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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

SOFIANE IBELAIDENE, as an individual and on behalf of all others similarly situated, Plaintiff, vs. KELLER INTERIORS LLC., a California limited liability company; LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company; and DOES 1 through 100, Defendants.	Case No. CIVSB2210336 [*Case assigned for all purposes to the Hon. Jessica Morgan in Dept. S-26*] **DECLARATION OF SEAN M. BLAKELY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: January 13, 2025 Time: 9:00 a.m. Dept.: S26 Complaint Filed: May 19, 2022 Trial Date: None Set

I, SEAN M. BLAKELY, declare as follows:

1. I am a Partner at Haines Law Group, APC, and counsel for the named Plaintiff Sofiane Ibelaidene ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein & Marias I assisted trial attorneys in employment and personal injury cases. From September 2011 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused on representing employees in wage and hour class actions. My work at Mahoney Law Group, APC also included representing employees in individual claims for wrongful termination, harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I performed at Mahoney Law Group, APC included: conducting client intakes performing pre-filing research and analysis, drafting complaints, attending court hearings, corresponding with opposing counsel, drafting and responding to written discovery, preparing for and taking and defending depositions, analyzing payroll and timekeeping records and employee handbooks, opposing motions for summary judgment, as well as a variety of other motions such as motions for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to quash, and motions for class certification, drafting mediation briefs, attending mediations, drafting long-form settlement agreements, drafting motions for preliminary and final settlement approval, and overseeing the notice process.

3. Since November 8, 2016, I have worked at my current firm, Haines Law Group, APC, where, in 2020, I became a Partner. I am currently responsible for managing over fifty (50) active wage and hour class and representative actions in both state and federal court.

4. The following is a non-exhaustive list of wage and hour class actions in which I

have been appointed as class counsel and/or played a significant role in prosecuting the litigation, and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al,* Case No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding (granted final approval of settlement on behalf of employees at rehabilitation facility involving claims for unpaid wages and meal and rest period violations, and other claims, in which I was approved at an hourly rate of $325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance Medical Center, Inc*., California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement on behalf of healthcare workers for unpaid wages, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $325 for work performed in 2012-2013); *Arteaga v. Command Center Security, Inc.,* Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving claims for unpaid overtime, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2012-2015); *Casadine v. Maxim Healthcare Services, Inc*., Case No. CV 12-10078-DMG (CWx), United States District Court, Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement on behalf of home health care employees involving claims for unpaid wages and other claims, in which I was approved at an hourly rate of $425 for work performed in 2012-2015); *Guzman v. Andrew Lauren Interiors, Inc*., *et al*., Case No. BC567757, California Superior Court, Los Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf of construction workers involving claims for unpaid wages, meal and rest period violation, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2014-2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and related violations, approved at hourly rate of $475 for work performed in 2016 and 2017); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees of a chemical manufacturing company involving claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al*., Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et al*., Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F. Highberger presiding (granting final approval of settlement involving claims for wage statement violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al*., Case No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement on behalf of direct support professionals involving claims for unpaid wages, meal and rest period violations, wage statement violations, and other claims); *Aguilar v. Act Fulfillment, Inc*., Case No. RIC1616643, California Superior Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval v. AMCOR Flexibles Inc*., Case No. BC617499, California Superior Court, Los Angeles County, Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of manufacturing employees involving claims for unpaid wages, meal period violations, rest period violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C*., Case No. RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on behalf of non-exempt employees of a freight railcar manufacturer involving claims for unpaid overtime and minimum wages, meal period violations, and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement involving claims for unpaid overtime and minimum wages, rest period violations, wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt direct support professionals involving claims for meal and rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders presiding (granting final approval of settlement on behalf of non-exempt garment employees involving claims for unpaid minimum wages, meal and rest period violations, and other claims); *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties); *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons and other employees involving claims for unpaid wages, meal and rest period violations, unreimbursed business expenses, and other claims); and *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No. CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman presiding (granting final approval of settlement on behalf of sales development representatives involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for meal and rest period violations, and other claims); *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid wages, meal and rest period violations, other claims); and *Julio Alfaro v. Orange Automotive d/b/a Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period violations, unreimbursed business expenses, and penalty claims).

5. I have also moved to certify and have received an order certifying a class action in *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company,* Case No. 16-CV-02749-WQH (BLM), United States District Court, Southern District of California, Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes, wage statement class, and waiting time penalty class).

6. In each year from 2018-2023, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in this case and I believe that the proposed Settlement is an excellent result for the Settlement Class.

8. Defendant Keller Interiors LLC ("Keller") is in the business of performing floor installation services throughout the State of California.

9. On May 19, 2022, Plaintiff filed this class action asserting causes of action for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse all necessary business expenditures; (6) wage statement violations; (7) waiting time penalties; and (8) unfair competition in violation of California Business & Professions Code § 17200 *et seq*. On May 19, 2022, Plaintiff also sent his PAGA notification letter to the Labor & Workforce Development Agency ("LWDA"). Attached as **Exhibit 2** is a true and correct copy of the LWDA letter. Plaintiff's complaint filed on May 19, 2022 also named Lowe's Home Centers, LLC as a Defendant. During early meet-and-confer discussions, Lowe's provided information and documents that led Plaintiff to determine that Lowe's was not a joint employer of Plaintiff or putative class members. On January 18, 2023, the Court dismissed Defendant Lowe's Home Centers, LLC without prejudice. On February 13, 2024, Plaintiff filed the operative First Amended Class and Representative Complaint ("FAC") adding a cause of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, *et seq*. ("PAGA").

10. After meeting and conferring early in the litigation process, the Parties informally exchanged discovery relating to Plaintiff's class and representative claims. Keller provided Plaintiff with a 20% sampling of timekeeping and payroll records for putative class members employed during the Class Period. Keller also produced relevant policy documents, including its written meal and rest period policies, its compensation plans, and the number of current and

former employees employed during the Class Period, as well as the aggregate number of workweeks worked by employees during the Class Period. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Keller's potential defenses.

11. After exchanging the information described above, the Parties participated in arms-length negotiations to resolve the matter. During negotiations, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. The Parties reached eventually reached a settlement, and, during the months that followed, negotiated and finalized the terms of the Settlement and executed the long-form Class Action Settlement Agreement now before the Court. A true and correct copy of the Class Action Settlement Agreement ("Settlement") is attached hereto as **Exhibit 1**. The proposed Notice of Pending Class Action and Estimated Settlement Payment is attached to the Settlement Agreement as **Exhibit A**.

12. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$120,000.00
• Minus Court-approved attorneys' fees:	$40,000.00
• Minus Court-approved verified costs (up to):	$10,000.00
• Minus Court-approved Service Payment:	$5,000.00
• Minus amount set aside as PAGA penalties:	$10,000.00
• Minus estimated Settlement Administration costs:	$7,750.00
Net Settlement Amount ("NSA"):	$47,250.00
• PLUS 25% of PAGA penalties ("PAGA Amount")	$2,500.00
TOTAL Amount Paid to Settlement Class:	**$49,750.00**

13. Based on information from Keller, there are approximately 160 Settlement Class members. Thus, the average Individual Class Payment from the NSA is estimated to be $295.31. Further, there are approximately 100 Aggrieved Employees who worked during the PAGA Period. Therefore, the average payment from the PAGA Payment is estimated to be approximately $25.00.

14. Keller asserts that Plaintiff and nearly all Settlement Class members signed valid and enforceable arbitration agreements with class action waivers. Setting aside any arguments as to the merits of Plaintiff's claims, Keller contends that absent settlement, a class-wide recovery for all Settlement Class members was not possible and that only PAGA civil penalties could

potentially be recovered on behalf of a subset of Settlement Class members. As such, Keller contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to Settlement Class members would be limited to only the employee's potential 25% share of PAGA civil penalties.

15. Plaintiff alleges that Keller failed to provide Plaintiff and other non-exempt employees with legally-compliant meal periods of at least thirty (30) minutes commencing before the conclusion of the fifth hour of work, and/or a second meal period when they worked shifts in excess of 10.0 hours. Plaintiff also alleges that on those occasions when Keller failed to provide all legally required meal periods, Keller failed to compensate their employees with the required meal period premium for each workday in which employees experienced a meal period violation, in violation of Labor Code § 226.7. Based on Plaintiff's review of Keller's records, approximately 28% of the 12,765 shifts over 6.0 hours were non-compliant, and 61% of the 5,560 shifts over 10.0 hours were non-compliant. Accordingly, Plaintiff calculated Keller's maximum exposure for first meal violations at approximately $74,125 (3,574 non-compliant first meal periods * $20.74 average meal period premium), and Keller's maximum exposure for second meal violations at approximately $70,350 (3,392 non-compliant first meal periods * $20.74 average meal period premium), for a total maximum exposure for meal period violations of approximately $144,475. Keller argues that it has maintained compliant written meal period policies throughout the Class Period and has provided compliant meal periods in line with those policies, and that for most shifts in which a meal period was not provided, the employee received a meal period premium for that shift. Keller further contends that it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. Keller also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. With respect to second meal periods, Keller argues that employees voluntarily waived their second meal period on shifts more than 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512. Lastly, Keller argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely.

Based on these defenses, Plaintiff discounted the maximum amount by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 35% or risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $28,173.

16. Plaintiff alleges that Keller's piece-rate/commission pay plan for installers is unlawful in that it fails to compensate for "non-productive" hours worked. Plaintiff alleges that Keller paid non-exempt employees on a piece-rate basis based on the total square footage installed per completed job, but did not maintain an accurate record of all hours worked by Plaintiff and other non-exempt installers. As a result of this practice, Plaintiff asserts that Keller did not adequately compensate Plaintiff and other non-exempt employees for all hours worked, including so-called "non-productive time." Using a conservative estimate of ten minutes per shift, Plaintiff calculated that Keller's failure to pay for non-productive has resulted in approximately 2,128 hours (12,765 shifts * 10 minutes) of unpaid wages. Based on the average hourly rate of pay of $20.74, Plaintiff calculated Keller's maximum exposure at approximately $44,135 (2,128 unpaid hours * $20.74 average hourly rate). Keller argues that its compensation plans fully comply with California law and compensate employees for all hours worked. Keller further contends that employees experienced minimal (if any) uncompensated "non-productive" time. Keller also argues that any questions of non-productive time would be highly individualized, as there are no records or other common evidence of time spent on potentially non-productive tasks necessary to prove class-wide liability, precluding certification. Based on these defenses, Plaintiff discounted the maximum exposure by 70% to account for the risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 70% to account for Keller's defenses on the merits, to arrive at an estimated exposure of approximately $3,972.

17. Plaintiff alleges that Keller failed to pay all overtime wages owed by not including all non-discretionary renumeration, such as the piece-rate pay, into the "regular rate" of pay. From the records provided by Keller, Plaintiff calculates the maximum overtime wages owed to Settlement Class members owing to Keller's failure to incorporate all earnings into the regular

rate of pay at approximately $17,365. However, Keller argues that it properly included all forms of remuneration when calculating the regular rate of pay, including all piece-rate compensation, and therefore paid all overtime wages to all Settlement Class members. Keller further argues that Settlement Class members received different types of renumeration throughout the Class Period, creating substantive differences among the Settlement Class members with respect to the incentives received, making class certification unlikely. In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and discounted an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $1,823.

18. Plaintiff alleges that Keller failed to separately compensate Plaintiff and non-exempt employees for paid rest periods when those employees were compensated under a piece-rate pay plan. Based on Plaintiff's analysis and extrapolation of employee timekeeping records, Plaintiff estimated that the 12,765 shifts eligible for at least one rest period did not have a compliant rest period. Therefore, Plaintiff estimated the maximum potential exposure for this claim at approximately $264,746 (12,765 rest period violations * $20.74 average premium). However, Keller argues that its compensation plans are compliant with California law. Keller further contends that any liability for its failure to separately compensate employees for rest periods during shifts would be limited to back-pay for the rest periods themselves (i.e., pay for the 10 minutes per rest period) as opposed to the rest period penalties under Labor Code § 226.7, measured as an hour of pay per workday, sought by Plaintiff. Keller further contends that any questions of uncompensated rest periods would be highly individualized, precluding certification, as employees worked in a variety of positions, some of them not compensated by piece-rate/commission plans. In light of these defenses, Plaintiff assessed a 70% risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements and discounted an additional 70% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of $23,827.

19. Plaintiff alleges that Keller failed to reimburse Plaintiff and other non-exempt employees for all reasonable and necessary work expenditures, including, but not limited to use of the employee's personal vehicles (including mileage), cellular phones, as well as the cost of purchasing and maintaining necessary tools in violation of Labor Code § 2802(a). Plaintiff estimated a reasonable reimbursement for these expenses to be approximately $25 per weekly pay period, and therefore, Plaintiff calculated Keller's maximum exposure for this claim at approximately $63,825 ($25.00 per pay period * 2,553 pay periods in Class Period). Keller argues that employees were not required to use their cellular phones in the discharge of their work duties. As to the other reimbursement claims, Keller contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal vehicles, tools, or cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. In light Keller's arguments and defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 70% for a risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 50% for risk of losing on the merits or failure to recover the full amount, to arrive at a projected exposure of $9,574.

20. As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Keller is liable for wage statement penalties. Plaintiff also alleges that Keller issued facially deficient wage statements which failed to include the number of piece-rate units earned, the total hours of rest periods and non-productive time worked, in violation of Labor Code §§ 226, 226.2. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. See Labor Code § 226(e). Plaintiff's analysis reflected that there were approximately 100 unique employees and approximately 1,732 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. The maximum possible exposure for all Settlement Class members is calculated as $168,200 ([100 "initial" violations * $50] + [1,632 "subsequent" violations * $100]). Keller argues any alleged wage statement violations were not "knowing and

intentional," and Plaintiff cannot show that he or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Keller further contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties. In light of these defenses, Plaintiff discounted the maximum exposure by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 65% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $17,661.

21. As a further result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Keller failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. Based on data produced by Keller, there are approximately 80 Settlement Class members who separated their employment from Keller at any time after May 18, 2019 and are therefore eligible for waiting time penalties. Plaintiff estimated an average waiting time penalty of approximately $4,978 ($20.74/hr * 8 hrs * 30 days), and calculated Keller's maximum waiting time penalty exposure at approximately $398,240 (80 former employees * $4,978 average waiting time penalty). Keller argues that it possesses strong, good-faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Keller further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Based on these defenses, Plaintiff discounted Keller's maximum exposure by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $29,868.

22. As a result of the foregoing Labor Code violations, Plaintiff alleges that Keller is liable for civil penalties under the PAGA. Plaintiff estimated a maximum PAGA exposure of $173,200 (1,732 pay periods during PAGA Period * $100 "initial" violation rate). Since

Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Keller asserts that the PAGA claim would fail with those claims. Keller further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties if it were to find Keller liable for any of Plaintiff's claims. Thus, Plaintiff discounted the maximum figure by 60% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and by an additional 75% for risk of the Court reducing penalties, for an estimated exposure of approximately $17,320.

23. Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class would be approximately $132,218. Thus, the proposed $120,000 GSA represents approximately 90.7% of Plaintiff's reasonably forecasted recovery.

24. Although the Parties engaged in significant informal discovery in advance of negotiating the Settlement, the Parties still had substantial formal discovery to complete in formal litigation had the matter not settled, which would have required the expenditure of substantial time and resources by all Parties. Even if Plaintiff overcame the arbitration agreements and obtained class certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. The Settlement avoids those risks and the accompanying delay and expense, and thus, this factor supports preliminary approval.

25. At final approval, Plaintiff's counsel will request an attorneys' fees award of one-third of the GSA, and up to $10,000 in verified costs. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff's counsel has expended significant time conducting pre-filing investigation, legal research, analyzing Plaintiff's claims, analyzing employee timekeeping and payroll records and other data and documents, engaging in informal discovery, developing a comprehensive damages model, negotiating and preparing the long-form Class Action Settlement Agreement, preparing this Motion, and otherwise litigating this case. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final Approval motion and appearing at the Final Approval Hearing.

26. As will be fully briefed at the time of final approval, Plaintiff's requested Service

Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 17, 2024, at El Segundo, California.

Sean M. Blakely

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is made by and between the named Plaintiff Sofiane Ibelaidene, on behalf of himself and the putative class members ("Plaintiff") and Defendant Keller Interiors LLC ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

A. "Action" means the Class Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Sofiane Ibelaidene v. Keller Interiors LLC and Lowe's Home Centers, LLC*, San Bernardino Superior Court Case No. CIV SB 2210336.

B. "Aggrieved Employee" means all current and former non-exempt employees who worked for Defendant during the PAGA Period.

C. "Class" means all persons employed by Defendant Keller Interiors in California as hourly-paid, non-exempt employees during the Settlement Period (defined as May 19, 2018, through April 1, 2023, (the "Settlement Period")), and excluding those persons who opt-out.

D. "Class Counsel" means Paul K. Haines and Sean M. Blakely of the Haines Law Group, APC.

E. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

F. "Class Data" means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; and his or her dates of employment and/or number of workweeks worked during the Class Period as a Class Member.

G. "Class Member" is a member of the Class.

H. "Class Notice" means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as <u>Exhibit A</u> to this Agreement and incorporated by reference into this Agreement. The Class Notice will include, but shall not be limited to: information regarding the nature of the Action; a summary of the substance of the Settlement; the Class definition; the procedure and time period to request exclusion from, or object to the claims process; the date set for the Final Approval Hearing; and the formula used to calculate the Settlement Shares. The Class Notice will not include a claim form, but will only include all procedural materials necessary to effect the Settlement and no claim form will be needed to be submitted to participate in the Settlement.

I. "Class Period" means the period of time between May 19, 2018, through April 1, 2023.

J. "Class Representative Service Payment" means the service payment made to Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.

K. "Court" means the Superior Court of California, County of San Bernardino.

L. "Defendant" means Keller Interiors LLC.

M. "Defendant's Counsel" means Sat Sang S. Khalsa of Gordon Rees Scully Mansukhani, LLP.

N. "Effective Date" means the date by which all of the following have occurred:

1. This Agreement is approved by the Court; and

2. The Judgment becomes Final as defined in Section I(P) of this Agreement.

O. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.

P. "Final" means the last of the following dates, as applicable:

1. If no objection to the Settlement is made, the date the Judgment is entered.

2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.

3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.

Q. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

R. "Gross Settlement Amount" means One Hundred Twenty Thousand Dollars ($120,000.00) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant and shall be inclusive of all Individual Class Payments to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the PAGA Payment contemplated by this Agreement, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.

S. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

T. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

U. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.

V. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

W. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

X. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA PAGA Payment, and the Settlement Administration Expenses.

Y. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.

Z. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

AA. “PAGA Group Member” means all persons who worked for Keller during the PAGA period.

BB. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for at least one day during the PAGA Period.

CC. “PAGA Period” means the period from May 19, 2021 through April 1, 2023.

DD. “PAGA Notice” means Plaintiff’s May 19, 2022, letter to Keller and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

EE. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($2,500.00) and the 75% to LWDA ($7,500.00) in settlement of PAGA claims.

FF. "Participating Class Member" means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.

GG. "Preliminary Approval of the Settlement" means the Court's Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.

HH. "Released Parties" collectively mean: Defendant Keller Interiors LLC, Lowe's Home Center's LLC, and each of them, and their corresponding respective past, present and future parents, subsidiaries, affiliates, corporations, divisions, and successors and assigns, and the past, present and future shareholders, managers, officers, partners, members, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns.

II. "Released Class Claims" means the claims being released as described in Section F, Paragraph 1 below.

JJ. "Released PAGA Claims" means the claims being released as described in Section F, Paragraph 2 below.

KK. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.

LL. "Settlement Administrator" means the administrator Phoenix Settlement Administrators proposed by the Parties and appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid and shall be agreed to by all counsel.

II. RECITALS

A. On May 19, 2022, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of San Bernardino (the "Action"). Plaintiff asserted claims that Defendant failed to comply with the following statutes:

1. Minimum Wage Violations (pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197);

2. Failure To Pay All Overtime Wages (pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198);

3. Meal Period Violations (pursuant to Labor Code §§ 226.7, 512 and 558);

4. Rest Period Violations (pursuant to Labor Code §§ 226.2, 226.7, 516 and 558);

5. Failure To Reimburse Necessary Business Expenses (pursuant to Labor Code §§ 2802 and 2804);

6. Wage Statement Violations (pursuant to Labor Code §§ 226 et seq. and 246);

7. Waiting Time Penalties (pursuant to Labor Code §§ 201 – 203); and

8. Unfair Competition (pursuant to Bus. & Prof. Code §§ 17200 et seq.).

B. On May 19, 2022, pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Keller and the LWDA by sending the PAGA Notice.

C. On February 13, 2024, Plaintiff filed a First Amended Complaint to assert a claim for Civil Penalties pursuant to PAGA.

D. The putative class only numbers 140 persons, who collectively worked approximately 2,553 pay periods. The small size of the class made direct negotiations the most efficient way to resolve the case since the potential exposure in relation to the fees and availability of qualified mediators did not justify the expense of mediation.

E. Accordingly, The Parties participated in direct negotiations to resolve the matter. Keller provided a twenty percent sample of the pay and time records for the putative class and the supporting policy documents to Class Counsel.

F. Plaintiff's counsel analyzed the data and determined that the settlement was reasonable in light of the narrow issues, the size of the class, and the risks posed by Plaintiff's Agreement to Arbitrate all claims on an individual basis.

G. The parties memorialized the settlement in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

H. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Hundred Twenty Thousand Dollars ($120,000.00). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.

B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, and upon Court approval, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiff:** In addition to the Individual Class Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than $5,000 as a Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of no more than $5,000 for Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than $5,000, for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to Plaintiff with respect to the payment who will assume full responsibility and liability for the taxes due on his Class Representative Service Payment. To receive the payment, the Plaintiff agrees to a 1542 waiver and a general release of all claims as set forth below. The Parties expressly agree that the Court's approval or denial of any request for a Class Representative Service Payment is not a material condition of this agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the application by Class Counsel of the Class Representative Service Payment shall not operate to terminate or cancel this Settlement. To the extent the Court awards less than the amount of the requested Class Representative Service Payment, the consideration referenced in this paragraph shall not be affected and the requirement for and/or validity of an executed 1542 waiver and general release of all claims as set forth below by Plaintiff shall remain in force and effect. To the extent the Court awards less than the amount of the requested Class Representative Service Payment, any remaining amount will be redistributed amongst the Participating Class Members on a pro rata basis.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third (1/3) of the Gross Settlement Amount, which is estimated at $40,000, as their Class Counsel Fees Payment and an amount not more than $10,000 for all expenses incurred as supported by declaration as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are $40,000, and $10,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.

3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of $10,000 out of the Gross Settlement Amount, which shall be allocated 75% ($7,500) to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% ($2,500) will be distributed to Class Members who worked for Defendant at any time from May 19, 2021 through April 1, 2023 ("PAGA Period") based on their respective workweeks during the PAGA Period. If the Court approves a PAGA Payment of less than $10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed $10,000 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than $10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Individual Class Payment.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.

2. **Calculation**. Each Participating Class Member will be entitled, provisionally, to a payment from the Net Settlement Amount. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. Each Class Member's number of weeks worked will be derived from the active contract dates and data contained in the records kept by Defendant in the ordinary course of business during the Class Period, but Class Members will have the right to challenge the number of workweeks.

3. **Withholding**.

   a. Subject to approval by the Court, Twenty Percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount.

   b. Subject to approval by the Court, Twenty Percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of claims for interest and Sixty Percent (60%) of each Participating Class Member's Individual Class Payment is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Individual Class Payment, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Individual Class Payments will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Individual Class Payments.

5. **Class Size.** Defendant has represented that the class members worked an estimated total of 2,253 total workweeks worked by Class Members as of September 1, 2022. If the number of workweeks worked during the Settlement Period exceeds this figure by more than 10% (i.e., if there are 2,479 or more workweeks), Plaintiff shall have the right to withdraw from the settlement. In addition, the parties may consider a good-faith renegotiation based on the changed workweek count.

D. **Appointment of Settlement Administrator.** After obtaining bids from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Individual Class Payments, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

The Settlement Administrator shall never be empowered to make payments to Participating Class Members exceeding the total Net Settlement Amount or deviate from the payment formula agreed upon by the Parties.

E. **Procedure for Approving Settlement**.

1. **Motion for Preliminary Approval of Settlement by the Court**.

a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to a mediator for resolution.

b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.

c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:

a. No later than 30 calendar days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. Defendant's records will be presumptively determinative in any dispute over entitlement to payment or over membership in the Class.

b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail in English and Spanish using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class

Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections and workweek disputes received.

e. Not later than 10 calendar days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Workweeks allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets. The Settlement Administrator shall forward any objections received to Class Counsel and Defendant's Counsel. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. A Participating Class Member who does not submit an objection in the manner specified above and in the Class Notice will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

b. **Disputes as to Workweeks.** Each Class Member shall also have sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the number or workweeks the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. Defendant's records will be presumptively determinative in any dispute over entitlement to payment or over membership in the Class.

c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Class Members whether or not they exclude themselves from the class action settlement. Class Members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their Individual PAGA Payment described above, and will release all Released PAGA Claims, whether they submit a valid and timely Request for Exclusion or not.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive an Individual Class Payment, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.

4. **Right of Parties to Reject Settlement.** If Class Members representing more than ten percent (10%) of the total workweeks in the Class Period timely submit valid Elections Not to Participate in Settlement, both Plaintiff and Defendant will have the right, but not the obligation, to void the Settlement, in which case the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that either Plaintiff or Defendant exercises the right to void the Settlement pursuant to this Paragraph. The party rejecting the Settlement shall inform the other party and the Court whether it is exercising its right pursuant to this Paragraph not later than seven (7) calendar days after the Settlement Administrator

notifies the Parties of the number of valid Elections Not to Participate in Settlement it has received.

5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant.

6. **Additional Briefing and Final Approval**.

   a. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.

   b. If any opposition is filed to the motion for final approval, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval.

   c. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.

   d. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as <u>Exhibit C</u>. After entry of the Judgment, pursuant to California Code of Civil Procedure section 664.6, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class

Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the LWDA Payment in accordance with this Agreement.

10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected Participating

Class Member at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure, § 1500 et seq. in the names of the Settlement Class Members and PAGA Group Members who did not cash their settlement checks until such time as they claim their property.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. **Release of Claims**.

1. **Participating Class Members.** Upon the Effective Date and the complete funding of the Gross Settlement Amount, Defendant and the Released Parties shall receive a release from the Participating Class Members of all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each Participating Class Member had, now has, or may hereafter claim to have against Defendant and the Released Parties that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Action that occurred during the Class Period regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period ("Released Class Claims"). The Released Class Claims specifically include all claims for: (1) minimum wage violations (pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197); (2) failure to pay all overtime wages (pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198); (3) meal period violations (pursuant to Labor Code §§ 226.7, 512 and 558); (4) rest period violations (pursuant to Labor Code §§ 226.2, 226.7, 516 and 558); (5) failure to reimburse necessary business expenses (pursuant to Labor Code §§ 2802 and 2804); (6) wage statement violations (pursuant to Labor

Code §§ 226 et seq. and 246); (7) waiting time penalties (pursuant to Labor Code §§ 201 – 203); and (8) unfair competition (pursuant to Bus. & Prof. Code §§ 17200 et seq.). The enumeration of these specific statutes shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in the Complaint.

2. **PAGA Release.** Pursuant to the requirements of Labor Code sections 2698, et seq., Plaintiff Ibelaidene is the designated agent of the California Labor and Workforce Development Agency ("LWDA"), and is proceeding as a private attorney general, by bringing this enforcement action to recover civil penalties pursuant to Labor Code sections 201, 202, 203, 204, 226, 226.2 226.7, 246, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2804 and the related IWC Wage Orders. Upon the Effective Date, the LWDA shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released the Released Parties from any claim for civil penalties arising out of the Released Class Claims or specifically enumerated in this paragraph.

3. **Plaintiff**. Upon the occurrence of the Effective Date, Plaintiff generally, unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any and all claims related in any way to the transactions or occurrences between them prior to the date of preliminary approval, to the fullest extent permitted by law, including, but not limited to, Plaintiff's hiring by and employment with the Defendant, Plaintiff's compensation, wages, or pay of any kind related to the Defendant, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with Plaintiff's employment with Defendant Keller Interiors LLC. This Release is intended to have the broadest possible application and includes, but is not limited to, any tort, contract, common law, constitutional or other statutory claims, including, but not limited to alleged violations of Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the National Labor Relations Act, the Family and Medical Leave Act, the California Family Rights Act, the California Fair Employment and Housing Act, the California Labor Code, the California Constitution, the California Business and Professions Code, the California Industrial Welfare Commission Wage Orders, the California Government Code, as well as any amendments to those laws, and all claims for attorneys' fees, costs and expenses ("Plaintiff's Released Claims"). This release of Plaintiff's Released Claims unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party at the time prior to the date of preliminary approval. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law

cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to unemployment benefits and workers' compensation benefits.

Plaintiff acknowledges that he may discover facts or law different from, or in addition to the facts or law that he knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete. The Parties execute this release with the full knowledge that this release of the Plaintiff's Released Claims covers all possible claims by Plaintiff against the Released Parties, to the fullest extent permitted by law. To the extent permitted by law, Plaintiff expressly waives his right to recovery of any type, including damages, penalties, or reinstatement, in any administrative or court action, whether state or federal, and whether brought by Plaintiff or on Plaintiff's behalf, related in any way to the matters released herein.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of the Plaintiff's Released Claims, Plaintiff expressly acknowledges that this settlement is intended to include in its effect, without limitation, all Plaintiff's Released Claims which Plaintiff does not know or suspects to exist in his favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Plaintiff's Released Claims.

Plaintiff and Defendant acknowledge that it is their mutual intent not only to resolve all matters presently in dispute between them, but also by this Agreement to forever prevent the reoccurrence of any question, dispute, or claim regarding the past employment or future consideration for employment of Plaintiff by Defendant or Released Parties.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

5. **Class Counsel**. As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action, except as provided in this Agreement.

G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

H. **Limitation on Public Statements About Settlement.** Plaintiff and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. Neither Plaintiff nor Defendant will issue any press release or other public or non-public representation regarding the Settlement other than as necessary to obtain Court approval and effectuate the terms of the Settlement, which may include publicizing for explanation and assistance purposes the Settlement at legal aid agencies likely to be consulted by the Class Members in order to maximize class participation and publicizing for notice and educational purposes the Settlement in periodicals and/or radio stations in order to maximize class participation. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the court. Class Counsel will not communicate with other wage-hour plaintiffs' counsel about this Settlement, nor utilize it in any way in their marketing or advertising materials or website until after final approval is granted by the Court, except that Class Counsel may post court-filed documents on their website for viewing by Class Members.

I. **Miscellaneous Terms**.

1. **No Admission of Liability or Class Certification for Other Purposes**.

a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaim any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.

b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its

exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, 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 including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.

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

5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement**. Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.

7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.

9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-

length negotiations, taking into account all relevant factors, current and potential.

11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.

12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Paul K. Haines
phaines@haineslawgroup.com
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel.: (424) 292-2350

To Defendant:

Sat Sang S. Khalsa
Gordon Rees Scully Mansukhani, LLP
1111 Broadway, Suite 1700
Oakland, CA 94607
Tel.: (510) 463-8668
Facsimile: (510) 984-1721
Email: skhalsa@grsm.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

15. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement. The Court shall award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of this Settlement Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 03/06/24, 2024

By: Sofiane Ibelaidene (Mar 6, 2024 08:03 PST)
Sofiane Ibelaidene

KELLER INTERIORS, LLC

Dated: February 28, 2024

By: ____________
Glen Keller

APPROVED AS TO FORM AND CONTENT

HAINES LAW GROUP, APC

Dated: 03/06/2024

____
Class Counsel Paul K. Haines

GORDON REES SCULLY MANSUKHANI LLP

Dated: 2/28/24

____
Defendant's Counsel Sat Sang S. Khalsa

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SOFIANE IBELAIDENE, as an individual and on behalf of all others similarly situated, Plaintiff, vs. KELLER INTERIORS LLC., a California limited liability company; LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company; and DOES 1 through 100, Defendants.	Case No. CIVSB2210336 **NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

To: All persons employed by Defendant Keller Interiors LLC ("Keller") in California as hourly-paid, non-exempt employees from May 19, 2018, through April 1, 2023. Collectively, these employees will be referred to as "Settlement Class members."

PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Sofiane Ibelaidene v. Keller Interiors LLC, et al*., San Bernardino Superior Court Case No. CIVSB2210336 (the "Action"). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Keller's records show that you were employed by Keller as a non-exempt hourly-paid employee in California at any time during May 19, 2018, through April 1, 2023 (the "Settlement Period"), and are therefore part of the proposed "Settlement Class." The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Sofiane Ibelaidene ("Plaintiff") filed a lawsuit alleging that Defendant violated California law by: (1) failing to pay minimum wages for all hours worked; (2) failing to pay all overtime wages; (3) failing to provide all legally required meal periods; (4) failing to authorize and permit all legally required rest periods; (5) failing to reimburse business expenses; (6) failing to furnish accurate and itemized wage statements; (7) failing to timely pay all wages owing upon separation of employment; and, as a result of the above, (8) engaging in unlawful business practices. In addition, Plaintiff seeks recovery of derivative civil penalties under the California Labor Code Private Attorneys General Act, Labor Code § 2698, *et seq*. ("PAGA"), interest, and attorneys' fees and costs. Plaintiff is known as the "Class Representative." Plaintiff's attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

Keller denies that it has done anything wrong and asserts that it properly paid its employees in accordance with the Law. Keller denies that it owes Settlement Class members any wages, restitution, penalties, or other damages or amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Keller, who expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties have decided to settle the lawsuit according to the terms summarized in this Notice. Keller provided relevant information to Class Counsel and the Settlement was reached after arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Keller, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Keller, your decision about whether to participate in the Settlement will not affect your employment. California law and Keller's policy strictly prohibit unlawful retaliation. Keller will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class members:	Attorneys for Defendant:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	**GORDON & REES SCULLY MANSUKHANI LLP** Sat Sang S. Khalsa skhalsa@grsm.com Mollie Burks mburks@grsm.com 275 Battery Street, Suite 2000 San Francisco, California 94111 Tel: (415) 986-5900 Fax: (415) 986-8054

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement. If the Court grants final approval of the Settlement, Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Keller, as specifically described below.

Defendant has agreed to pay $120,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys' fees and costs, settlement administration costs, the Class Representative Service Payment, and the amount designated as PAGA civil penalties.

The following deductions from the Gross Settlement Amount will be requested by the parties:

> <u>Attorneys' Fees and Expenses</u>. Class Counsel have been prosecuting the Lawsuit on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount (which is currently estimated to be $40,000.00) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement

finalization. Class Counsel also will ask for reimbursement of up to $10,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to $7,750.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Class Representative Service Payment. Class Counsel will ask the Court to award $5,000.00 for the Class Representative Service Payment. This payment is meant to compensate Plaintiff for her service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to the State of California. The parties have agreed to allocate $10,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties ($7,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% ($2,500.00) will be payable to Aggrieved Employees as the "PAGA Amount."

Calculation of Settlement Class Members' Individual Class Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

(i) The NSA will be allocated proportionally to all participating Settlement Class members (i.e., those who do not opt out) based on each Settlement Class member's total weeks worked for Keller in California as a non-exempt employee during the Settlement Period.

(ii) In addition to the NSA, $2,500 of the Gross Settlement Amount has been designated as the "PAGA Penalties" as described above, and will be allocated to all Aggrieved Employees (regardless whether they opt out) who worked for Keller at any time from May 19, 2021 through April 1, 2023 (the "PAGA Period"), in proportion to the number of workweeks that each Aggrieved Employee worked for Keller in California as a non-exempt employee during that time period.

Deposit of Gross Settlement Amount. The Settlement will be funded by Keller with the Settlement Administrator within thirty (30) days of the Effective Date.

Individual Class Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Class Payments will be mailed to Settlement Class members who did not opt out of the settlement by submitting a valid and timely Request for Exclusion.

Allocation and Taxes. For tax purposes, each Individual Class Payment will be allocated as 20% wages and 20% interest and 60% penalties. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Settlement Class members are responsible for the proper income tax treatment of the Class Payments. The Settlement Administrator, Keller and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release by Settlement Class members. If the Court approves the Settlement, each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully release and discharge Keller and any and all of Keller's officers, directors, employees, agents, owners, principals, representatives, attorneys, attorneys in fact, accountants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, corporate affiliates, subsidiaries, divisions, joint ventures, joint employers, predecessors, successors and assigns (collectively the "Released Parties") from any and all claims, liabilities, suits, rights, demands, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, penalties, causes of action, and legal theories which arise out of the facts alleged in the Action which were pled in the Operative Complaint or that could have been pled or otherwise raised based on the facts alleged therein, including (1) Minimum Wage Violations (Labor Code §§1182.12, 1194, 1194.2, 1197, 1198); (2) Failure to pay all overtime wages (Labor Code §§204, 510, 558, 1194, 1198); (3) Rest period violations (Labor

Code §§226.7, 516, 558); (4) Meal period violations (Labor Code §§226.7, 512, 558); (5) Wage Statement violations (Labor Code §226 et seq.) ; (6) Waiting time penalties (Labor Code §§201-203); (7) Failure to reimburse for all necessary business expenditures (Labor Code §§2802, 2804); and (8) Unfair Competition ((Business & Professions Code sections 17200, *et seq*.)("Class Released Claims"). The release of the Class Released Claims shall apply for the duration of the Settlement Period. In addition, all Settlement Class members (whether or not they opt out) who worked for The Complete Logistics Company in California at any point from May 19, 2021 through April 1, 2023 (the "PAGA Period") shall release and discharge Keller from all claims for civil penalties under the PAGA, arising during the PAGA Period as disclosed in Plaintiff's May 19, 2022 Notification Letter to the Labor and Workforce Development Agency ("LWDA") which shall include all claims for civil penalties pursuant to PAGA based on the allegations that were pled in the operative Complaint or that could have been pled based on the facts alleged therein (the "Released PAGA Claims").

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Class Payment which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

Check Cashing Deadline and Uncashed Checks. If you are issued an Individual Class Payment, you will have one hundred and eighty (180) calendar days after your check is mailed by the Settlement Administrator to cash it. If you do not cash your check within 180 days after mailing, the check will become void, and the funds associated with such voided check will be distributed to the Controller of the State of California to be held in your name pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for your benefit until such time that you claim the funds being held in your name.

What other options do I have?

Dispute Information in Notice of Settlement Award. As noted above, your estimated Individual Settlement Payment is based on the number of workweeks you worked during the Class Period. The information contained in Keller's records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed above. If you dispute the above information from Keller's records, Keller's records will control unless you are able to provide documentation that establishes otherwise and that Keller's records are mistaken. If there is a dispute about whether Keller's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in this Notice. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must clearly state that you wish to exclude yourself from the Settlement, and must include the case name and number, *Sofiane Ibelaidene v. Keller Interiors LLC, et al.*, San Bernardino Superior Court Case No. CIVSB2210336.

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member with respect to the class claims alleged, shall be barred from participating in the Class Settlement, and shall receive no benefits from the Class Settlement. Any person who submits a valid and timely Request for Exclusion will also lack standing to submit any objection to the Settlement. However, Aggrieved Employees who were employed by Keller in California at any time during the PAGA Period, including those who opt-out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Penalties.

Do not submit both a Dispute and a Request for Exclusion Form. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. All objections and correspondence must be sent directly to the Settlement Administrator, please do not send objections or correspondence to the Court. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. Notwithstanding the foregoing, you do not need to object in writing to be heard at the Final Approval Hearing.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Sofiane Ibelaidene v. Keller Interiors LLC, et al.*, San Bernardino Superior Court Case No. CIVSB2210336. You need not file a written objection in order to appear at the Final Approval Hearing.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. At the Final Approval Hearing, the Court will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the service award to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact the Settlement Administrator at __________ to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan to attend the hearing in person or otherwise visit the Court, please consult the Court's website, https://www.sb-court.org.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular Court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, KELLER OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

NOTICE OF ESTIMATED SETTLEMENT PAYMENT

Sofiane Ibelaidene v. Keller Interiors LLC, et al.
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2210336

Please complete and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

____
(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

____
Former Names (if any)

____
New Street Address

____
City State Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Defendant Keller Interiors LLC's ("Keller") records:

(a) you worked ____ workweeks for Keller as a non-exempt, hourly-paid employee in California during the time period from May 19, 2018, through April 1, 2023; and

(b) you worked ____ workweeks for Keller as a non-exempt, hourly-paid employee in California during the time period from May 19, 2021 through April 1, 2023.

Based on the above, your Settlement Payment is estimated at $________.

(IV) If you disagree with items (a) and (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

____
____
____
____
____
____

If you dispute the above information from Keller's records, Keller's records will control unless you are able to provide documentation that establishes otherwise, and that Keller's records are mistaken. If there is a dispute about whether Keller's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

Date: ______________________ **Signature:** ___________________________

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 19, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Sofiane Ibelaidene, et al., v. Keller Interiors LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Sofiane Ibelaidene in claims arising from his employment with Keller Interiors LLC ("Keller Interiors"), and Lowe's Home Centers, LLC ("Lowe's"), and Does 1 through 100 (collectively, "Defendants"). Mr. Ibelaidene is an "aggrieved employee" as defined by Labor Code § 2698, *et seq*. due to Defendants' numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

Mr. Ibelaidene worked for Defendants as a non-exempt employee from approximately May of 2021 to August of 2021. His primary job duties consisted of installing wood and vinyl flooring in residential homes. The "aggrieved employees" whom Mr. Ibelaidene seeks to represent include all non-exempt employees who have worked for Defendants in California at any time from one year prior to the date of this letter through the present. While Plaintiff's ostensible employer was Keller Interiors, all of the flooring jobs performed by Plaintiff and other installers were ordered by Lowe's customers and assigned to them for installation directly by Lowe's. Plaintiff and other installers would wear Lowe's uniforms, including a shirt with a Lowe's logo, and Lowe's performed background checks on Plaintiff and other installers prior to their hire. Accordingly, Lowe's, together with Keller Interiors, controlled Plaintiff's and other installers' hours and working conditions, and therefore both Keller Interiors and Lowe's employed Plaintiff and other non-exempt installers.

Throughout his employment, Defendants paid Mr. Ibelaidene on a piece-rate basis based on the total square footage installed per installation job he completed. Defendants did not maintain an accurate record of the hours worked by Mr. Ibelaidene or other aggrieved employees who were compensated on a piece-rate basis, as the app used to record working hours was routinely not working, and also due to Defendants' practice of failing to take compensate installers for travel time, i.e., time spent traveling to and in-between job sites.

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WWW.HAINESLAWGROUP.COM

Defendants failed to pay Mr. Ibelaidene and other aggrieved employees who were compensated on a piece-rate basis for so-called "non-productive" time (i.e., hours that they were working but were not performing piece-rate work). For example, Mr. Ibelaidene performed tasks that included, but were not limited to: traveling from Defendants' office to the job site, traveling from the job site to the office at the end of the day to drop off trash produced while working at a job site at the Defendants' office location, cleaning a job site before leaving, gathering and organizing tools, transporting tools to job sites, and travelling between job sites. Under Defendants' piece-rate compensation system, Mr. Ibelaidene was not separately compensated for any time spent performing such tasks. As a result of these practices, Defendants did not pay Mr. Ibelaidene and other aggrieved employees for all hours worked at the minimum wage when they were being compensated on a piece-rate basis, as Defendants failed to pay for non-productive hours.

Additionally, Mr. Ibelaidene often worked in excess of 8 hours per day and/or 40 hours per week. However, Defendants failed to properly calculate Mr. Ibelaidene's overtime rate because the overtime rate did not properly incorporate his piece rate earnings. Because Defendants failed to properly calculate Mr. Ibelaidene's regular rate of pay, he was deprived of overtime compensation. Further, as a result of Defendants' failure to record all of the hours worked by Mr. Ibelaidene, he did not receive all overtime compensation to which he was entitled.

Defendants also failed to provide Mr. Ibelaidene and other aggrieved employees with legally compliant meal periods of at least 30-minutes commencing before the conclusion of the fifth hour of work, and/or a second meal period when they worked shifts in excess of 10.0 hours. As Mr. Ibelaidene and other aggrieved employees were pressured to finish installation jobs within a given timeframe, Mr. Ibelaidene and other aggrieved employees often missed meal periods altogether, and/or took meal periods that were short (less than 30 minutes) and/or late (commencing after 5 hours of work). Moreover, as Defendants did not require Mr. Ibelaidene and other aggrieved employees to clock in and out for their meal periods, and maintained no other records of employee meal periods, Defendants also failed to keep accurate records of employee hours worked, including time records showing when employees took meal periods. Instead, on information and belief, Defendants would auto-deduct 30-minutes from aggrieved employees' pay, even when aggrieved employees did not in fact take a 30-minute meal period, resulting in additional unpaid wages. Moreover, on those occasions that Defendants failed to provide all legally required meal periods, Defendants failed to compensate their non-exempt employees with the required meal period premium for each workday in which employees experienced a meal period violation, in violation of Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that Mr. Ibelaidene and/or other aggrieved employees were not provided with a legally compliant meal period.

In addition, Defendants did not separately compensate Mr. Ibelaidene or other aggrieved employees paid on a piece-rate basis for rest periods, as required under Labor Code section 226.2. Accordingly, Defendants are liable for rest period premiums under

Labor Code section 226.7 for their failure to separately compensate rest periods for Mr. Ibelaidene and other aggrieved employees who were paid on a piece-rate basis.

Defendants also required Mr. Ibelaidene and other aggrieved employees to use their personal vehicles, including to transport trash produced from job sites to Defendants' office location, and other work-related purposes. Mr. Ibelaidene was also responsible for purchasing and maintaining tools necessary to his work, including but not limited to a table saw, an air compressor, a miter saw, a hammer, a nail gun, and a crowbar. Lastly, Defendants required Mr. Ibelaidene and other aggrieved employees to use their personal cellular phones for work-related purposes, including clocking in and out on a phone-based application, but failed to reimburse Mr. Ibelaidene and other aggrieved employees for use of their cellphones. Thus, Defendants failed to reimburse Mr. Ibelaidene and other aggrieved employees for all necessary business expenses associated with using their personal vehicles (including mileage), cell phones, as well as the cost of purchasing and maintaining necessary tools.

As a result of Defendants' failure to pay all wages owed and meal and rest period premium wages owed, Defendants maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Ibelaidene and other aggrieved employees, and failed to pay all final wages owed to Mr. Ibelaidene and other aggrieved employees upon their respective separations of employment. Defendants' wage statements are also facially deficient because, *inter alia*, they fail to include the number of piece-rate units earned, the total hours of rest periods and non-productive time worked, and the amount of paid sick leave available in violation of Labor Code §§ 226, 226.2, and 246(h).

<u>Overtime Violations</u>

Defendants were, and are, required to pay Mr. Ibelaidene and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 510, 558, 1194(a) and 1198; Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per workday and/or in excess of 40 hours of work in the workweek, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and "[d]ouble the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek." As described herein, Defendants caused Mr. Ibelaidene and other aggrieved employees to work overtime and/or double-time hours but did not compensate Mr. Ibelaidene or other aggrieved employees at one and one-half times (or two times) their "regular rate" of pay for such hours.

<u>Minimum Wage Violations</u>

Defendants were, and are, required to pay Mr. Ibelaidene and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked, including, for employees paid on a piece-rate basis, separate compensation for non-productive time. *See* Labor Code §§ 226.2, 1194, 1194.2, 1197, 1198, and Wage Order 16, § 4. As alleged above, Defendants maintained, and continue to maintain, timekeeping policies/practices and pay policies/practices that regularly, systematically, and impermissibly fail to compensate Mr. Ibelaidene and other aggrieved employees at least the minimum wage for all hours worked. As a result of these policies/practices, Mr. Ibelaidene and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed, and continue to fail, to provide Mr. Ibelaidene and other aggrieved employees with all required and compliant meal periods, due to Defendants' meal period policies/practices that fail to provide legally compliant meal periods, to Mr. Ibelaidene and other aggrieved employees. *See* Labor Code §§ 226.7 512, 558, 1198; Wage Order 16, § 10. As a result, Mr. Ibelaidene and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with…[an] order of the Industrial Welfare Commission…the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."). As alleged above, Defendants have also failed to pay them the premium wages to which aggrieved employees are legally entitled. In addition, as noted above, Defendants have failed to properly record meal periods due to their auto-deduct practice.

Rest Period Violations

Due to its unlawful rest period policies and/or practices, and its failure to pay piece-rate employees separately for rest periods, Defendants have failed to authorize and permit Mr. Ibelaidene and other aggrieved employees to take all paid rest periods to which they are legally entitled. Wage Order 16, § 11 and California Labor Code §§ 226.2, 226.7, 516, 558, and *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) mandate that employees paid pursuant to a piece-rate compensation system be compensated separately for their rest periods thereof. Despite Defendants' violations, Defendants have not paid an additional hour of premium pay to Mr. Ibelaidene and other aggrieved employees at their respective regular rates of compensation for each violation in accordance with Labor Code section 226.7.

Failure to Reimburse Necessary Business Expenses

As alleged herein, Defendants have failed to reimburse Plaintiff and other aggrieved employees for expenses incurred in connection with their employment. At all relevant times, Defendants have also been subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." Due to Defendants' unlawful reimbursement practices, Defendants failed to indemnify Mr. Ibelaidene and other aggrieved employees for all necessary business expenses incurred, including, among other things, the cost purchasing and maintaining tools, of vehicle mileage, and cell phone use.

As a proximate result of Defendants' policies and/or practices in violation of Labor Code sections 2802 and 2804, Mr. Ibelaidene and other aggrieved employees are entitled to damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Ibelaidene and other aggrieved employees with complete and accurate wage statements with respect to, among other things, their total gross wages earned, total net wages earned, number of piece-rate units earned, total hours of rest period and non-productive time worked, and amount of paid sick leave time available, in violation of Labor Code §§ 226 *et seq*., 226.2, and 246. Defendants' failure in furnishing Mr. Ibelaidene and other aggrieved employees with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all earned wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

Failure to Timely Pay Final Wages

Defendants were, and are, also required to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment, pursuant to Labor Code sections 201-202. Defendants failed to timely pay Mr. Ibelaidene and other aggrieved employees all final wages due to them at the time of their separation including, among other things, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Mr. Ibelaidene is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-202. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

Defendants' willful failure to timely pay Mr. Ibelaidene and other aggrieved employees all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Mr. Ibelaidene and other aggrieved employees are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

Mr. Ibelaidene is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present. As an "aggrieved employee," Mr. Ibelaidene will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. As alleged herein, and based on Mr. Ibelaidene's own investigation and on information and belief, Defendants have committed the following Labor Code violations:

a. Defendants have violated Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198 by failing to pay Mr. Ibelaidene and other aggrieved employees all overtime and/or double-time compensation earned;

b. Defendants have violated Labor Code §§ 226.2, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Ibelaidene and other aggrieved employees at least the statutory minimum wage for all hours worked;

c. Defendants have violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide all legally required meal periods and by failing to pay meal period premiums to Mr. Ibelaidene and other aggrieved employees;

d. Defendants have violated Labor Code §§ 226.2, 226.7, 516, 558, and 1198 by failing to authorize and permit all legally required rest periods and by failing to pay rest period premiums to Mr. Ibelaidene and other aggrieved employees;

e. Defendants have violated Labor Code §§ 226, 226.2, and 246 by failing to furnish Mr. Ibelaidene and other aggrieved employees with accurate and complete itemized wage statements;

f. Defendants have violated Labor Code §§ 201-203 by failing to pay Mr. Ibelaidene and other aggrieved former employees all wages due at the end of their employment; and

g. Defendants have violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Ibelaidene and other aggrieved employees.

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Pursuant to Labor Code Section 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

Paul K. Haines

cc: Keller Interiors LLC, c/o California Registered Corporate Agent (1505) (agent for service of process) (via certified mail)
Lowe's Home Centers, LLC, c/o/ CSC – Lawyers Incorporating Service (agent for service of process) (via certified mail)