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Attorneys for Plaintiff,
EDUARDO SANDOVAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

EDUARDO SANDOVAL on behalf of himself and all aggrieved employees,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC.; and DOES 1 through 25, inclusive,

Defendants.

CASE NO.: 22CV015414

[Assigned for All Purposes to the Hon. Karin Schwartz]

DECLARATION OF REUBEN D. NATHAN IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ENTRY OF JUDGMENT

Date: May 15, 2024
Time: 3:00 p.m.
Dept: 20

Reservation ID: 765149662728

Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

I, REUBEN D. NATHAN, declare as follows:

1. I am over the age of eighteen years old and I am mentally competent to attest to the matters set forth in this declaration. I have specific knowledge of the information contained in this declaration and I attest the following statements are true and correct. I would testify to the matters stated herein if called upon as a witness to do so.

2. I am the principal attorney at the law firm of Nathan & Associates, APC ("RN"). I am co-counsel of record for Plaintiff Eduardo Sandoval in this action.

3. I am submitting this Declaration in support of Plaintiff's Motion for Approval of PAGA Settlement and Entry of Judgment.

4. I am an attorney at law licensed to practice in the State of California and the District of Columbia, and I am a member of the bar of this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

EDUCATION AND EXPERIENCE

5. I graduated from Western State University School of Law in 1999 after pursuing undergraduate studies in the United Kingdom. I am admitted to practice law before all courts in the State of California.

6. I have been practicing law full time for approximately 25 years. My practice has been devoted to complex class action and/or representative action litigation for the past twenty-eight years. Much of this litigation has involved class action and representative action prosecution of wage and hour laws (state and federal), state and federal privacy laws (FCRA, CCPA and CCCRA) and consumer laws.

7. I have been named a Super Lawyer from 2014-2022 and won awards such as Class Action Attorney of the Year. I have represented and continue to represent plaintiffs in various types of class action cases.

8. I have served as lead class counsel in several cases and as counsel in PAGA representative actions, including some of the following, which are set forth below:

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a. *Reid v. Diedrich Coffee, Inc., et al.*, U.S. District Court, Central District of California, Case No. SACV06-888 AG (MLGx);

b. *Scerca v. Town & Country, et al.,* U.S. District Court, Central District of California, Case No. SACV06-889 AG (MLGx);

c. *Hilliard v. Ameriquest, et al. and Torok v. Ameriquest, et al.,* U.S. District Court Central District of California, Case No. SACV06-892 JVS (ANx);

d. *Strich v. Solstice Capital*, *et al.,* U.S. District Court Central District of California, Case No. CV05-8757 SGL (RNBx);

e. *The Parking Concepts Wage & Hour Cases*, Los Angeles County Superior Court, Case No. JCCP 4531;

f. *Griffin et al. v 725 Baker LLC, Orange County County Superior Court,* Case No. 30-2010-00397655-CU-OE-CXC;

g. *Leon v. Allied Exhaust Systems*, Los Angeles Superior Court, Case No.: BC438653;

h. *De Los Santos v. Lala's Argentine Grill,* Los Angeles Superior Court, Case No. BC472215;

i. *Duarte v. Heroes Restaurants, Inc.,* Orange County Superior Court, Case No.: 30-2012-00581304;

j. *Lopez v. My World Enterprises, Inc*., Los Angeles Superior Court, Case No. BC506687;

k. *Taylor v. Loandepot.com, llc*., Orange County Superior Court, Case No. 30-2013-00648925;

l. *Soto v. Wild Planet, Inc*., Northern District of California, Case No. 5:15-cv-05082, resulting in a settlement on behalf of class members;

m. *Tran v. Paramount Mortgage, LLC*, Orange County Superior Court, Case No. 30-00827323 resulting in a settlement on behalf of class members;

n. *Morris v. SolarCity Corporation*, Northern District of California, Case No. 5:15-cv-005107, resulting in a $15,000,000.00 settlement on behalf of class members;

o. *Santoli v. The Money Source, Inc., et al.*, Orange County Superior Court, Case No. 30-2017-00917450 resulting in a $1,500,000.00 settlement on behalf of class members;

p. *Lavelle v. Nationstar Mortgage, et al*., Orange County Superior Court, Case No. 30-2017-00917438 resulting in a $10,050,000.00 settlement on behalf of class members;

q. *Arnold v. Guaranteed Rate Inc., et al*., Ventura County Superior Court, Case No. 56-2019-00523081-CU-OE-VT;

r. *Sicairos v. Staffmark Investment, LLC, et al*., Orange County Superior Court, Case No. 30-2019-01050988, PAGA only action, resulting in a $1,500,000 settlement on behalf of aggrieved employees, resulting in $350 per pay period and approximately $2,000 per aggrieved employee;

s. *Louka v. Nations Direct Mortgage, et al.,* Orange County Superior Court, Case No. 30-2019-01042277-CU-OE-CXC;

t. *Arevalos v. Americor Funding, Inc., et al.*, Orange County Superior Court, Case No. 30-2019-01068606-CU-OE-CX;

u. *Nelson v. Bridgestone Retail Operations, LLC, et al*. San Diego Superior Court, Case No. 37-2020-00035994-CU-OE-CTL, coordinated with *Bridgestone Retail Wage and Hour Cases*, JCCP Action, San Bernardino Superior Court, Case No. JCCP 5054, consolidated with *Strawn v. Bridgestone Retail Operations, LLC, et al.*, Sacramento Superior Court, Case No. 34-2018-00242049; and

v. *Jones v. Apple, Inc.*, et al., Merced County Superior Court, Case No. 18CV-0455; PAGA only action.

<u>INVESTIGATION AND RELEVANT LITIGATION HISTORY</u>

9. On February 4, 2022, Plaintiff provided notice of Plaintiff's allegations to the Labor and Workforce Development Agency (LWDA), as presented in Plaintiff's Second Amended Complaint. Plaintiff provided notice to Defendant as well. The LWDA did not respond to these notices, thus allowing Plaintiff to initiate the PAGA lawsuit under California Labor Code section 2699.3(a)(2)(A).

10. On August 1, 2022, Plaintiff filed the Complaint in this Action. On September 21, 2022, Plaintiff filed the First Amended Complaint. On December 2, 2022, the Court issued its Order granting the Parties' Stipulation for Leave to file Second Amended Complaint. On December 13, 2022, Plaintiff filed the Second Amended Complaint. On January 12, 2023, Defendant filed its Answer to Plaintiff's Second Amended Complaint.

11. On August 30, 2023, the Parties participated in mediation before the Hon. Ronald s. Prager (Ret.). The Parties settled the case at mediation.

12. The parties engaged in hard-fought litigation and intended to take their claims and defenses to trial. The parties engaged in voluminous discovery, which included:

- written discovery
- the production of documents

13. From Plaintiff's perspective, the evidence weighs in favor of Plaintiff due to Defendant's requirement for Plaintiff and Aggrieved Employees to use their personal cell phones in order to discharge their duties for Defendant without reimbursement in violation of California Labor Code Section 2802. Based on their investigation and discovery, Plaintiff was prepared to take the case to trial.

14. These facts and the continuing risk and expense of further litigation led the parties to pursue mediation. In preparation for the mediation, Defendant provided Plaintiffs with information and data necessary for penalty calculations, including employment files, sampling data for the PAGA Settlement Aggrieved Employees, the total number of PAGA Settlement

Aggrieved Employees, total number of pay periods between February 4, 2021 and April 7, 2024. Using this information, Plaintiff was able to calculate Defendant's total penalty exposure for the one-year statutory PAGA period.

15. The Settlement Agreement (Nathan Decl., Exhibit 1) involves the formation of a non-reversionary fund consisting of $300,000 ("Gross Settlement Fund"). The Gross Settlement Fund will be used to make payments to the LWDA and PAGA Settlement Aggrieved Employees after payment of attorney fees, costs of administration, Plaintiff's incentive award, Plaintiff's 1542 releases and litigation costs. Plaintiff's incentive award is requested in the amount of $5,000 and settlement administration costs to ILYM Group Inc. shall not exceed $10,000. Plaintiff has executed a Cal. Civil Code §1542 waiver for claims that can be individually asserted and are being released in exchange for $10,000.00. The Net Settlement Fund will be distributed as follows: Seventy-five percent (75%) of the Net Settlement Fund (i.e., $116,250) will be distributed to the California Labor & Workforce Development Agency ("LWDA") as required by the PAGA and the remaining twenty-five percent (25%), (i.e., approximately $38,750) will be distributed to all PAGA Settlement Aggrieved Employees on a pro-rata share basis based on the number of pay periods worked by each Settlement Aggrieved Employee. A true and correct copy of the parties Settlement Agreement is marked and attached hereto as "Exhibit 1."

16. After payment of administration, requested fees and costs, and service awards, the proposed settlement provides a Net Settlement Amount of $155,000 with approximately $116,250 allocated to the LWDA and $38,750 to the PAGA Settlement Aggrieved Employees. Based on this Settlement, the PAGA Settlement Aggrieved Employees will receive an average payment of $92.00 to be mailed to each of the 421, PAGA Settlement Aggrieved Employees.

17. Defendant will fund the Settlement Amount within 21 days of the Court's Order approving the Settlement. (Settlement Agreement § III(13).) The PAGA Settlement Aggrieved Employees will have 120 days to negotiate their checks. If for any reason a check is un-cashed, then a postcard reminder will be mailed. Should checks remain uncashed then the funds will be tendered to the California State Controller's Office, Unclaimed Property Division in the name of the employee(s). (Settlement Agreement § III(13)(d).) The Cover Letter (Settlement Agreement §

III(13)(c)) informing the PAGA Settlement Aggrieved Employees of the nature of the payment will be provided with the settlement check.

18. The parties agree that payments will be made to the LWDA and the aggrieved employees no later than fourteen (14) calendar days after the Settlement Administrator receives the Settlement Group Information and is wired the Gross Settlement Amount, which is the date the final approval order and judgment approving the settlement becomes final. (Settlement Agreement § I(9) III(13).The PAGA Settlement Aggrieved Employees will have 120 days to negotiate their checks. If for any reason a check is un-cashed, then a postcard reminder will be mailed. Should checks remain uncashed then the funds will be tendered to the California State Controller's Office, Unclaimed Property Division in the name of the employee(s). The Cover Letter informing the PAGA Settlement Aggrieved Employees of the nature of the payment will be provided with the settlement check. A true and correct copy of Cover Letter is attached hereto as "Exhibit 2."

19. In 2016, the PAGA was amended to require the Court to "review and approve any settlement of any civil action filed pursuant to this part." (Cal. Labor Code § 2699(1)(2).) The amendment also required that the "proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." As such, the Settlement and this Motion have been concurrently submitted to the LWDA in accordance with this section. A true and correct copy of the verification from the LWDA of the submission to the LWDA of the proposed settlement is attached hereto as "Exhibit 3."

20. Plaintiff's entire theory centers around Defendant's alleged practice of failing to reimburse expenses to Plaintiff and Aggrieved Employees for the use of personal cell phones while discharging their duties for Defendant. Defendant maintains data for all 421 PAGA Settlement Aggrieved Employees. Based on interviews with Plaintiff and the aggrieved employees, including Plaintiff, aggrieved employees were required to use their cell phones for approximately 2-3 hours every week, at the time of delivering products to customers. The 421 aggrieved employees were registered as drivers and authorized to drive Defendant's designated trucks. There was no specific schedule which would alert the aggrieved employees that they would drive one of Defendant's

vehicles on a particular day. Instead, managers would request aggrieved employees to deliver products on the spur of the moment if one of Defendant's customers made the request. These aggrieved employees were Defendants contend that aggrieved employees were not required to use their personal cell phones, because Defendant either provided trucks with operating navigation systems, phones were made available for use, or Defendant used a third-party delivery company to make the deliveries. The data produced by Defendant confirms approximately 20,000 pay periods for the approximately 421 PAGA Settlement Aggrieved Employees between February 4, 2021, through April 7, 2024.

21. Therefore, based on this analysis, Plaintiff believes the maximum total exposure value of the claims is $2,000,000.00 based on 20,000 pay periods (x $100 per violation).

22. These 421 employees were registered to drive in Defendant's database and only delivered products a few times a week and sometimes, none-at-all. During the deliveries, Plaintiff alleges that these aggrieved employees would use their cell phones to call the store, customers, and use their navigation system on their phone.

23. Under the PAGA, the realistic range for PAGA penalties range between $10-$15 per pay period. Courts have considerable discretion to reduce the penalty award below the maximum. In *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA penalties from $2,800,000.00 to $500,000.00, a reduction of 82.2%, because the court found maximum penalties "unjust." Some trial courts have awarded no civil penalties, even when Labor Code violations were established. Examples of such reductions include but are not limited to the following:

- *Makabi v. Gedalia* (2nd Dist. Ct. of App. Mar. 6, 2016) 2016 Cal.App.Unpub. 1489, *5–7 (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision).
- *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).
- *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801 (E.D. Cal. 2012), where the court approved a total PAGA penalty amount of $10,000, for as many as 2,055 current and

former employees.

- *Schiller v. David's Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. 2012), the court approved a PAGA penalty amount of $10,000 for 3,326 individuals.

- *Enombang v.Target*, Case No. RG17853948, on July 24, 2018 for a total amount of $9,000,000. The dispute involved 90,462 allegedly aggrieved employees and 1,939,006 pay periods in Alameda Superior Court. [$4.66 per pay period].

- *Pickett v. 99 Cents Only Stores*, Case No. BC473038, on August 1, 2017, for a total amount of $1,290,000. The dispute involved approximately 10,000 allegedly aggrieved employees and approximately 1,592,592.6 pay periods in Los Angeles Superior Court. [$.81 per pay period.]

- *Carrington v. Starbucks Corp.*, (2018) 30 Cal.App.5th 504, the Court of Appeal affirmed a judgment after trial which provided for a PAGA penalty of $5 per pay period. In *Doe v. Google, et al*., Case No. CGC-16-556034, the court approved $15 per aggrieved employee.

24. This result is positive and favorable to the State, which will receive $116,250. The PAGA Settlement Aggrieved Employees will receive $38,750, which amounts on average to $92 per aggrieved employee, which is an outstanding result considering this is a cell phone reimbursement case, wherein the Defendant alleges that it provides its employees phones and a GPS system in its vehicles for employees to use while working. Additionally, this is a case in which Plaintiff and Aggrieved Employees used their personal cell phones for limited periods of time.

HOURLY RATE

25. The fee request sought herein is reasonable in light of the contingent nature or the fee, the amount of work performed, the quality of work performed, and most importantly the results/benefits to the aggrieved employees.

26. Fee awards are almost always determined based on current rates, such as the attorney's rate at the time a motion for fees is made rather than the historical rate at the time the work was performed.

27. This Court can appreciate that litigating a high-stakes cases against defendant with deep pockets, represented by a top-notch law firm, dealing with issues that are unsettled is not

appealing to most lawyers. Even more challenging is the heightened risk as a result of having to finance that type of litigation, which was not undertaken lightly.

28. One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any consumers or employees pay attorney's fees on an hourly basis for such litigation. Thus, in such cases attorneys base their retainer agreements on a contingency fee relationship.

29. This PAGA action case involves California's wage and hour laws. Litigating a wage and hour PAGA action through trial can take years and frequently requires the investment of hundreds of thousands of dollars in costs. This is a very difficult area of law and not within the knowledge of many lawyers as it requires knowledge of the substantive law, representative action procedure and enforcement positions of state and federal agencies. This case involved a novel issue relating to the reimbursement for home office expenses. Representative action work of this type requires specialized learning and the willingness to take large risks. Plaintiffs' counsel used a high level of skill in the difficult questions that arose in this case.

30. Based on my knowledge and experience, the hourly rates charged by my firm are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. These are the same hourly rates that we actually charge to our hourly clients who have retained us for non-contingent matters, and which are actually paid by those clients. I have personal knowledge of the range of hourly rates typically charged by counsel in our field in California and I have weighted the market rates into account and have aligned my rate with that of the market.

31. Non-contingent market rates charged by attorneys in California are as follows: (1) by the attorneys' fee applications of counsel of record; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates filed by other attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises. Comparable hourly rates include:

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i. *Williams v. H&R Block Enterprises, Inc.*, Alameda County Superior Ct. No. RG08366506, Order of Final Approval and Judgment filed November 8, 2012, a wage and hour class action, in which the court found the hourly rates of $785, $775, and $750 reasonable for the more senior class counsel.

ii. *Pierce v. County of Orange*, 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar-based, *inter alia*, on 2011 rates of $850 and $825 per hour.

iii. *Holloway et. al. v. Best Buy Co., Inc.*, No. 05-5056 PJH (N.D. Cal. 2011) (Order dated November 9, 2011), a class action alleging that Best Buy discriminated against female, African American and Latino employees by denying them promotions and lucrative sales positions, in which the court approved lodestar-based rates of up to $825 per hour.

32. Surveys also justify my firm's hourly rate: Similarly, on February 25, 2011, the Wall Street Journal published an on-line article entitled "Top Billers." That article listed the 2010 and/or 2009 hourly rates for more than 125 attorneys, in a variety of practice areas and cases, who charged $1,000 per hour or more. Indeed, the article specifically lists *eleven* (11) Gibson Dunn & Crutcher attorneys billing at $1,000 per hour or more.

33. The Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 show that as far back as 2009, attorneys with as little as 19 years of experience were charging $800 per hour or more, and that the rates requested here are well within the range of those reported. Again, current rates are significantly higher.

34. Representative action cases unlike many others can only properly be litigated one at a time, which required me to forego accepting other cases during the time of this litigation. The requirements of this were significant.

35. There is no question that my firm was precluded from taking other cases, and in fact, had to turn away other meritorious fee-generating cases in order to meet the demands of this case.

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36. My co-counsel and my firm were paid nothing along the way and had to pay expenses for costs.

37. My hourly rate of $950.00 is supported by other courts issuing my firm similar fee awards.

38. My firm's fee application, in any case, before any court of law, has never been denied.

39. My firm undertook this representation on a contingent basis recognizing that the risk of non-payment has been high throughout this litigation. I recognized that there were substantial uncertainties in the viability of this case as a class action. A realistic assessment shows that the risks in the resolution of the liability issues, protracted litigation in this action as well as the probable appeals process, are great.

40. If this case had not resolved through settlement, I would have vigorously prosecuted the case through summary judgment, trial, and appeal. My firm was therefore at great risk for non-payment.

41. Based on our lodestar, my hourly rate is $950.00. I was the only attorney from my firm that worked on this case. The hours worked by my firm in covering eight categories are outlined in my firm's Time Report attached hereto as "Exhibit 4." I expended a total of 80.9 hours prosecuting this action, totaling **$76,855**.

42. Under Ninth Circuit standards, a District Court may award attorneys' fees under either the "percentage-of-the-benefit" method or the "lodestar" method. Fischel v. Equitable Life Assur. Soc'y, 307 F.3d 997, 1006 (9th Cir. 2002); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998). Class Counsel's fee request is fair and reasonable under either of these methods.

LITIGATION EFFORTS

43. In the instant case, Apple strongly denied liability and contended that it had meritorious affirmative defenses on both procedural and substantive grounds.

44. The prosecution of this action case involved a significant financial risk because Counsel took this case on a pure contingency basis (meaning no guarantee of ever being paid, if the case is lost), at the same time advancing all litigation costs out of their own pockets, while

incurring ongoing costs of paying overhead and salaries of employees who are working on this case.

45. In preparing this fee application, I reviewed the firm's time records, files and emails. Based on my review of these records, I can attest that all of the time set forth was reasonably devoted to pursuing the Plaintiffs' interests and otherwise would have been billed to a fee-paying client. To calculate the lodestar for the time spent on this case, I personally reviewed and summarized the billing records incurred in prosecuting the matter. I eliminated time entries that could be considered duplicative or inefficient. As of the filing of this motion, I have spent 80.9 hours in the prosecution of this lawsuit which was necessary to achieve a successful outcome. My lodestar as of the filing of this motion is $76,855. I have submitted time summaries setting forth in detail the categories of work performed and the amount of time spent on each of the various categories to support the number of hours expended. The categories are:

(1) Investigations, Factual Research

(2) Discovery

(3) Pleadings, Briefs and Pretrial Motions (includes legal research)

(4) Court Appearances

(5) Mediation Settlement and Administration

(6) Litigation Strategy, Analysis and Case Management

(7) Final Approval Hearing

(8) Trial Preparation and Trial

46. Attached hereto as "Exhibit 4" is a true and correct copy of the non-duplicative time I spent on the categories listed above.

47. The amount of time spent on this case is reasonable given the complexity and novelty of the issues involved, the vigorous defense provided by defense counsel, the length and intensity of the litigation, and the results obtained. Since its inception, Plaintiffs faced a phalanx of defenses as outlined in Defendant's Answer. Counsel litigated this action with skill and efficiency reflecting the amount of work required to achieve the settlement. Once the settlement was consummated our work has not stopped. We expect to work closely with the court appointed

notice administrator to assure that notice is provided consistent with this Court's orders and due process. We intend to promptly respond to all inquiries and we intend to continue our work until all responsibilities are discharged and all funds are dispersed.

48. I have reviewed the time and cost summaries submitted to the Court in the declarations of Mr. Righetti and Mr. Glugosk of Righetti Glugoski, P.C. I attest to the amount of work performed by these lawyers and their firm as well as the high quality of work and professional standards for both the lawyers and their firm. The work they performed was necessary to achieve a successful outcome and was not duplicative of the work performed by the Nathan & Associates, APC firm.

49. More importantly, not only are the attorney's fees being sought here in line with the market rates, but also approved by Courts in California.

- In *Enombang v. Target*, Alameda County Superior Court Case No. RG17853948, the court approved a settlement of $9,000,000 for 1,939,006 pay periods, which equates to $4.66 per pay period and Plaintiff's counsel were awarded 40% of the $9,000,000 settlement in attorney's fees;
- In *Varela et. al., v. Dolgen California, LLC*, Riverside County Superior Court Case No. RIC1306158, the court approved a fee award of $3,980,000.00 which equated to 40% of the Settlement Fund based on a lodestar of $2,783,570.00 times a multiplier of 1.43.

50. Marked and attached hereto as Exhibit 7 are true and correct copies of the Court Orders approving a 40% fee request.

COUNSEL'S COSTS

51. Nathan & Associates, APC incurred $1,124.45 in costs. Added to the costs incurred by Righetti Glugoski, P.C. as set forth in the Declaration of John Glugoski, the total costs incurred by Plaintiff's counsel during this litigation is $7,645.30. Attached hereto as "Exhibit 5" is a breakdown of the costs incurred by Nathan & Associates, APC in this case.

SETTLEMENT ADMINSTRATOR

52. ILYM will serve as the Settlement Administrator and will be responsible for

processing the settlement payments and providing notice to the PAGA Settlement Aggrieved Employees. The Settlement Agreement authorizes up to $10,000 in administration costs (Settlement Agreement ¶ 23) to ILYM. A true and correct copy of the CV for ILYM is attached hereto as "Exhibit 6."

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

Executed on April 18, 2024 in Newport Beach, California.

Reuben D. Nathan

EXHIBIT 1

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Attorneys for Defendant
HOME DEPOT U.S.A., INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

EDUARDO SANDOVAL on behalf of himself and all aggrieved employees, Plaintiff, vs. HOME DEPOT U.S.A., INC.; and DOES 1 through 25, inclusive, Defendants.	Case No. 22CV015414 **JOINT STIPULATION OF SETTLEMENT AND RELEASE OF CLAIMS** Complaint Filed: August 1, 2022

This Joint Stipulation of Settlement and Release of Claims ("Stipulation" or "Settlement") is entered into by and between plaintiff Eduardo Sandoval ("Plaintiff"), individually and on behalf of all others similarly situated and the State of California, as a private attorney general, on the one hand, and defendant Home Depot U.S.A., Inc. ("Defendant") on the other hand (collectively referred to as "the Parties").

This Settlement shall be binding on Plaintiff, the current and former employees he seeks to represent, on Defendant, and on their respective counsel, subject to the terms and conditions definitions, recitals, and terms set forth herein and to the approval of the Court.

I. DEFINITIONS

1. Action

"Action" or "Lawsuit" is defined as *Eduardo Sandoval v. Home Depot, U.S.A., Inc.,* which was filed in the Superior Court of the State of California for the County of Alameda (Case No. 22CV015414) on August 1, 2022.

2. Approval Hearing

"Approval Hearing" is defined as the hearing on the motion to be filed by Settlement Group Counsel to determine approval of the Settlement as described in Paragraph III(11).

3. Approval Order

"Approval Order" means the proposed order granting approval of the Parties' Settlement and constituting a Final Judgment, in a form substantially similar to the order attached hereto as **Exhibit A**.

4. Covered Period

"Covered Period" means the period from February 4, 2021 through the earlier of: (1) the date granting approval of the settlement of this Action; or (April 7, 2024.

5. Compensable Pay Periods

"Compensable Pay Periods" means the number of pay periods in which, according to Defendant's internal and currently available electronic records, the Settlement Group Member(s) both: (a) were qualified as associate drivers to make deliveries of products to customer homes during the Covered Period; and (b) actually performed compensable work for Home Depot as a non-exempt employee in California during the Covered Period. Defendant's internal records indicate that there are approximately 20,000 Compensable Pay Periods within the release period.

6. Complaint

"Complaint" means the Second Amended Complaint that was filed in Alameda County Superior Court, as described more fully below in Paragraph II(1).

7. Court

"Court" means the Alameda County Superior Court in the State of California.

8. Defendant

"Defendant" means Defendant Home Depot U.S.A., Inc. and includes its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, Settlement Administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

9. Effective Date

"Effective Date" of the Settlement means the date on which the Court's Order granting approval of this Joint Stipulation becomes final. Such Order becomes final upon the later of the following events: (a) the day after the last day by which a notice of appeal of the Order may be timely filed with an appellate court, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the appellate court's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the appellate court, and further review of the appellate court's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the appellate court affirms the Settlement.

10. Employees' Allocation

"Employees' Allocation" means the total amount of money allocated for payment to the Settlement Group Members pursuant to this Settlement, which shall equal 25% of the Net Settlement Fund.

11. Final Judgment

"Final Judgment" means a judgment issued by the Court approving this Settlement as binding upon the Parties.

12. Gross Settlement Fund

"Gross Settlement Fund" means the agreed upon settlement amount totaling $300,000.00 (Three-Hundred Thousand Dollars and Zero Cents) to be paid by Defendant in full settlement of the Released Claims, and includes without limitation the Settlement Group Counsel Award, Settlement Group Representative Service Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs. In no event shall Defendant be liable for more than the Gross Settlement Fund.

13. Individual Settlement Payment

"Individual Settlement Payment" means the amount paid from the Net Settlement Fund to a Settlement Group Member as described by the formula found at Paragraph III(5) based upon his/her Compensable Pay Periods.

14. LWDA

"LWDA" means the California Labor and Workforce Development Agency.

15. Net Settlement Fund

"Net Settlement Fund" means the remainder from the Gross Settlement Fund after deducting the Court-approved Settlement Group Counsel Award, Settlement Group Representative Service Award, and Settlement Administrator Costs.

16. PAGA

"PAGA" refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2699 et seq.

17. PAGA Payment

"PAGA Payment" means the payment made hereunder to the LWDA pursuant to PAGA, which shall equal 75% of the Net Settlement Fund as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA.

18. Parties

"Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean Plaintiff or Defendants, individually.

19. Plaintiff

"Plaintiff" means Plaintiff Eduardo Sandoval.

20. Released Claims

"Released Claims" means any and all claims, causes of action, and factual or legal theories that were or reasonably could have been alleged based on Plaintiff's allegation that Settlement Group Members were not reimbursed for all business expenses, including all of the following: (i) all claims (including those for civil penalties and attorneys' fees recover) that could be brought or recovered pursuant to PAGA relating to unreimbursed business expenses; and (ii) any other recovery or penalty that Plaintiff, acting as a proxy for the LWDA and State of California, could have reasonably sought relating to or arising out of allegations of unpaid business expenses.

21. Released Parties

"Released Parties" means Defendant and any of its former and present parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents, successors, assigns, or legal representatives.

22. Settlement

"Settlement" or "Settlement Agreement" means the disposition of the Lawsuit pursuant to this Joint Stipulation of Settlement and Release of Claims.

34. Settlement Administrator

"Settlement Administrator" means the third-party company that Plaintiff has selected to be responsible for administering the Settlement. Specifically, Plaintiff has selected ILYM Group as the Settlement Administrator so long as ILYM Group agrees to comply with Home Depot's data security protocols. In the event that ILYM Group does not agree to comply with Home Depot's data security protocols, Plaintiff will designate another Settlement Administrator who will agree to comply with Home Depot's data security protocols.

23. Settlement Administrator Costs

"Settlement Administrator Costs" means the amount to be paid to the Settlement Administrator from the Gross Settlement Fund for administration of this Settlement, currently estimated at $10,000.

24. Settlement Group Counsel

"Settlement Group Counsel" means Nathan & Associates, APC and Righetti Glugoski, P.C., who, subject to Court approval, shall act as counsel for the Settlement Group Members, including Plaintiff.

25. Settlement Group Counsel Award

"Settlement Group Counsel Award" means attorneys' fees for Settlement Group Counsel's litigation and resolution of this Lawsuit, and Settlement Group Counsel's expenses and legal costs incurred in connection with this Lawsuit.

26. Settlement Group Information

"Settlement Group Information" means information regarding Settlement Group Members that Defendant will in good faith compile from Defendant's internal and currently available electronic records and provide to the Settlement Administrator. To the extent possible, it shall be formatted as a Microsoft Excel spreadsheet. It shall include and be limited to, to the extent such information is available, each Settlement Group Member's: full name; last known address; last known home telephone number; social security number; and Compensable Pay Periods. The Settlement Group Information shall be provided to the Settlement Administrator but not Settlement Group Counsel. The Settlement Administrator shall keep the Settlement Group strictly confidential and not share it with the Settlement Group Counsel or any other entity, absent express written authorization from Defendant's Counsel.

27. Settlement Group Members

"Settlement Group Members" means the group of 421 retail store employees, who, during the Covered Period (as defined herein), were, according to Defendant's existing records, qualified as associate drivers to make deliveries of products to customer homes (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

28. Settlement Group Representative

"Settlement Group Representative" means Plaintiff Eduardo Sandoval.

29. Settlement Group Representative Service Award

"Settlement Group Representative Service Award" means the amount that the Court authorizes to be paid to Plaintiff, in recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Lawsuit. The Settlement Group Representative Service Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Group Member.

II. RECITALS

1. Procedural History

On February 4, Plaintiff sent the LWDA notice, via online filing, of his intent to file an action against Home Depot to seek civil penalties under PAGA.

On August 1, 2022, Plaintiff filed this Action Alameda County Superior Court, Case No. 22CV015414.

On or about October 10, 2022, Plaintiff filed a First Amended Complaint.

On or about December 14, 2022, Plaintiff Filed a Second Amended Complaint, which is the operative Complaint in this matter.

On August 30, 2023, the Parties attended a full-day mediation with experienced mediator Hon. Ronald S. Prager (Ret.). After a full-day's mediation the Parties reached an agreement, as provided herein, to settle Plaintiff's claims.

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in this Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for representative action treatment. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in this Action. Defendant contends, among other things, that, at all times, it has complied with all applicable state, federal and local laws related to the Settlement Group Members' employment.

The Settlement Group Representative is represented by Settlement Group Counsel. Settlement Group Counsel conducted an investigation into the facts relevant to the Action, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Settlement Group Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Settlement Group Members in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies liability, Defendant is agreeing to this Settlement solely to avoid the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth herein.

2. <u>Benefits of Settlement to Settlement Group Members.</u>

Plaintiff and Settlement Group Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Settlement Group Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the Settlement Group Members. Plaintiff and Settlement Group Counsel have also taken into account Defendant's agreement to enter into this Settlement that confers substantial relief upon the members of the Settlement Group Members. Based on the foregoing, Settlement Group Counsel have concluded that settlement 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 Settlement Group Members in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's financial condition, numerous potential appellate issues, and other risks inherent in litigation.

3. Defendant's Reasons for Settlement.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims asserted by Plaintiff and Settlement Group Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in this Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied with all applicable state, federal, and local laws.

4. Settlement of Disputed Claims.

This Agreement is a compromise of disputed claims. Defendant contends that the Released Claims have no merit and do not give rise to liability. Plaintiff and Settlement Group Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Settlement Group Members or Settlement Group Counsel as to the merits or lack thereof of the claims asserted in this Action.

III. TERMS OF AGREEMENT

1. PAGA Release

As of the Effective Date, Plaintiff, the LWDA, the State of California, and all Settlement Group Members (the "Releasing Entities") will release the Released Parties from the Released Claims, whether known or unknown. To be clear, the scope of this release is limited to the Released Claims. The Releasing Entities may later discover facts or legal arguments in addition to or different from those that they now know or currently believe to be true with respect to the claims, causes of action, and legal theories of the Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the Releasing Entities shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims. The Parties understand and specifically agree that the scope of this Release described in this Paragraph is a material part of the consideration for this Agreement, was critical in justifying the agreed upon economic value of the Settlement and without it, Defendant would not have agreed to the consideration provided, and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of the claims that were or could have been alleged based on facts, causes of action, and legal theories contained in the Action. The period of the release described herein shall extend through the entirety of the Covered Period.

2. <u>General Release by Plaintiff</u>

As of the Effective Date, and in exchange for payment of $10,000.00, Plaintiff knowingly and voluntarily releases and forever, to the fullest extent of the law, discharges the Released Parties from any and all claims, actions, charges, complaints, grievances and causes of action, without limitation, of every nature whatsoever, known or unknown, suspected or unsuspected, which Plaintiff has or may have had prior to and as of the date the Court enters an order approving of this Settlement. This broader release includes, but is not limited to, any and all claims arising directly or indirectly from Plaintiff's employment or other relationships with Defendant, claims under federal, state or local laws, claims for unpaid wages, penalties, liquidated damages, claims for breach of contract, tort claims, wrongful termination claims, disability claims, benefit claims, public policy claims, discrimination claims, failure to accommodate claims, claims for breach of the covenant of good faith and fair dealing, harassment claims, public policy claims, claims for impairment of economic opportunity, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the

Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance.

Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code §1542, which provides:

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

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. Plaintiff represents and warrants that as of the date of execution of this agreement he was under forty (40) years of age.

3. <u>Tax Liability and Medicare.</u>

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Group Members are not relying on any statement or representation by the Parties in this regard. Settlement Group Members understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect

Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare beneficiary as of the date of this Agreement. As such, no conditional payments have been made by Medicare.

4. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

5. Settlement Allocation, PAGA Payment, and Individual Settlement Payments.

The Parties will seek approval from the Court for a total Gross Settlement Fund of $300,000, from which the amounts identified in Paragraph I(15) shall be deducted to arrive at the Net Settlement Fund. The Net Settlement Fund shall be allocated and paid as follows: (a) the PAGA Payment shall constitute 75% of the Net Settlement Fund allocated as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA; and (b) the Employees' Allocation shall constitute 25% of the Net Settlement Fund allocated as payments to the Settlement Group Members. Each Settlement Group Member will be entitled to an Individual

Settlement Payment equaling a pro rata share of the Employees' Allocation based on their number of Compensable Pay Periods. Specifically, to calculate each Settlement Group Member's Individual Settlement Payment, the Settlement Administrator will: (a) for each Settlement Group Member, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods Worked by all Settlement Group Members; and then (b) multiply that amount by the PAGA Payment to arrive at each Settlement Group Member's Individual Settlement Payment.

6. <u>Payment to Settlement Group Member.</u>

Checks shall be made payable to each Settlement Group Member for payment of each Settlement Group Member's Individual Settlement Payment as set forth in Paragraph III(13) of this Agreement.

7. <u>Settlement Group Representative Service Award.</u>

Plaintiff will request that the Court approve a Settlement Group Representative Service Award of up to $5,000. However, even in the event the Court reduces or does not approve the requested Settlement Group Representative Service Award, Plaintiff and Settlement Group Counsel shall not have the right to revoke this Agreement or this settlement and it shall remain binding. Any Court-approved Settlement Group Representative Service Award shall be paid to Plaintiff from the Gross Settlement Fund within seven (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement Administrator. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiff for his respective Settlement Group Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Settlement Group Representative Service Award and shall hold harmless Defendant and Settlement Group Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the Settlement Group Service Award. The Settlement Group Service Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Group Member. Any amount requested by Plaintiff for the Settlement Group Service Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Settlement Group Members as provided in this Agreement.

8. Settlement Group Counsel Award.

Settlement Group Counsel will request that the Court approves attorneys' fees in the amount of up to one third of the Gross Settlement Fund. This amount is currently anticipated to be $100,000.00. Settlement Group Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Settlement Group Counsel's prosecution of this matter from the Gross Settlement Fund not to exceed $20,000. However, even in the event that the Court reduces or does not approve the requested Settlement Group Counsel Award (including fees and/or costs and/or expenses), Plaintiff and Settlement Group Counsel shall not have the right to revoke the Settlement and it will remain binding. Settlement Group Counsel shall be paid any Court-approved fees and costs no later than seven (7) calendar days after Defendant provides the Gross Settlement Fund to the Settlement Administrator. Settlement Group Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Settlement Group Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Settlement Group Counsel any particular amount in attorneys' fees and costs. Any amount requested by Settlement Group Counsel for the Settlement Group Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Settlement Group Members as provided in this Agreement.

9. Settlement Administrator Costs.

The Parties agree to allocate up to $10,000.00 of the Gross Settlement Fund for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Group Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

10. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be responsible for the following: processing and mailing payments to Plaintiff, Settlement Group Counsel, and Settlement Group Members; printing, and mailing the Notice of Settlement and tax forms to the Settlement Group Members as directed by the Court; providing declaration(s) as necessary; other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform; and becoming familiar with and complying with all of the terms, conditions and obligations set forth in this Agreement in its entirety. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Settlement Administrator has been selected by Settlement Group Counsel and not Defendant or Defendant's Counsel. Defendant and Defendant's Counsel shall not enter into or be bound by any contractual relationship with the Settlement Administrator. Plaintiff, Settlement Group Counsel, Defendant, and Defendant's counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments.

11. <u>Approval Hearing, Implementation, and Entry of Final Judgment.</u>

The Parties will seek to obtain Court approval of this Settlement by way of a motion to be filed by Settlement Group Counsel. The Approval Hearing shall be conducted to determine approval of the Settlement along with the amount properly payable for: (i) the Settlement Group Counsel Award; (ii) the Settlement Group Representative Service Award; (iii) Individual Settlement Payments; and (iv) the Settlement Administrator Costs. The Parties are aware that some courts approve PAGA settlements and enter orders approving the settlement and judgment and thereafter close the case, while others approve the settlement and enter only an order approving the settlement with later instructions to file a request for dismissal of the action.

The Parties agree to cooperate and take all steps consistent with this Agreement and required by the Court to implement the settlement and terminate the Action pursuant to settlement (i.e., to terminate the Action by way of judgment and/or dismissal) and effectuate the PAGA Release and General Release described in Paragraphs III(1) and III(2). Settlement Group Counsel shall provide to Defendant's Counsel copies of all documents (including exhibits and declarations) relating to or intended to effectuate this Settlement at least five (5) days before they are filed with the Court.

Because this is a settlement of PAGA claims for civil penalties only, no portion of the

Settlement is allocated to unpaid wages. One hundred percent (100%) of the Settlement will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

None of the Settlement Group Members shall be entitled to opt-out of the Settlement and all will be subject to the res judicata effect of the Settlement.

12. Court Approval Is Required

The Parties and their Counsel understand and agree that Plaintiff, the Settlement Group, Settlement Group Counsel, the LWDA, and the State of California will not receive any of the consideration or payments described in this Agreement unless and until: (a) all Parties execute this Agreement; (b) the Parties fulfill all of the promises and obligations described in this Agreement; (c) the Court grants full, final and binding approval of the Settlement; and (d) Plaintiff provides notice to the LWDA pursuant to Labor Code Section 2699(l)(2). If the Settlement Agreement is not approved by the Court as currently drafted, or pursuant to modifications mutually agreed upon by all Parties, it shall be null and void.

13. Disbursal of Settlement Funds / Notice to Recipients

After completion of the items described in Paragraph III(12), and no earlier than twenty one (21) calendar days from the Court's issuance of a written order granting approval of the Settlement and such order becoming final, Defendant shall wire to the Settlement Administrator the total amount of the Gross Settlement Fund.

The Settlement Administrator shall distribute each member of the Settlement Group their individually calculated payments by way of check, along with a cover letter agreed to by the Parties and approved by the Court (the "Cover Letter"), in substantially the form attached hereto as **Exhibit B**, in the following manner:

(a) No later than ten (10) calendar days after the Court issues a written order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with the Settlement Group Information.

(b) The Settlement Administrator will conduct one (1) National Change of Address

("NCOA") search for all individuals identified in the Settlement Group Information and update addresses for the members of the Settlement Group to the extent updated addresses are located through the NCOA search.

(c) No later than fourteen (14) calendar days after the Settlement Administrator receives the Settlement Group Information and is wired the Gross Settlement Amount, the Settlement Administrator will mail the agreed-upon Cover Letter and individual payments to all members of the Settlement Group by first-class United States mail (collectively, the "Settlement Package"). For each Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the Settlement Administrator will promptly attempt to locate an alternate, updated address for the individual at issue by using a skip-trace search and shall attempt one (1) remailing of the Settlement Package.

(d) Individual checks sent to Settlement Group Members shall remain valid for one hundred twenty(120) calendar days, and thereafter shall be cancelled by the Settlement Administrator. Funds associated with canceled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the recipient at issue and in the amount of his or her respective individual payment.

(3) No later than fourteen (14) calendar days after the Settlement Administrator is wired the Gross Settlement Amount, the Settlement Administrator will transmit the PAGA Payment to the LWDA.

(4) No later than fourteen (14) calendar days after the Settlement Administrator receives the Settlement Group Information and is wired the Gross Settlement Amount, the Settlement Administrator will transmit the Settlement Group Counsel Award to Settlement Group Counsel.

(5) No later than fourteen (14) calendar days after the Settlement Administrator receives the Settlement Group Information and is wired the Gross Settlement Amount, the Settlement Administrator will transmit the Settlement Administrator Costs to itself, only after all of the Settlement Packages have been mailed to all Settlement Group Members.

(6) Upon complete distribution of the Gross Settlement Fund, the Settlement

Administrator will notify the Parties of such distribution.

14. <u>Nullification of Settlement Agreement.</u>

In the event: (i) the Court denies approval of the Settlement; (ii) the Court refuses to enter a Final Judgment as provided herein; or (iii) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. If one or more of such events occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the party terminating the Settlement. The return of any funded, transferred or paid Settlement funds to Defendant shall occur no later than five (5) business days after one or more of the triggering events leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

15. <u>No Effect on Employee Benefits.</u>

Amounts paid to Plaintiff or other Settlement Group Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Group Members.

16. <u>No Admission by Defendant.</u>

Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing whatsoever. This Agreement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

17. <u>Exhibits and Headings.</u>

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

18. Interim Stay of Proceedings.

The Parties agree to an immediate stay of all proceedings and activity in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Approval Hearing to be conducted by the Court. The Parties agree that within five court days after the complete execution of this Agreement, they will submit to the Court a stipulation to stay all discovery, pre-trial and trial deadlines in the Action to focus their efforts on effectuating this Settlement.

19. Amendment or Modification.

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

20. Entire Agreement.

This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering in to this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

21. Authorization to Enter into Settlement Agreement.

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their reasonable best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

22. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

23. Governing Law, Interpretation, and Breach.

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California. In the event of a breach of any provision of this Settlement, all Parties reserve their rights to institute an action specifically to enforce any term or terms of this Agreement or seek damages for breach, or both. In an action to enforce any term or terms of this Agreement or seek damages for breach, the prevailing Party in that action will be entitled to recover reasonable attorney's fees and costs form the non-prevailing Party.

24. Counterparts.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

25. Jurisdiction of the Court.

The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

26. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

27. Publicity.

Plaintiff and Settlement Group Counsel agree not to disclose or publicize this Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential Settlement Group Members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and Settlement Group Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording, website or social media post, or any other medium, with any person or entity concerning the Settlement, including the fact of the settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, for the limited purpose of allowing Settlement Group Counsel to prove adequacy as class counsel in other actions, Settlement Group Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes.

28. No Unalleged Claims.

Plaintiff and Settlement Group Counsel represent that they, as of the date of execution of this Settlement, are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are covered by this Settlement; and/or (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant. Plaintiff and Settlement Group Counsel further represent that, other than the instant Action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum. Settlement Group Counsel further represent they do not currently represent any persons who have expressed any interest in pursuing litigation against or seeking any recovery from Defendant. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice. The Parties acknowledge, understand and agree that the representations described in this paragraph are essential to the Settlement and that this Settlement would not have been entered into were it not for this representation.

29. Notice of Settlement to LWDA.

Plaintiff will submit this Agreement and proposed settlement to the LWDA as required by Labor Code Section 2699(l)(2) at the same time that it is submitted to the Court for approval.

WHEREFORE, Plaintiff, on behalf of himself and the Settlement Group Members, and Defendant has executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

DATED: 4/16/24.

By:
Yoko Yagi Okula
THE HOME DEPOT USA, INC.

DATED: 4/12/2024

By: DocuSigned by: Eduardo Sandoval 910B2DEE2CD140B...
Eduardo Sandoval
PLAINTIFF

APPROVED AS TO FORM:

DATED: 4/15/2024, 2023

NATHAN & ASSOCIATES, APC

By: DocuSigned by: Reuben D. Nathan 3AC2DBE408C347F...
Reuben D. Nathan

Attorneys for Plaintiff and Proposed Class

DATED: 4/12/2024, 2023

RICHETTI GLUGOSKI, P.C.

By: DocuSigned by: Matthew Righetti CD11929C76BD477...
Mathew Righetti

Attorneys for Plaintiff and Proposed Class

DATED: 4/16/2024

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: ______________________
Evan R. Moses
Eric E. Suits

Attorneys for Defendant
HOME DEPOT USA, INC.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

EDUARDO SANDOVAL on behalf of himself and all aggrieved employees, Plaintiff, vs. HOME DEPOT U.S.A., INC.; and DOES 1 through 25, inclusive, Defendants.	Case No. 22CV015414 **[PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ENTRY OF JUDGMENT** Complaint Filed: August 1, 2022

The Court has considered MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ENTRY OF JUDGMENT, including the Settlement Agreement, and the record in this action ("the Litigation"). The matter having been submitted and good cause appearing,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. All defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement and the MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ENTRY OF JUDGMENT. The Labor Code Private Attorneys General Act, codified at California Labor Code section 2698 et sec. is referred to herein as "PAGA."

2. The Action consists of (a) a representative action by Plaintiff Eduardo Sandoval ("Settlement Group Representative") against Defendant Home Depot U.S.A., Inc. ("Home Depot") under PAGA for penalties on behalf of the State of California and 421 retail store employees of Home Depot who, during the Covered Period (from February 4, 2021 through the date the Court grants approval of the Settlement; or April 7, 2024, "Covered Period") were, according to Defendant's existing records, qualified as associate drivers to make deliveries of products to customer homes (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) ("Settlement Group Members").

3. The Court has jurisdiction over the subject matter of the Litigation, the PAGA Representatives, the Aggrieved Employees, and Home Depot. This Judgment shall be binding not only on the named parties to the litigation but also on all Aggrieved Employees and the State of California, who are hereby barred by the doctrine of res judicata from re-litigating the Released Claims. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (holding that a judgment in a representative action brought by an aggrieved employee under PAGA is binding not only on the named employee Plaintiffs but also on state labor law enforcement agencies and any aggrieved employee not a party to the proceeding).

4. In accordance with the Settlement Agreement, which the Court hereby approves based on good cause showing for the reasons set forth in the Motion for Approval of PAGA Settlement and with no objection received from the LWDA: (a) The Gross Settlement Amount

under this Settlement Agreement is Three Hundred Thousand Dollars ($300,000.00), which includes any and all payments that shall be made pursuant to the PAGA to the Labor Workforce Development Agency, the Aggrieved Employees, Plaintiff's Counsels' fees and litigation costs, Service Payment to the Named Plaintiff, and all third-party costs of settlement administration; (b) ILYM Settlement Administrators is hereby approved to administer this Settlement; and (c) the LWDA and all Aggrieved Employees are hereby permanently enjoined from pursuing, or seeking to reopen, any Released Claims against any Released Parties.

5. Plaintiff's request for attorneys' fees in the amount of $100,000.00, Plaintiff's request for reimbursement of litigation costs in the amount of $7,645.30, Plaintiff's service award of $5,000.00, and Plaintiff's 1542 release as to all claims Plaintiff may have or could have asserted against Home Depot in exchange for $10,000.00 are hereby approved to compensate Plaintiff and his counsel in connection with the prosecution of the Released Claims. The Court finds that the attorneys' fees, litigation costs, service awards, and 1542 releases are reasonable under the circumstances of this matter, including the length of the proceeding and effort required. No party shall be deemed a prevailing party, and except as provided in this Paragraph, all parties shall bear their own attorneys' fees and litigation costs.

6. Pursuant to PAGA and Labor Code section 2699(l) in particular, the Court approves the Settlement and finds that it is fair, just, reasonable and adequate. The Settling Parties are directed to perform their duties in accordance with the terms set forth in the Settlement Agreement.

7. All of the Released Claims are deemed adjudicated and extinguished with prejudice as to the PAGA Representative, all of the other Aggrieved Employees, and the State of California.

8. Settlement Administrator shall make the payments to the LWDA, the Aggrieved employees, the Named Plaintiff, Plaintiff's counsel and to the Settlement Administrator as provided for in the Settlement Agreement.

9. The Court finds that, under California law (which is applicable here), class action procedural rules are not required when litigating representative PAGA actions. (See *Arias v.*

Superior Court (2009) 46 Cal.4th 969.) The differences between a traditional class action and a PAGA suit are well summarized in *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435-436 (9th Cir. 2015) *en banc review denied* (2016). Following the California Supreme Court's decision in *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit explained:

> The class action is a procedural device for resolving the claims of absent parties on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 613-17 (1997). By contrast, a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer. An employee bringing a PAGA action does so "as the proxy or agent of the state's labor law enforcement agencies," *Iskanian,* 59 Cal.4th at 380 (quoting *Arias v. Superior Court,* 46 Cal.4th 969, 986 (2009)), who are the real parties in interest, *see id.* at 382. As the state's proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent employees, Cal. Lab.Code § 2699(g)(l), just as the state could if it brought an enforcement action directly. However, by obtaining such penalties, the employee-plaintiff does not vindicate absent employees' claims, for the PAGA does not give absent employees any substantive right to bring their "own" PAGA claims. *See Amalgamated Transit Union. Local 1756, AFL-CIO v. Superior Court,* 46 Cal .4th 993. 1003 (2009); *see also Iskanian,* 59 Cal.4th at 381 (explaining that "[t]he civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities").
>
> *Sakkab, supra* at 435-436.

10. The Court finds that the notice requirements and other procedures applicable to class action settlements do not apply to the settlement approval process for this PAGA Action.

11. The Court further finds that Plaintiff's counsel has sufficiently demonstrated that notice of the Settlement has been provided to the LWDA as required by PAGA and Labor Code section 2699, subdivision (l)(2), in particular.

12. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other

tribunal. Home Depot U.S.A, Inc. or any of the Released Parties may file the Settlement and/or the Judgment from this Litigation in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The Court reserves exclusive and continuing jurisdiction over the Action, the PAGA Representative, the Aggrieved Employees and Home Depot U.S.A, Inc. for the purposes of supervising the implementation, enforcement, construction, administration and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED AND ADJUDGED.

Dated: ___________________

____
Hon. Karin Schwartz
Judge of the Superior Court

EXHIBIT B

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

Re: Payment From *Eduardo Sandoval v. Home Depot U.S.A., Inc., et al.*
Case No. 22CV015414 (Alameda County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled Eduardo Sandoval v. Home Depot U.S.A., Inc., et al., Case No. 22CV015414 (Alameda County Superior Court) (the "Action").

The Action was filed against Defendant Home Depot U.S.A., Inc. ("Defendant"). The Action was brought by employees of Defendant on behalf of the State of California and all allegedly "aggrieved employees" of Defendant pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders. Moreover, in agreeing to this settlement, Defendant does not admit that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action, but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the State of California will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is both below and at the top of this letter).

Very Truly Yours,

[Administrator]

EXHIBIT 2

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

Re: Payment From *Eduardo Sandoval v. Home Depot U.S.A., Inc., et al.*
Case No. 22CV015414 (Alameda County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled Eduardo Sandoval v. Home Depot U.S.A., Inc., et al., Case No. 22CV015414 (Alameda County Superior Court) (the "Action").

The Action was filed against Defendant Home Depot U.S.A., Inc. ("Defendant"). The Action was brought by employees of Defendant on behalf of the State of California and all allegedly "aggrieved employees" of Defendant pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders. Moreover, in agreeing to this settlement, Defendant does not admit that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action, but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the State of California will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is both below and at the top of this letter).

Very Truly Yours,

[Administrator]

EXHIBIT 3

EXHIBIT 4

Sandoval v. Home Depot

TIME REPORT

Firm Name: Nathan & Associates, APC

Categories:

(P) Partner
(A) Associate
(LC) Law Clerk

(1) Investigations, Factual Research
(2) Discovery
(3) Pleadings, Briefs and Pretrial Motions (Including Legal Research)
(4) Court Appearances
(5) Mediation Settlement and Administration
(6) Litigation Strategy, Analysis and Case Management
(7) Final Approval
(8) Trial Preparation and Trial

ATTORNEY OR PARALEGAL	1	2	3	4	5	6	7	8	HOURS	HOURLY RATE	LODESTAR
Reuben Nathan (P)	15.4	6.8	31.8	0.00	7.5	17.4	2.0 (Est.)	0.00	80.9	950.00	**$76,855.00**
TOTALS:									80.9		**$76,855.00**

EXHIBIT 5

Sandoval v. Home Depot U.S.A., Inc.
Case No.: 22CV015414

NATHAN & ASSOCIATES, APC - COSTS

TOTAL:

$1,124.45

ITEM:	Cost	ATTORNEY:	CASE:
Case Filing Fee (Complex Filing Fee refunded @ $1,000.00/Case Deemed Non-Complex)	$435.00	RDN	SANDOVAL
PAGA Filing Fee	$75.00	RDN	SANDOVAL
Attorney Service Fees (Service of Summons & Complaint on Defendant)	$98.60	RDN	SANDOVAL
One Legal Fees (Includes Court Techology Fees, Filing Fees, E-Service Fees, etc.)	$421.95	RDN	SANDOVAL
Paper Fees	$29.75	RDN	SANDOVAL
Supplies	$17.39	RDN	SANDOVAL
Postage/Courior Fees	$46.76	RDN	SANDOVAL

EXHIBIT 6

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 14 years of experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

• Wage and Hour	• Consumer	• TCPA
• FLSA	• Finance	• Antitrust
• Insurance and Health Care	• ERISA	• Securities

Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

Kruger, et al. v. Novant Health

- ERISA Case with a class size of $32 million.

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with $62 million.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- ***Administration Consultation***: Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- ***Fulfillment and Correspondence***: All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.

- ***Reverse Lookup***: A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.

- ***Creating Class Database***: All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.

- ***Claim Forms***: ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.

- ***Translations***: When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.

- ***Remails***: Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

MEDIA & INTERNET BANNER ADS
Notice Publication

- ***Legal Notices***: ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.

- ***Electronic Publication (Banner Ads)***: ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.

- ***Electronic Mail Notices***: ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always "White List" accepted with minimal returns.

- ***Reach***: Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.

- ***Services Included***: Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- ***Case Notification, Maintenance and Management***: ILYM Group, Inc.'s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.

- ***Claims Processing***: All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.

- ***Call Center***: ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.

- ***Internet Support***: Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ's) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.

- ***Objection and Request for Exclusion***: All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels' no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

DATA ADMINISTRATION AND NETWORK SECURITY

- ***Network Security***: All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.

- ***Database Administration:*** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- ***Distribution and Management***: Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.

- ***Check Printing and Mailing***: Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.

- ***Preparation, Filing and Reporting of Taxes***: ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- ***Data Manager Final Report***: All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.

- ***Project Manager Final Report***: All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.

- ***Affidavits***: ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.

- ***Document Retention***: Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT 7

7/20/2020

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 30 2020

S. Salazar

THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

JUAN VARELA and VICTORIA LEE DINGER MAIN, an individual and on behalf of all others similarly situated, Plaintiff, vs. DOLGEN CALIFORNIA, LLC, and DOES 1 through 50, inclusive, Defendants.	**CLASS ACTION** **CASE NO.** RIC1306158 **~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT; JUDGMENT** Date: July 27, 2020 Time: 8:30 a.m. Dept.: 6 Hon. Sunshine Sykes

WHEREAS, the above-entitled action is pending before this Court as a certified class action;

WHEREAS, on January 8, 2020, the Court entered the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and preliminary approved the Plaintiffs' and Defendant's Amended Stipulation for Settlement of Class and Representative Claims ("Settlement Agreement");

WHEREAS, Plaintiffs timely petitioned this Court for an order finally approving the Settlement and for an order granting Plaintiffs' motion for attorneys' fees, reimbursement of litigation costs, class representative enhancements and claims administration costs on April 22, 2020;

WHEREAS, on July 27, 2020 at 8:30 a.m. in the above-captioned Court, the Hon. Sharon J. Waters presiding, a hearing was held on Plaintiffs' Motion for Final Approval of Class Action Settlement and on Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Costs, Class Representative Enhancements and Claims Administration Costs, as set forth in the Settlement Agreement.

NOW, THEREFORE, GOOD CAUSE APPEARING, THE IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement preliminary approved by the Court on December 24, 2019 and filed on January 8, 2020, and all terms defined therein shall have the same meaning in this Order.

2. This Court has jurisdiction over the subject matter of this litigation and over all Parties to this litigation, including the Plaintiffs, Defendant and the Settlement Class Members.

3. Pursuant to the Preliminary Approval Order, the Court-appointed Settlement Administrator, Phoenix Settlement Administrators, mailed the Court-approved NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING to all known Settlement Class Members by First Class U.S. Mail. The Notice of Settlement fairly and adequately informed Settlement Class Members of the terms of the proposed Settlement and the benefits available to Settlement Class Members. The Notice of Settlement further informed Class Members of the pendency of the Action, of the proposed Settlement, of the Settlement Class

Members' right to receive their share of the proceeds from the Net Settlement Fund, of the scope and effect of the Released Claims, of the Court's order preliminarily approving the Settlement Agreement, of exclusion and objection and workweek dispute timing and procedures, of the date of the Final Approval Hearing, and of the right to file documentation in support of or in opposition to the Settlement and/or to appear in connection with the Final Approval Hearing. Settlement Class Members had adequate time to consider this information and to use the procedures identified in the Notice. The Court finds and determines that this notice procedure afforded adequate protections to Settlement Class Members and provides the basis for the Court to make an informed decision regarding final approval of the Settlement based on the responses of Class Members. The Court finds and determines that the Notice provided in the Action was the best notice practicable, which satisfied the requirements of law and due process.

4. In response to the Notice, the Court finds that there were no valid objections submitted by Class Members, and that only three individuals requested exclusion from the Settlement out of 5,445 individuals who were sent the Notice.

5. The Court finds that the Settlement offers significant monetary recovery to the Settlement Class Members and finds that such recovery is fair, adequate and reasonable when balanced against further litigation related to procedural, liability and damages issues. The Court further finds that extensive investigation, formal and informal discovery, research and litigation have been conducted such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective positions at this time. The Court finds that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. The Court further finds that the Settlement has been reached as the result of non-collusive, arms' length negotiations. Thus, the Court approves the settlement set forth in the Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate and reasonable and directs the Parties to effectuate the Settlement according to its terms.

6. For purposes of this Final Approval Order and for this Settlement only, the Court hereby certifies the Class as defined in the Settlement Agreement. Furthermore, the Court

hereby confirms the appointment of Plaintiffs Juan Varela and Victoria Lee Dinger Main as the class representatives for the Settlement Class.

7. The Court hereby orders the Settlement Administrator to distribute the Individual Settlement Payments to Participating Class Members and to the LWDA in accordance with the provisions of the Settlement Agreement.

8. For purposes of this Final Approval Order and this Settlement only, the Court hereby confirms the appointment of Michael C. Righetti and Matthew Righetti of Righetti Glugoski P.C. and Michael Malk of the Malk Law Firm as Class Counsel.

9. With regard to Plaintiffs' request for attorneys' fees totaling $3,980,000.00, Plaintiffs' counsel provided a lodestar of $2,783,570.00 resulting in a multiplier of approximately 1.43. The fee amount requested is 40% of the Gross Settlement Fund. The Court finds that Class Counsel, having conferred a substantial benefit upon the Settlement Class Members and having expended great efforts to secure such benefit over seven years of litigation, is entitled to recover attorneys' fees as well as reimbursement of their litigation expenses. Given the duration of this litigation, the extent of the work performed, the large amount recovered on behalf of the Settlement Class Members, and because the requested 1.43 multiplier falls within a reasonable range, the Court finds the fee request is fair and reasonable. As such, the Court approves Plaintiffs' unopposed request for attorneys' fees of $3,980,000.00. Furthermore, the Court approves Plaintiffs' unopposed request for reimbursement of their litigation expenses in the amount of $200,000 finding that such expenses were reasonably incurred in the prosecution of this action, and there were no objections from Defendant or any Settlement Class Members.

10. Further, the Court finally approves the Class Representative Enhancement Awards to Plaintiffs in the amount of Twenty Thousand Dollars ($20,000) for each Plaintiff. The Court finds that both Plaintiffs contributed substantially to the prosecution of this action and took substantial risks on behalf of the Settlement Class Members. The Court hereby orders the Settlement Administrator to distribute the Class Representative Enhancement Awards to the Plaintiffs in accordance with the provisions of the Settlement Agreement.

11. For purposes of this Final Approval Order and this Settlement only, the Court hereby

confirms the appointment of Phoenix Settlement Administrators as the Settlement Administrator to complete the administration of the Settlement Agreement and further finally approves Settlement Administration Costs as fair and reasonable of $30,000.00.

12. As of the Effective Date, Plaintiffs, Participating Class Members and the LWDA shall be deemed to have released the Released Parties from all Released Claims. As of the Effective Date, Plaintiffs, Settlement Class Members and the LWDA are hereby permanently enjoined and restrained from and against initiating or pursuing any of the Released Claims in the Settlement Agreement.

13. After Settlement administration has been completed in accordance with the Settlement Agreement, Plaintiffs shall file a report with this Court certifying compliance with the terms of the Settlement. The Court sets a non-appearance compliance hearing for December 10, 2020. A declaration(s) regarding disposition of the settlement shall be filed at least five court days prior to the hearing.

14. The Court hereby enters final judgment in this action on the merits and with prejudice in accordance with the terms of the Settlement Agreement.

15. Without affecting the finality of this Final Approval Order in any way, and pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court, Rule 3.769(h), the court reserves exclusive and continuing jurisdiction over this Action, the interpretation, implementation and enforcement of the Settlement and all orders and judgments entered in connection therewith.

IT IS SO ORDERED

DATED: July 28, 2020

Sharon Waters
HONORABLE SHARON J. WATERS
JUDGE OF THE SUPERIOR COURT

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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By [signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA - OAKLAND - RCD COURTHOUSE

VALERIE ENOMBANG, individually and on behalf of all other similarly situated aggrieved employees, Plaintiff, v. TARGET CORPORATION, and DOES 1-10, inclusive, Defendants.	CASE NO. RG17853948 [~~PROPOSED~~] ORDER GRANTING JOINT MOTION FOR APPROVAL OF SETTLEMENT AND JUDGMENT THEREON; AND AWARDING ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS Date: July 24, 2018 Time: 3:00 p.m. Dept: 23 Judge: Hon. Brad Seligman

The hearing on the parties' Joint Motion for Approval of Settlement came for hearing on July 24, 2018, in the Alameda County Superior Court, the Honorable Brad Seligman, presiding. The Court has reviewed the materials submitted by the parties, including the Settlement Agreement ("Settlement") and various motions and supplemental briefs.

During the hearing, the Court expressed concern about Section II(E)(2) of the Settlement, which sets forth a waiver of rights under Civil Code section 1542. The parties have agreed to strike Section II(E)(2) from the Settlement. With that revision, the Court finds the Settlement is entitled to judicial approval and meets all of the requirements for approval under the Labor Code Private Attorneys General Act, including the notice of the Settlement having been properly provided to the California Labor and Workforce Development Agency

("LWDA"). The Court also finds that the LWDA has not objected to, and is deemed to have approved of, the terms of the Settlement. The Court further finds that, although no one other than the LWDA has standing to object to the terms of the Settlement, no other objection to the Settlement has been received by the Court.

The Court further finds that executing the seating program set forth in Section II(B)(2)(a-d) of the Settlement, namely notifying each affected employee of the right to request and be provided with a suitable seat or stool, and by actually providing a suitable seat or stool if requested, complies with Section 14 of Wage Order 7-2001.

The Court additionally finds that the dismissal of the PAGA cause of action in *Thompson* without prejudice as to non-Cashiers comports with the requirements of PAGA, that because the PAGA cause of action in *Thompson* was brought solely as a representative action under PAGA, and not as a class action, the non-Cashiers have no legally cognizable interest that is impacted by the dismissal of *Thompson*, the non-Cashiers in *Thompson* have no right to notice of the dismissal, and the non-Cashiers in *Thompson* have no standing to object or otherwise challenge the dismissal.

Accordingly, the Court hereby orders, adjudges, and decrees as follows:

1. The Parties, their Counsel, and the Settlement Administrator shall take all steps necessary to implement and consummate the Settlement according to the terms and provisions, including but not limited to the parties effectuating the dismissals of *Murphy v. Target Corporation*, U.S. District Court for the Southern District of California Case No. 09-1436 and *Thompson v. Target Corporation*, U.S. District Court of the Central District of California Case No. 16-0839, pursuant to Section II(D)(2) of the Settlement.

2. The Court awards plaintiffs' counsel attorneys' fees in the amount of Three Million, Six Hundred Thousand Dollars and No Cents ($3,600,000.00), plus costs in the amount of Two Hundred Thousand Dollars and No Cents ($200,000.00). The Court finds the attorney hours, hourly rates, and costs incurred by plaintiffs' counsel over this nine-year litigation as reflected in their declarations were reasonable, and further that plaintiffs' counsel are entitled to a multiplier given the novelty of the claims and the contingent nature of the fee.

The Court further awards the representative plaintiffs, Valerie Enombang, Danyell Murpy, Candi Perry, and Stacy Thompson, Twenty Thousand Dollars ($20,000.00) each for the time they spent, and the risk they undertook, in prosecuting these actions on behalf of the State and the aggrieved employees. All of these amounts shall be deducted from the $9 million settlement fund. Attorneys' fees shall be distributed consistent with the Settlement.

3. Without affecting the finality of this Judgment or the Settlement, this Court shall, pursuant to Section II(F)(3) of the Settlement, retain continuing jurisdiction over the parties to this action to ensure effectuation of the Settlement in accordance with the terms of the Settlement and this Judgment.

4. To the extent any settlement checks are uncashed by the deadline provided in the Settlement, or in the event there any other undistributed settlement funds, such funds shall be paid to the Equal Access Fund of the Judicial Branch, to be distributed in accordance with Bus. & Prof. Code sections 6216 to 6223.

5. Judgment and dismissal is hereby entered as to Plaintiff Valerie Enombang, the LWDA, and all individuals who worked for Defendant in California as a Cashier as that term is defined in the Settlement Agreement at any time from April 14, 2008 through the date of this Order.

6. Except as otherwise provided by the Settlement, each side shall bear their own attorneys' fees and costs.

IT IS SO ORDERED.

DATED: 8/2/18

HON. BRAD SELIGMAN
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG17853948
Case name: Enombang v. Target Corporation

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was emailed to the addresses shown on at the bottom of this document.

Dated: August 03, 2018

Jhalisa A. Castaneda
Courtroom Clerk, Dept. 23

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