

ORIGINAL

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behalf of himself and all others similarly situated

FILED/ENDORSED
DEC - 9 2022
By: <u>V. Aleman</u> Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

ARTHUR HAGE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

SEARS HOME IMPROVEMENT
PRODUCTS INC., TRANSFORM SR
HOME IMPROVEMENT PRODUCTS LLC,
and Does 1 through 50, inclusive,

Defendants.

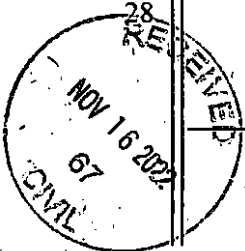
CASE NO. 34-²⁰²²~~2002~~-00315102

CLASS ACTION

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND JUDGMENT**

Date: December 9, 2022
Time: 9:00 a.m.
Dept.: 28
Reservation #: 2668803

BY FAX



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The above-referenced class action ("Action") having come before the Court on December 9,
3 2022, in Department 28, before the Honorable Lauri A. Damrell, presiding for a hearing and Order
4 Granting Final Approval of Class Action and PAGA Settlement and Judgement ("Final Order"),
5 consistent with the Court's Preliminary Approval Order ("Preliminary Approval Order"), filed and
6 entered August 9, 2022, and as set forth in the Joint Stipulation of Settlement and Release Between
7 Plaintiff and Defendant ("Stipulation") in the Action, and due and adequate notice having been given to
8 all Class Members as required in the Preliminary Approval Order, and the Court having considered all
9 papers filed and proceedings had herein and otherwise being fully informed and good cause appearing
10 therefore, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

11 1. All terms used herein shall have the same meaning as defined in the Stipulation.

12 2. Consistent with the definitions provided in the Stipulation, the term "Settlement Class"
13 and "Class Members" shall mean the following: all persons employed by Defendant and/or Sears Home
14 Improvement Products, Inc. as Sales Consultants and/or Sales Project Consultants (New SHP Sales
15 Representatives, SHP Sales Representatives, Field Sales Trainers, Sr SHP Sales Representatives, Field
16 Sales Leads) in California from February 11, 2019 through August 9, 2022. The Settlement Class,
17 however, shall not include any person who previously settled or released the claims covered by this
18 Settlement, any person who previously was paid or received awards through civil or administrative
19 actions for the claims covered by this Settlement, or any person who submitted a timely and valid
20 Request for Exclusion as provided in this Settlement. The "Class Period" shall be February 11, 2019
21 through August 9, 2022. For purposes of the Settlement and this Final Order, "Released Parties" as
22 referenced herein and as released in the Settlement shall collectively mean: (i) Transform SR Home
23 Improvement Products LLC; (ii) Sears Home Improvement Products, Inc.; (iii) their respective past,
24 present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the past,
25 present and future shareholders, directors, officers, agents, employees, clients, attorneys, insurers,
26 predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which
27 could be jointly liable with any of the foregoing. The term "Action" shall mean this class action.

28 3. This Court has jurisdiction over the subject matter of this Action and over all Parties to

1 this Action, including all Class Members.

2 4. Distribution of the Notice and the Claim Form directed to the Class Members as set forth
3 in the Stipulation and the other matters set forth therein has been completed in conformity with the
4 Preliminary Approval Order, including notice to all Class Members who could be identified through
5 reasonable effort, is the best notice practicable under the circumstances. The Notice provided due and
6 adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement
7 set forth in the Stipulation, to all persons entitled to such Notice, and the Notice fully satisfied the
8 requirements of due process. All Class Members and all Released Claims are covered by and included
9 within the Settlement and this Final Order.

10 5. The Court hereby finds the Settlement was entered into in good faith pursuant to and
11 within the meaning of California Code of Civil Procedure section 877.6. The Court further finds that
12 the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the standards and
13 applicable requirements for final approval of this class action settlement under California law, including
14 the provisions of California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure
15 23, approved for use by the California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800,
16 821.

17 6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the
18 Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the
19 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
20 intensive, serious and non-collusive arms-length negotiations. The Court further finds that the Parties
21 have conducted extensive investigation and research, and counsel for the Parties are able to reasonably
22 evaluate their respective positions. The Court also finds that Settlement at this time will avoid additional
23 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
24 of the Action. The Court has reviewed the benefits that are being granted as part of the Settlement and
25 recognizes the significant value to the Class Members. The Court also finds that the Class is properly
26 certified as a class for settlement purposes only.

27 7. As of the date of entry of this Final Order, each and every Released Claim (as defined in
28 the Stipulation and set forth below) of each and every Class Member is and shall be deemed to be

1 conclusively released as against the Released Parties. As of the date of this Final Order, the Class
2 Representative and each and every Class Member who has not submitted a valid Request for Exclusion
3 is hereby released and forever barred and enjoined from prosecuting the Released Claims, except as to
4 such rights or claims as may be created by the Settlement against Defendant and the Released Parties
5 from any and all claims under state, federal and local law that were or could have been asserted based
6 on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members,
7 including without limitation, California Labor Code sections 201, 202, 203, 218.5, 218.6, 226, 226.3,
8 558, 2698 et seq. (including but not limited to 2699, 2699.3, and 2699.5), 2751, 2802, California
9 Industrial Commission Wage Orders, Cal. Code Regs., Title 8, section 11040, et seq., Civil Code section
10 3287, and Business and Professions Code sections 17200, et seq., and including but not limited to all
11 claims for or related to alleged unpaid wages, timely payment of wages during employment, timely
12 payment of wages at separation, commission agreements, wage statements, payroll records and
13 recordkeeping, unreimbursed business expenses, business use of personal vehicles, business mileage
14 reimbursement, vehicle insurance costs, the purchase, transport, and maintenance of required material
15 and equipment, the cost of smart phones, cell phone data usage charges and internet services, failure to
16 pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for
17 payments received under the Settlement, unfair competition, unfair business practices, unlawful business
18 practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved
19 party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages,
20 penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA
21 penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from
22 February 11, 2019 through the date the Court finally approves the Settlement (collectively "Released
23 Claims").
24

25 8. The release of claims shall not include any claims that cannot be released as a matter of
26 law. In addition, as of the date of this Final Order, the Class Representative and the Settlement Class,
27 and each member of the Class who has not submitted a valid Request for Exclusion, is forever barred,
28 and enjoined from instituting or accepting damages or obtaining relief against the Released Parties for

1 any period from February 11, 2019, up to and including the date of final approval of the Settlement,
2 relating to the Released Claims.

3 9. Neither the Settlement nor any of the terms set forth in the Stipulation is an admission
4 by Defendant, or any of the other Released Parties, nor is this Final Order a finding of the validity of
5 any claims in the Action or of any wrongdoing by Defendant, or any of the other Released Parties.
6 Neither this Final Order, the Stipulation, nor any document referred to herein, nor any action taken to
7 carry out the Stipulation is, may be construed as, or may be used as, an admission by or against
8 Defendant, or any of the other Released Parties, of any fault, wrongdoing, or liability whatsoever. The
9 entering into or carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall
10 not in any event be construed as, or deemed to be evidence of, an admission or concession with regard
11 to the denials or defenses by Defendant, or any of the other Released Parties, and shall not be offered in
12 evidence in any action or proceeding in any court, administrative agency or other tribunal for any
13 purpose whatsoever other than to enforce the provisions of this Final Order, the Stipulation, the Released
14 Claims, or any related agreement or release. Notwithstanding these restrictions, any of the Released
15 Parties may file in the Action, or submit in any other proceeding, the Final Order, the Stipulation, and
16 any other papers and records on file in the Action as evidence of the Settlement to support a defense of
17 *res judicata*, *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense
18 as to the Released Claims.

19 10. The Court hereby enters judgment in the entire Action as of the filing date of this Final
20 Order, pursuant to the terms set forth in the Stipulation. Without affecting the finality of this Final Order
21 in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation and
22 enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code
23 of Civil Procedure section 664.6.

24 11. The Court finds the settlement payments provided for under the Settlement to be fair and
25 reasonable in light of all of the circumstances. The Court orders the calculations and the payments to
26 be made and administered in accordance with the terms of the Settlement.

27 12. The Court hereby confirms Robin G. Workman of Workman Law Firm, PC as Class
28 Counsel in the Action.

1 13. The Court further finds that the common fund doctrine is applicable to this Action
2 because there is a sufficiently identifiable class of beneficiaries (the Class), the benefits can be accurately
3 traces to the Settlement that Plaintiff and Class Counsel negotiated on behalf of the Class, and the fee
4 can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage
5 of the common fund. *See Serrano v. Priest* (1977) 20 Cal.3d 25, 34-35. The Court finds the attorneys'
6 fees request of twenty-five percent (25%) of the common fund to be appropriate compensation for Class
7 Counsel. The attorneys' fees request is within the range that has been approved by other Courts in
8 similar cases and reasonable in light of the circumstances of this case, the substantial and beneficial
9 results obtained on behalf of the Class, and the contingent nature of the recovery over the course of this
10 Action, which included potential loss at summary judgment, certification, and/or trial proceedings.
11 Pursuant to the terms of the Settlement, and the authorities, evidence and argument submitted by Class
12 Counsel, the Court hereby awards Class Counsel attorneys' fees in the amount of \$137,500.00 and
13 attorneys' costs in the amount of \$4,824.27, from the Gross Settlement Amount as final payment for
14 and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class
15 Counsel and any other person or entity related to the Action. The Court further orders that the award of
16 attorneys' fees and costs set forth in this Paragraph shall be administered pursuant to the terms of the
17 Stipulation, and made payable to and deposited into the bank account of "Workman Law Firm, PC" as
18 Class Counsel in the Action.

19 14. The Court also hereby approves and orders an Enhancement Award to Plaintiff and Class
20 Representative Arthur Hage in the amount of \$10,000.00 from the Gross Settlement Amount.

21 15. The Court also hereby approves and orders payment in the amount of \$18,750.00 from
22 the Gross Settlement Amount for PAGA penalties, payable to the California Labor and Workforce
23 Development Agency.

24 16. The Court also hereby approves and orders payment from the Gross Settlement Amount
25 for actual Claims Administration expenses incurred by the Claims Administrator, Simpluris, Inc. in the
26 amount of \$10,000.

27 17. The Court also hereby approves and orders that any residue from uncashed settlement
28 award checks after the expiration date will be paid out to Koinonia Family Services, a non-profit

1 501(c)(3) organization with child advocacy programs within the State of California pursuant to Code of
2 Civil Procedure section 384(b); any residue received by Koinonia Family Services shall be used solely
3 for child advocacy programs within the State of California pursuant to Code of Civil Procedure section
4 384(b).

5 18. The Court also hereby finds and orders that the Stipulation is and constitutes a fair,
6 adequate, and reasonable compromise of the Released Claims against Defendant and the Released
7 Parties.

8 19. Provided the Settlement becomes effective under the terms of the Stipulation, the Court
9 also hereby orders that the deadline for mailing the Court-approved Settlement Awards, attorneys' fees
10 and costs, and Enhancement Awards is as set forth in the Implementation Schedule within the
11 Preliminary Approval Order.

12 20. The Court also hereby finds that there were no objections to the Settlement raised by any
13 person on the record at the hearing on the Final Order.

14 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

15
16
17 Dated: 12-9-22



HON. LAURI A. DAMRELL
JUDGE OF THE SUPERIOR COURT