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Attorneys for Plaintiff Victor Mendoza

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

GABRIEL TARIN, individually, and on
behalf of other members of the general
public similarly situated; VICTOR
MENDOZA, individually, and on behalf of
other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,
vs.

HD SUPPLY, INC., a Delaware corporation;
HD SUPPLY MANAGEMENT, INC., a
Florida corporation; HD SUPPLY
MANAGEMENT, LLC, a Florida corporation,
and DOES 3 through 100, inclusive,

Defendants.

Case No.: 21STCV42524

Honorable Elihu M. Berle
Department SSC-6

CLASS ACTION

**DECLARATION OF SELENA
MATAVOSIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

[Notice of Motion and Motion for
Preliminary Approval of Class Action and
PAGA Settlement; Declaration of
Proposed Class Representative (Victor
Mendoza); and [Proposed] Order filed
concurrently herewith]

Date: August 13, 2024
Time: 10:00 a.m.
Department: SSC-6

Complaint Filed: November 18, 2021
FAC Filed: May 25, 2023
Doe Amendment Filed: October 5, 2023
Trial Date: None Set

DECLARATION OF SELENA MATAVOSIAN

I, Selena Matavosian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Victor Mendoza (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. Since October 2008, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, the firm is the attorney of record in over a dozen employment-related putative class actions in both state and federal courts in the State of California. The firm is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California. Below is a summary of the experience and qualifications of the attorneys at Lawyers *for* Justice, PC who most recently and primarily have been responsible for the representation of Plaintiffs in connection with the resolution of above-captioned matter. Additional attorney and non-attorney staff have also worked on the above-captioned matter.

3. Edwin Aiwarzian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During

1 the summer of 2000, he studied Legal Writing at Harvard University. From approximately
2 September 2002 to approximately December 2002, he served as a Judicial Extern to the Honorable
3 Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From
4 approximately June 2002 to approximately August 2002, he served as a Judicial Extern to the
5 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
6 In December of 2004, he obtained a license to practice law from the California State Bar. Since in
7 or around October of 2008, through his work at Lawyers *for* Justice, PC, he has almost exclusively
8 focused on the prosecution of consumer and employment class actions, involving wage-and-hour
9 claims, race discrimination, unfair business practices, or consumer fraud. Together with other
10 attorneys at the firm, and in many cases in conjunction with co-counsel, he has successfully
11 litigated cases involving the executive, administrative, and other overtime exemptions to the State
12 of California and federal overtime compensation requirements. Under his supervision, Lawyers
13 *for* Justice, PC has successfully obtained class certification by contested motion practice in
14 approximately fifteen (15) cases in the last decade, and litigated over 1,000 class action or
15 representative action cases.

16 4. Arby Aiwarzian is a Member and Shareholder of Lawyers *for* Justice, PC. He
17 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
18 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
19 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
20 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
21 From approximately August 2008 to approximately December 2008 he served as a Judicial Extern
22 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth
23 Circuit. He was admitted to practice law in California in 2010. He is admitted to practice before
24 all courts of the State of California and all United States District Courts in the State of California.
25 He has worked on many wage-and-hour class action and representative action cases, taking the
26 lead in taking and defending depositions, arguing motions, and attending mediations. He has
27 played an integral role in preparing matters for class certification, including and not limited to,
28 successful certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court

1 Case No. BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court
2 Case No. BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case
3 No. RG13680477). He has worked on over one hundred (100) class action or representative action
4 cases which have resulted in settlement, including and not limited to those listed in paragraph 7
5 herein.

6 5. Joanna Ghosh is a Senior Member of Lawyers for Justice, PC. She received a
7 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
8 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
9 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
10 and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in
11 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
12 Court. She has taken and defended dozens of depositions and successfully handled motion
13 practice in class action cases regarding discovery (including and not limited to, regarding class
14 contact information), class certification (both contested class certification and stipulated class
15 certification), arbitration agreements, coordination, intervention. She has successfully handled
16 briefing and oral argument on appeal and obtained notable decisions regarding the Private
17 Attorneys General Act and employer efforts to compel arbitration of PAGA claims, e.g., *Roberto*
18 *Betancourt v. Prudential Overall Supply* (Cal., May 24, 2017) 9 Cal.App.5th 439 (Cal. Ct. App.,
19 Mar. 7, 2017), cert. denied, cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*
20 (2019) 8 Cal.5th 175. She also has extensive experience with class action and/or representative
21 action settlements. Under her, Edwin Aiwazian, and Arby Aiwazian's supervision, the firm has
22 handled the class certification and court approval process for hundreds of class action and/or
23 representative action matters that have successfully resolved. She is a member of the California
24 Employment Lawyers Association.

25 6. I am a Member of Lawyers for Justice, PC. I received my Bachelor of Science
26 degree from California State University, Northridge in 2019 and earned my Juris Doctor degree
27 from Southwestern Law School in 2022. I was admitted to practice law in California in 2022. I
28 am admitted to practice before all courts of the State of California and all federal district courts in

1 the State of California. I have worked on many wage-and-hour class action and PAGA
2 representative cases, and my work on these cases has included researching and drafting pleadings
3 and motions, administrative notice exhaustion, drafting, negotiating, and finalizing stipulations and
4 settlement agreements, claims evaluation and analysis, and making court appearances.

5 **EXAMPLES OF RESULTS IN WAGE-AND-HOUR CLASS ACTION AND**
6 **REPRESENTATIVE ACTION CASES**

7 7. What follows are just a few examples of the type of results Lawyers *for* Justice, PC
8 (“LFJ”) has achieved on behalf of its clients:

9 a) LFJ, in association with co-counsel therein, represented the plaintiffs in a
10 wage-and-hour class action against a major property management company involving allegations
11 of misclassification of various “manager” positions. On September 20, 2010, the court granted
12 final approval of the class action settlement. The Los Angeles County Superior Court Case
13 Number is BC400414.

14 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
15 wage-and-hour class action against a national retailer of household items involving allegations of
16 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court
17 granted final approval of the class action settlement. The Los Angeles County Superior Court
18 Case Number is BC413498.

19 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
20 wage-and-hour class action against a national property management company involving
21 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
22 granted final approval of the class action settlement. The Los Angeles County Superior Court
23 Case Number is BC430918.

24 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
25 wage-and-hour class action against a national retailer involving allegations of misclassification of
26 the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
27 certification. On August 26, 2013, the court granted final approval of the class action settlement.
28 The Los Angeles County Superior Court Case Number is BC424012.

1 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
2 wage-and-hour class and PAGA representative action against a bank, involving allegations of
3 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
4 granted final approval of the class and PAGA representative action settlement. The Kern County
5 Superior Court Case Number is S-1500-CV-273194-LHB.

6 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
7 wage-and-hour class and PAGA representative action against a national wholesale distributor of
8 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
9 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
10 representative action settlement. The Sacramento County Superior Court Case Number is 34-
11 2012-00136285.

12 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
13 wage-and-hour class action against a multinational corporation that provides global workplace
14 solutions, involving allegations of misclassification of the “Operations Manager” position. On
15 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
16 County Superior Court Case Number is BC478769.

17 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
18 wage-and-hour class and PAGA representative action against a national retailer of household
19 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
20 final approval of the class and PAGA representative action settlement. The San Francisco County
21 Superior Court Case Number is CGC-13-532344.

22 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
23 wage-and-hour class and PAGA action involving allegations of misclassification of the salaried
24 residential “Property Manager” position. On September 17, 2015, the court granted plaintiff’s
25 motion for class certification. On October 20, 2017, the court granted final approval of the class
26 and PAGA representative action settlement. The Los Angeles County Superior Court Case
27 Number is BC474784.

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1 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a national retailer of upscale
3 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court
4 granted final approval of the class and PAGA representative action settlement. The Los Angeles
5 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
6 Coordination Proceeding Number is 4794.

7 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
8 wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf
9 of non-exempt employees. On August 5, 2016, the court granted final approval of the class action
10 settlement. The Los Angeles County Superior Court Case Number is BC488069.

11 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
12 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
13 involving allegations of misclassification of the “Department Manager” position. On August 12,
14 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On
15 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
16 County Superior Court Case Number is RG13680477.

17 m) LFJ represented the plaintiff in a PAGA representative action against a real
18 estate and property management company, on behalf of non-exempt employees. On November 4,
19 2016, the court granted approval of the PAGA representative action settlement. The Orange
20 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

21 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
22 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
23 exempt employees. On November 18, 2016, the court granted final approval of the class and
24 PAGA representative action settlement. The San Francisco County Superior Court Case Number is
25 CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

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o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA representative action against a foodservice distributor, on behalf of non-exempt employees. On January 26, 2017, the court granted final approval of the class and PAGA representative action settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the employer's motion to compel arbitration, which resulted in a published opinion by the California Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal. App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

q) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a consumer packaging company, on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC590429.

r) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a manufacturer of food service industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the class and PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2015-00810013-CU-OE-CXC.

s) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a lumber and hardware company on behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class and PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2014-00747750-CU-OE-CXC.

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1 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
2 representative action against a property management company, on behalf of non-exempt
3 employees. On June 14, 2017, the court granted final approval of the class and PAGA
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC586234.

6 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
7 representative action against a food company on behalf of non-exempt employees. On June 30,
8 2017, the court granted final approval of the class and PAGA representative action settlement. The
9 Sacramento County Superior Court Case Number is 34-2015-00175871.

10 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
11 representative action against a chocolate company on behalf of non-exempt employees. On July
12 19, 2017, the court granted final approval of the class and PAGA representative action settlement.
13 The Alameda County Superior Court Case Number is RG15764300.

14 w) LFJ firm represented the plaintiff in a PAGA representative action, against
15 the parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
16 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
17 Los Angeles County Superior Court Case Number is BC569664.

18 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
19 representative action against a manufacturer of plastic containers on behalf of non-exempt
20 employees. On October 31, 2017, the court granted final approval of the class and PAGA
21 representative action settlement. The Los Angeles County Superior Court Case Number is
22 BC577233.

23 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
25 employees. On December 11, 2017, the court granted final approval of the class and PAGA
26 representative action settlement. The Los Angeles County Superior Court Case Number is
27 BC569646.

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1 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a property management company on
3 behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
4 approval of the class and PAGA representative action settlement. The Los Angeles County
5 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
6 Number is 4819.

7 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
8 wage-and-hour class and PAGA representative action against a global provider of flexible office
9 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
10 representative action settlement. The Los Angeles County Superior Court Case Number is
11 BC498401.

12 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
13 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
14 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
15 County Superior Court Case Number is VCU264528.

16 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
17 representative action against a behavioral health service provider on behalf of non-exempt
18 employees. On November 13, 2018, the court granted final approval of the class and PAGA
19 representative action settlement. The Alameda County Superior Court Case Number is
20 RG16811450.

21 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
22 PAGA representative action against a global provider of products and services to the energy
23 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
24 granted approval of the PAGA representative action settlement. The Kern County Superior Court
25 Case Number is S-1500-CV-280215-SDC.

26 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
27 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
28 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a

1 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
2 Council Coordination Proceeding Number is 4886.

3 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
5 employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification
6 in part and certified a class. The Alameda County Superior Court Case Number is RG15757606
7 and the Judicial Council Coordination Proceeding Number is 4921.

8 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a national retailer of apparel and
10 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
11 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
12 court granted final approval of the class and PAGA representative action settlement. The
13 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

14 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
15 wage-and-hour class and PAGA representative action against a medical equipment supplier on
16 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
17 for class certification and certified a class. The San Bernardino County Superior Court Case
18 Number is CIVDS1505744.

19 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
20 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
21 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
22 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
23 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted
24 approval of the PAGA representative action settlement. The San Diego County Superior Court
25 Case Number is 34-2016-00005578-CU-OE-CTL.

26 jj) LFJ, in association with co-counsel therein, represented the plaintiff in a
27 wage-and-hour class and PAGA representative action against a large national drug testing
28 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the

1 plaintiff's motion for class certification and certified a class. On October 28, 2022, the court
2 granted final approval of the class and PAGA representative action settlement. The San Diego
3 County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

4 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
5 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
6 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
7 court granted in part the plaintiff's motion for class certification and certified a class. The
8 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
9 Judicial Council Coordination Proceeding Number is 4930.

10 ll) LFJ, in association with co-counsel therein, represented the plaintiffs in a
11 wage-and-hour class action against manufacturer and supplier of power products and services on
12 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion
13 for class certification and certified a class. On August 27, 2021, the court granted final approval of
14 the class action settlement. The San Diego County Superior Court Case Number is 37-2015-
15 00025968-CU-OE-CTL.

16 mm) LFJ represents the plaintiff in a wage-and-hour class action against a
17 nutritional products manufacturer on behalf of non-exempt production line employees. On
18 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
19 certified a class. The Solano County Superior Court Case Number is FCS051001.

20 nn) LFJ represents the plaintiff in a wage-and-hour class action against an iconic
21 lifestyle accessories brand and retailer on behalf of non-exempt employees. On March 15, 2022,
22 the court granted the plaintiff's motion for class certification in part and certified a class. The San
23 Francisco Superior Court Case Number is CGC-16-550794.

24 oo) LFJ represents the plaintiffs in a wage-and-hour class action against a
25 manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the
26 restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July
27 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class. The
28 Los Angeles County Superior Court Case Number is BC707670.

BASIC INFORMATION ABOUT THE CASE AND REACHING THE SETTLEMENT

8. Marked and attached hereto as “**EXHIBIT 1**” is the Stipulation of Class Action and PAGA Settlement (“Agreement,” “Settlement,” or “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and Defendants HD Supply, Inc., HD Supply Management, Inc., and HD Supply Management, LLC (collectively, “Defendants”), on the other hand (collectively, the “Parties”). The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”), which is attached to the Settlement Agreement as “**EXHIBIT C**” and respectfully request that the Court approve it as well.

9. Based on information provided by Defendants on June 28, 2023, the Class is estimated to consist of approximately three thousand one hundred forty-four (3,144) individuals.

10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this matter has translated into tangible monetary benefits in the following respects: (1) Class Members, Aggrieved Employees, and the State of California recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other complex wage and hour class and/or representative action settlements of similar type given the strengths and weaknesses of the case; and (3) significant savings in attorneys’ fees and/or costs that would have only increased significantly had the case progressed through certification, trial, and/or appeals.

11. On October 10, 2022, Plaintiff Victor Mendoza provided written notice to the California Labor and Workforce Development Agency (“LWDA”) by online submission and to Defendant HD Supply, Inc. by Certified Mail, of the specific provisions of the California Labor Code that Defendants are alleged to have violated (“October 10, 2022 LWDA Notice”). A true and correct copy of the October 10, 2022 LWDA Notice is attached hereto as “**EXHIBIT 2.**” On July 17, 2024, Plaintiff sent an additional letter to the LWDA and Defendants, clarifying that HD Supply Management, LLC is the successor entity of HD Supply Management, Inc. and that HD Supply Management, Inc. employed Plaintiff up until on or about December 31, 2021, at which point HD Supply Management, LLC became Plaintiff’s employer, and thus HD Supply Management, Inc. and HD Supply Management, LLC are included among Defendants against

1 whom civil penalties are being pursued and sought by way of the Action; and also clarifying that
2 Plaintiff contends that HD Supply, Inc. operated in concert with and was a joint employer with HD
3 Supply Management, Inc. and its successor entity HD Supply Management, LLC (“July 17, 2024
4 LWDA Notice”). A true and correct copy of the July 17, 2024 LWDA Notice is attached hereto as
5 **“EXHIBIT 3.”**

6 12. Class Counsel has litigated the case for over two (2) years and was actively
7 preparing the matter for class certification and trial. The Parties engaged in extensive settlement
8 negotiations and participated in a formal, full-day mediation conducted by Todd A. Smith, Esq., a
9 well-respected mediator experienced in mediating complex labor and employment matters. Prior to
10 and during the mediation and settlement discussions, the Parties exchanged class information and
11 engaged in extensive discussions regarding their evaluations of the case and various aspects of the
12 case, including but not limited to, the risks and delays of further litigation, the risks to the Parties
13 of proceeding with class certification and/or representative adjudication, the law relating to off-the-
14 clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and
15 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
16 other things. During all settlement discussions, the Parties conducted their negotiations at arm’s
17 length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was not
18 easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at
19 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
20 certification and prevail at trial. After conducting investigations, formal and informal discovery,
21 exchange of information, extensive settlement negotiations, and with the aid of the mediator's
22 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
23 issues relating to Plaintiff’s principal claims, as well as the costs and risks to both sides that would
24 attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the
25 Released Class Claims of Plaintiff and Settlement Class Members and of the Released PAGA
26 Claims of Plaintiff, Aggrieved Employees, and the State of California, against the Released
27 Parties.

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1 13. Prior to reaching the Settlement, Class Counsel investigated the veracity, strength,
2 and scope of the claims, and was preparing the action for class certification and trial. Class
3 Counsel conducted significant investigation and formal and informal discovery regarding the facts
4 of the case, including and not limited to, the exchange, review, and analysis of a large volume of
5 pages of documents and data obtained from Defendants, Plaintiffs, and other sources. Class
6 Counsel propounded multiple sets of formal written discovery requests onto Defendants HD
7 Supply, Inc. and HD Supply Management, Inc. (specifically, Requests for Production of
8 Documents, (Set One); Requests for Admission (Set One); Special Interrogatories, (Sets One and
9 Two); and Form Interrogatories, (Set One)) and noticed the depositions of Defendant HD Supply,
10 Inc.'s Person Most Knowledgeable designees along with accompanying requests for production of
11 documents, on Defendant HD Supply, Inc. The volume of data and documents that Class Counsel
12 reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed
13 sampling of Plaintiff's and other Class Member's time data and pay records, internal memoranda,
14 new hire orientation checklists, job descriptions, company policy acknowledgments, forms
15 (including but not limited to Notice to Employee as to Change in Relationship and
16 Termination/Separation Checklist), and procedures and policies (including but not limited to
17 Attendance and Punctuality Policy and Procedure, Standard Operating Procedures, Payroll Policy
18 and Procedure, and Timekeeping Policy and Procedure), among other information and documents.
19 Class Counsel had the opportunity to interview Plaintiff and other class members to gather
20 information regarding the facts and circumstances surrounding Plaintiff's and putative class
21 members' employment and to identify potential witnesses. Counsel for the Parties also met and
22 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the
23 production of documents and data prior to the mediation. Class Counsel also drafted pleadings and
24 the mediation brief and prepared for and attended court proceedings, mediation, and settlement
25 negotiations, among other tasks.

26 14. Counsel for the Parties have also invested time researching and investigating the
27 applicable law, which is constantly evolving as it relates to class certification, representative
28 PAGA claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,

1 Plaintiff's claims and damages, and Defendants' defenses thereto, as well as facts discovered.
2 Based on Class Counsel's analysis, the result achieved in this litigation is fair, adequate, and
3 reasonable.

4 15. The Settlement provides for a Total Settlement Amount of Two Million Nine
5 Hundred Fifty Thousand Dollars and Zero Cents (\$2,950,000.00). The Net Settlement Amount is
6 the Total Settlement Amount less the following amounts subject to approval by the Court:
7 Enhancement Award, Settlement Administration Costs, PAGA Penalty Amount, and Attorneys'
8 Fee and Costs. Assuming that the amounts allocated under the Settlement toward these payments
9 are awarded by the Court, the Net Settlement Amount that will be available for distribution to the
10 Participating Class Members is currently estimated to be One Million Four Hundred Fifteen
11 Thousand Five Hundred Dollars and Zero Cents (\$1,415,500.00). Additionally, 75% of the PAGA
12 Penalty Amount (i.e., the LWDA Payment), which is \$337,500.00 out of \$450,000.00, will be
13 distributed to the California Labor and Workforce Development Agency ("LWDA") and 25% of
14 the PAGA Payment, which is \$112,500.00 out of \$450,000.00, will be distributed on a *pro rata*
15 basis to Aggrieved Employees. The Net Settlement Amount will be fully distributed to Settlement
16 Class Members and the PAGA Penalty Amount will be fully distributed to the LWDA and
17 Aggrieved Employees, in accordance with the terms of the Settlement, and there is no reversion to
18 Defendants.

19 16. The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or
20 "Settlement Administrator") to handle the notice and settlement administration process. The
21 Parties respectfully request that the Court appoint Phoenix to handle these procedures and serve as
22 the Settlement Administrator. Defendants will provide the Settlement Administrator with a list of
23 Class Members and Aggrieved Employees that Defendants will compile from its records, which
24 shall include each Class Member's and Aggrieved Employee's full name, last known mailing
25 address, telephone number, Social Security Number, start and end dates employed by Defendants
26 in California as Delivery Drivers (non-CDL) and/or Warehouse Associates during the Class Period
27 and, if applicable, during the PAGA Period, and such other information and data as necessary for
28 the Settlement Administrator to independently calculate the Workweeks and Pay Periods ("Class

1 List”). The Settlement Administrator will calculate each Settlement Class Member’s estimated *pro*
2 *rata* share of the Net Settlement Amount (“Individual Settlement Share”) and each Aggrieved
3 Employees’ estimated *pro rata* share of the PAGA Penalty Amount (“Individual PAGA
4 Payment”). The Settlement Administrator will also receive Requests for Exclusion, Notices of
5 Objections, and disputes regarding Workweeks and Pay Periods; provide necessary reports and
6 declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and
7 submit informational and other tax filings and documents; issue and transmit all payments
8 provided for by the Settlement, including and not limited to, mailing payments to Settlement Class
9 Members and Aggrieved Employees; and perform any other usual and customary duties for
10 administering a class action settlement. The Settlement Administration Costs are currently
11 estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) and will be
12 paid out of the Total Settlement Amount, subject to approval of the Court.

13 17. Based on investigation and information discovered, Class Counsel believes that
14 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
15 that Defendants, with respect to Plaintiff and the putative class members and aggrieved employees,
16 *inter alia*, failed to properly pay overtime and minimum wages and associated premium pay, failed
17 to provide compliant meal and rest periods and to pay associated premium pay, failed to timely pay
18 wages during employment and upon termination of employment, failed to provide compliant wage
19 statements, failed to maintain requisite payroll records, and failed to reimburse necessary business
20 expenses, and thereby engaged in unfair business practices and conduct giving rise to penalties
21 recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections
22 2698, et seq.). Plaintiff also asserted that they and other putative class members and aggrieved
23 employees were expected to perform similar job duties and were subject to the same or similar
24 operations and employment policies, practices, and procedures. Additionally, Plaintiff asserted that
25 Defendants’ recordkeeping practices with respect to Plaintiff, Class Members and Aggrieved
26 Employees were substantially the same during the time period at issue. As a result of said alleged
27 uniform practices, Plaintiff claims that they and putative class members and aggrieved employees
28 were uniformly not paid all of the compensation that was owed to them by Defendants. Thus, in

1 Class Counsel's view, it is clear that the outcome of this litigation would be determined by
2 Defendants' uniform operations and employment practices, policies, and procedures that Plaintiff
3 allege applied across their hourly-paid or non-exempt employees in California during the relevant
4 time period.

5 18. Class Counsel is aware of the defenses and position of Defendants, but believes that
6 Plaintiff could potentially obtain class certification despite many obstacles. Class Counsel has also
7 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
8 and delays inherent in such litigation, including those involved in class certification and/or
9 representative adjudication. Plaintiff and Class Counsel further recognize the burdens of proof
10 necessary to establish liability for the claims asserted in the lawsuit, Defendants' defenses, and the
11 difficulties in establishing entitlement to monetary recovery. Class Counsel have also considered
12 the Parties' settlement discussions, as well as the evaluations of the mediator, who is experienced
13 and well-regarded in complex labor and employment matters.

14 19. Defendants, on the other hand, denied and continue to deny any liability and
15 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further deny that the
16 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
17 this Settlement. Defendants believe that they would ultimately succeed in the matter. Both sides
18 have also had the opportunity to conduct investigations and gather documents and information
19 relating to Plaintiff's, Class Members' and Aggrieved Employees' employment with Defendants,
20 and Defendants' operations and employment policies, practices, and procedures. Counsel for the
21 Parties also reviewed and analyzed a large volume of pages of documents and data, including but
22 not limited to a detailed sampling of Class Members' and Aggrieved Employees' time and pay
23 information, to determine the potential value and strength of the claims. The available information
24 enabled Class Counsel to assess and value the class and PAGA claims and prepare violation,
25 damages, and penalties analyses and models. Accordingly, counsel for the Parties have conducted
26 adequate investigation and discovery to be sufficiently informed of the nature and extent of the
27 class and PAGA claims, and to enable both sides to fully evaluate the Settlement for its fairness,
28 adequacy, and reasonableness. The Settlement takes into account the strengths and weaknesses of

1 each side's position and the uncertainty of how the cases might have concluded at certification,
2 trial, and/or appeals.

3 20. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
4 in an amount of up to thirty-five percent (35%) of the Total Settlement Amount
5 (i.e., \$1,032,500.00) and expenses and costs in an amount not to exceed Twenty Thousand Dollars
6 and Zero Cents (\$20,000.00), which will be paid out of the Total Settlement Amount, subject to
7 approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs of
8 litigation and will not receive any compensation until recovery is obtained.

9 21. The Settlement Agreement provides for payment of up to Seven Thousand Dollars
10 and Zero Cents (\$7,000.00) to Plaintiff as an Enhancement Award to be paid out of the Total
11 Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort
12 to produce relevant documents and past employment records and to provide the facts and evidence
13 necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel
14 needed him and actively tried to obtain and provide information that would facilitate the pursuit of
15 the class and PAGA claims. Accordingly, it is appropriate and just for Plaintiff to receive an
16 Enhancement Award, in addition to his individual settlement payments, for services performed in
17 the matter on behalf of the Class, Aggrieved Employees, and the State of California.

18 22. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
19 in the best interest of Plaintiff, the Settlement Class, Aggrieved Employees, and the State of
20 California. Class Counsel further submits that the Settlement is within an acceptable range of
21 recovery for this type of litigation given the strengths and weaknesses of the case, the inherent
22 costs and risks of further litigation, and the costs and risks associated with class certification,
23 representative adjudication, trial, and/or appeals.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on this 24th day of July 2024, at Glendale, California.

27 

28 _____
Selena Matavosian

EXHIBIT 1

1 **STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Stipulation of Class Action and PAGA Settlement (“Agreement,” “Settlement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Victor Mendoza (“Plaintiff”
4 or “Class Representative”), on behalf of all others similarly situated and the State of California with
5 respect to aggrieved employees, and Defendants HD Supply, Inc., HD Supply Management, Inc., and
6 HD Supply Management, LLC (together, “Defendants”) (and collectively with Plaintiff, the “Parties”).

7 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as defined
8 herein), and the California Labor & Workforce Development Agency (the “LWDA”) with respect to the
9 Aggrieved Employees, and on Defendants, subject to the terms and conditions hereof and the approval
10 of the Court.

11 **RECITALS**

12 1. On November 18, 2021, former plaintiff Gabriel Tarin filed a Class Action Complaint for
13 Damages (“Original Complaint”) against Defendant HD Supply, Inc., thereby commencing the lawsuit
14 entitled *Gabriel Tarin v. HD Supply, Inc.*, Superior Court of California for the County of Los Angeles,
15 Case No. 21STCV42524, alleging causes of action for violation of (1) California Labor Code §§ 510 and
16 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide
17 Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide
18 Compliant Rest Periods and Associated Premiums), (4) California Labor Code §§ 1194, 1197 and 1197.1
19 (Failure to Pay Minimum Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final
20 Wages), (6) California Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7)
21 California Labor Code § 226(a) (Failure to Provide Compliant Wage Statements), (8) California Labor
22 Code § 1174(d) (Failure to Keep Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802
23 (Failure to Reimburse Business Expenses), and (10) California Business & Professions Code § 17200, *et*
24 *seq.*

25 2. On February 2, 2022, Defendant HD Supply, Inc. filed an Answer to the Original
26 Complaint.

27 3. On February 3, 2022, by way of the Declaration of Nancy Fletcher, and at various times
28 during the litigation of the Action, Defendants have contended that HD Supply Management, Inc. is a

1 separately incorporated subsidiary of HD Supply, Inc. and that HD Supply, Inc. did not employ Plaintiff
2 Gabriel Tarin and that it does not have any employees in California (and thus also does not employ
3 Plaintiff Victora Mendoz). However, Plaintiff has maintained by way of the Action that HD Supply, Inc.
4 operated in concert with and was a joint employer with doe defendants (eventually, named as HD Supply
5 Management, Inc. and its successor entity HD Supply Management, LLC).

6 4. On June 20, 2022, former plaintiff Gabriel Tarin filed an Amendment to Complaint,
7 thereby adding HD Supply Management, Inc. as an additional defendant.

8 5. On October 10, 2022, Plaintiff provided written notice to the Labor and Workforce
9 Development Agency and Defendants of the specific provisions of the California Labor Code that
10 Defendants violated, a true and correct copy of which is attached hereto as “EXHIBIT A” (“Original
11 PAGA Notice”).

12 6. On October 28, 2022, Defendant HD Supply Management, Inc. filed an Answer to the
13 Original Complaint.

14 7. On November 11, 2022, Defendants submitted a Response to Notice of Labor Code
15 Violations and PAGA Penalties to the LWDA, thereby responding to Plaintiff’s Original PAGA Notice.

16 8. On May 25, 2023, former plaintiff Gabriel Tarin and Plaintiff filed a First Amended Class
17 Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California
18 Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”), thereby adding
19 Victor Mendoza as an additional plaintiff and adding a claim for civil penalties pursuant to the Private
20 Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA”), on behalf of the State of
21 California in connection with Plaintiff Victor Mendoza and aggrieved employees.

22 9. On June 27, 2023, Defendants HD Supply, Inc. and HD Supply Management, Inc. filed an
23 Answer to the Operative Complaint.

24 10. On October 5, 2023, former plaintiff Gabriel Tarin and Plaintiff filed an Amendment to
25 Complaint, thereby adding HD Supply Management, LLC as an additional defendant.

26 11. On November 22, 2023, Defendant HD Supply Management, LLC filed an Answer to the
27 Operative Complaint.

28 ///

12. On July 17, 2024, Plaintiff sent an additional letter to the LWDA and Defendants, clarifying that HD Supply Management, LLC is the successor entity of HD Supply Management, Inc. and that HD Supply Management, Inc. employed Plaintiff up until on or about December 31, 2021, at which point HD Supply Management, LLC became Plaintiff's employer, and thus HD Supply Management, Inc. and HD Supply Management, LLC are included among Defendants against whom civil penalties are being pursued and sought by way of the Action; and also clarifying that Plaintiff contends that HD Supply, Inc. operated in concert with and was a joint employer with HD Supply Management, Inc. and its successor entity HD Supply Management, LLC ("Additional PAGA Notice"). A true and correct copy of the Additional PAGA Notice is attached hereto as "**EXHIBIT B.**"

13. Defendants deny all material allegations set forth in the Action, defined below, and have asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendants desire to fully and finally settle the Action and Released Class Claims and Released PAGA Claims (as defined herein).

14. Class Counsel diligently investigated the allegations asserted in the Action and evaluated the claims against Defendants, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

15. On June 29, 2023, the Parties participated in an all-day mediation with Todd A. Smith, Esq. (the "Mediator"), a respected mediator of complex wage and hour actions. Eventually, after continued settlement negotiations and with the assistance of the Mediator's evaluations, the Parties reached the settlement that is memorialized in a memorandum of understanding and that is now memorialized herein. The settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and detailed analysis of Defendants' potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believe that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members, the State of California, and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant

1 delay and uncertainty associated with litigation and various defenses asserted by Defendants.

2 16. Included among the information considered by the Parties in reaching the settlement, was
3 information regarding prior settlements completed by Defendants, including and not limited to the
4 settlement completed in *Daniel G. Lozano v. The Home Depot USA, Inc.*, Superior Court of California
5 for the County of Los Angeles, Case No. 22STCV18980 (“*Lozano Action*”), which resolved the
6 following:

- 7 a. Class action wage-and-hour claims defined as “Released Class Claims” in the
8 Amended Joint Stipulation of Class Action Settlement and Release of Claims
9 executed on or about March 17, 2023 in the *Lozano Action* pertaining to the time
10 period of April 6, 2016 to August 15, 2022 on behalf of all current and former
11 non-exempt Supply Chain Drivers (specifically, job codes: IBAIND, IBBUDR,
12 IBCDDR, IBLGHD, IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP)
13 employed by Home Depot U.S.A., Inc. or HD Supply, Inc. in CA during the Class
14 Period (or if any such person is incompetent, deceased, or unavailable due to
15 military service, the person’s legal representative or successor in interest evidenced
16 by reasonable verification) (“*Lozano Class*”).
- 17 b. Claims for civil penalties under the Private Attorneys General Act, California Labor
18 Code § 2698, *et seq.* defined as “Released PAGA Claims” in the Amended Joint
19 Stipulation of Class Action Settlement and Release of Claims executed on or about
20 March 17, 2023 in the *Lozano Action*, pertaining to the time period April 7, 2019
21 to August 15, 2022 on behalf of all current and former non-exempt Supply Chain
22 Drivers (specifically, job codes: IBAIND, IBBUDR, IBCDDR, IBLGHD,
23 IBNCDR, IBWDVR, IBWHDC, IBWHDL, HDRVHP) employed by Home Depot
24 U.S.A., Inc. or HD Supply, Inc. in California during the period April 7, 2019 to
25 August 15, 2022 (or if any such person is incompetent, deceased, or unavailable
26 due to military service, the person’s legal representative or successor in interest
27 evidenced by reasonable verification) (“*Lozano Aggrieved Employee Group*”).

28 17. The Parties expressly acknowledge that this Settlement Agreement is entered into solely

for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

18. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. “Action” means the lawsuit entitled *Gabriel Tarin v. HD Supply, Inc.*, Superior Court of California for the County of Los Angeles, Case No. 21STCV42524.

b. “Aggrieved Employees” means all current and former hourly-paid or non-exempt employees of Defendants in California employed as Delivery Drivers (non-CDL) or Warehouse Associates during the PAGA Period, who were not included in the *Lozano* Aggrieved Employee Group.

c. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs incurred and to be incurred by Class Counsel in the Action, as set forth in Paragraph 23 below.

d. “Class Counsel” means Arby Aiwarzian, Joanna Ghosh, and Selena Matavosian of Lawyers *for* Justice, PC.

e. “Class List” means a complete list of all Class Members and Aggrieved Employees that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s and Aggrieved Employee’s full name, last known mailing address, telephone number, Social Security Number, start and end dates employed by Defendants in California as Delivery Drivers (non-CDL) and/or Warehouse Associates during the Class Period and, if applicable, during the PAGA Period, and such other information and data as necessary for the Settlement Administrator to independently calculate the Workweeks and Pay Periods (as defined below).

f. “Class Member(s)” or “Settlement Class” mean all current and former hourly-paid or non-exempt employees of Defendants in California employed as Delivery Drivers (non-CDL) or Warehouse Associates during the Class Period, who were not included in the *Lozano* Class.

g. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as “**EXHIBIT C.**”

h. “Class Period” means the time period from November 18, 2017 to November 30, 2023.

i. “Class Representative” or “Plaintiff” means Victor Mendoza.

j. “Class Settlement” means the settlement and release of the Released Class Claims.

k. “Court” means the Superior Court of the State of California, County of Los Angeles.

l. “Defendants” mean HD Supply, Inc., HD Supply Management, Inc., and HD Supply Management, LLC.

m. “Defendants’ Counsel” means Todd Scherwin, Anet Drapalski, and Danielle Zobel of Fisher & Phillips LLP.

n. “Effective Date” means the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendants’ Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members and Aggrieved Employees, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; and (5) the later of the following events: five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Court’s Final Approval Order and Judgment has been finally and conclusively dismissed with no right to pursue further remedies or relief.

o. “Enhancement Award” means the amount to be paid to Plaintiff Victor Mendoza in recognition of his efforts and work in prosecuting the Action, as set forth in Paragraph 24 below.

p. “Final Approval” means the determination by the Court that the Settlement is

1 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

2 q. “Final Approval Hearing” means the hearing at which the Court will consider and
3 determine whether the Settlement should be granted Final Approval.

4 r. “Final Approval Order and Judgment” means the order or orders entered by the
5 Court that, *inter alia*, finally approve(s) this Agreement and the Settlement, disposes of all issues raised
6 in the Action by way of judgment in conformity with California Rules of Court Rule 3.769, and awards
7 and orders the payment of all required amounts pursuant to the terms of this Agreement.

8 s. “Individual PAGA Payment” means the *pro rata* share of the twenty-five percent
9 (25%) portion of the PAGA Penalty Amount that an Aggrieved Employee is eligible to receive under the
10 Settlement Agreement, to be calculated in accordance with Paragraph 27.b.

11 t. “Individual Settlement Payment” means the net payment of each Settlement Class
12 Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
13 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
14 Paragraph 38 below.

15 u. “Individual Settlement Share” means the *pro rata* share of the Net Settlement
16 Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be
17 calculated in accordance with Paragraph 27.a.

18 v. “LWDA Payment” means the amount that the Parties have agreed to pay to the
19 LWDA for its seventy-five percent (75%) share of the PAGA Penalty Amount, as set forth in Paragraph
20 26.

21 w. “Net Settlement Amount” means the portion of the Total Settlement Amount that
22 is available for distribution to Settlement Class Members for the Class Settlement, which is the Total
23 Settlement Amount less the Court-approved Enhancement Awards, Settlement Administration Costs,
24 PAGA Penalty Amount, and Attorneys’ Fees and Costs, as defined herein.

25 x. “Notice of Objection” means a Class Member’s written objection to the Class
26 Settlement, which must: (a) be signed by the Class Member (b) contain the case name and number of
27 the Action; (c) contain the Class Member’s full name, telephone number, mailing address, and last four
28 digits of their Social Security Number; (d) clearly state the factual and legal basis for objecting to the

Class Settlement; (e) indicate whether the Class Member is represented by counsel and identify said counsel; and (f) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing.

y. “PAGA Notices” means collectively, the Original PAGA Notice and Additional PAGA Notice (defined above).

z. “PAGA Penalty Amount” means the amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00) which the Parties have agreed to allocate for civil penalties pursuant to PAGA. The Parties have agreed that the PAGA Penalty Amount will be paid out of the Total Settlement Amount. Pursuant to PAGA, seventy-five percent (75%), or \$337,500.00, will be paid to the LWDA and twenty-five percent (25%), or \$112,500.00, of the PAGA Penalty Amount will be distributed to Aggrieved Employees, in accordance with Paragraph 27.b.

aa. “PAGA Period” means the period from October 10, 2021 to November 30, 2023.

bb. “PAGA Settlement” means the settlement and release of the Released PAGA Claims.

cc. “Parties” means Plaintiff and Defendants, collectively, and “Party” means either Plaintiff or Defendants.

dd. “Pay Periods” means the pay periods each Aggrieved Employee was employed by Defendants in California as Delivery Drivers (non-CDL) and/or Warehouse Associates during the PAGA Period.

ee. “Preliminary Approval” means entry of the Court order granting preliminary approval of the Settlement Agreement.

ff. “Preliminary Approval Order” means the order entered by the Court that preliminarily approves the terms and conditions of this Agreement, including the content of the Class Notice, and set a Final Approval Hearing.

gg. “Released Class Claims” means any and all claims under state, federal, or local law alleged in the Operative Complaint or that reasonably could have been alleged based on the factual allegations contained in the Operative Complaint, arising during the Class Period, including but not limited to claims for failure to pay overtime wages, failure to provide compliant meal periods and

1 associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay
2 minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during
3 employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and
4 failure to reimburse necessary business expenses, in violation of California Labor Code §§ 201, 202, 203,
5 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare
6 Commission Wage Orders Nos. 4-2001, 7-2001, and 9-2001, and unfair business practices in violation of
7 California Business & Professions Code § 17200 *et seq.* based on the aforementioned.

8 hh. “Released PAGA Claims” means any and all claims for civil penalties under the
9 Private Attorneys General Act (California Labor Code § 2698, *et seq.*), arising out of the facts alleged
10 in the Operative Complaint and PAGA Notices, or reasonably could have been alleged based on the
11 factual allegations contained in the Operative Complaint and PAGA Notices, arising during the PAGA
12 Period, for failure to pay overtime wages, failure to provide compliant meal period and associated
13 premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum
14 wages, failure to timely pay wages upon termination, failure to timely pay wages during employment,
15 failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to
16 reimburse necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204,
17 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare
18 Commission Wage Orders Nos. 4-2001, 7-2001, and 9-2001.

19 ii. “Released Parties” means Defendants, and all of its present and former agents,
20 officers, executive-level employees, directors, owners, subsidiaries, affiliates, parent companies,
21 attorneys, insurers, successors, and assigns.

22 jj. “Request for Exclusion” means a Class Member’s written letter indicating a
23 request to be excluded from the Class Settlement. The Request for Exclusion must: (a) contain the case
24 name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address,
25 telephone number, and the last four digits of the Social Security Number of the Class Member requesting
26 exclusion; and (d) clearly state that the Class Member does not wish to be included in the Class
27 Settlement.

28 kk. “Response Deadline” means the deadline by which Class Members must submit a

1 Request for Exclusion, Notice of Objection, and/or dispute of the Workweeks credited to them, which
2 shall be the date that is sixty (60) calendar days from the initial mailing of the Class Notice by the
3 Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the
4 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
5 Response Deadline may also be extended by express agreement between Class Counsel and Defendants'
6 Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to
7 extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the
8 Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the
9 initial mailing of the Class Notice.

10 ll. “Settlement Administrator” means Phoenix Settlement Administrator, or any
11 other third-party class action settlement administrator agreed to by the Parties and approved by the Court
12 for purposes of administering this settlement. The Parties and their counsel each represent that they do
13 not have any financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 mm. “Settlement Administration Costs” means the costs payable from the Total
16 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
17 settlement, as set forth in Paragraph 25 below.

18 nn. “Settlement Class Members” means all Class Members who do not submit a timely
19 and valid Request for Exclusion from the Class Settlement.

20 oo. “Total Settlement Amount” or “TSA” means the amount of Two Million Nine
21 Hundred Fifty Thousand Dollars and Zero Cents (\$2,950,000.00) to be paid by Defendants in full
22 resolution of all Released Class Claims, Released PAGA Claims, and the Action, which includes all
23 Attorneys’ Fees and Costs, Enhancement Awards, PAGA Penalty Amount, Net Settlement Amount to be
24 paid to the Settlement Class Members, and Settlement Administration Costs. The employer’s share of
25 taxes on the wages portion of Individual Settlement Shares will be paid by Defendants separately and in
26 addition to the Total Settlement Amount.

27 pp. “Workweeks” means the number of weeks each Class Member was employed by
28 Defendants as an hourly-paid or non-exempt employee in California during the Class Period, which will

1 be calculated by the Settlement Administrator based on information provided by Defendants by way of
2 the Class List. Workweeks shall not include any Workweeks of individuals who were employed by
3 Defendants and were a participating class member in the *Lozano* Action.

4 **CLASS CERTIFICATION**

5 19. For the purposes of this settlement only, the Parties stipulate to the certification of the
6 Class.

7 20. The Parties agree that certification for the purpose of settlement is not an admission that
8 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever
9 reason, the Court not grant Final Approval, or if Judgment thereon not become final, the Parties'
10 stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall
11 have no bearing on, and shall not be admissible in connection with, the issue of whether or not
12 certification would be appropriate or inappropriate in a non-settlement context in this or any other
13 proceeding.

14 **TERMS OF AGREEMENT**

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

17 21. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the
18 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts
19 to be paid by Defendants pursuant to the terms of the Settlement. Within thirty (30) calendar days of
20 receipt of the Settlement Administrator's accounting, Defendants will make a one-time deposit of the
21 Total Settlement Amount, plus an amount sufficient for the employer's share of taxes and contributions
22 in connection with the wages portion of Individual Settlement Shares, into a settlement account to be
23 established by the Settlement Administrator.

24 22. Distribution of the Settlement Amount. Within seven (7) calendar days of the funding of
25 the Total Settlement Amount, the Settlement Administrator will issue payments due under the
26 Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement
27 Class Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) LWDA Payment to the
28 LWDA; (d) Enhancement Award to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f)

1 Settlement Administration Costs to the Settlement Administrator.

2 23. Attorneys' Fees and Costs. Class Counsel will request and Defendants will not oppose
3 attorneys' fees of up to thirty-five percent (35%) of the Class Settlement Fund Amount (i.e., up to
4 \$1,032,500.00 if the Class Settlement Fund Amount remains \$2,950,000.00) and reimbursement of
5 actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an
6 amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to Class Counsel, both of
7 which will be paid from the Total Settlement Amount subject to Court approval. These amounts will
8 cover any and all work performed and any and all costs incurred by Class Counsel in connection with
9 the litigation of the Action, including without limitation all work performed and costs incurred to date,
10 and all work to be performed and all costs to be incurred in connection with obtaining the Court's
11 approval of this Settlement Agreement, including any objections raised and any appeals necessitated by
12 those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
13 compensation for tax purposes and for paying any taxes on the amounts received. With respect to the
14 Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to
15 utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel.
16 Any additional expenses for the use of attorney fee deferral vehicles by the Settlement Administrator
17 shall be paid separately by Class Counsel and shall not be included within the Settlement Administration
18 Costs. Should the Court approve the Attorneys' Fees and Costs in an amount that is less than that set
19 forth above, the difference between the lesser amount approved by the Court and the amount allocated
20 toward the Attorneys' Fees and Costs shall be a part of the Net Settlement Amount for the benefit of
21 Settlement Class Members.

22 24. Enhancement Award. In recognition of his efforts and work in prosecuting the Action,
23 Defendants agree not to oppose or impede any application or motion for an Enhancement Award in an
24 amount up to Seven Thousand Dollars and Zero Cents (\$7,000.00) to Plaintiff Victor Mendoza. The
25 Enhancement Award, which will be paid from the Total Settlement Amount, subject to Court approval,
26 will be in addition to his Individual Settlement Payment and Individual PAGA Payment that is to be paid
27 pursuant to the Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for
28 the Enhancement Award, and Plaintiff shall be solely and legally responsible for correctly characterizing

1 this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees
2 to indemnify and hold Defendants harmless from any claim or liability for taxes, penalties, or interest
3 arising as a result of the Enhancement Award. Should the Court approve the Enhancement Award to
4 Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount
5 approved by the Court and the amount allocated toward the Enhancement Award will be part of the Net
6 Settlement Amount for the benefit of Settlement Class Members.

7 25. Settlement Administration Costs. The Settlement Administrator will be paid for the
8 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
9 which is currently estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
10 These costs, which will be paid from the Total Settlement Amount, subject to Court approval, will
11 include, *inter alia*, translating the Class Notice into Spanish, printing, distributing, and tracking Class
12 Notices and other documents for this settlement, calculating and distributing payments due under the
13 Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings,
14 and remittances, providing necessary reports and declarations, and other duties and responsibilities set
15 forth herein to process this settlement, and as requested by the Parties. To the extent actual Settlement
16 Administration Costs are greater than the estimated amount stated herein, such excess amount will be
17 deducted from the Total Settlement Amount, subject to approval by the Court. Any portion of the
18 estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to
19 fulfill payment to the Settlement Administrator to undertake the required settlement administration
20 duties will be part of the Net Settlement Amount for the benefit of Settlement Class Members.

21 26. Labor and Workforce Development Agency Payment. Subject to approval by the Court,
22 the Parties agree that the amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00)
23 from the Total Settlement Amount will be allocated toward penalties under the Private Attorneys General
24 Act, California Labor Code Section 2698, *et seq.* (i.e., PAGA Penalty Amount), of which seventy-five
25 percent (75%), or \$337,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five
26 percent (25%) or, \$112,500.00, will be payable to the Aggrieved Employees on a *pro rata* basis, based
27 on Workweeks during the PAGA Period (i.e., Individual PAGA Payment).

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1 27. Individual Settlement Share and Individual PAGA Payment Calculations. Class Members
2 shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, and
3 Aggrieved Employees shall not be required to submit a claim in order to receive a share of the PAGA
4 Penalty Amount, and no portion of the Total Settlement Amount shall revert to Defendants.

5 a. Individual Settlement Shares will be calculated and apportioned from the Net
6 Settlement Amount based on the Class Members' Workweeks, as follows:

7 i. After Preliminary Approval of the Settlement, the Settlement Administrator
8 will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated
9 Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated
10 Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible
11 to receive under the Settlement.

12 ii. After Final Approval of the Settlement, the Settlement Administrator will
13 divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the
14 "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the
15 Final Workweek Value to yield his or her Individual Settlement Share.

16 b. Individual PAGA Payments will be calculated and apportioned from the 25% of
17 the PAGA Penalty Amount payable to Aggrieved Employees, based on the Aggrieved Employees' Pay
18 Periods during the PAGA Period, as follows: the Settlement Administrator will divide 25% of the PAGA
19 Penalty Amount by the Pay Periods of all Aggrieved Employees during the PAGA Period to yield the
20 "PAGA Workweek Value," and multiply each Aggrieved Employee's individual Pay Periods during the
21 PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.

22 28. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
23 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
24 are issued to the payee. It is expressly understood and agreed that payments made under this settlement
25 shall not in any way entitle Plaintiff, Settlement Class Members, and/or Aggrieved Employees to
26 additional compensation or benefits under any new or additional compensation or benefits, or any bonus,
27 contest or other compensation or benefit plan or agreement in place during the Class Period, nor will it
28 entitle any Settlement Class Member and/or Aggrieved Employee to any increased retirement, 401K

benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

29. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.

30. Notice by First-Class U.S. Mail.

a. Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice (in the form attached as **EXHIBIT C** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Class Notices that are returned as undeliverable with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Class Notice within five (5) calendar days.

c. With respect to Class Notices that are returned as undeliverable without a forwarding address on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.

31. Dispute Regarding Workweeks. Class Members and Aggrieved Employees will have an opportunity to dispute the number of Workweeks and/or Pay Periods to which they have been credited, as reflected in their respective Class Notices. In order to dispute Workweeks and/or Pay Periods, Class Members and Aggrieved Employees may submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action, (b) is signed by the Class Member and/or Aggrieved Employee, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee, (d) clearly states that the Class Member and/or Aggrieved Employee disputes the number of Workweeks and/or Pay Periods credited to him or her and what he or she contends is the correct number to be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of

1 Workweeks and/or Pay Periods that he or she contends should be credited to him or her are correct, and
2 (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before
3 the Response Deadline. The date of the postmark on the mailing envelope on the submission will be the
4 exclusive means to determine whether a dispute has been timely submitted. Absent information
5 indicating that Defendants' records and data are inaccurate as they pertain to the number of Workweeks
6 and/or Pay Periods to be credited to a disputing Class Member and/or Aggrieved Employee, Defendants'
7 records will be presumed correct and determinative of the dispute. However, if a Class Member and/or
8 Aggrieved Employee produces information and/or documents to the contrary, the Settlement
9 Administrator will evaluate the materials submitted by the Class Member and/or Aggrieved Employee
10 and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or
11 Pay Periods that the disputing Class Member and/or Aggrieved Employee should be credited with under
12 the settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

13 32. Settlement Checks. The Settlement Administrator will be responsible for undertaking
14 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
15 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
16 Aggrieved Employees, in accordance with this Settlement Agreement. The Settlement Administrator
17 may, at its discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way
18 of a single check that combines both payments (if applicable). Each Individual Settlement Payment and
19 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar
20 days from the date the checks are issued, and thereafter, shall be cancelled. All funds associated with
21 such cancelled checks will be transmitted to the *cy pres*, Court Appointed Special Advocates of Los
22 Angeles ("CASA"), in accordance with California Code of Civil Procedure section 384. Pursuant to Code
23 of Civil Procedure section 384, the Court shall set a date when Plaintiff shall report to the Court the total
24 amount that was actually paid to Settlement Class Members. After this report is received, the Court shall
25 amend the judgment and direct the Settlement Administrator to pay the sum of the unpaid residue or
26 unclaimed or abandoned funds associated with cancelled checks, plus interest that has accrued on those
27 funds (if any), to the CASA. The Parties and their counsel each represent that they do not have any
28 financial interest in the *cy pres* recipient or otherwise have a relationship with the *cy pres* recipient that

could create a conflict of interest. The Settlement Administrator shall undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the cancellation of any Individual Settlement Payment checks or Individual PAGA Payment checks. All Settlement Class Members and Aggrieved Employees shall be bound by the terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check or not.

33. Procedure for Requesting Exclusion from the Class Settlement. Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the Settlement Administrator, by mail, postmarked no later than the Response Deadline. The date of the postmark on the mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendants' Counsel the Requests for Exclusion that were timely submitted, and also identify the individuals who have submitted a timely and valid Request for Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing. Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the Class Settlement. Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.

34. Effect of Seeking Exclusion from the Class Settlement. Any Class Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion will be bound by the Class Settlement, including and not limited to those pertaining to the release of Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval to the Settlement, as it pertains to the Class Settlement. Any Class Member who submits a timely and valid Request for Exclusion is nevertheless bound to the PAGA Settlement if he or she is an Aggrieved Employee, as well as any judgment that may be entered by the Court if it grants Final Approval to the settlement, as it pertains to the PAGA Settlement. Prior to the Final Approval Hearing, the Settlement Administrator will provide a declaration for filing with the Court that identifies by full name, those individuals who submit timely and valid Requests for Exclusion.

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1 35. Procedures for Objecting to the Class Settlement. To object to the Class Settlement,
2 Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must
3 submit a timely and complete Notice of Objection to the Settlement Administrator, by mail, on or before
4 the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and
5 contain all information required by this Settlement Agreement. The postmark date will be deemed the
6 exclusive means for determining that the Notice of Objection is timely. At no time will any of the
7 Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the
8 Class Settlement or appeal from the Final Approval Order and Judgment. Settlement Class Members
9 may also appear in person to present their objection orally at the Final Approval Hearing, regardless of
10 whether they submit a written objection. Prior to the Final Approval Hearing, the Settlement
11 Administrator will provide a declaration for filing with the Court that attaches all Notices of Objection
12 that it receives, as an exhibit.

13 36. Reports by the Settlement Administrator Regarding Settlement Administration. The
14 Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly report which
15 certifies: (a) the number of Class Members who have submitted a dispute of Workweeks; (b) the number
16 of Class Members who have submitted timely and valid Requests for Exclusion or timely and complete
17 Notices of Objection; and (c) the number of undeliverable and re-mailed Class Notices. Additionally,
18 the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
19 administration of the Settlement Agreement as needed or requested, and immediately notify the Parties
20 when it receives a request from an individual or any other entity regarding inclusion in the Class and/or
21 settlement.

22 37. Certification of Completion. Upon completion of administration of the settlement, the
23 Settlement Administrator will provide a written declaration under oath to certify such completion to the
24 Court and counsel for all Parties.

25 38. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each
26 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty percent
27 (80%) penalties and interest. The portion allocated to wages will be reported on an IRS Form W-2 and
28 the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement

1 Administrator. The Settlement Administrator will withhold the employee's share of taxes and
2 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to
3 Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual
4 Settlement Share net of these taxes and withholdings). Any payment for an Individual PAGA Payment
5 will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings,
6 and will be reported on an IRS Form-1099, if necessary. The employer's share of taxes and contributions
7 on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
8 Settlement Amount.

9 39. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
10 will be responsible for issuing to Plaintiff, Settlement Class Members, Aggrieved Employees, and Class
11 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
12 this Settlement Agreement. The Settlement Administrator will also be responsible for forwarding all
13 payroll taxes, contributions, and withholdings to the appropriate government authorities.

14 40. Tax Liability. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel do not
15 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
16 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement
17 Class Members, and Aggrieved Employees will be solely responsible for correctly characterizing any
18 compensation received under the Settlement on his/her personal income tax returns and paying any and
19 all taxes due for any and all amounts paid to them under the Settlement.

20 41. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
22 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
23 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
25 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
26 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
27 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
28 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS

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

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

19 43. Release of Released Class Claims. Upon the Effective Date and full funding of the Total
20 Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for
21 Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever released,
22 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

23 44. Release of Released PAGA Claims. Upon the Effective Date and full funding of the
24 Total Settlement Amount, Plaintiff, the State of California, and all Aggrieved Employees will be deemed
25 to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the
26 Released Parties of all Released PAGA Claims.

27 45. General Release of Claims by Plaintiff. In exchange for the Enhancement Award, upon
28 the Effective Date and full funding of the Total Settlement Amount, Plaintiff will be deemed to have

1 fully and finally released and discharged the Released Parties of and from any and all claims whether
2 known or unknown, arising under any federal, state and/or local law or statute, ordinance, regulation,
3 common law, or other source of law, including but not limited to claims arising from or related to his
4 employment with Defendants, separation of employment from Defendants, his compensation while an
5 employee of Defendants, and any acts that have or could have been asserted in any legal action or
6 proceeding against Defendants. This release of claims includes all claims alleged or could have been
7 alleged in the Action, including but not limited to state and/or federal wage and hour claims, failure to pay
8 overtime wages; the calculation of the regular rate of pay; failure to provide meal periods and/or rest
9 periods; failure to pay proper meal and/or rest period penalties; failure to pay minimum wages; failure to
10 provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay
11 all wages during employment; failure to timely pay all wages due at separation of employment; failure to
12 maintain accurate payroll records; unfair business practices; penalties, including but not limited to
13 recordkeeping penalties, wage statement penalties, and minimum-wage penalties; interest; and attorneys'
14 fees and costs. This release of claims also expressly includes all claims arising under the California Labor
15 Code (including but not limited to Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197,
16 1198, 2800, 2802, and 2698 *et seq.*); the Wage Orders of the California Industrial Welfare Commission;
17 California Business and Professions Code Section 17200, *et seq.*; California Code of Civil Procedure,
18 including but not limited to Section 1021.5; and the California common law of contract. This release of
19 claims also includes all claims for lost wages and benefits. This release of claims excludes the release of
20 claims not permitted by law. This release of claims includes all claims, whether known or unknown. Even
21 if Plaintiff discovers facts in addition to or different from those that she now knows or believes to be true
22 with respect to the subject matter of this release of claims, those claims will remain released and forever
23 barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of California
24 Civil Code Section 1542, which reads:

25 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
26 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
27 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
28 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.”

Further, as to Plaintiff, this Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that Plaintiff has or may have under the Federal Age Discrimination In Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, 29 U.S.C. § 621 *et seq.* This paragraph and this Agreement are written in a manner calculated to be understood by Plaintiff. Plaintiff is hereby advised in writing to consult with an attorney before signing this Agreement.

46. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for Plaintiff's Motion for Preliminary Approval of the Settlement, which Plaintiff and Class Counsel will be responsible for drafting and submit this Settlement Agreement to the Court in support of said motion. Class Counsel will provide Defendants' Counsel a draft of the motion before the filing deadline. Defendants agrees not to oppose the motion as long as it is consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiff as representative of the Class;
- d. Preliminarily appointing Class Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually-agreed upon and proposed Class Notice and directing its mailing to the Class by First Class U.S. mail;
- f. Approving the manner and method for Class Members to request exclusion from or object to the Class Settlement as contained herein and within the Class Notice; and
- g. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members, State of California, and Aggrieved Employees.

47. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for (a) Individual Settlement Payments; (b) Individual PAGA Payments; (c) LWDA Payment;

(d) Attorneys' Fees and Costs; (e) Enhancement Award; and (f) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendants' Counsel a draft of the motion before the filing deadline. By way of said motion, Plaintiff will apply for the entry of the mutually-agreed upon proposed order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part, the following:

- a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Certification of the Class for settlement purposes;
- c. Awarding Attorneys' Fees and Costs to Class Counsel;
- d. Awarding Enhancement Award to Plaintiff;
- e. Awarding Settlement Administration Costs to Settlement Administrator;
- f. Directing Defendants to fund all amounts due under the Settlement Agreement and ordered by the Court; and
- g. Entering judgment in the Actions, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement Agreement.

48. Termination or Revocation of Settlement.

a. If the Court finds the Total Settlement Amount to be insufficient to warrant Preliminary Approval or Final Approval of the Settlement, Defendants may, at their election, rescind the Settlement Agreement and all actions taken in furtherance of it will thereby be null and void. Defendants must exercise this right of rescission in writing that is provided to Class Counsel.

49. Effects of Termination of the Settlement. Termination of the Settlement Agreement shall have the following effects, except as otherwise specifically provided herein:

- a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;
- b. In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any Party, Class Member or attorney, except that the terminating

1 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
2 Administrator is notified that the Settlement has been terminated;

3 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
4 any order certifying the Class, shall be vacated;

5 d. The Settlement Agreement and all negotiations, statements and proceedings
6 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored
7 to their respective positions in the Actions prior to the execution of the Settlement Agreement;

8 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
9 statements or filings in furtherance of the Settlement (including all matters associated with the mediation)
10 shall be admissible or offered into evidence in the Actions or any other action for any purpose whatsoever;
11 and

12 f. Any documents generated to bring the settlement into effect, will be null and void,
13 and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
14 likewise be treated as void from the beginning.

15 50. Escalator Clause. Defendants represent that there were 177,271 Workweeks during the
16 period from November 18, 2017 to June 29, 2023. Further, Defendants represent that there were 89,610
17 Pay Periods during the period from October 10, 2021 to June 29, 2023. Should the qualifying Workweeks
18 increase beyond seven and a half percent (7.5%) worked by the Class Members during the period from
19 November 18, 2017 to Preliminary Approval (i.e., more than 13,295 Workweeks) and/or the Pay Periods
20 increase beyond seven and a half percent (7.5%) worked by the Aggrieved Employees during the period
21 from October 10, 2021 to Preliminary Approval (i.e., more than 6,721 Pay Periods), Defendants shall have
22 the option to: (a) increase the Total Settlement Amount on a proportional basis by the same number of
23 percentage points above seven and a half percent (7.5%) (e.g., if the number of Workweeks for the time
24 period of November 18, 2017 to Preliminary Approval actually exceeds 177,271 by 8.5% to 192,339
25 Workweeks, and/or the number of Pay Periods for the time period of October 10, 2021 to Preliminary
26 Approval actually exceeds 89,610 by 8.5% to 97,227 Pay Periods, the Total Settlement Amount will
27 increase by 1%), or (b) end the Class Period and/or PAGA Period on a date in which the Workweeks
28 and/or Pay Periods are equal to or less than 190,566 Workweeks or 96,330 Pay Periods.

1 51. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
2 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
3 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
4 enforcement of the terms of the settlement, (b) settlement administration matters, and (c) such post-
5 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

6 52. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
7 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
8 forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

9 53. Entire Agreement. This Settlement Agreement and any attached exhibits contain the
10 entire agreement between the Parties relating to the settlement and transaction contemplated hereby,
11 and all prior or contemporaneous agreements, understandings, representations, and statements, whether
12 oral or written and whether by a Party or such Party's legal counsel, are merged herein. The Parties
13 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),
14 which provide that a written agreement is to be construed according to its terms and may not be varied
15 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
16 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

17 54. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
18 Actions (including with respect to California Code of Civil Procedure section 583.310), except such
19 proceedings necessary to implement and complete the Settlement Agreement, pending the Final
20 Approval Hearing to be conducted by the Court.

21 55. Amendment. The Parties may not amend or modify any provision of this Settlement
22 Agreement except by written agreement signed by counsel for all Parties, and subject to any necessary
23 Court approval.

24 56. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
27 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
28 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have

1 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
2 will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to
3 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
4 provisions that otherwise might apply under state or federal law.

5 57. Signatories. It is agreed that because the Class Members and Aggrieved Employees are
6 so numerous, it is impossible or impractical to have each of them execute this Settlement Agreement.
7 The Class Notice will advise all Class Members and Aggrieved Employees of the binding nature of the
8 Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
9 as to the Aggrieved Employees, and the release shall have the same force and effect as if this Settlement
10 Agreement were executed by each Settlement Class Member and Aggrieved Employee.

11 58. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
12 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13 59. California Law Governs. All terms of this Settlement Agreement and attached exhibits
14 hereto will be governed by and interpreted according to the laws of the State of California.

15 60. Execution and Counterparts. This Settlement Agreement is subject only to the execution
16 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
17 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
18 signature page, will be deemed to be one and the same instrument.

19 61. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
20 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
21 this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
22 account all relevant factors, present and potential. The Parties further acknowledge that they are each
23 represented by competent counsel and that they have had an opportunity to consult with their counsel
24 regarding the fairness and reasonableness of this Settlement Agreement. In addition, the Mediator may
25 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
26 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
27 is objectively fair and reasonable.

28 62. Invalidity of Any Provision. Before declaring any provision of this Settlement

1 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
2 possible consistent with applicable precedents so as to define all provisions of this Settlement
3 Agreement valid and enforceable.

4 63. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this Settlement
5 Agreement and, by signing this Settlement Agreement, are hereby bound by the terms herein.

6 64. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
7 the dispute that has arisen between them and to avoid the burden, expense and risk of continued
8 litigation. In entering into this Settlement Agreement, Defendants do not admit, and specifically deny,
9 that they have violated any state, federal, or local law; violated any regulations or guidelines
10 promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements;
11 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
12 or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement
13 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
14 construed as an admission or concession by Defendants of any such violations or failures to comply with
15 any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
16 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as
17 evidence in any action or proceeding to establish any liability or admission on the part of Defendants or
18 to establish the existence of any condition constituting a violation of, or a non-compliance with state,
19 federal, local or other applicable law.

20 65. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted
21 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
22 provisions of this Settlement Agreement.

23 66. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
24 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
25 more strictly against one party than another merely by virtue of the fact that it may have been prepared
26 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
27 between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

28 67. Representation by Counsel. The Parties acknowledge that they have been represented by

counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

68. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

69. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiff and Class Counsel:

Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Selena Matavosian, Esq.
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

To Defendants:

Todd Scherwin, Esq.
Anet Drapalski, Esq.
Danielle Zobel, Esq.
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071

70. Posting of the Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website within three (3) business days of receipt, and shall maintain the posting for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment will be required to be provided to the Class.

71. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendants:

1 **IT IS SO AGREED.**

2 **PLAINTIFF VICTOR MENDOZA**

3
4 Dated: 07/19/2024, 2024

Electronically Signed 2024-07-20 01:32:29 UTC - 189.240.48.155
Victor Manuel Mendoza
Xmrtex AssureSign® 1241d1be-e142-4731-abe7-b1b200223013

Victor Mendoza, Plaintiff

6 **DEFENDANT HD SUPPLY, INC**

7
8 Dated: _____, 2024

Full Name: _____

9
10 Title: _____
On behalf of HD Supply, Inc.

11 **DEFENDANT HD SUPPLY MANAGEMENT, INC.**

12
13 Dated: _____, 2024

Full Name: _____

14
15 Title: _____
On behalf of HD Supply Management, Inc.

16 **DEFENDANT HD SUPPLY MANAGEMENT, LLC**

17
18 Dated: _____, 2024

Full Name: _____

19
20 Title: _____
On behalf of HD Supply Management, LLC

21
22 **APPROVED AS TO FORM**

23 **LAWYERS *for* JUSTICE, PC**

24
25 Dated: July 22, 2024



26 Joanna Ghosh
Selena Matavosian
Attorneys for Plaintiff Victor Mendoza, and Proposed Class
27 Counsel
28

1 **IT IS SO AGREED.**

2 **PLAINTIFF VICTOR MENDOZA**

3
4 Dated: _____, 2024

Victor Mendoza, Plaintiff

6 **DEFENDANT HD SUPPLY, INC**

7
8 Dated: July 23, 2024

Full Name: Scott D. Bohrer
Title: Chief Financial Officer
On behalf of HD Supply, Inc.

11 **DEFENDANT HD SUPPLY MANAGEMENT, INC.**

12
13 Dated: July 23, 2024

Full Name: Scott D. Bohrer
Title: Chief Financial Officer
On behalf of HD Supply Management, Inc.

16 **DEFENDANT HD SUPPLY MANAGEMENT, LLC**

17
18 Dated: July 23, 2024

Full Name: Scott D. Bohrer
Title: Chief Financial Officer
On behalf of HD Supply Management, LLC

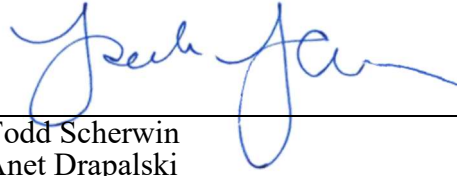
22 **APPROVED AS TO FORM**

23 **LAWYERS for JUSTICE, PC**

24
25 Dated: _____, 2024

Joanna Ghosh
Selena Matavosian
Attorneys for Plaintiff Victor Mendoza, and Proposed Class
Counsel

FISHER & PHILLIPS LLP



Dated: July 24, 2024

Todd Scherwin
Anet Drapalski
Landon R. Schwob
Danielle Zobel
Attorneys for Defendants HD Supply, Inc., HD Supply
Management, Inc., and HD Supply Management, LLC

EXHIBIT A



October 10, 2022

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: HD SUPPLY, INC.

Dear Representative:

We have been retained to represent Victor Mendoza against HD Supply, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as “HDS”) for violations of California wage-and-hour laws. Mr. Mendoza seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Mr. Mendoza seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

HDS employed Mr. Mendoza as an hourly-paid, non-exempt employee from approximately October 2021 to approximately April 2022, in the State of California.

The “aggrieved employees” that Mr. Mendoza may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, HDS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001.

HDS required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to,

waiting in line to clock-in and/or clock-out, completing orders, and responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Mendoza and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Mendoza and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, HDS required Mr. Mendoza and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, HDS did not provide Mr. Mendoza and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from HDS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include

the total hours worked by Mr. Mendoza and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Mendoza and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, HDS failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Mendoza and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, HDS did not provide Mr. Mendoza and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Mendoza and the other aggrieved employees reported to work and were furnished less

than half the usual or scheduled day's work. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Mendoza and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Mendoza and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by HDS. These costs include, but are not limited to, the purchasing and maintenance of footwear in compliance with the dress code.

Therefore, on behalf of all aggrieved employees, Mr. Mendoza seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwarzian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

HD Supply, Inc.
c/o CSC- Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

HD Supply, Inc.
c/o Todd Scherwin
FISHER & PHILLIPS LLP
Attorney
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

EXHIBIT B

LAWYERS FOR JUSTICE^{PC}

July 17, 2024

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: HD SUPPLY INC., HD SUPPLY MANAGEMENT, INC., AND HD SUPPLY MANAGEMENT, LLC.

Dear Representative:

We have been retained to represent Victor Mendoza against HD Supply, Inc., HD Supply Management, Inc., and HD Supply Management, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as “HDSM”) for violations of California wage-and-hour laws. We write to follow up on the correspondence originally submitted to the labor agency and the employer on October 10, 2022, which was assigned LWDA Case No. LWDA-CM-913079-22.

Mr. Mendoza commenced an action under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), entitled *Victor Mendoza v. HD Supply, Inc., et al.*, Los Angeles County Superior Court Case No. 21STCV42524 (“Lawsuit”), which alleges that HDSM violated multiple provisions of the California Labor Code and Industrial Welfare Commission Wage Orders.

For all of the reasons asserted in the Lawsuit and also those espoused herein, Mr. Mendoza seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Mr. Mendoza seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent as a follow-up to the letter already sent on October 10, 2022, in compliance with the reporting requirements of California Labor Code section 2699.3.

HDSM employed Mr. Mendoza as an hourly-paid, non-exempt employee from approximately October 2021 to approximately April 2022, in the State of California. HD Supply Management, LLC is the successor entity of HD Supply Management, Inc. HD Supply Management, Inc. employed Mr. Mendoza up until on or about December 31, 2021, at which point HD Supply Management, LLC became Mr. Mendoza’s employer.

The “aggrieved employees” that Mr. Mendoza may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-

paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, HDSM has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001.

HDSM required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, waiting in line to clock-in and/or clock-out, completing orders, and responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Mendoza and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Mendoza and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, HDSM required Mr. Mendoza and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any

employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, HDSM did not provide Mr. Mendoza and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from HDSM were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Mendoza and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Mendoza and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, HDSM failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Mendoza and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, HDSM did not provide Mr. Mendoza and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that “The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees half the usual or scheduled day’s work in an amount no less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay for workdays in which Mr. Mendoza and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day’s work. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees for two (2) hours at the employee’s regular rate of pay on days in which Mr. Mendoza and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Mendoza and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by HDSM. These costs include, but are not limited to, the purchasing and maintenance of footwear in compliance with the dress code.

Therefore, on behalf of all aggrieved employees, Mr. Mendoza seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

A handwritten signature in cursive script, appearing to read "Selena".

Joanna Ghosh, Esq.
Selena Matavosian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

HD Supply Management, LLC.
c/o CSC- Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

HD Supply Management, LLC.
c/o Todd Scherwin
FISHER & PHILLIPS LLP
Attorney
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

EXHIBIT C

NOTICE OF CLASS ACTION SETTLEMENT

Gabriel Tarin, et al. v. HD Supply, Inc., et al.
Superior Court of California for the County of Los Angeles
Case No. 21STCV42524

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Class Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the class settlement, object to the class settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Victor Mendoza ("Plaintiff") and Defendants HD Supply, Inc., HD Supply Management, Inc., and HD Supply Management, LLC (collectively, "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") in the case entitled *Gabriel Tarin, et al v. HD Supply, Inc., et al.*, Superior Court of California for the County of Los Angeles, Case No. 21STCV42524 ("Action"). The settlement may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [date of Final Approval hearing] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Aggrieved Employees" means all current and former hourly-paid or non-exempt employees of Defendants in California employed as Delivery Drivers (non-CDL) or Warehouse Associates during the PAGA Period, who were not included in the *Lozano* Aggrieved Employee Group.

"Class" means all current and former hourly-paid or non-exempt employees of Defendants in California employed as Delivery Drivers (non-CDL) or Warehouse Associates during the Class Period, who were not included in the *Lozano* Class.

"Class Member" means an individual member of the Class.

"Class Period" means the time period from November 18, 2017 to November 30, 2023.

"Class Settlement" means the settlement and release of the Released Class Claims.

"PAGA Period" means the period from October 10, 2021 to November 30, 2023.

"PAGA Settlement" means the settlement and release of the Released PAGA Claims.

II. BACKGROUND OF THE LAWSUIT

On November 18, 2021, former plaintiff Gabriel Tarin commenced a putative class action lawsuit by filing the Class Action Complaint for Damages against Defendant HD Supply, Inc. in the Los Angeles County Superior Court, Case No. 21STCV42524 ("Action").

On June 20, 2022, former plaintiff Gabriel Tarin filed an Amendment to Complaint, thereby adding HD Supply Management, Inc. as an additional defendant.

On October 10, 2022, Plaintiff provided written notice by certified mail ("LWDA Notice") to the California Labor & Workforce Development Agency ("LWDA") of his intent to assert claims under the California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004) ("PAGA") and on the basis for those claims.

On May 25, 2023, former plaintiff Gabriel Tarin and Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”), thereby adding Victor Mendoza as an additional plaintiff and adding a claim for civil penalties pursuant to PAGA, on behalf of the State of California in connection with Plaintiff Victor Mendoza and aggrieved employees.

On October 5, 2023, former plaintiff Gabriel Tarin and Plaintiff filed an Amendment to Complaint, thereby adding HD Supply Management, LLC as an additional defendant.

Plaintiff alleges that Defendants violated the California Labor Code by failing to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices and conduct that in violation of California Business & Professions Code section 17200, *et seq.* and engaged in conduct that gives rise to civil penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Defendants deny all of the allegations in the Action or that it violated any law.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Victor Mendoza as the representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Arby Aiwazian
Joanna Ghosh
Selena Matavosian
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below. If you are an Aggrieved Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object to or seek exclusion from the PAGA Settlement; all Aggrieved Employees will be bound by the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by the Defendants that the claims in the Action has merit or that the Defendants have any liability to Plaintiff, Class Members, the State of California, and/or Aggrieved Employees. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members, Aggrieved Employees, and the State of California. The Court has made no ruling on the merits of the claims asserted in the Action and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total settlement amount is Two Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$2,950,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Settlement Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., \$1,032,500.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) to Class Counsel; (2) Enhancement Award in an amount not to exceed Seven Thousand Dollars and Zero Cents (\$7,000.00) to Plaintiff for his services in the Action; (3) payment to the California Labor and Workforce Development Agency (“LWDA”) in the amount of Three Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$337,500.00) for its 75% portion of the PAGA Penalty Amount (“LWDA Payment”) and the remaining 25%, or \$112,500.00, will be payable to the Aggrieved Employees on a *pro rata* basis based on Pay Periods during the PAGA Period (i.e., Individual PAGA Payment); and (4) Settlement Administration Costs in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member was employed by Defendants as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”), which will be calculated by the Settlement Administrator by determining the number of days between the start and end dates of employment during the Class Period, divided by seven (7) and rounding up to the nearest whole number.

The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement (“Settlement Class Members”) will be issued payment of their final Individual Settlement Share.

Aggrieved Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the 25% portion of the PAGA Penalty Amount attributed to Aggrieved Employees, i.e., \$112,500.00, (“Individual PAGA Payment”) based on the Aggrieved Employees’ Pay Periods during the PAGA Period, which will be calculated by the Settlement Administrator by determining the number of days between the start and end dates of employment during the PAGA Period, divided by seven (7) and rounding up to the nearest whole number.

The Settlement Administrator has divided 25% of the PAGA Penalty Amount by the Pay Periods of all Aggrieved Employees during the PAGA Period to yield the “PAGA Workweek Value,” and multiplied each Aggrieved Employee’s individual Pay Periods during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment (which is listed in Section III.C below). Aggrieved Employees shall receive an Individual PAGA Payment and shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages which will be reported on an IRS Form W2 and eighty percent (80%) penalties and interest which will be reported on an IRS Form 1099 (if required). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, resulting a net payment to the Settlement Class Member (“Individual Settlement Payment”). Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form 1099-MISC, if necessary.

If the Court grants final approval of the Settlement, within fifteen (15) calendar days after the Effective Date, Defendant will fund the Settlement by making a one-time deposit of the Total Settlement Amount, plus an amount sufficient for the employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares.

The timing of the distribution of payments will depend on the date of Final Approval of the Settlement and the date on which Defendants fund the installments.

Individual Settlement Payments and/or Individual PAGA Payments will be mailed to Settlement Class Members and Aggrieved Employees at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and Pay Periods Based on Defendants' Records

According to Defendants' records, you have been credited with [REDACTED] Workweeks during the Class Period, i.e., from November 18, 2017 to November 30, 2023.

According to Defendants' records, you have been credited with [REDACTED] Pay Periods during the PAGA Period, i.e., from October 10, 2021 to November 30, 2023.

If you wish to dispute the Workweeks and/or Pay Periods credited to you, you may submit your dispute by way of written letter that is sent to the Settlement Administrator. The dispute must: (a) contain the case name and number of the Action; (b) be signed by the Class Member and/or Aggrieved Employee, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class member and/or Aggrieved Employee, (d) clearly states that the Class Member and/or Aggrieved Employee disputes the number of Workweeks and/or Pay Periods credited to him or her and what he or she contends is the correct number that should be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks and/or Pay Periods that he or she contends should be credited to him or her are correct, and (f) is returned by mail to the Settlement Administrator at the specified address listed below (Section IV.B), postmarked on or before [Response Deadline].

C. Your Estimated Individual Settlement Share and/or Individual PAGA Payment

As explained above, your estimated Individual Settlement Share is based on the number of Workweeks credited to you during the Class Period and your estimated Individual PAGA Payment is based on the number of Pay Periods credited to you during the PAGA Period.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for employee's share of taxes and withholding with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and/or Individual PAGA Payment reflected in this Notice is only an estimate. Your actual Individual Settlement Payment and/or Individual PAGA Payment may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff, the State of California, and all Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

"Released Class Claims" means any and all claims under state, federal, or local law alleged in the Operative Complaint or that reasonably could have been alleged based on the factual allegations contained in the Operative Complaint, arising during the Class Period, including but not limited to claims for failure to pay overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to reimburse necessary business

expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 7-2001, and 9-2001, and unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the aforementioned.

“Released PAGA Claims” means any and all claims for civil penalties under the Private Attorneys General Act (California Labor Code § 2698, *et seq.*), arising out of the facts alleged in the Operative Complaint and PAGA Notices, or reasonably could have been alleged based on the factual allegations contained in the Operative Complaint and PAGA Notices, arising during the PAGA Period, for failure to pay overtime wages, failure to provide compliant meal period and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to reimburse necessary business expenses, in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders Nos. 4-2001, 7-2001, and 9-2001.

“Released Parties” means Defendants, and all of its present and former agents, officers, executive-level employees, directors, owners, subsidiaries, affiliates, parent companies, attorneys, insurers, successors, and assigns.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., an amount of up to \$1,032,500.00) and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. All Attorneys’ Fees and Costs awarded by the Court will be paid from the Total Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and Aggrieved Employees on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

F. Enhancement Award to Plaintiff

Plaintiff will seek the amount of Seven Thousand Dollars and Zero Cents (\$7,000.00) (“Enhancement Award”), in recognition of his services in connection with the Action. The Enhancement Award will be paid from the Total Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment (if applicable) that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members and Aggrieved Employees of the Settlement, processing Requests for Exclusion, Notices of Objection, and disputes regarding Workweeks and Pay Periods, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Total Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Class Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and the contemplated judgment to be entered by the Court based thereon if the Court grants final approval of the Settlement, and you will release the Released Class Claims described in Section III.D above.

If you are an Aggrieved Employee, you will automatically be bound to the PAGA Settlement and issued your Individual PAGA Payment.

As a Class Member or Aggrieved Employee, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own

attorney's fees and expenses.

B. Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must seek exclusion from the Class Settlement by submitting a written letter ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion; and (d) clearly state that the Class Member does not wish to be included in the Class Settlement. The Request for Exclusion must be mailed to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked no later than **[Response Deadline]**, at the following mailing address:

[Settlement Administrator]

[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive an Individual Settlement Payment from the Class Settlement, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Any Class Members who do not submit a valid and timely Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of Released Class Claims described in Section III.D above, as well as the contemplated judgment to be entered by the Court (as it pertains to the PAGA Settlement), if the Court grants final approval of the Settlement. However, consistent with applicable law, Aggrieved Employees may not exclude themselves from the PAGA Settlement and will be bound by all terms of the PAGA Settlement, including those pertaining to the release Released PAGA Claims described in Section III.D above, and any judgment that may be entered by the Court (as it pertains to the PAGA Settlement) if it grants final approval of the Settlement.

C. Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection ("Notice of Objection") to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

The Notice of Objection must: (a) be signed by the Class Member; (b) contain the case name and number of the Action; (c) contain the Class Member's full name, telephone number, mailing address, and the last four digits of their Social Security number; (d) clearly state the factual and legal basis for objecting to the Class Settlement; (e) indicate whether the Class Member is represented by counsel and identify said counsel; and (f) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing. The Notice of Objection must be mailed to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked on or before **[Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 6 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, on **[date and time of Final Approval hearing]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members and Aggrieved Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Actions for a fee by visiting the civil clerk's office,

office during business hours (you must make an appointment prior to visiting the civil clerk's office), located at the Stanley Mosk Courthouse, 111 North Hill Street, California, 90012, or by online by visiting the following website: <https://www.lacourt.org/casesummary/ui>.

Please note, due to COVID-19, there are limitations on personal appearances and telephonic appearances are an option. You can find information regarding the Court's most current COVID-19 guidelines online at: <https://www.lacourt.org/>. You can find information regarding appearing remotely through LA CourtConnect online at: <http://www.lacourt.org/lacceligibility/ui/civil.aspx?casetype=ci>. Please note that there may be deadlines to reserve a remote appearance and reservation fees or charges may apply.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

EXHIBIT 2



October 10, 2022

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: HD SUPPLY, INC.

Dear Representative:

We have been retained to represent Victor Mendoza against HD Supply, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as "HDS") for violations of California wage-and-hour laws. Mr. Mendoza seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Mr. Mendoza seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

HDS employed Mr. Mendoza as an hourly-paid, non-exempt employee from approximately October 2021 to approximately April 2022, in the State of California.

The "aggrieved employees" that Mr. Mendoza may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, HDS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001.

HDS required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to,

waiting in line to clock-in and/or clock-out, completing orders, and responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Mendoza and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Mendoza and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, HDS required Mr. Mendoza and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, HDS did not provide Mr. Mendoza and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from HDS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include

the total hours worked by Mr. Mendoza and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Mendoza and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, HDS failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Mendoza and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, HDS did not provide Mr. Mendoza and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Mendoza and the other aggrieved employees reported to work and were furnished less

than half the usual or scheduled day's work. During the relevant time period, HDS failed to pay Mr. Mendoza and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Mendoza and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Mendoza and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by HDS. These costs include, but are not limited to, the purchasing and maintenance of footwear in compliance with the dress code.

Therefore, on behalf of all aggrieved employees, Mr. Mendoza seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwarzian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

HD Supply, Inc.
c/o CSC- Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

HD Supply, Inc.
c/o Todd Scherwin
FISHER & PHILLIPS LLP
Attorney
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

EXHIBIT 3

LAWYERS FOR JUSTICE^{PC}

July 17, 2024

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: HD SUPPLY INC., HD SUPPLY MANAGEMENT, INC., AND HD SUPPLY MANAGEMENT, LLC.

Dear Representative:

We have been retained to represent Victor Mendoza against HD Supply, Inc., HD Supply Management, Inc., and HD Supply Management, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as “HDSM”) for violations of California wage-and-hour laws. We write to follow up on the correspondence originally submitted to the labor agency and the employer on October 10, 2022, which was assigned LWDA Case No. LWDA-CM-913079-22.

Mr. Mendoza commenced an action under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), entitled *Victor Mendoza v. HD Supply, Inc., et al.*, Los Angeles County Superior Court Case No. 21STCV42524 (“Lawsuit”), which alleges that HDSM violated multiple provisions of the California Labor Code and Industrial Welfare Commission Wage Orders.

For all of the reasons asserted in the Lawsuit and also those espoused herein, Mr. Mendoza seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Mr. Mendoza seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent as a follow-up to the letter already sent on October 10, 2022, in compliance with the reporting requirements of California Labor Code section 2699.3.

HDSM employed Mr. Mendoza as an hourly-paid, non-exempt employee from approximately October 2021 to approximately April 2022, in the State of California. HD Supply Management, LLC is the successor entity of HD Supply Management, Inc. HD Supply Management, Inc. employed Mr. Mendoza up until on or about December 31, 2021, at which point HD Supply Management, LLC became Mr. Mendoza’s employer.

The “aggrieved employees” that Mr. Mendoza may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-

paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, HDSM has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001.

HDSM required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, waiting in line to clock-in and/or clock-out, completing orders, and responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Mendoza and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Mendoza and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, HDSM required Mr. Mendoza and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any

employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, HDSM failed to pay Mr. Mendoza and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, HDSM did not provide Mr. Mendoza and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from HDSM were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Mendoza and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Mendoza and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Mendoza and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, HDSM failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Mendoza and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, HDSM did not provide Mr. Mendoza and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

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Therefore, on behalf of all aggrieved employees, Mr. Mendoza seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

A handwritten signature in cursive script, appearing to read "Selena".

Joanna Ghosh, Esq.
Selena Matavosian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

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