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and CHRIS J. MESUNAS

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

SILVIANO VASQUEZ, individually and on  
behalf of all other similarly situated employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,  
INC., A California Corporation; and DOES 1 to  
100, inclusive,

Defendants.

Case No.: 34-2021-00305938

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

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and  
2 entered into between the Plaintiff Silviano Vasquez (“Plaintiff”), on behalf of himself, the Labor and  
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendants Chriswell  
4 Home Improvements, Inc., Paul C. Cromwell and Chris J. Mesunas (“Defendants”). This Agreement is  
5 subject to the terms and conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Vasquez v. Chriswell Home Improvements, Inc.*,  
9 Sacramento County Superior Court, Case No. 34-2021-00305938, filed August 10, 2021.

10 1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, perform work  
11 for Chriswell Home Improvements, Inc. in California as non-exempt employees during the PAGA Claim  
12 Period.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation  
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s  
16 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,  
17 1.25, 5.5, and 5.8.

18 1.5 “Claims Administrator” means and refers to ILYM Group, Inc., the third-party entity that  
19 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action  
20 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of  
21 administering this Agreement. The Parties each represent that they do not have any financial interest in  
22 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create  
23 a conflict of interest.

24 1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the  
25 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,  
26 and shall include all costs of administering the Agreement, including, but not limited to, all tax document  
27 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees  
28 associated with preparing, issuing and mailing any and all notices and other correspondence to Class

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC.

1.8 “Class Member(s)” means all individuals who have, or continue to, perform work for Chriswell Home Improvements, Inc. in California as non-exempt employees during the Class Period.

1.9 “Class Period” means August 10, 2017 up to either (1) the Preliminary Approval Date, or (2) September 26, 2022, whichever is earlier.

1.10 “Class Representative” means Plaintiff Silviano Vasquez.

1.11 “Complaint” means the operative Complaint on file in the Action with the Court.

1.12 “Court” means the Sacramento County Superior Court.

1.13 “Defendants” means Chriswell Home Improvement, Inc., Paul C. Cromwell and Chris J. Mesunas.

1.14 “Defendants’ Counsel” means Coggins Law and Elguindy Meyer & Koegel, APC.

1.15 “Enhancement Payment” means the amount approved by the Court to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a Qualified Claimant.

1.16 “Effective Date” means the Final Approval Date unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day

1 after a signed order approving this settlement has been filed provided no appellate proceeding having been  
2 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been  
3 finally dismissed with no material change to the terms of this settlement and there is no right to pursue  
4 further remedies or relief, whichever is later.

5 1.17 “Final Approval Date” means the date a signed order granting final approval of this  
6 Agreement is filed with the Court.

7 1.18 “Gross Settlement Amount” is the sum of One Hundred Ten Thousand Dollars and No  
8 Cents (\$110,000).

9 1.19 “LWDA” means the California Labor and Workforce Development Agency.

10 1.20 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for  
11 distribution to Qualified Claimants, as described in this Agreement, after deduction of Class Counsel’s  
12 attorneys’ fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement  
13 Payment to the Class Representative.

14 1.21 “Notice of Settlement” means the document substantially in the form attached hereto as  
15 Exhibit 1.

16 1.22 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of  
17 Settlement to Class Members and Aggrieved Employees.

18 1.23 “PAGA” means Private Attorneys General Act.

19 1.24 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards  
20 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

21 1.25 “PAGA Claim Period” means August 10, 2020 up to either (1) to the Preliminary Approval  
22 Date or (2) September 26, 2022, whichever is earlier.

23 1.26 “Parties” mean Defendants and Plaintiff.

24 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval  
25 of this Agreement is filed with the Court.

26 1.28 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the  
27 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this  
28

Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.29 “Qualified Claimant” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.30 “Qualified Claimant’s Released Claims” means all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant’s Released Claims exclude claims for workers’ compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.31 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendants’ records.

1.32 “Released PAGA Claims” means any all Private Attorneys General Act claims for civil penalties contained in Plaintiff’s letter to the LWDA and/or operative Complaint, through the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.33 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders, directors, agents, employees, attorneys, and insurers.

## **2. DESCRIPTION OF THE LITIGATION**

2.1 On or about August 10, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for expenses, failure to maintain accurate records and

1 failure to provide paid sick leave. The LWDA did not respond to the notice within the statutorily required  
2 time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged  
3 PAGA claims.

4       2.2     On or about August 10, 2021, Plaintiff filed a class action Complaint in Sacramento  
5 County Superior Court on behalf of himself and Class Members alleging claims for failure to pay  
6 minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest  
7 periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay  
8 reimbursements for expenses, and unfair competition. Plaintiff filed a First Amended Complaint on  
9 approximately January 5, 2022 to add a PAGA cause of action based on the violations alleged in the  
10 August 10, 2021 notice to the LWDA on behalf of himself and Aggrieved Employees.

11       2.3     Through informal discovery, Defendants and Defendants' Counsel provided Class  
12 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,  
13 information on Class Members including, but not limited to, Class Members' dates of employment, total  
14 number of Class Members, as well as timecard data and payroll reports for a randomly selected sample of  
15 Class Members.

16       2.4     On July 28, 2022, the Parties participated in a lengthy mediation with private mediator  
17 Russ J. Wunderli, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution.  
18 At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

19       2.5     Discussions between Plaintiff and Class Counsel, between counsel for the Parties,  
20 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff  
21 and the detailed analysis of the records, including expert analysis, have permitted each side to assess the  
22 relative merits of the claims and the defenses to those claims.

23       2.6     In the Action, Plaintiff contends that Defendants violated California law by 1) failing to  
24 pay Plaintiff and similarly situated employees for all hours worked; and 2) failing to incorporate the value  
25 of nondiscretionary remuneration, such as bonuses into Plaintiff's and similarly situated employees'  
26 regular rates of pay for the purpose of calculating overtime and paid sick time; 3) failing to authorize and  
27 permit all meal and rest periods and failing to keep track of whether employees took meal periods; and 4)  
28 failing to reimburse employees for the use of personal items for work, such as personal cellphones,

1 vehicles, and tools. Defendants have denied each of Plaintiff's claims and Defendants have denied that  
2 this Action is appropriate for class certification for anything other than settlement purposes. The agreed  
3 upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure  
4 for the underlying claims and the class data supporting these claims. The Parties, with the assistance of  
5 the mediator, also assessed appropriate discounts to the potential liability based on Defendants' claim of  
6 financial hardship.

7         2.7 The Parties agree that the above-described investigation and evaluation, as well as  
8 discovery and the information exchanged to date, are more than sufficient to assess the merits of the  
9 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class  
10 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be  
11 settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense,  
12 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the  
13 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.  
14 Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for  
15 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts  
16 and circumstances.

### 17 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

18         3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose  
19 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed  
20 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final  
21 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a  
22 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the  
23 Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement  
24 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or  
25 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain  
26 subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence  
27 408, and any other analogous rules of evidence that may be applicable.

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3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

#### **4. SCOPE OF THE CLASS**

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request to the Claims Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendants ended; (c) the years during which such employee was employed with Defendants; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Claims Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendants' Counsel and request that Defendants review their records.

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1           4.4     If Defendants agree that the person listed in a data request is a Class Member and/or  
2 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person  
3 who submitted the data request, at the address designated for that purpose in the data request. All  
4 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements  
5 sent in response to data requests, and any person who submits a data request and is sent a Notice of  
6 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved  
7 Employee for all other purposes.

8           4.5     If Defendants disagree that the person listed in a data request is a Class Member and/or  
9 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute  
10 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request  
11 dispute. Defendants' records shall control unless the individual submitting the data request provides  
12 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants'  
13 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The  
14 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve  
15 the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar  
16 days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The  
17 decision by the Claims Administrator shall be final and there shall be no right of appeal.

## 18     **5.     TERMS OF THE SETTLEMENT**

19           The Parties agree as follows:

20           5.1     Gross Settlement Amount: In consideration and exchange for the releases described in  
21 Section 6, Defendants shall pay the Gross Settlement Amount (\$110,000). Funding of the Gross  
22 Settlement Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a  
23 QSF by the Claims Administrator. The Gross Settlement Amount includes payments to Qualified  
24 Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action  
25 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering  
26 the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement,  
27 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary  
28 to satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage

1 payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross  
2 Settlement Amount.

3       5.2     Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of  
4 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants  
5 have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the  
6 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not  
7 to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to  
8 not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they  
9 do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form  
10 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less  
11 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class  
12 Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro  
13 rata basis.

14       5.3     Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross  
15 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the  
16 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants  
17 on a pro rata basis.

18       5.4     Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for  
19 an Enhancement Payment to the Class Representative in an amount not to exceed \$10,000 to compensate  
20 for the risks, time, and expense of his involvement in the Action and securing the benefits of this  
21 Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount Plaintiff  
22 would otherwise be due under the Agreement as a Qualified Claimant. Defendants have agreed to not  
23 oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the  
24 amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported  
25 on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment  
26 amount requested, then any portion of the requested amount not awarded to the Class Representative shall  
27 be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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1           5.5     PAGA Payment: Two Thousand Five Hundred Dollars No Cents (\$2,500) of the Gross  
2 Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%)  
3 of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to  
4 Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved  
5 by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be  
6 distributed to Qualified Claimants on a pro rata basis.

7           5.6     Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or  
8 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by  
9 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be  
10 donated equally, i.e. 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of  
11 the Gross Settlement Amount will revert to Defendants for any reason.

12           5.7     No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants  
13 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were  
14 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not  
15 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits  
16 under any company bonus or other compensation or benefit plan or agreement in place during the period  
17 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased  
18 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is  
19 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments  
20 to be made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with this  
21 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan  
22 document that might have been in effect during the period covered by this Agreement).

23           5.8     Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved  
24 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement  
25 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved  
26 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims  
27 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing  
28 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks by all Class

Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

5.9.1 One third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive an IRS Form 1099-MISC.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

## **6. RELEASE**

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

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6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

## **7. SETTLEMENT ADMINISTRATION**

7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for

undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved Employee's estimated Claim Amount. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known mailing address, last known telephone number, Social Security Number, start and end date of employment (if any) of each Class Member and Aggrieved Employee, and any other information the Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein.

1 The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for  
2 each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of  
3 such address information, the Claims Administrator will perform a national change of address (“NCOA”)  
4 search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement,  
5 substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-  
6 class mail, postage prepaid. The Claims Administrator shall maintain all information received from  
7 Defendants confidential to itself, and Defendants’ Counsel. However, Class Counsel shall be able to  
8 review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and  
9 Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information  
10 is redacted and/or omitted.

11       7.4     Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement  
12 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,  
13 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar  
14 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to  
15 determine a correct address using a skip-trace, computer or other search using the name, address and/or  
16 Social Security number of the individual involved, and shall then perform a single re-mailing within five  
17 (5) calendar days to any more recent address found as a result of the search. Following each search that  
18 does not result in a corrected address, for those Class Members who appear to be current employees of  
19 Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact  
20 Defendants’ Counsel for assistance and Defendants shall cooperate in good faith with the Claims  
21 Administrator’s reasonable efforts to obtain valid mailing addresses for Class Members to the extent they  
22 are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address  
23 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,  
24 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-  
25 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are  
26 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall  
27 be bound by all terms of the Agreement, including the releases contained in Section 6.

28 //

1           7.5     Responses to Notice of Settlement:

2           7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish  
3 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.  
4 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that  
5 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants  
6 to be excluded from the settlement; (c) identify the case name and number (i.e. Vasquez v. Chriswell  
7 Home Improvement, Inc., 34-2021-00305938); (d) be signed; and (e) be post-marked no later than the  
8 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must  
9 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class  
10 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to  
11 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to  
12 opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net  
13 Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or  
14 comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound  
15 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they  
16 otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this  
17 Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt  
18 out of being a Class Member.

19           7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes  
20 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written  
21 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and  
22 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny  
23 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's  
24 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state  
25 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify  
26 the case name and number (i.e. Vasquez v. Chriswell Home Improvement, Inc., 34-2021-00305938) (e)  
27 be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing  
28 timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with

1 the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the  
2 final approval hearing.

3           7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying  
4 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)  
5 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;  
6 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing  
7 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two  
8 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the  
9 dispute. Defendants' records shall presumptively control unless the Class Member can produce  
10 documentation evidencing other periods of employment worked. If Defendants do agree with submitted  
11 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with  
12 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that  
13 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'  
14 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any  
15 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class  
16 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class  
17 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot  
18 timely resolve shall be resolved by the Claims Administrator or Court.

19           7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,  
20 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator  
21 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If  
22 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency  
23 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever  
24 is later.

25           7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1  
26 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and  
27 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class  
28 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

1           7.7     Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar  
2 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and  
3 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed  
4 report regarding the statistics and responses of settlement administration to date and all the Claims  
5 Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

6           7.8     Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:  
7 Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of  
8 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the  
9 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net  
10 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any  
11 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants'  
12 Counsel. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the  
13 Settlement as described in Section 5.1 to the Claims Administrator within thirty (30) calendar days after  
14 the Effective Date to be held in trust in a QSF. Within seven (7) calendar days after Defendants fund  
15 the settlement, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees and  
16 costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to  
17 the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved  
18 Employees as required under this Agreement and approved by Court.

19                 7.8.1   The Claims Administrator shall wire the Court-approved attorneys' fees and costs  
20 to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide the  
21 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the  
22 Final Approval Date.

23                 7.8.2   The Claims Administrator shall send a check by mail for the Court-approved  
24 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is  
25 requested by Class Counsel.

26                 7.8.3   Only Qualified Claimants and Aggrieved Employees will receive their Claim  
27 Amount.

28     //

7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

## **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

|                                                                                                              |                                                             |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Last day for Defendants to provide Claims Administrator with Class Member and Aggrieved Employee information | Within 14 calendar days after the Preliminary Approval Date |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                 |                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement                                                                                                                        | Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants                       |
| Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests                                                                                                                                                                             | 60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later |
| Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics                                                                                                                                                  | Within 14 calendar days after end of the Notice Period                                                                               |
| Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel | Within 7 calendar days after the Effective Date                                                                                      |
| Last day for Defendants to fund settlement                                                                                                                                                                                                                                      | Within 30 calendar days after the Effective Date                                                                                     |
| Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees                                           | Within 7 calendar days after Defendants fund the settlement                                                                          |
| Last day for Qualified Members and Aggrieved Employees to cash settlement checks                                                                                                                                                                                                | 180 calendar days after issuance of checks to Qualified Members and Aggrieved Employees                                              |
| Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries                                                                                                                                                                | Within 14 calendar days after settlement check cashing deadline                                                                      |
| Last day for Claims Administrator to provide Parties with compliance declaration                                                                                                                                                                                                | Within 21 calendar days after settlement check cashing deadline                                                                      |

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed  
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this  
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class  
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of  
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may  
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation  
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement  
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to  
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final  
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the  
12 Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments  
13 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from  
14 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and  
15 response time shall be observed by the Parties. The Parties will request that the Court's preliminary  
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and  
17 PAGA Settlement.

18 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)  
19 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the  
20 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily  
21 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving  
22 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving  
23 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment  
24 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)  
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally  
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed  
28 Agreement.

1           9.1.3 The Parties shall cooperate with each other and the Claims Administrator during  
2 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and  
3 appropriate to assure effective communication to individual Class Members of information about their  
4 rights and obligations under this Agreement.

5           9.2   Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the  
6 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if  
7 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the  
8 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice  
9 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of  
10 the Claim Administrator's mailings including tracing and re-mailing efforts.

11           9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which  
12 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,  
13 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the  
14 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's  
15 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)  
16 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to  
17 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

18           9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the  
19 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the  
20 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside  
21 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class  
22 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and  
23 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and  
24 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each  
25 other and assist the Claims Administrator as needed or requested in completing the distribution of any  
26 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with  
27 the Claims Administrator, will certify to the Court completion of all payments required to be made by this  
28 Agreement.

1           9.3     Final Judgment: If the Court approves this Agreement at the final approval and fairness  
2 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action  
3 and PAGA Settlement and Final Judgment.

4           9.4     Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development  
5 Agency (“LWDA”) of this settlement in accordance with Labor Code § 2699(1)(2).

6     **10.     MISCELLANEOUS TERMS**

7           10.1    Defendants’ Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,  
8 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance  
9 with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its  
10 furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to  
11 Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the  
12 total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall  
13 be paid by Defendants. Defendants have represented that there are no more than 3,987 workweeks  
14 during the Class Period. In the event the number of workweeks during the Class Period is more than  
15 4,386 (*i.e.*, greater than 10% more than 3,987), then the Gross Settlement Amount shall be increased  
16 proportionally by the workweeks in excess of 3,987, multiplied by the pay period value. For example,  
17 if there were 11,900 workweeks represented to exist during the Class Period, but there are actually  
18 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek,  
19 Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks –  
20 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

21          10.2    Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF  
22 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT  
23 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND  
24 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN  
25 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR  
26 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH  
27 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON  
28 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT

1 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS  
2 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX  
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY  
6 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR  
7 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY  
8 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO  
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT  
10 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX  
11 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON  
12 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX  
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED  
14 BY THIS AGREEMENT.

15 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not  
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
17 any person or entity any portion of any liability, claim, demand, action, cause of action or right released  
18 and discharged in this Agreement.

19 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by  
20 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the  
21 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement  
22 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

23 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set  
24 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this  
25 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

26 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment  
27 will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County  
28 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil

1 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of  
2 the Agreement after default by the other party may recover reasonable attorney's fees and costs related  
3 thereto.

4 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish  
5 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,  
6 execution of such other documents and the taking of such other action as may reasonably be necessary to  
7 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including  
8 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court  
9 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

10 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of  
11 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to  
12 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the  
13 Complaint, the representative character of the Action, the validity of any of the claims that were or could  
14 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of  
15 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by  
16 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,  
17 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or  
18 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered  
19 into this Stipulation with the intention to avoid further disputes and litigation.

20 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other  
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as of  
22 the third business day after mailing by United States certified mail, return receipt requested, addressed as  
23 follows:

24 To Plaintiff and the Class:

25 Justin P. Rodriguez  
26 Brittany V. Berzin  
27 Shimoda & Rodriguez Law, PC  
28 9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624

To Defendants:

Brian Coggins  
Coggins Law  
9001 Foothills Blvd., Ste. 110  
Roseville, CA 95747

10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action 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.

10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representative.

10.15 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed

1 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force  
2 and effect of originals.

3 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been  
4 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and  
5 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance  
6 with, and governed by, the substantive laws of the State of California without giving effect to that State's  
7 choice of law principles.

8 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted  
9 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of  
10 this Agreement, or any provision thereof.

11 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could  
12 be construed as retaliation against any Class Members for participating or seeking to participate in this  
13 class action settlement. The Parties will not discourage any class member from participating or seeking  
14 to participate in this class action settlement. This is a material term of the Agreement and non-breaching  
15 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they  
16 shall be entitled to further attorneys' fees and costs.

17 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the  
18 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.  
19 Each party acknowledges that there is no representation, inducement, promise or agreement which has  
20 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,  
21 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent  
22 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

23 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to  
24 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

25 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the  
26 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with  
27 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.  
28

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Date: \_\_\_\_\_

Date: 9-12-2022

Date: 7/12/2022

Date: 1 12 2022

Chris J. Mesunas

**Shimoda & Rodriguez Law, PC**

Dated: 9-14-22

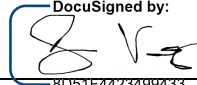
By: Justin P. Rodriguez  
 Brittany V. Berzin  
 Attorney for Plaintiff and Aggrieved  
 Employees

10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

**For Plaintiff:**

Date: 9/8/2022

DocuSigned by:  
  
8D51F4423499433...  
Silviano Vasquez

**For Defendants:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
For Chriswell Home Improvement, Inc.

Date: \_\_\_\_\_

Paul C. Cromwell

Date: \_\_\_\_\_

Chris J. Mesunas

APPROVED AS TO FORM

**Shimoda & Rodriguez Law, PC**

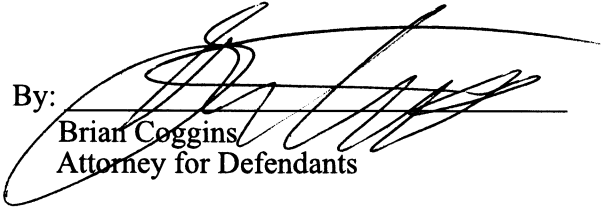
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Justin P. Rodriguez  
Brittany V. Berzin  
Attorney for Plaintiff and Aggrieved  
Employees

1  
2 APPROVED AS TO FORM

COGGINS LAW

3  
4 Dated: 9/13/2022

By: 

Brian Coggins  
Attorney for Defendants