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HOME IMPROVEMENT PRODUCTS LLC

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. 34-2022-00315102

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE BETWEEN PLAINTIFF AND
DEFENDANT**

This Joint Stipulation of Class Action and PAGA Settlement and Release (hereinafter
“Stipulation of Settlement” is made and entered into by and between Plaintiff Arthur Hage, on
behalf of himself and all others similarly situated (“Plaintiff”) and Transform SR Home
Improvement Products LLC (“Defendant”).

1 This Stipulation of Settlement shall be binding on Plaintiff and those persons he seeks to
2 represent, and on (i) Defendant Transform SR Home Improvement Products LLC; (ii) Sears Home
3 Improvement Products, Inc., (iii) each of the foregoing respective past, present and future parents,
4 subsidiaries and affiliates; (iii) the past, present and future partners, shareholders, directors, officers,
5 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing;
6 and (iv) any individual or entity which could be jointly liable with any of the foregoing. The
7 Settlement contemplated by this Stipulation of Settlement may hereinafter be referred to as the
8 “Settlement.”

9 THE PARTIES STIPULATE AND AGREE as follows:

10 1. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

11 2. On February 4, 2022, Plaintiff filed a complaint in the Sacramento County
12 Superior Court alleging class and individual wage and hour claims against Defendant.

13 3. Plaintiff’s Complaint alleges a failure to reimburse expenses, failure to provide
14 signed written commission contracts, failure to provide accurate itemized wage statements, failure
15 to timely pay final wages and waiting time penalties, and unfair competition, on behalf of all
16 persons employed by Defendant and Sears Home Improvement Products, Inc. as Sales Consultants
17 and/or Sales Project Consultants (including New SHP Sales Representatives, SHP Sales
18 Representatives, Field Sales Trainers, Sr. SHP Sales Representatives, and Field Sales Leads) in
19 California from February 11, 2019 to the present. The term “Action” means this putative class
20 action pending in Sacramento Superior Court. The Class Period is from February 11, 2019 to
21 preliminary Court approval of the Settlement.

22 4. This Action has been actively litigated. There have been on-going investigations,
23 and there has been an exchange of extensive information. Plaintiff has not filed a motion for class
24 certification in this action, nor has a date been set by the Court for the filing of such a motion.

25 5. For purposes of this Settlement, the “Settlement Class” or “Class Members” shall
26 consist of all persons employed by Defendant and/or Sears Home Improvement Products, Inc.
27 as Sales Consultants and/or Sales Project Consultants (New SHP Sales Representatives, SHP
28 Sales Representatives, Field Sales Trainers, Sr SHP Sales Representatives, Field Sales Leads) in

1 California from February 11, 2019 through the date the Court preliminarily approves the
2 Settlement. The Settlement Class, however, shall not include any person who previously settled
3 or released any of the claims covered by this Settlement, any person who previously was paid or
4 received awards through civil or administrative actions for the claims covered by this Settlement.
5 The Settlement Class includes 196 persons and 8,205 workweeks from February 11, 2019 to
6 December 5, 2020, and will increase to preliminary approval of the Settlement; Defendant's
7 Counsel agrees to provide Class Counsel updated Class Member headcount and workweek
8 numbers before preliminary approval of the Settlement.

9 6. Solely for purpose of settling this case, the Parties stipulate and agree that the
10 requisites for establishing class certification with respect to the Settlement Class have been met
11 and are met. More specifically, the Parties stipulate and agree that:

12 a. The Settlement Class is ascertainable and so numerous as to make it
13 impracticable to join all Class Members.

14 b. There are common questions of law and fact including, but not limited to,
15 the following:

16 i. Whether Defendant complied with applicable laws affecting
17 Plaintiff and the Settlement Class under the California Labor Code and the Wage Orders of the
18 California Industrial Welfare Commission; and

19 ii. Whether Plaintiff and the Settlement Class are entitled to alleged
20 penalties, interest, and attorneys' fees and costs.

21 c. Plaintiff believes Plaintiff's claims are typical of the claims of the members
22 of the Settlement Class.

23 d. Plaintiff believes Plaintiff will fairly and adequately protect the interests of
24 the Settlement Class, and that Robin G. Workman of Workman Law Firm, PC should be "Class
25 Counsel," and will fairly and adequately protect the interests of the Settlement Class.

26 e. The prosecution of separate actions by individual members of the
27 Settlement Class would create the risk of inconsistent or varying adjudications, which would
28 establish incompatible standards of conduct.

1 f. With respect to the Settlement Class, Plaintiff believes that questions of law
2 and fact common to the members of the Settlement Class predominate over any questions affecting
3 any individual member in such Class, and a class action is superior to other available means for
4 the fair and efficient adjudication of the controversy.

5 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
6 with the claims alleged in the Complaint, and further deny that, for any purpose other than settling
7 this Action, this Action is appropriate for class or representative treatment. With respect to
8 Plaintiff's claims, Defendant contends, among other things, that they have complied with all
9 applicable state, federal and local laws affecting Plaintiff and the Settlement Class.

10 9. It is the desire of the Parties to fully, finally and forever settle, compromise and
11 discharge all disputes and claims arising from the allegations and causes of action stated in the
12 Complaint. To achieve a full and complete release of Defendant and Sears Home Improvement
13 Products, Inc., each Class Member acknowledges that this Stipulation of Settlement is intended to
14 include in its effect all claims of any nature reasonably arising out of the allegations made in the
15 Complaint.

16 10. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
17 full and complete settlement and release of all claims arising from the allegations in the Complaint
18 against (i) Defendant; (ii) Sears Home Improvement Products, Inc.; (iii) their respective past,
19 present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (iv) the
20 past, present and future shareholders, directors, officers, agents, employees, clients, attorneys,
21 insurers, predecessors, successors and assigns of any of the foregoing; and (v) any individual or
22 entity which could be jointly liable with any of the foregoing (collectively "Released Parties").

23 11. Counsel for the Settlement Class have conducted a thorough investigation into the
24 facts of this Action, and have diligently pursued an investigation of Class Members' claims against
25 Defendant and Sears Home Improvement Products, Inc. Based on their own independent
26 investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant
27 for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable
28 and adequate and is in the best interest of the Settlement Class in light of all known facts and

1 circumstances, including the risk of significant delay, the risk the Settlement Class will not be
2 certified by the Court, defenses asserted by Defendant and numerous potential appellate issues.
3 Defendant and Defendant's counsel also agree that the Settlement is fair and in the best interest of
4 the Parties.

5 12. The Parties agree to cooperate and take all steps necessary and appropriate to
6 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
7 Settlement, including but not limited to the filing of a First Amended Complaint including claims
8 under the Private Attorneys General Act ("PAGA") and an answer to the same.

9 13. This Settlement provides for a claims-made administration process wherein
10 Defendant will pay Settlement Awards (defined below) according to a specified formula to each
11 Settlement Class Member who does not request to be excluded from this Settlement and who
12 submits a timely and valid claim form as defined below. The maximum total payment under the
13 Settlement is \$550,000.00, including the Settlement Awards for all claims, the attorneys' fees and
14 litigation costs to Class Counsel, the Enhancement Award to the Class Representative, the claims
15 administration costs, the PAGA penalties, payroll taxes on the wage portion of the Settlement
16 Awards, and any other payments provided by the Settlement. It is understood and agreed that
17 Defendant's maximum total liability under the Settlement shall not exceed the sum of \$550,000.00.
18 It is understood and agreed that Defendant shall have no obligation to pay any person, entity, or
19 organization more than the amount of its maximum total liability under the Settlement.

20 TERMS OF SETTLEMENT

21 14. NOW THEREFORE, in consideration of the mutual covenants, promises and
22 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

23 a. It is agreed by and among Plaintiff and Defendant that this Action and any
24 claims, damages or causes of action arising out of the Complaint which are the subject of this
25 Action, be settled and compromised as between the Settlement Class and Defendant, subject to the
26 terms and conditions set forth in this Stipulation of Settlement and the approval of the Court.

27 b. Effective Date: The Settlement embodied in this Stipulation of Settlement
28 shall become effective when all of the following events have occurred: (i) this Stipulation of

1 Settlement has been executed by all Parties and by counsel for Plaintiff and Defendant; (ii) the
2 Court has given preliminary approval to the Settlement; (iii) the class settlement notice has been
3 given to the Settlement Class, providing them with an opportunity to submit Claim Forms to
4 participate in the Settlement, or to opt out of the Settlement; (iv) the Court has held a formal
5 fairness hearing and entered a final order and judgment certifying the Settlement Class and finally
6 approving this Stipulation of Settlement, without objection by the California Labor and Workforce
7 Development Agency (“LWDA”); and (v) in the event there are objections to the Settlement which
8 are not later withdrawn, the later of the following events: when the period for filing any appeal,
9 writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or
10 other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding
11 opposing the Settlement has been dismissed finally and conclusively with no right to pursue further
12 remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court’s final
13 order with no right to pursue further remedies or relief. In this regard, it is the intention of the
14 Parties that the Settlement shall not become effective until the Court’s order approving the
15 Settlement is completely final, and there is no further recourse by an appellant or objector who
16 seeks to contest the Settlement. It is further agreed by the Parties that this Settlement will not
17 become effective if Defendant, contrary to Paragraph 13 above, is required to pay more than the
18 total amount of its maximum total liability under the Settlement as set forth in Paragraph 13 under
19 any circumstances. It is further agreed by and between the Parties that this Settlement shall not
20 become effective, and Defendant shall not have any obligation (monetary or otherwise) under the
21 terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights of
22 appeal with respect to any objections or the judgment, have been finally exhausted and resolved
23 upholding the terms of this Settlement.

24 c. Maximum Settlement Amount, and Net Settlement Amount: To implement
25 the terms of this Settlement, Defendant agrees to pay on a claims-made basis up to a maximum of
26 \$550,000.00 (“Maximum Settlement Amount”), including all Settlement Awards to Class
27 Members, the Enhancement Award to the Class Representative, attorneys’ fees and litigation costs,
28 PAGA penalty payments, payroll taxes for the wage portion of the Settlement Awards, employer

1 payroll taxes, and claims administration expenses. At no time shall Defendant have the obligation
2 to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain
3 exclusive authority over and responsibility for those funds subject to the disbursement of funds
4 necessary for the payment of claims, approved attorneys' fees, approved costs, approved
5 Enhancement Award to the Class Representative, the claims administration fees and expenses, the
6 payment to the LWDA pursuant to PAGA, the employer payroll taxes for the wage portion of the
7 Settlement Awards, and any other payments provided by this Settlement. The Settlement Awards
8 paid to Class Members, the attorneys' fees and litigation costs to Class Counsel, the Enhancement
9 Award to the Class Representative, the fees and expenses of the Claims Administrator, the
10 payment to the LWDA pursuant to PAGA, the employer payroll taxes for the wage portion of the
11 Settlement Awards, and any other payments provided by this Settlement, shall be paid out of the
12 Maximum Settlement Amount. The "Net Settlement Amount," the amount available for potential
13 distribution to Class Members, shall be calculated by deducting from the Maximum Settlement
14 Amount, (i) Class Counsel's attorneys' fees and litigation costs, (ii) the Enhancement Award, (iii)
15 the PAGA penalty payment to the LWDA as described further below, (iv) the employer payroll
16 taxes for the wage portion of the settlement (defined and allocated below), and (v) the fees and
17 expenses of the Claims Administrator. Settlement Awards to the Class Members will be calculated
18 by the Claims Administrator and paid out of the Net Settlement Amount as set forth below.

19 i. Settlement Awards to Class Members: Settlement Awards to Class
20 Members will be determined based on the number of weeks worked by all Class Members during
21 the Class Period based on information provided by Defendant. The workweeks will be calculated
22 by the Claims Administrator for Class Members by dividing the total days employed in California
23 as a Class Member during the Class Period by seven. Partial workweeks will not be counted,
24 meaning incomplete workweeks will be rounded down; however, if a Class Member worked only
25 one day as a Class Member, such Class Member will be credited with having worked one
26 workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be
27 correct, unless a particular Class Member proves otherwise to the Claims Administrator by
28 credible written evidence submitted with the Claim Form. Subject to Court approval, all

workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all workweek disputes will be final and non-appealable. For any amount of the Net Settlement Sum not claimed by Class Members by submitting timely valid Claim Forms or because a Class Member opted out of this Settlement, the Parties agree that the minimum amount to be paid to Class Members who submit valid claims (*i.e.*, the settlement floor) will be 50 percent of the Net Settlement Amount; if the amount claimed by Class Members is less than 50 percent, the amount to be paid to Class Members who submit valid claims will be increased pro rata until 50 percent of the Net Settlement Amount is paid out. Any unclaimed residue remaining in the Net Settlement Amount will remain Defendant's' sole and exclusive property. Any person who opts out of the Settlement is not a Class Member, and is ineligible to object to the Settlement or to participate in the Settlement.

ii. Private Attorneys General Act Allocation: Subject to Court approval, the Parties have agreed to allocate \$25,000.00 of the Maximum Settlement Amount to Plaintiff's claims under PAGA. Seventy-five percent (75%) of this amount, or in other words \$18,750.00 will be paid out of the Maximum Settlement Amount to the Labor and Workforce Development Agency ("LWDA") of the State of California, and the remaining balance of \$6,250.00 will remain included in the Net Settlement Amount.

iii. Allocation of Settlement Awards: The Parties have agreed, based on the allegations in the Action, that individual Settlement Awards payable to eligible Class Members who submit timely and valid claim forms will be allocated from the Net Settlement Amount and paid as follows: 1/4 will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; 1/2 will be allocated to alleged unpaid penalties and interest for which IRS Forms 1099-MISC will issue; and 1/4 will be allocated to alleged expense reimbursement for which IRS Forms 1099-MISC will issue.

iv. Settlement Awards Do Not Trigger Additional Benefits: All Settlement Awards to Class Members shall be deemed to be income to such Class Members solely in the year in which such awards actually are received by the Class Members. It is expressly understood and agreed that the receipt of such Settlement Awards will not entitle any Class

1 Member to additional compensation or benefits under any company bonus, contest or other
2 compensation or benefit plan or agreement in place during the period covered by the Settlement,
3 nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching
4 benefits, or deferred compensation benefits. It is the intent of this Settlement that the Settlement
5 Awards provided for in this Agreement are the sole payments to be made by Defendant to the
6 Class Members in connection with this Settlement, and that the Class Members are not entitled to
7 any new or additional compensation or benefits as a result of having received the Settlement
8 Awards (notwithstanding any contrary language or agreement in any benefit or compensation plan
9 document that might have been in effect during the period covered by this Settlement).

10 v. Attorneys' Fees and Litigation Costs: Subject to Court approval or
11 modification, Defendant further agrees to pay, from the Maximum Settlement Amount, Class
12 Counsel's attorneys' fees and litigation costs as set forth in Paragraph 16 below.

13 vi. Class Representative: The Parties agree to the designation of
14 Plaintiff as "Class Representative." Subject to Court approval, Defendant agrees to pay Plaintiff,
15 from the Maximum Settlement Amount, an Enhancement Award at no additional cost to the
16 Released Parties, and subject to Plaintiff's execution of a general release of all claims under
17 California Code of Civil Procedure Section 1542. The Enhancement Award cannot exceed
18 \$10,000.00, subject to Court approval, and is in addition to any claimed individual Settlement
19 Award to which Plaintiff is entitled under this Stipulation of Settlement. The Enhancement Award
20 is to be part of, and to be deducted from, the Maximum Settlement Amount. Defendant or the
21 Claims Administrator will issue an IRS Form 1099-MISC for the Enhancement Award to the
22 Plaintiff for Plaintiff's service as a Class Representative, and Plaintiff will be responsible for
23 correctly characterizing this compensation for tax purposes and for paying any taxes on the
24 amounts received. Should the Court approve an Enhancement Award to the Class Representative
25 in an amount less than that set forth above, the difference between the lesser amount approved by
26 the Court and the Enhancement Award set forth above shall be added to the Net Settlement Amount

27 vii. Claims Administrator: The Claims Administrator will be Simpluris,
28 Inc., or such other claims administrator as may be mutually agreeable to the Parties, after review

1 and approval by the Parties of a not-to-exceed quote for claims administration expense which
2 Plaintiff's counsel agrees to request and circulate to Defendant's counsel. All claims
3 administration expenses shall be paid out of the Maximum Settlement Amount. The fees of the
4 Claims Administrator for work done shall be paid by Defendant regardless of the outcome of this
5 Settlement.

6 viii. Mailing of Settlement Awards: The Claims Administrator will
7 cause the Settlement Awards to be mailed to the Class Members who have submitted timely and
8 valid Claim Forms, have not opted out of the Settlement, and have not previously released their
9 claims as to Defendant, within 35 calendar days after the Settlement becomes effective as defined
10 in Paragraph 14.b

11 ix. Claim Forms: For each Class Member, there will be pre-printed
12 information on the Claim Form mailed to the Class Member, based on Defendant's records, stating
13 the number of weeks worked as Class Member during the Class Period, along with each Class
14 Member's estimated Settlement Award amount. The Claim Form shall be substantially in the form
15 identified as Exhibit 1 to this Settlement. The pre-printed information based on Defendant's
16 records shall be presumed to be correct, unless written proof to the contrary is provided to the
17 Claims Administrator. A Class Member may challenge the pre-printed information on the Claim
18 Form as to the weeks worked during the Class Period by submitting written evidence to the Claims
19 Administrator with the Claim Form. Subject to Court approval, all disputes regarding weeks
20 worked will be resolved and decided by the Claims Administrator, and the Claims Administrator's
21 decision on all disputes will be final and binding. All Claim Forms must be signed and dated to
22 be considered valid.

23 d. Enhancement Award to Plaintiff for Service as Class Representative: The
24 Claims Administrator will pay the Enhancement Award approved by the Court to Plaintiff within
25 35 calendar days after the Settlement becomes effective as defined in Paragraph 14.b.

26 e. Right to Rescission: If more than five percent (5.0%) of the Settlement
27 Class opts out of the Settlement by submitting valid and timely Requests for Exclusion as set forth
28 in the Notice of Pendency of Class Action and Proposed Settlement, Defendant shall have the right

1 (but need not) in its sole discretion to rescind and void the Settlement, before final approval by the
2 Court, by providing written notice to Class Counsel no later than ten (10) calendar days before the
3 final approval hearing date. If Defendant exercises this option, Defendant shall pay any costs of
4 Settlement claim administration incurred up to that date, but not to include Class Counsel's fees
5 and costs.

6 CLAIMS ADMINISTRATION

7 15. The Parties have agreed to the appointment of Simpluris, Inc. to perform the
8 customary duties of Claims Administrator; provided, however, the Parties shall have the right to
9 select or substitute a different Claims Administrator by mutual agreement and approval by the
10 Court. The Claims Administrator will mail the Notice of Pendency of Class Action and Proposed
11 Settlement, and the Claim Form, to all Class Members. The Claims Administrator will
12 independently review the Claim Forms and Defendant's data, based on Defendant's records, as to
13 the number of weeks worked during the Class Period, and will calculate the amounts due to Class
14 Members in accordance with this Stipulation of Settlement. The Claims Administrator shall report,
15 in summary or narrative form, the substance of its findings. The Claims Administrator shall be
16 granted reasonable access to Defendant's records to perform its duties. At the request of
17 Defendant, and upon receipt of funds from Defendant, the Claims Administrator will issue and
18 send out Settlement Award checks to Class Members. Defendant shall be able to review proposed
19 distributions and class workweek data to ensure correct and accurate distributions and
20 representations to the Class Members through the Class Notice are accurate. Tax treatment of the
21 Settlement Awards will be as set forth herein, and in accordance with state and federal tax laws.
22 All disputes relating to the Claims Administrator's performance of its duties shall be referred to
23 the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
24 this Stipulation of Settlement until all payments and obligations contemplated by this Stipulation
25 of Settlement have been fully carried out. The Settlement Administrator shall create and maintain
26 a webpage, which will include links to the Settlement Agreement, Class Notice, Motions for
27 Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available, until
28

1 the Effective Date. The website shall also include links to any other documents or information the
2 Settlement Administrator deems necessary to perform its duties.

3 ATTORNEYS' FEES AND LITIGATION COSTS

4 16. In consideration for settling this Action, in exchange for the release of claims by
5 the Settlement Class, and subject to final approval or modification by the Court, Defendant agrees
6 to pay, from the Maximum Settlement Amount, Class Counsel attorneys' fees not to exceed 25
7 percent of the Maximum Settlement Amount, or in other words up to \$137,500.00, and attorneys'
8 costs not to exceed \$20,000.00 from the Maximum Settlement Amount. Defendant will not object
9 to Class Counsel's application for attorneys' fees and litigation costs up to these amounts. The
10 amounts set forth above will cover all work performed and all fees and costs incurred to date, and
11 all work to be performed and all fees and costs to be incurred in connection with the approval by
12 the Court of this Stipulation of Settlement, the administration of the Settlement, and obtaining the
13 final judgment. Should Class Counsel request lesser amounts, or should the Court approve lesser
14 amounts for attorneys' fees and litigation costs, the difference between the lesser amounts and the
15 maximum amounts set forth above shall be added to the Net Settlement Amount.

16 17. The attorneys' fees and litigation costs approved by the Court shall be paid to Class
17 Counsel within 35 calendar days after the Settlement becomes effective as defined in Paragraph
18 14.b.

19 NOTICE TO THE PLAINTIFF CLASS

20 18. A Notice of Pendency of Class Action, Proposed Settlement and Hearing Date for
21 Final Court Approval ("Notice of Pendency of Class Action and Proposed Settlement") shall be
22 jointly drafted by the Parties, and as approved by the Court, shall be sent by the Claims
23 Administrator to the Class Members by first class mail. The Notice of Pendency of Class Action
24 and Proposed Settlement shall be substantially in the form identified as Exhibit 2 to this Settlement.
25 Accompanying the Notice of Pendency of Class Action and Proposed Settlement will be the Claim
26 Form that shall be jointly drafted by the Parties and as approved by the Court.

27 a. Within 21 calendar days of preliminary approval of this Settlement by the Court,
28 Defendant shall provide to the Claims Administrator the Class Members' names, last-known

1 addresses, last-known telephone numbers, Social Security Numbers, and start and end dates during
2 the Class Period. The Parties agree the Social Security Numbers will be used only by the Claims
3 Administrator for the sole purpose of effectuating the Settlement and will not be provided to Class
4 Counsel at any time or in any form. Notwithstanding anything herein to the contrary, neither the
5 Claims Administrator nor the Class Counsel will be entitled to receive confidential information of
6 Defendant (including non-public personal information of its employees) unless and until the
7 Claims Administrator or Class Counsel, as the case may be, signs and delivers a non-disclosure
8 agreement to Defendant on terms and conditions reasonably acceptable to Defendant. To the
9 extent Class Counsel possesses or comes to possess the Class Members' contact information and/or
10 Social Security Numbers from the Claims Administrator Class Counsel shall return all such
11 information (including copies and data or information derived therefrom) within 5 calendar days
12 from the date the Court finally approves the Settlement, shall not retain copies of such information,
13 and shall not maintain or use such information for any purpose. The spreadsheet provided for
14 above, shall be based on Defendant's business records and in a format acceptable to the Claims
15 Administrator. Defendant agrees to consult with the Claims Administrator prior to the production
16 date to ensure that the format will be acceptable to the Claims Administrator. The Claims
17 Administrator will run a check of the Class Members' addresses against those on file with the U.S.
18 Postal Service's National Change of Address List. Within 30 calendar days of preliminary
19 approval of this Settlement, the Claims Administrator will mail the Notice and the Claim Form to
20 Class Members.

21 b. Notices and Claim Forms returned to the Claims Administrator as
22 non-delivered during the 45-calendar day period for the filing of claims shall be resent to the
23 forwarding address, if any, on the returned envelope. If there is no forwarding address, the Claims
24 Administrator will do an NCOA check and will skip-trace return mail and re-mail within five (5)
25 days of receipt using the Class Member's Social Security Number; this search will be performed
26 only once per Class Member by the Claims Administrator. Class Members will have a maximum
27 of 15 days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or
28 until the end of the claims filing deadline, whichever is later. Upon completion of these steps by

1 the Claims Administrator, Defendant and the Claims Administrator shall be deemed to have
2 satisfied their obligations to provide the Notice of Pendency of Class Action and Settlement to the
3 affected member of the Settlement Class. The affected member of the Settlement Class shall
4 remain a member of the Settlement Class and shall be bound by all the terms of the Stipulation of
5 Settlement and the Court's Order and Final Judgment.

6 c. Claim Forms must be completed in full and timely returned to be valid. If
7 a timely submitted Claim Form is not completed in full, the Claims Administrator will send one
8 deficiency notice to the Class Member within fifteen (15) calendar days before the postmark
9 deadline, advising Class Member to cure the deficiency. The deficiency notice will provide the
10 Class Member fifteen (15) calendar days from the date of mailing of the deficiency notice to cure
11 the deficiency; the completed Claim Form must be postmarked no later than the 15th day after the
12 date of mailing of the deficiency notice or the deadline for the submission of Claim Forms
13 (whichever is later), or, unless otherwise agreed upon by the Parties, it must be rejected as untimely
14 by the Claims Administrator. The Claims Administrator will also send one reminder notice to
15 Class Members who have not returned a claim form 20 days before the deadline. The cost of all
16 deficiency or reminder notices shall be part of the Claims Administrator's expenses and paid out
17 of the Maximum Settlement Amount.

18 d. The Notice of Pendency of Class Action and Settlement shall also identify
19 the procedures for opting out of or objecting to the Settlement.

20 e. Class Counsel shall provide to the Court, at least sixteen (16) Court days
21 before the final fairness hearing, an initial declaration by the Claims Administrator of due diligence
22 and proof of mailing with regard to the mailing of the Notice of Pendency of Class Action and
23 Proposed Settlement, and the Claim Form.

24 ADMINISTRATION PROCESS

25 19. Class Members shall have forty-five (45) calendar days from the date of mailing to
26 respond to the Notice of Pendency of Class Action and Proposed Settlement.

27 20. For any Claim Forms submitted by Class Members, they shall be sent directly by
28 Class Members to the Claims Administrator at the address indicated on the Claim Form. The

1 Claims Administrator shall review the Claim Forms and calculate the Settlement Awards. The
2 Claims Administrator will certify jointly to Class Counsel and Defendant's Counsel the outcome
3 of any disputes raised through the Claim Forms. Settlement Awards to Class Members will be
4 mailed by the Claims Administrator within thirty-five (35) calendar days after the Settlement
5 becomes effective as defined in Paragraph 14.b. Settlement Award checks shall remain valid and
6 negotiable for one hundred and twenty (120) calendar days from the date of their issuance; the
7 Parties agree the Claims Administrator will send one reminder notice to all Class Members who
8 have not cashed the settlement award check thirty (30) calendar days prior to the deadline; upon
9 the deadline to cash the Settlement Award checks, the checks will automatically be cancelled by
10 the Claims Administrator if not cashed by the Class Member within that time, at which point the
11 Class Member's claim will be deemed void and of no further force or effect, and the Class
12 Member's claims will remain released by the Settlement. The checks provided to Class Members
13 shall prominently state the expiration date or a statement that the checks will expire in one hundred
14 and twenty (120) calendar days, or alternatively, such a statement may be made in a letter
15 accompanying the check. Expired Settlement Award checks will not be reissued, except for good
16 cause and as mutually agreed by the Parties in writing. Any residue from uncashed Settlement
17 Award checks after the expiration date will be paid within fourteen (14) calendar days after one
18 hundred and twenty (120) day check cashing period expires pursuant to Code of Civil Procedure
19 section 384(b)(3) as follows: 100% to Koinonia Family Services, a non-profit IRS 501(c)(3)
20 charitable organization, to be used for child advocacy programs in the State of California as *cy*
21 *pres* recipients, subject to Court approval. Any residue received by Koinonia shall be ordered by
22 the Court to be used solely for child advocacy programs within the State of California pursuant to
23 Code of Civil Procedure section 384(b). Upon completion of its calculation of payments, the
24 Claims Administrator shall provide Defendant with a report listing the amount of all payments to
25 be made to each Class Member. Defendant, on behalf of the Released Parties, will fund the
26 Settlement within thirty (30) calendar days after the Settlement becomes effective as defined in
27 Paragraph 14.b. The Claims Administrator will be responsible for making appropriate deductions,
28 calculating and reporting the employer payroll taxes on the Settlement Awards, paying to Class

1 Counsel any Court-approved attorneys' fees and litigation costs, paying to the Class
2 Representatives any Court-approved Enhancement Award, paying the LWDA seventy-five
3 percent (75%) of the amount allocated for PAGA penalties above, meeting tax reporting
4 obligations, and for issuing the individual Settlement Awards to Class Members. Proof of
5 compliance with the Court's final approval order will be provided to counsel for the Parties by the
6 Claims Administrator within twenty-one (21) days after all payment obligations, the check cashing
7 deadline for Class Members, and payment to the *cy pres* beneficiaries have passed.

8 OPTING OUT OF / OBJECTING TO THE SETTLEMENT

9 21. Opting Out of the Settlement. For those Class Members who do not wish to
10 participate in the Settlement, such Class Members may exclude themselves by submitting a timely
11 written request to the Claims Administrator. The written request ("Request for Exclusion") should
12 state that he/she has received the Notice of Pendency of Class Action and Proposed Settlement,
13 decided not to participate in the Settlement, and words to the effect that he/she desires to be
14 excluded from the Settlement. The Request for Exclusion must also state the individual's full
15 name, address, date of birth, and the dates he/she worked as a Class Member for Defendant or
16 Sears Home Improvement Products, Inc. in California. The Request for Exclusion must be signed,
17 dated, and mailed by First Class U.S. Mail, or the equivalent, to the Claims Administrator. All
18 Requests for Exclusion must be postmarked and mailed to the Claims Administrator no later than
19 forty-five (45) calendar days after the Claims Administrator mails the Notice of Pendency of Class
20 Action and Proposed Settlement and the Claim Form to the Class Members. Any individual who
21 submits a Request for Exclusion will not be allowed to object to the terms of the Settlement. If an
22 individual submits both an executed Claim Form and a Request for Exclusion, the Request for
23 Exclusion will be deemed invalid, and the individual will be included in the Settlement Class and
24 will be bound by the terms of the Settlement.

25 22. Objecting to the Settlement. Any individual who does not exclude himself/herself
26 from the Settlement can object to the terms of the Settlement in writing before the deadline to
27 object to the Settlement. To object, the individual must file a written objection and a notice of
28 intention to appear at the Final Approval hearing with the Clerk of the Sacramento County Superior

1 Court of the State of California and send copies to the Claims Administrator, Class Counsel and
2 counsel for Defendant. Any written objection must state each specific reason in support of the
3 objection and any legal support for each objection. The individual must state his/her full name,
4 address, date of birth, and the dates he/she worked as a Class Member in California for Defendant
5 and/or Sears Home Improvement Products, Inc. To be valid and effective, any written objections
6 to approval of the Settlement must be filed with the Clerk of the Court and delivered to the Claims
7 Administrator, Class Counsel and counsel for Defendant no later than forty-five (45) calendar days
8 after the Claims Administrator mails the Notice of Pendency of Class Action and Proposed
9 Settlement and the Claim Form to the Class Members. However, a Class Member may appear at
10 the Final Approval Hearing, either in person or through their own counsel, and object to the
11 Settlement Agreement and any of its terms without submitting a prior objection in the manner and
12 by the deadline specified above. If the Court rejects the objection, the individual will be bound by
13 the terms of the Settlement and will not receive any portion of the Settlement amount unless he/she
14 has submitted a valid and timely Claim Form.

15 RELEASE BY THE CLASS

16 23. Effective upon the date of final approval by the Court of this Stipulation of
17 Settlement, and except as to such rights or claims as may be created by this Stipulation of
18 Settlement, the Settlement Class and each member of the Class who has not submitted a valid
19 Request for Exclusion, fully releases and discharges the Released Parties, all claims under state,
20 federal and local law that were or could have been asserted based on the facts and allegations made
21 in the Action, and any amendments thereto, as to the Class Members, including without limitation,
22 California Labor Code sections 201, 202, 203, 218.5, 218.6, 226, 226.3, 558, 2698 et seq.
23 (including but not limited to 2699, 2699.3, and 2699.5), 2751, 2802, California Industrial
24 Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, et seq., Civil Code section
25 3287, and Business and Professions Code sections 17200, et seq., and including but not limited to
26 all claims for or related to alleged unpaid wages, timely payment of wages during employment,
27 timely payment of wages at separation, commission agreements, wage statements, payroll records
28 and recordkeeping, unreimbursed business expenses, business use of personal vehicles, business

1 mileage reimbursement, vehicle insurance costs, the purchase, transport, and maintenance of
2 required material and equipment, the cost of smart phones, cell phone data usage charges and
3 internet services, failure to pay additional 401(k) benefits and/or deferred compensation benefits
4 and/or matching benefits for payments received under the Settlement, unfair competition, unfair
5 business practices, unlawful business practices, fraudulent business practices, conversion, class
6 actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief,
7 accounting, punitive damages, liquidated damages, penalties of any nature (including but not
8 limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well
9 as all other claims and allegations alleged in the Action, from February 11, 2019 through the date
10 the Court finally approves the Settlement (collectively "Released Claims").

11 24. In addition to the Released Claims identified in Paragraph 23, Plaintiff agrees to
12 generally release the Released Parties from any and all claims, whether known or unknown, under
13 all federal, state and local statutes, and federal and state common law (including but not limited to
14 those for contract, tort, and equity), except for workers compensation claims. Plaintiff
15 acknowledges the language of Section 1542 of the California Civil Code, which provides:

16 A general release does not extend to claims that the creditor or
17 releasing party does not know or suspect to exist in his or her favor
18 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.

19 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and agrees
20 that claims or facts in addition to or different from those which are now known or believed by
21 them to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all
22 of the claims, except for workers compensation claims, they now have against the Released Parties,
23 whether known or unknown, suspected or unsuspected.

24 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

25 25. To effectuate the terms of the Settlement, the Parties agree all formal and informal
26 discovery shall be stayed pending Court approval of the Settlement. Class Counsel agree to cease
27 all affirmative communication (oral and written) with the putative class members, other than
28 through Court-approved notices; this provision does not prevent Class Counsel from

1 communicating with any Class Members who may contact Class Counsel. Plaintiff shall promptly
2 submit this Stipulation of Settlement to the Sacramento County Superior Court in support of
3 Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness,
4 adequacy and reasonableness. Plaintiff agrees to provide Defendant the opportunity to review, and
5 to provide comment, before filing Plaintiff's Motion for Preliminary Approval. At the same time
6 Plaintiff submits this Stipulation of Settlement to the Sacramento County Superior Court, Plaintiff
7 agrees to submit a copy of the Stipulation of Settlement to the LWDA. Promptly, upon execution
8 of this Stipulation of Settlement and after filing a First Amended Complaint including Plaintiff's
9 PAGA claim, Plaintiff shall apply to the Court for the entry of an order preliminarily approving
10 the Settlement in a form that is mutually agreeable between the Parties and also provides for the
11 following:

12 a. Scheduling a fairness hearing on the question of whether the proposed
13 Settlement, including payment of attorneys' fees and litigation costs, costs of administration and
14 the Class Representative's Enhancement Award should be finally approved as fair, reasonable and
15 adequate as to the members of the Settlement Class;

16 b. Certifying a Settlement Class, Plaintiff as Class Representative, and Robin
17 G. Workman of Workman Law Firm, PC as Class Counsel;

18 c. Approving as to form and content the proposed Notice of Pendency of Class
19 Action and Proposed Settlement;

20 d. Approving as to form and content the proposed Claim Form;

21 e. Approving the manner and method for Class Members to request exclusion
22 from the Settlement as contained herein and within the Notice of Pendency of Class Action and
23 Proposed Settlement;

24 f. Directing the mailing of the Notice of Pendency of Class Action and
25 Proposed Settlement and the Claim Form by first class mail to the Class Members;

26 g. Preliminarily approving the Settlement subject only to the objections of
27 Class Members and final review by the Court; and
28

1 h. Enjoining Plaintiff and all Class Members from filing or prosecuting any
2 other cases, claims, suits or administrative proceedings (including filing claims with the Division
3 of Labor Standards Enforcement of the California Department of Industrial Relations) regarding
4 the Released Claims unless and until such Class Members have filed valid Requests for Exclusion
5 with the Claims Administrator and the time for filing claims with the Claims Administrator has
6 elapsed.

7 i. The Preliminary Approval Order shall be substantially in the form identified
8 as Exhibit 3 to this Settlement.

9 DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL

10 26. Class Counsel agrees to return or destroy all confidential documents, lists and data
11 in all forms and formats (originals and copies) within seven (7) calendar days from final Court
12 approval of the Settlement. Plaintiff agrees to provide Defendant's counsel the opportunity to
13 review, and to comment, before filing Plaintiff's Motion for Final Approval of Class Action
14 Settlement. Class Counsel agrees to submit a proposed final order and judgment, in a form that is
15 mutually agreeable between the parties and also provides for the following:

16 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable
17 and adequate, and directing consummation of its terms and provisions;

18 b. Approving Class Counsel's application for an award of attorneys' fees and
19 litigation costs;

20 c. Approving the Enhancement Award to the Class Representative; and

21 d. Entering judgment in accordance with California Rules of Court, Rule
22 3.769(h), and permanently barring and enjoining all members of the Settlement Class from
23 prosecuting against Defendant and Sears Home Improvement Products, Inc.; each of Defendant
24 and Sears Home Improvement Products, Inc.'s respective past, present and future parents,
25 subsidiaries and affiliates; the past, present and future partners, shareholders, directors, officers,
26 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the
27 foregoing; and any individual or entity which could be jointly liable with any of the foregoing.
28

1 e. The Final Approval Order shall be substantially in the form identified as
2 Exhibit 4 to this Settlement.

3
4
5 PARTIES' AUTHORITY

6 27. The signatories hereto hereby represent that they are fully authorized to enter into
7 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

8 MUTUAL FULL COOPERATION

9 28. The Parties agree to fully cooperate with each other to accomplish the terms of this
10 Stipulation of Settlement, including, but not limited to, execution of such documents and taking
11 such other action as reasonably may be necessary to implement the terms of this Stipulation of
12 Settlement. The Parties shall use their best efforts, including all efforts contemplated by this
13 Stipulation of Settlement and any other efforts that may become necessary by order of the Court,
14 or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon
15 as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the
16 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
17 Court's final approval of this Stipulation of Settlement.

18 29. The Parties and their respective counsel agree that they will not attempt to
19 discourage Class Members from filing Claim Forms or Requests for Exclusion.

20 NO PRIOR ASSIGNMENTS

21 30. The Parties and their counsel represent, covenant and warrant that they have not
22 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
23 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
24 action or right herein released and discharged except as set forth herein.

25 NO ADMISSION

26 31. Nothing contained herein, nor the consummation of this Stipulation of Settlement,
27 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
28 the part of Defendant or Sears Home Improvement Products, Inc. Each of the Parties hereto has

1 entered into this Stipulation of Settlement solely with the intention to avoid further disputes and
2 litigation with the attendant inconvenience and expenses.

3
4
5 ENFORCEMENT ACTIONS

6 32. The Parties agree that the Sacramento County Superior Court shall retain
7 jurisdiction to enforce the terms of this Settlement pursuant to California Code of Civil Procedure
8 Section 664.6. In the event one or more of the Parties to this Stipulation of Settlement institutes
9 any legal action or other proceeding against any other Party or Parties to enforce the provisions of
10 this Stipulation of Settlement or to declare rights or obligations under this Stipulation of
11 Settlement, the successful party or Parties shall be entitled to recover from the unsuccessful Party
12 or Parties' reasonable attorneys' fees and litigation costs, including expert witness fees incurred in
13 connection with any enforcement actions.

14 NOTICES

15 33. Unless otherwise specifically provided herein, all notices, demands or other
16 communications given hereunder shall be in writing and shall be deemed to have been duly given
17 as of the third business day after mailing by United States registered or certified mail, return receipt
18 requested, addressed as follows:

19 **To Plaintiff and the Settlement Class:**

20 Robin G. Workman, Esq.
21 Workman Law Firm, PC
22 2325 3rd Street, Suite 329
San Francisco, California 94107

23 **To Defendant:**

24 Cary G. Palmer, Esq.
25 JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814

26 NO PUBLIC COMMENT

27 34. The Class Representative and Class Counsel will not make any public disclosure of
28 the Settlement or this Confidential Memorandum of Understanding, except through Court filings

1 to approve the Settlement. Class Counsel will take all steps necessary to ensure that the Class
2 Representative is aware of, and will ensure that Class Representative adheres to the restriction
3 against any public disclosure of the Settlement or the Confidential Memorandum of
4 Understanding. Following preliminary Court approval of the Settlement, the Class Representative
5 and Class Counsel will not initiate any communications (directly or indirectly) with the media
6 regarding the Action. Class Counsel will take all steps reasonably necessary to ensure the Class
7 Representative is aware of, and will ensure that he will adhere to, the restriction against any media
8 comment on the Settlement and its terms.

9 CONSTRUCTION

10 35. The Parties hereto agree that the terms and conditions of this Stipulation of
11 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and
12 this Stipulation of Settlement shall not be construed in favor of or against any party by reason of
13 the extent to which any party or his, her or its counsel participated in the drafting of this Stipulation
14 of Settlement.

15 CAPTIONS AND INTERPRETATIONS

16 36. Paragraph titles or captions contained herein are inserted as a matter of convenience
17 and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of
18 Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and
19 not merely a recital.

20 MODIFICATION

21 37. This Stipulation of Settlement may not be changed, altered, or modified, except in
22 writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement
23 may not be discharged except by performance in accordance with its terms or by a writing signed
24 by the Parties hereto.

25 INTEGRATION CLAUSE

26 38. This Stipulation of Settlement and Confidential Memorandum of Understanding
27 contain the entire agreement between the Parties relating to the settlement and transaction
28 contemplated hereby, and all prior or contemporaneous agreements, understandings,

1 representations, and statements, whether oral or written and whether by a party or such party's
2 legal counsel, are merged herein. No rights hereunder may be waived except in writing.

3
4
5 BINDING ON ASSIGNS

6 39. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
7 Parties and the Released Parties hereto, and their respective heirs, trustees, executors,
8 administrators, successors, and assigns.

9 CLASS MEMBER SIGNATORIES

10 40. It is agreed that because the members of the Class are so numerous, it is impossible
11 or impractical to have each member of the Class execute this Stipulation of Settlement. The Notice
12 of Pendency of Class Action and Proposed Settlement will advise all Class Members of the binding
13 nature of the release, and the release shall have the same force and effect as if this Stipulation of
14 Settlement were executed by each member of the Class.

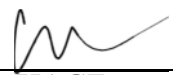
15 COUNTERPARTS

16 41. This Stipulation of Settlement may be executed in counterparts and by facsimile
17 signatures, and when each party has signed and delivered at least one such counterpart, each
18 counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken
19 together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon
20 and effective as to all Parties.

21 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
22 Joint Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set
23 forth below:

24 **Plaintiff and Class Representative**

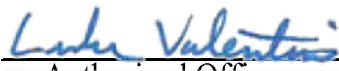
25 Dated: 04 / 06 / 2022

26 
ARTHUR HAGE

27 **Defendant**

28 Transform SR Home Improvement Products LLC

1 Dated: April 18, 2022

2 By: 
3 Authorized Officer or Agent

4
5 APPROVED AS TO FORM:

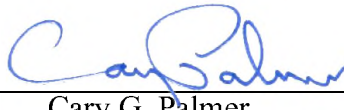
6 WORKMAN LAW FIRM, PC

7 Dated: April 6, 2022

8 By: 
9 Robin G. Workman
10 Attorneys for Plaintiff and Class Members

11 JACKSON LEWIS P.C.

12 Dated: April 19, 2022

13 By: 
14 Cary G. Palmer
15 Evan D. Beecher
16 Attorneys for Defendant

17 4869-2383-1833, v. 1