ELECTRONICALLY RECEIVED
1/9/2026 9:03 AM
MS

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: jcampbell@aegislawfirm.com

Attorneys for Plaintiff Brendan Fitzgerald, individually, and on behalf of all others similarly situated.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

WILLIAM ROSE and BRENDAN FITZGERALD, as individuals, and on behalf of all others similarly situated,

Plaintiffs,

vs.

SCARBOROUGH HOME CENTER; SCARBOROUGH TAHOE, INC.; SCARBOROUGH LUMBER AND BUILDING SUPPLY, INC., DBA ACE HARDWARE, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **24CV02298**

<u>REVISED</u> [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Complaint Filed: August 13, 2024

On January 8, 2026 at the hearing set for 8:30 a.m., the unopposed Motion for Preliminary Approval of Class Action Settlement, filed by Plaintiffs William Rose and Brendan Fitzgerald (collectively "Plaintiffs") came on regularly in Department 10 of the above-captioned court, Hon. Timothy Schmal, presiding.

Having fully reviewed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and the supporting Memorandum of Points and Authorities, the Declaration of Kevin Lipeles, the Declaration of Jessica Campbell, the Declaration of William Rose, the Declaration of Brendan Fitzgerald, the Amended Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), the Class Notice (which is attached as Exhibit A to the Settlement Agreement), THE COURT HEREBY MAKES THE FOLLOWING FINDINGS AND ORDERS:

Plaintiffs and their counsel filed this class action lawsuit alleging that Defendants Scarborough Home Center, Scarborough Lumber and Building Supply, Inc. dba Ace Hardware and Scarborough Tahoe, Inc. (collectively "Defendants") failed to pay their non-exempt employees' overtime, minimum wages, afford them meal/rest breaks, reimburse business expenses, provide a uniform maintenance allowance and pay for all hours worked. Plaintiffs further alleged that these Labor Code violations also resulted in Defendants issuing inaccurate wage statements to class members and failing to pay all wages due upon termination of employment to class members who are former employees. Plaintiffs alleged on a class basis that the foregoing violated California's Unfair Competition Law, Business and Professions Code §§17200, *et seq*. Further, Plaintiffs alleged that Defendants were liable for PAGA remedies pursuant to California Labor Code §2699.

On August 13, 2024, Plaintiff William Rose filed his Original Class Action Complaint in the Superior Court of California, Santa Cruz County, on behalf of himself and others similarly situated for certain present and former employees of Defendant Scarborough Lumber and Building Supply, Inc. dba Ace Hardware for: (1) failure to pay minimum wages (Cal. Labor Code §§ 1194, 1197, 1197,1, 1198, 119); (2) failure to pay for meal periods not provided (Cal. Labor Code §226.7); (3) failure to pay for rest periods not provided (Cal. Labor Code §226.7); (4) failure to maintain records and provide accurate itemized wage statements (Cal. Labor Code §§ 226); (5) failure to pay wages on termination and/or resignation (Cal. Labor Code §§ 201-203); (6) failure to

reimburse business expenses (Cal. Labor Code § 2802); (7) failure to provide a uniform maintenance allowance (Cal. Labor Code § 2802); (8) failure to pay for all hours worked (Cal. Labor Code § 204); (9) failure to allow inspection of employment records (Cal. Labor Code § 1198.5); and (10) unfair/unlawful business practices (Cal. Bus. and Prof. Code §§ 17200 et seq.)

On September 13, 2024, Plaintiff Fitzgerald commenced his action by filing a Complaint alleging causes of action against Defendant Scarborough Home Center for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Reimburse Business Expenses; (6) Failure to Maintain and Provide Accurate Itemized Wage Statements; (7) Failure to Pay Wages Due Upon Separation of Employment; and (8) Unfair Competition.

On October 17, 2025, Plaintiff Rose filed his First Amended Class Action Complaint in the Santa Cruz Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004, Cal. Lab. Code §§2699, *et seq*.

On or about October 20, 2025, Plaintiffs filed a consolidated Second Amended Class Action and PAGA Complaint ("SAC").

After conducting informal discovery and negotiating at arm's-length, Plaintiffs and Defendants have arrived at what the Court finds to be a fair and equitable settlement of all claims encompassed by Plaintiffs' SAC.

The Court finds on a preliminary basis that the Settlement Agreement, which is attached as an Exhibit A to the Declaration of Kevin Lipeles and is hereby incorporated in full by reference as part of this Order Granting Preliminary Approval, appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by the Court. The Court notes that Defendants have agreed to pay Four Hundred Ninety-five Thousand Dollars and No Cents ($495,000.00) ("Gross Settlement Amount") to the putative class as settlement in full of past claims, with no reversion to Defendants of any settlement monies remaining after all Class Members are paid, as more specifically described in the Settlement Agreement. Any settlement checks which remain uncashed upon the expiration of 180 days of issuance will be cancelled and

funds associated with such cancelled checks, will be remitted Casa of Santa Cruz County, the agreed upon *cy pres* recipient. The Court also notes that out of the Gross Settlement Amount, the Settlement Agreement allocates up to One Hundred Seventy Three Thousand Two Hundred Fifty Dollars and No Cents ($173,250.00) as attorneys' fees ("Class Counsel Fees Payment"), costs up to Thirty Three Thousand Five Hundred Dollars and No Cents ($33,500.00) ("Class Counsel Litigation Expenses Payment"), up to Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) as Class Representative Service Payments to each of the Named Plaintiffs ($15,000 total) ("Class Representative Service Payments"), and approximately Eleven Thousand Dollars and No Cents ($11,000.00) to Phoenix Class Action Administration Solutions ("Phoenix") to administer the settlement ("Administration Expenses Payment").

The Court indicated an intent to award fees based on 30% of the net recovery after deducting costs. The Court accorded Counsel an opportunity to brief the fee award prior to the Final Fairness and Approval Hearing.

It appears to the Court on a preliminary basis that the Settlement Agreement is fair and reasonable when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues and potential appeal. It further appears that significant investigation, research, and informal discovery have been conducted such that counsel for the parties at this time are able to reasonably evaluate their respective positions. It further appears that settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It further appears that the Settlement Agreement has been reached as the result of intensive, serious and non-collusive negotiations between the parties.

ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY GRANTED.

The Court hereby orders that the putative class of "all individuals whom Defendants classified as non-exempt employees and who worked for Defendants at any time during August 13, 2020 through September 2, 2025" shall be conditionally certified for settlement purposes only. The Court finds that the proposed Class Notice fairly and adequately advises Class Members of: the

conditional certification for settlement purposes only; the preliminary Court approval of the proposed Settlement Agreement; the date of the Final Fairness and Approval Hearing; the terms of the proposed settlement and the benefits available to Class Members; and the Class Members' rights to opt out or object to their share of the Settlement Amount, and the timing and procedures for doing so. The Court further finds the Class Notice clearly comports with all constitutional requirements, including those of due process.

ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES THE PROPOSED NOTICE TO THE CLASS MEMBERS.

For purposes of the Settlement Agreement only, this litigation is hereby CERTIFIED as a class action pursuant to California Code of Civil Procedure Section 382.

The Court hereby APPOINTS Kevin Lipeles, Esq., Jasmine Badawi, Esq., Samuel A. Wong Esq., Kashif Haque. Esq., and Jessica Campbell, Esq. as Class Counsel. The Named Plaintiffs William Rose and Brendan Fitzgerald are approved as class representatives for the settlement class.

The mailing to the last known addresses of Settlement Class Members as specifically described within the Settlement Agreement constitutes an effective method of notifying Settlement Class Members of their rights with respect to the proposed settlement.

ACCORDINGLY, THE COURT HEREBY ORDERS the following settlement approval schedule:

No later than twenty (20) calendar days of the Preliminary Approval Order	Deadline for Defendants to provide Class Data containing the names, last-known addresses, etc., of Class Members to the Administrator. Stip. at § 4.2.
No later than three (3) business days after receipt of the Class Data	Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data. Stip. at § 7.4.1.

Within fourteen (14) calendar days after receiving the Class Data from Defendants	Administrator shall mail Class Members the Class Notice. Stip. at § 7.4.2.
Not later than three (3) business days after the Administrator receives a Class Notice returned by the USPS as undelivered	Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. Stip. at § 7.4.3.
Not later than five (5) calendar days after the expiration of the Response Deadline	Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); and (b) the names of Class Members who have submitted invalid Requests for Exclusion. Stip. at § 7.8.2.
No later than sixty (60) calendar days after the Administrator mails the Class Notice to Class Members	Deadline for Class Members' request for exclusion from the settlement to be sent to the Administrator. Stip. at § 1.44.
No later than sixty (60) calendar days after the Administrator mails the Class Notice to Class Members	Deadline for Class Members to object to the Settlement. Stip. at § 1.44.
Response Deadline	The date sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and the last date on which Class Members may postmark requests for exclusion or objections to the Settlement. Stip. at § 1.44.
No later than fourteen (14) calendar days from the re-mailing or sixty (60) calendar days from the date of initial mailing, whichever is later	Class Members who received a re-mailed Class Notice shall have their Response Deadline extended. Stip. at § 1.44.
Effective Date	The date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the

	day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed or other judicial review is commenced, the day after the appellate court affirms the Judgment and issues a remittitur. Stip. at §1.19.
Within fifteen (15) calendar days after the Court grants Final Approval	Defendants shall fund 50% of the Gross Settlement Amount (including the amount of any corresponding increase to the Gross Settlement Amount pursuant to the Escalator Clause). Defendants shall also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator. Stip. at § 4.3.
Within one year after Final Approval	Defendants shall fund the remaining 50% of the Gross Settlement Amount (including the amount of any corresponding increase to the Gross Settlement Amount pursuant to the Escalator Clause). Stip. at § 4.3.
Within thirty (30) calendar days after Defendants fully fund the Gross Settlement Amount	Administrator will pay the Individual Settlement Payments to Participating Class Members, Individual PAGA Payments, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Administration Expenses Payment, the LWDA PAGA Payment and the Class Representative Service Payments. Stip. at § 4.4.
Within sixty (60) calendar days of the postmark of the Class Notice, or as extended in the case of a re-mailed Class Notice, an additional fourteen (14) calendar days	Settlement Class Members must submit any disputes regarding their Workweeks and/or Pay Periods used to calculate the Individual Settlement Payment or Individual PAGA Payment. Stip. at §§ 7.4.4, 7.6.
Within seven (7) calendar days of receiving a returned check	Administrator will re-mail all returned checks to USPS forwarding address provided or to an address ascertained through the Class Member Address Search. Stip. at § 4.4.2.
No later than twenty-one (21) court days before the Final Approval Hearing	Administrator shall serve on Class Counsel and Defense Counsel, a declaration for filing in support of Plaintiffs' Motion for Final Approval. Stip. at § 7.8.5.

IT IS FURTHER ORDERED that **the Final Fairness and Approval Hearing shall be held at 8:30 a.m. on May 21, 2026, in Department 10** of the Superior Court for the State of California, County of Santa Cruz, located at 701 Ocean Street, Santa Cruz, CA 95060, to consider the good faith, fairness, adequacy and reasonableness of the proposed Settlement Agreement preliminarily approved by this Order Granting Preliminary Approval, and to consider Plaintiffs' application for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments. Any party to this case, including Class Members, in person or by counsel, may be heard, to the extent allowed by the Court, in support of or in opposition to the Court's determination of the good faith, fairness, reasonableness and adequacy of the proposed Settlement Agreement, including the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments. The Court expressly reserves the right to adjourn or continue the Final Fairness and Approval Hearing from time to time without further notice to Class Members.

IT IS FURTHER ORDERED that, pending final determination of whether the proposed Settlement Agreement should be granted final approval, the Plaintiffs and all members of the putative class, either directly or representatively, or in any other capacity, shall not commence or prosecute any action or proceeding asserting any of the claims released against any of the Released Parties, as defined in the Settlement Agreement.

IT IS FURTHER ORDERED that if for any reason the Court does not execute and file an Order of Final Approval, or if the Final Order and Dismissal does not occur for any reason whatsoever, the Settlement Agreement and the proposed settlement that is the subject of this Order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the parties to the litigation, as more specifically set forth in the Settlement Agreement.

IT IS FURTHER ORDERED that the Settlement Agreement shall not be construed as an admission or evidence of either liability or the appropriateness of class certification in the non-settlement context, as more specifically set forth in the Settlement Agreement.

IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Timothy Schmal
Judge of the Superior Court