed by defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Cased settled; final approval granted; no objections and funds fully distributed.

w. *Perez v. Naked Juice Company of Glendora, Inc*., Los Angeles Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

37. Here, the Parties' agreement to pay Class Counsel Fees of 33.333% of the GSA is reasonable. My firm and I have been the only counsel to represent Plaintiff and the Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm and our co-counsel. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

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

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

by Defendant, and numerous potential appellate issues.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 6, 2022 at Irvine, California.

James R. Hawkins

EXHIBIT 1

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Attorneys for Defendant
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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

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

This Settlement shall be binding on Plaintiff, the current and former employees he seeks 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 *Daniel G. Lozano v. Home Depot, U.S.A., Inc., et al*., which was initially filed in Los Angeles County Superior Court (Case No. 20STCV13980), subsequently removed to the United States District Court, and which was pending in the Central District of California as Case No. 2:20-cv-06866-FMO-JPR, voluntarily dismissed, and which has been re-filed in Los Angele County Superior Court (Case No. 22STCV18980), and will be amended consistent with the terms of this Settlement..

2. Class Counsel

"Class Counsel" means James Hawkins, APLC, 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 Information

"Class Information" means information regarding Class Members that Defendant will in good faith compile from Defendant's internal and currently available electronic timekeeping and HRIS records and provide to the Settlement Administrator. To the extent possible, it shall be 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.

15. Final Approval Order

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

16. Final Judgment

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties.

17. Gross Settlement Fund

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

18. Individual Settlement Payment

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

19. LWDA

"LWDA" means the California Labor and Workforce Development Agency.

20. Net Settlement Fund

"Net Settlement Fund" means the Gross Settlement Fund, less Court-approved Class Counsel Award, Class Representative Service Award, payment to the LWDA, and Settlement Administration Costs.

21. Notice of Class Action Settlement

"Notice of Class Action Settlement" means the Notice of Pendency of Class Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as **Exhibit A**, which shall include an estimated individual settlement payment, number of workweeks worked, dates of employment, how to opt-out of the settlement, and how to object to the settlement, and how to dispute the number of estimated workweeks worked.

22. PAGA

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

23. PAGA Members

"PAGA 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 PAGA 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).

24. PAGA Payment

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

25. PAGA Period

"PAGA Period" means the period from April 7, 2019 through August 15, 2022.

26. Parties

"Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean Plaintiff or Defendants, individually.

27. 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.

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.

37. Settlement Class Members

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

II. RECITALS

1. Amendment of Complaint

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

2. Class Certification.

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

3. <u>Procedural History</u>

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

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

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

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

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

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

On April 18, 2022, the Parties attended a full-day mediation with experienced mediator Louis Marlin. After a full-day's mediation and subsequent further negotiations, the Parties reached an 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. <u>Benefits of Settlement to Class Members.</u>

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. <u>Defendant's Reasons for Settlement.</u>

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. <u>Settlement of Disputed Claims.</u>

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. <u>TERMS OF AGREEMENT</u>

1. <u>Release as to All Settlement Class Members.</u>

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

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

2. Release as to all PAGA Members

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

3. <u>Release of Claims by Plaintiff</u>

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

Plaintiff's 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.**

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees 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 Plaintiff's employment with Defendant.

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

5. Circular 230 Disclaimer.

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

6. Preliminary Approval of Settlement.

Promptly upon execution of this Agreement, Plaintiff 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 order shall provide for the Notice of Class Action Settlement to be sent to Settlement Class Members as specified herein.

7. Settlement Administrator.

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

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

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

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

9. Undeliverable Notices.

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

10. Disputes Regarding Individual Settlement Payments.

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

11. Disputes Regarding Administration of Settlement.

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

12. Requests for Exclusion.

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

13. Objections.

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. <u>No Solicitation of Settlement Objections or Exclusions.</u>

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. <u>Funding and Allocation of Gross Settlement Fund.</u>

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. <u>Net Settlement Fund.</u>

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.

17. Individual Settlement Payments.

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

18. Settlement Class Member's Payment Ratio.

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

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

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

20. Payment to Settlement Class Member and PAGA Members.

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

21. Unclaimed Settlement Payment(s).

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

22. Class Representative Service Award.

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

23. Class Counsel Award.

Class Counsel will request that the Court approves attorneys' fees in the amount of up to thirty-three and one-third percent (33.33%) of the Gross Settlement Fund. This amount is currently anticipated to be $98,333.33. Class Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement Fund not to exceed $XX. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke the Settlement and it will remain binding. Class Counsel shall be paid any Court-approved fees and costs no later than seven (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement Administrator. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Settlement Class Members as provided in this Agreement.

24. <u>Settlement Administrator Costs.</u>

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

25. <u>Responsibilities of the Settlement Administrator.</u>

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

26. Settlement Administrator Fees.

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

27. Payment to the LWDA.

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

28. 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 Award; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA Payment.

29. Final Approval Order.

Plaintiff will request that the Court enter, after the Final Approval Hearing, a Final Approval Order in the form attached hereto as **Exhibit C**. Plaintiff 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.

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

31. Class and PAGA Period Adjustment.

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

32. <u>No Effect on Employee Benefits.</u>

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

33. <u>No Admission by Defendant.</u>

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.

34. <u>Exhibits and Headings.</u>

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.

35. <u>Interim Stay of Proceedings.</u>

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.

36. <u>Amendment or Modification.</u>

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

37. <u>Entire Agreement.</u>

Apart from the short-form Memorandum of Agreement that was executed on or about May 9, 2022, 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.

38. <u>Authorization to Enter into Settlement Agreement.</u>

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. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

39. <u>Binding on Successors and Assigns</u>.

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

40. <u>California Law Governs.</u>

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

41. <u>Counterparts.</u>

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.

42. <u>Jurisdiction of the Court.</u>

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.

43. <u>Invalidity of Any Provision.</u>

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.

44. <u>Publicity.</u>

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

45. <u>No Unalleged Claims.</u>

Plaintiff and Class Counsel represent that they, as of the date of execution of this Settlement, (a) are not currently aware of any unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement, except for the 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(l)(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: DocuSigned by: [signature] 9B03DE71EEBA4A3

Daniel G. Lozano

Dated:__________ By:__________

THE HOME DEPOT USA, INC.

APPROVED AS TO FORM:

DATED: October 5, 2022

JAMES HAWKINS APLC

By: ______________________
James Hawkins,
Gregory Mauro
Michael Calvo

Attorneys for Plaintiff and Proposed Class

DATED: October 6, 2022

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

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

Attorneys for Defendant
HOME DEPOT USA, INC.

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.

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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:______________________ By:______________________

Daniel G. Lozano

Dated: 10/5/22 By:______________________

THE HOME DEPOT USA, INC.

YOKO YAGI OKUDA

APPROVED AS TO FORM:

EXHIBIT A

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

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

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 Judge: Hon. Elihu M. Berle Department: 6 **NOTICE OF CLASS ACTION SETTLEMENT**

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Daniel G. Lozano v. Home Depot U.S.A., Inc*., (Los Angeles County Superior Court Case No. 22STCV1890) (the "Action"). You are receiving this notice because the records of Home Depot U.S.A., Inc. ("Home Depot") and/or HD Supply, Inc. ("HD Supply") indicate that you are a current or former employee who worked for Home Depot and/or HD Supply within the State of California during the time period of April 6, 2016 through August 15, 2022; who was a Supply-Chain Driver (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) (the "Class"). As a result, you are eligible to receive a portion of the settlement amount. Home Depot and HD Supply may be referred to in this notice collectively as "Defendants".

This is **not** a notice of a lawsuit against you. **You are not being sued**. Your participation in the Settlement will not affect your employment with Home Depot or HD Supply in any way whatsoever.

The Court has ordered that this notice be sent to you because Defendants' records indicate that you are a member of the Class. The purpose of this notice is to inform you of the proposed Settlement of the Action. The notice is also intended (i) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you, and (ii) to advise you of your rights and options with respect to the Settlement.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In April 2020, a Home Depot employee filed a lawsuit in Los Angeles County Superior Court (Case No. 20STCV13980), in which he alleged multiple violations of California wage-and-hour laws on a class-wide basis as to all current and former employees in California who were classified as non-exempt from overtime pay. In June 2020, that same employee filed an amended complaint adding a claim for action for civil penalties under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* ("PAGA"), which was later removed to the United States District Court for the Central District of California, Case No. 2:20-cv-06866-MCS (JPRx). In June 2022, that same employee filed a further complaint in Los Angeles County Superior Court (Case No. 22STCV18980) that brought the following claims on a class-wide basis as to all current and former employees in California who were classified as non-exempt Supply-Chain Driver (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) who were employed by Home Depot and/or HD Supply: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to timely pay wages at the time of termination and/or during employment; (4) failure to provide accurate wage statements; (5) Unlawful Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq*.; and (6) civil penalties under PAGA (the "Action").

The individual who is suing Defendants is referred to in this document as "Plaintiff." The Action was litigated in Federal Court and State Court prior to this settlement.

Home Depot and HD Supply contend that the members of the Class have been paid all monies that were due to them, maintains that it has at all times complied with California's wage-and-hour laws, and vigorously denies any wrongdoing alleged by Plaintiff.

The Court has not ruled on whether Plaintiff's allegations have any merit. However, for the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiff and Home Depot have negotiated a settlement whereby Home Depot has agreed to pay $295,000.00 to resolve the matter, and Class Members will be eligible to claim a portion of this amount. This settlement is **not** an admission by Home Depot or its affiliates of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All persons who work or worked for Home Depot and/or HD Supply in California who were classified as non-exempt Supply-Chain Driver (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) at any time during the time period of April 6, 2016 through August 15, 2022.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties' proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. Home Depot will pay Two Hundred and Ninety-Five Thousand Dollars and no cents ($295,000.00) to settle the claims of all Class Members.

B. A claims administrator has been appointed by the Court to administer the settlement. The claims administrator will pay from the $295,000.00: **(1)** Plaintiff's counsel's attorneys' fees, up to $98,334.00; **(2)** Plaintiff's costs of litigation, up to the amount of $20,000.00; **(3)** The expenses of administering the settlement, up to the amount of $10,000.00; **(4)** An enhancement award of $10,000.00 to the Plaintiff; **(5)** A payment of $22,500.00 to the California Labor & Workforce Development Agency, representing 75% of the $30,000 allocated to the settlement of Plaintiff's claim for penalties under PAGA, and $7,500.00 to Class Members who worked between April 7, 2019 and August 12, 2022, representing 25% of the $30,000.00 allocated to the settlement of Plaintiff's claim for penalties under PAGA. The remainder of the $295,000.00 will be available to make individual settlement payments to Class Members.

C. The amount to be distributed to Class Members will be divided among all Class Members. The amount of money you will receive will be based on the total amount to be distributed to Class Members, after the amounts described in paragraph IV.B, above, are deducted, divided by the number of aggregate compensable weeks worked by all Class Members during the Class Period to produce a "Weekly Settlement Value." A "compensable week" is any week in which a Class Member was employed by/worked for Home Depot and/or HD Supply in California as a non-exempt Supply Chain Driver (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) during the Class Period. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of compensable weeks you worked for Home Depot and/or HD Supply during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings. **According to Defendants' records, you worked XX compensable weeks. Your estimated individual settlement payment is: $INDIVIDUAL'S AMOUNT.**

D. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release Home Depot, HD Supply, and any of their former and present parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents, successors, assigns, or legal representatives (including HD Supply) (the "Released Parties"), from any and all claims, causes of action, and factual or legal theories that were alleged in the Action, or reasonably could have been alleged based on the facts and legal theories of the Action 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 of relief described above or any of the claims, causes of action or legal theories based on the Complaint; (f) all damages, penalties, interest, and other amounts recoverable under each of the preceding claims, causes of action, or legal theories of relief (collectively, the "Released Class Claims"). Released Class Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies available at law or equity allegedly owed or available to the Class arising or reasonably flowing from the Action against the Released Parties for the time period from the beginning of time up to and including the last date of the Class Period. If you do not submit a timely request for an exclusion, you will be barred from prosecuting any of the Released Class Claims against the Released Parties.

You will also release claims for civil penalties pursuant to the Private Attorneys General Act of 2004 against the Released Parties irrespective of whether you opt out of the Settlement, including all causes of action, claims, and/or legal theories for civil penalties, both potential and actual, that were alleged or reasonably could have been alleged based on the facts and theories of the operative complaints in the Action, including but not limited to claims for: (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) any other claims for civil penalties under the wage and hour laws pleaded in the Action or that are based on the same predicate facts or primary rights associated with such laws; and (f) all civil penalties and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders.

V. WHAT ARE MY OPTIONS?

A. ***You may accept your share of the $295,000.00 settlement and be bound by the release of all claims described above.*** Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the claims administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; ***or***

B. ***You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement***. If you choose to be excluded, by no later than _____ (45 calendar days after mailing of this Notice), you must send a written request for exclusion, by fax to ________ or by mail, to the claims administrator, Name, located at Address. In order to be considered valid, your request for exclusion ***must*** be timely sent and ***must*** include your name, your phone number, a request for exclusion, and your signature.

C. ***You may object to the settlement.*** The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The claims administrator will calculate your share of the settlement and will issue you a check.

B. Twenty percent (20%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining eighty percent (80%) of your share of the settlement. You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the claims administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on __________, 202_, at _____ a.m., in Department 6 of the Los Angeles Superior Court, located at the 312 North Spring Street, Los Angeles CA 90012 to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you.

You are not required to attend the hearing. Counsel for Plaintiff and the Class will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Face masks are strognly encouraged at the final fairness hearing. Remote appearances at the hearing are also allowed. If you would like to appear remotely at the final fairness hearing, you must schedule a remote appearance through Court Connect at http;//www.lacourt.org/lacc/. Check the Court's website for the most current information.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it. The Court will consider your views. To object, you must either appear at the Final Approval Hearing or send a letter that: (1) you sign; (2) includes your full name; (3) states the basis for your objection; and (4) if you intend to appear at the Final Approval hearing. If you object by written letter, the letter must be postmarked on or before ______________, 202_ (45 calendar days after mailing of this Notice). If you would like to object to the settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 22STCV18980. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the Archives and Records Center of the Los Angeles County Superior Court, located at 222 North Hill Street, Room 212, Los Angeles, CA, 90012. You may also obtain more details by examining the Court's file on the internet via the Case Access page for the California Superior Court for the County of Los Angeles at https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil

If you have any questions, you can call the Claims Administrator at _____ or any of Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING THE CLASS

James Hawkins APC
James Hawkins
Gregory Mauro
Michael Calvo
9880 Research Drive, Suite 800
Irvine, CA 92618
Tel.: (949) 387-7200

ATTORNEYS REPRESENTING HOME DEPOT U.S.A., INC.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Evan R. Moses
Aaron H. Cole
Melis Atalay
Omar M. Aniff
400 South Hope Street, Suite 1200
Los Angeles, California 90071
Tel: (213) 239-9800; Fax: (213) 239-9045

PLEASE DO NOT CALL THE COURT, HOME DEPOT, HD SUPPLY, OR HOME DEPOT'S ATTORNEYS REGARDING THIS SETTLEMENT.

EXHIBIT B

EXHIBIT B

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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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

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

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

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

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

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

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

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

9. This Preliminary Approval Order and the Stipulation, and all papers related thereto, are not, and shall not be construed to be, an admission by Defendants of any liability, claim, or 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