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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15 JAIME UGARTE and JULIAN PINEDA,  
Individually and On Behalf of All Other  
16 Similarly Situated Employees,

17 Plaintiffs,

18 vs.

19 S.P. CARPET PROS, INC.; HOME DEPOT  
U.S.A., INC; J.W. FLOOR COVERING,  
20 INC., AND DOES 2 THROUGH 100,  
inclusive,

21 Defendants.

Case No. BC613043

[Assigned For All Purposes to the Honorable  
Kenneth R. Freeman, Dept. 14]

**SECOND AMENDED JOINT STIPULATION OF  
CLASS ACTION SETTLEMENT AND  
RELEASE**

22 Date Action Filed: March 8, 2016

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1                   **SECOND AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND**  
2                   **RELEASE**

3                   This Second Amended Joint Stipulation of Class Action Settlement and Release (“Settlement”  
4                   or “Settlement Agreement”) is made and entered into by and between plaintiffs Jaime Ugarte  
5                   (“Ugarte”) and Julian Pineda (“Pineda”) (collectively, “Plaintiffs”), as individuals and on behalf of all  
6                   others similarly situated, and defendants J.W. Floor Covering, Inc. (“J.W.”), S.P. Carpet Pros, Inc.  
7                   (“Carpet Pros”), and Home Depot U.S.A., Inc. (“Home Depot”) (collectively, “Defendants”)  
8                   (collectively with Plaintiffs, the “Parties”).

9                   **BACKGROUND**

10                  This settlement arises from an action entitled *Jaime Ugarte v. Professional Flooring*  
11                  *Installation, Inc., et al.*, Case No. BC613043, pending in the Superior Court of California, Los Angeles  
12                  County (the “Action”). On March 8, 2016, Ugarte filed the Action against Carpet Pros, Home Depot,  
13                  and his former employer Professional Flooring Installation, Inc. (“PFI”). He later added J.W. and  
14                  PFI’s owners, Moises Alvarez and Martha Alvarez, as defendants. He later filed a third amended  
15                  complaint, which added Pineda as a plaintiff and removed PFI, Moises Alvarez, and Martha Alvarez as  
16                  defendants. Plaintiffs assert various claims under the California Labor Code and tort law against J.W.,  
17                  Carpet Pros, and Home Depot under a joint employer theory. Specifically, they allege claims for  
18                  unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate  
19                  wage statements, false time statements, failure to reimburse expenses, unfair competition,  
20                  fraud/misrepresentation, insufficient funding of contracts, and negligence. Plaintiffs also allege a  
21                  claim for civil penalties under California’s Private Attorneys General Act (“PAGA”) and a claim under  
22                  California Labor Code section 2810.3. They assert their claims on behalf of a putative class that  
23                  includes all persons who performed flooring installation work as installers or helpers in California for  
24                  or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, from March 8, 2012 to the  
25                  present.

26                  From September 28, 2021 through January 20, 2022, the Parties attended several mediation  
27                  sessions before Bruce A. Edwards, Esq. (the “Mediator”). As a result of mediation and arm’s-length  
28                  negotiations, the Parties agreed to the terms memorialized in this Settlement Agreement.

## DEFINITIONS

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

1. “Aggrieved Employee(s)” means all persons who performed flooring installation work as installers or helpers in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, from January 15, 2015 through the date the Court enters Preliminary Approval of the Settlement. A person’s status as an Aggrieved Employee will be determined based on their inclusion in either (i) the database compiled for California workers indicating that an individual maintained an active badge during the PAGA Period (the “PAGA Badge Data”); or (ii) J.W.’s or Carpet Pros’ records indicating that an individual who is not reflected in the PAGA Badge Data performed flooring installation work in California on Home Depot jobs during the PAGA Period (“PAGA Service Provider Records”), as listed in Exhibit A.

2. “Class Counsel” means Arns Davis Law.

3. “Class Member(s)” or “Settlement Class” means all persons who performed flooring installation work as installers or helpers in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, from March 8, 2012 through the date the Court enters Preliminary Approval of the Settlement. A person’s status as a Class Member will be determined based on their inclusion in either (i) the database compiled for California workers indicating that an individual maintained an active badge during the Class Period (the “Class Badge Data”), or (ii) J.W.’s or Carpet Pros’ records indicating that an individual who is not reflected in the Class Badge Data performed flooring installation work in California on Home Depot jobs during the Class Period (“Class Service Provider Records”), as listed in Exhibit B.

4. “Class Period” means the period from March 8, 2012 through the date the Court enters Preliminary Approval of the Settlement.

5. “Class Workweeks” means the number of calendar weeks during which the Class Members performed flooring installation work as installers or helpers in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, during the Class Period, as calculated by

1 Defendants based on the Class Badge Data and Class Service Provider Records, and rounding up to the  
2 nearest whole number.

3 6. “Court” means the Superior Court of California for Los Angeles County.

4 7. “Released Parties” means J.W., Carpet Pros, Home Depot, and all of their respective  
5 present and former parents, subsidiaries, affiliates, and joint venturers, and all of their respective  
6 shareholders, members, managers, officers, officials, directors, employees, agents, servants, registered  
7 representatives, attorneys, insurers, successors, and assigns, and any other persons acting by, through,  
8 under, or in concert with any of them.

9 8. “Effective Date” means: (i) the day the Court enters a judgment granting final approval  
10 of the settlement, if no Class Member has moved to intervene in the Action or moved to vacate  
11 judgment; or, (ii) if a Class Member has moved to intervene in the Action or moved to vacate judgment  
12 prior to the entry of judgment, the later of (a) the final date for the would-be aggrieved party to file a  
13 timely appeal, or (b) if any timely appeals or motions for reconsideration or review are filed, the date  
14 of final resolution of any such appeals or motions for reconsideration or review have been finally  
15 concluded. In this regard, it is the intention of the Parties that the Effective Date of the Settlement  
16 shall not be a date before the Court’s order approving the Settlement has become completely final and  
17 there is no timely recourse by any person who seeks to object or otherwise contest the Settlement.

18 9. “Gross Settlement Amount” is the amount of Three Million, Two Hundred Thousand  
19 Dollars (\$3,200,000), which is the amount to be paid by Defendants pursuant to this Settlement  
20 Agreement. The Gross Settlement Amount includes: (a) all Individual Class Payments to Participating  
21 Class Members; (b) all Individual PAGA Payments to Aggrieved Employees; (c) the LWDA Payment;  
22 (d) the Class Representative Service Payments to Plaintiffs; (e) Attorneys’ Fees and Costs to Class  
23 Counsel; and (f) Settlement Administration Costs to the Settlement Administrator. Except for payroll  
24 taxes due on Individual Class Payments to Participating Class Members, if any, the Parties agree that  
25 Defendants will have no obligation to pay any amount in connection with this Settlement Agreement  
26 apart from the Gross Settlement Amount. No part of the Gross Settlement Amount will revert to  
27 Defendants.

1           10.    “Individual Class Payment” means a Participating Class Member’s share of the Net  
2 Settlement Amount.

3           11.    “Individual PAGA Payment” means an Aggrieved Employee’s share of 25% of the  
4 PAGA Penalties.

5           12.    “LWDA” means the California Labor and Workforce Development Agency.

6           13.    “Net Settlement Amount” means the Gross Settlement Amount less deductions for the  
7 Individual PAGA Payments, LWDA Payment, Class Representative Service Payments, Attorneys’ Fees  
8 and Costs, and Settlement Administration Costs.

9           14.    “Notice of Class Action Settlement” means the notice of settlement, attached as Exhibit  
10 C, to be mailed to all members of the Settlement Class upon Preliminary Approval.

11          15.    “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the  
12 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and 75% to the LWDA  
13 (\$15,000) in settlement of PAGA claims.

14          16.    “PAGA Period” means the period from January 15, 2015 through the date the Court  
15 enters Preliminary Approval of the Settlement.

16          17.    “PAGA Workweeks” means the number of calendar weeks during which the Aggrieved  
17 Employees performed flooring installation work as installers or helpers in California for or on behalf  
18 of either or both J.W. and Carpet Pros, on Home Depot jobs, during the PAGA Period, as calculated by  
19 Defendants based on the PAGA Badge Data and PAGA Service Provider Records, and rounding up to  
20 the nearest whole number.

21          18.    “Participating Class Members” means all Class Members who do not submit valid  
22 Requests for Exclusion.

23          19.    “Preliminary Approval” means the Court order granting preliminary approval of the  
24 Settlement Agreement.

25          20.    “Released Class Claims” means all claims released by Plaintiffs and Participating Class  
26 Members, as defined below.

27          21.    “Released PAGA Claims” means all claims for penalties under PAGA released by  
28 Plaintiffs and Aggrieved Employees, as defined below.

22. "Response Deadline" means the deadline by which Class Members must postmark to the Settlement Administrator Requests for Exclusion or Objections to the Settlement. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice of Class Action Settlement by the Settlement Administrator, or such other deadline specified by the Court, unless the deadline falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

23. "Settlement Administrator" means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement. The Parties represent that they do not have a financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

**TERMS OF THE AGREEMENT**

Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as follows:

24. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm’s-length negotiations in front of an experienced Mediator and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

25. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Class Members. Neither this Settlement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary

1 in a proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions  
2 will not be offered or received as evidence in any action or proceeding to establish any liability or  
3 admission on the part of Defendants or to establish the existence of any condition constituting a  
4 violation of, or a non-compliance with, federal, state, local or other applicable law.

5 26. Acknowledgement of Defendants' Defenses. Plaintiffs and Class Counsel acknowledge  
6 that, based on their investigation, Defendants have raised defenses to all of the claims asserted in the  
7 Action that could affect the likelihood of Plaintiffs' success on the merits.

8 27. Third Amended Complaint and Motion for Preliminary Approval. For the purpose of  
9 effectuating this Settlement only, the Parties stipulated and agreed that Plaintiffs shall file a Third  
10 Amended Complaint, which was filed on August 8, 2022, and which (i) added Pineda as a named  
11 plaintiff, (ii) amended the class definition to reflect the Settlement Class definition described in  
12 Paragraph 3 of this Agreement, (iii) added claims under California Labor Code Section 2810.3, and  
13 (iv) dismissed defendants PFI and Moises and Martha Alvarez from the Action without prejudice.  
14 Plaintiffs will provide Defendants' counsel reasonable opportunity to review and provide comments  
15 regarding the motion for preliminary approval of the Settlement before it is filed. Should, for whatever  
16 reason, this Settlement not become final, the Third Amended Complaint shall be deemed stricken, null  
17 and void *ab initio*, and the operative complaint as of March 10, 2022 shall be deemed the operative  
18 pleading.

19 28. Class Certification. For settlement purposes only, the Parties agree to class certification  
20 of the Settlement Class, pursuant to California Code of Civil Procedure Section 382. If, for any  
21 reason, the Settlement is not fully and finally approved and/or the Effective Date does not occur, the  
22 stipulation of certification will be void *ab initio*, and Defendants will not be deemed to have waived or  
23 limited any objections or defenses to class certification or any other matter. The Parties further agree  
24 that nothing in this Settlement Agreement will be construed as an admission or acknowledgement in  
25 this or any other proceeding that either (i) class action certification is proper except as provided in this  
26 paragraph, or (ii) Defendants are liable to Plaintiffs or any Class Member other than in accordance with  
27 the terms of this Settlement.



1           29.    Class Members' Waiver and Release. Effective on the date when Defendants fund the  
2 Gross Settlement Amount and fund all payroll taxes due on Individual Class Payments, Plaintiffs and  
3 all Class Members (including any assigned agents/representatives) who do not submit a valid and  
4 timely Request for Exclusion shall, for the Class Period, fully and finally waive, release, and forever  
5 discharge the Released Parties from any and all claims (i) asserted in the Action (including in the Third  
6 Amended Complaint that Plaintiffs filed on August 8, 2022), or (ii) arising from, or derivative of, the  
7 claims or factual allegations asserted in the Action (including in the Third Amended Complaint that  
8 Plaintiffs filed on August 8, 2022), including those concerning any Defendant's practices regarding  
9 payment of wages, meal and rest periods, final pay, wage statements, time statements, and expense  
10 reimbursements ("Released Class Claims"). The Released Class Claims include, but are not limited to,  
11 any claims, rights, demands, liabilities, and causes of action of any kind or nature in law or in equity,  
12 under any theory, whether contract, common law, constitutional, statutory or otherwise, of any  
13 jurisdiction, foreign or domestic, whether known or unknown, anticipated or unanticipated, for unpaid  
14 regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage  
15 statements, false time statements, failure to reimburse expenses, unfair competition,  
16 fraud/misrepresentation, insufficient funding of contracts, and negligence, and for damages, restitution,  
17 penalties, interest, costs, attorneys' fees, expenses, equitable relief, injunctive relief, and any other  
18 relief premised on the alleged violations.

19           This waiver and release will be final and binding on the date Defendants fund the Gross  
20 Settlement Amount, and will have every preclusive effect permitted by law.

21           30.    Aggrieved Employees' Waiver and Release. After the judgment is final and Defendants  
22 have fully funded the Gross Settlement Amount, Plaintiffs and all Aggrieved Employees (including any  
23 assigned agents/representatives) shall, for the PAGA Period, fully and finally waive, release, and  
24 forever discharge the Released Parties from any and all claims for PAGA penalties predicated on the  
25 alleged California Labor Code violations (i) asserted in the Action (including in the Third Amended  
26 Complaint that Plaintiffs filed on August 8, 2022 and in the letter sent to the LWDA on January 15,  
27 2016), or (ii) arising from, or derivative of, the claims or factual allegations asserted in the Action  
28 (including in the Third Amended Complaint that Plaintiffs filed on August 8, 2022 and in the letter sent

1 to the LWDA on January 15, 2016), including those concerning any Defendant’s practices regarding  
2 payment of wages, meal and rest periods, final pay, wage statements, time statements, and expense  
3 reimbursement (“Released PAGA Claims”). The Released PAGA Claims include all claims for  
4 penalties, attorneys’ fees, litigation costs, interest, and any other relief available under PAGA that  
5 Plaintiffs alleged in the Action (including in the Third Amended Complaint that Plaintiffs filed on  
6 August 8, 2022 and in the letter sent to the LWDA on January 15, 2016) or could have sought based on  
7 the claims and factual allegations alleged in the Action (including in the Third Amended Complaint  
8 that Plaintiffs filed on August 8, 2022 and in the letter sent to the LWDA on January 15, 2016). The  
9 Release in this paragraph shall apply to all Released PAGA Claims for the PAGA Period. This waiver  
10 and release will be final and binding on the date Defendants fund the Gross Settlement Amount, and  
11 will have every preclusive effect permitted by law.

12 31. Release of Additional Claims and Rights by Plaintiffs. After the judgment is final and  
13 Defendants have fully funded the Gross Settlement Amount, and as a condition of receiving any  
14 portion of their respective Class Representative Service Payment, each Plaintiff agrees to the additional  
15 following General Release: In consideration of Defendants’ promises and agreements as set forth  
16 herein, Plaintiffs hereby fully release the Released Parties from any and all Released Class Claims and  
17 Released PAGA Claims, and also generally release and discharge the Released Parties from any and all  
18 claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or  
19 could have been asserted against the Released Parties through the date that this Agreement is fully  
20 executed. This general release includes, but is not limited to, claims arising out of or relating to each  
21 Plaintiff’s alleged employment and/or alleged joint employment by Defendants and/or (if applicable)  
22 the termination of their alleged employment with Defendants, including but not limited to any and all  
23 claims for violation of any section of the California Labor Code and/or Wage Orders; violation of the  
24 Fair Labor Standards Act (“FLSA”); failure to pay wages, benefits, vacation pay, severance pay, final  
25 pay, or other compensation of any sort; fraud; intentional or negligent misrepresentation; breach of  
26 contract; promissory estoppel; wrongful termination; retaliation; violation of public policy; breach of  
27 implied covenant of good faith and fair dealing; defamation; unlawful effort to prevent employment;  
28 sexual harassment; discrimination on the basis of race, color, sex, national origin, ancestry, religion,

1 age, disability, handicap, medical condition, marital status or any other protected class; any claim  
2 under the Fair Credit Reporting Act, California Consumer Credit Reporting Agencies Act, California  
3 Investigative Consumer Reporting Agencies Act, or other laws regarding background checks; any  
4 claim under Title VII of the Civil Rights Act of 1964 (Title VII, as amended), 42 U.S.C. §§ 2000, *et*  
5 *seq.*; the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act  
6 (“ADEA”), the California Fair Employment and Housing Act (“FEHA”), or California Government  
7 Code §§ 12940 *et seq.*; violation of the Consolidated Omnibus Budget Reconciliation Act of 1985  
8 (“COBRA”); violation of the Occupational Safety and Health Act (“OSHA”) or any other health and/or  
9 safety laws, statutes or regulations; violation of the Employment Retirement Income Security Act of  
10 1974 (“ERISA”); violation of the Internal Revenue Code; any other claim arising from employment or  
11 termination of employment; or other common law or tort matters and all other claims under federal,  
12 state or local law. This release specifically includes any and all claims, demands, obligations and/or  
13 causes of action for damages, restitution, penalties, injunctive or equitable relief, interest, and  
14 attorneys’ fees and costs (except as provided by the Settlement Agreement) relating to or in any way  
15 connected with the matters referred to in this paragraph, whether or not known or suspected to exist,  
16 and whether or not specifically or particularly described herein. Specifically, each Plaintiff waives all  
17 rights and benefits afforded by California Civil Code Section 1542, which provides:

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

23 32. No Retaliation. Defendants agree that neither they nor their agents shall take any action  
24 that will result in adverse impacts to Plaintiffs’ jobs or reputations as a result of Plaintiffs’ participation  
25 in the Action or Settlement.

26 33. Calculation of Participating Class Members’ Share of the Net Settlement Amount. Each  
27 Participating Class Member’s share of the Net Settlement Amount will be calculated based on the  
28 number of his or her Class Workweeks during the Class Period. Defendants will calculate the number  
of Class Workweeks for each Participating Class Member and the aggregate total number of Class

1 Workweeks for all Participating Class Members and provide these counts to the Settlement  
2 Administrator within twenty-one (21) calendar days of Preliminary Approval. Defendants will make  
3 these calculations based on the Class Badge Data and Class Service Provider Records. For  
4 Participating Class Members included in the Class Badge Data, a Class Workweek will be any week in  
5 which a Participating Class Member maintained an Active badge. Weeks during which badges were  
6 designated Inactive or Terminated shall not count as Class Workweeks. For any Class Member  
7 included in the Class Badge Data for whom insufficient Class Badge Data is available to calculate  
8 Class Workweeks, the Class Workweeks shall equal the average number of Class Workweeks per Class  
9 Member for whom sufficient Class Badge Data exists to calculate Class Workweeks. For Participating  
10 Class Members who are not included in the Class Badge Data and are included in the Class Service  
11 Provider Records, a Class Workweek will be based on the work dates reflected in the Class Service  
12 Provider Records. The Net Settlement Amount will be divided by the aggregate total number of Class  
13 Workweeks, resulting in the "Class Workweek Value." To determine each Class Member's estimated  
14 share of the Net Settlement Amount, the Settlement Administrator will multiply each individual Class  
15 Member's Class Workweeks by the Class Workweek Value. If there are any valid and timely  
16 submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the  
17 share of the Net Settlement Amount apportioned to each Participating Class Member so that the  
18 amount actually distributed to Participating Class Members (inclusive of any unclaimed amounts  
19 submitted to the California State Controller's Office) equals 100% of the Net Settlement Amount. The  
20 amounts paid to Participating Class Members will be reduced by any required deductions, including  
21 appropriate tax withholdings or deductions. The Parties agree that the formula described herein is  
22 reasonable and that the payments are designed to provide a fair settlement to each Participating Class  
23 Member in light of the uncertainties regarding the compensation alleged to be owed and the calculation  
24 of such amounts.

25       34. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees and  
26 Costs of not more than thirty-three and thirty-three hundredths percent (33.33%) of the Gross  
27 Settlement Amount, or One Million Sixty Six Thousand and Five Hundred and Sixty Dollars  
28 (\$1,066,560) in attorneys' fees, plus reasonable litigation costs not to exceed \$20,000, and Defendants

1 agree not to oppose such application. These amounts include, without limitation, all time expended by  
2 Class Counsel in defending and preparing the Settlement Agreement and securing Preliminary and  
3 Final Approval (including any appeals therein), and there will be no additional charge of any kind to  
4 either the Settlement Class Members or Defendants for such work. All Attorneys' Fees and Costs will  
5 be paid from the Gross Settlement Amount. Plaintiffs and Class Counsel will not have the right to  
6 revoke this Settlement in the event that the Court does not approve the amount of Attorneys' Fees and  
7 Costs sought by Class Counsel. If the Court reduces the requested attorneys' fees, costs and expenses,  
8 any such reduction will be added to the Net Settlement Amount.

9       35.     Class Representative Service Payments. Ugarte will apply to the Court for a Class  
10 Representative Service Payment of not more than Seven Thousand and Five Hundred Dollars (\$7,500),  
11 and Pineda will apply to the Court for a Class Representative Service Payment of not more than Seven  
12 Thousand and Five Hundred Dollars (\$7,500), without deductions, for their effort and work in  
13 prosecuting the Action on behalf of Class Members, and Defendants agree not to oppose such  
14 applications. The Class Representative Service Payments, which will be paid from the Gross  
15 Settlement Amount, will be in addition to each Plaintiff's right to an Individual Class Payment and  
16 Individual PAGA Payment (if any). Each Plaintiff will be issued an IRS Form 1099 in connection with  
17 these Service Payments, and they will be solely and legally responsible to pay any and all applicable  
18 taxes on the payments made pursuant to this paragraph and will hold Defendants harmless from any  
19 claim or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiffs will not  
20 have the right to revoke this Settlement in the event that the Court does not approve the amount sought  
21 by Plaintiffs as Class Representative Service Payments. If the Court reduces the requested Class  
22 Representative Service Payments, any such reduction will be added to the Net Settlement Amount.

23       36.     LWDA Payment. Subject to Court approval, the Parties agree that the amount of  
24 Twenty Thousand Dollars (\$20,000) from the Gross Settlement Amount will be paid in settlement of  
25 all individual and representative claims brought in the Action by or on behalf of Plaintiffs and  
26 Aggrieved Employees and aggrieved parties under PAGA. Pursuant to PAGA, Seventy-Five Percent  
27 (75%) of this sum, or Fifteen Thousand Dollars (\$15,000), will be paid to the LWDA (the "LWDA  
28 Payment") and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000), will be paid to the

1 Aggrieved Employees as Individual PAGA Payments. Each Aggrieved Employee’s share of 25% of  
2 the PAGA Penalties will be calculated based on the number of his or her PAGA Workweeks during the  
3 PAGA Period. Defendants will calculate the number of PAGA Workweeks for each Aggrieved  
4 Employee and the aggregate total number of PAGA Workweeks for all Aggrieved Employees and  
5 provide these counts to the Settlement Administrator within twenty-one (21) calendar days of  
6 Preliminary Approval. Defendants will make these calculations based on the PAGA Badge Data and  
7 PAGA Service Provider Records. For Aggrieved Employees included in the PAGA Badge Data, a  
8 PAGA Workweek will be any week in which an Aggrieved Employee maintained an Active badge.  
9 Weeks during which badges were designated Inactive or Terminated shall not count as PAGA  
10 Workweeks. For any Aggrieved Employee included in the PAGA Badge Data for whom insufficient  
11 PAGA Badge Data is available to calculate PAGA Workweeks, the PAGA Workweeks shall equal the  
12 average number of PAGA Workweeks per Aggrieved Employee for whom sufficient PAGA Badge  
13 Data exists to calculate PAGA Workweeks. For Aggrieved Employees who are not included in the  
14 PAGA Badge Data and are included in the PAGA Service Provider Records, a PAGA Workweek will  
15 be based on the work dates reflected in the PAGA Service Provider Records. The 25% of the PAGA  
16 Penalties will be divided by the aggregate total number of PAGA Workweeks, resulting in the “PAGA  
17 Workweek Value.” To determine each Aggrieved Employee’s estimated share of 25% of the PAGA  
18 Penalties, the Settlement Administrator will multiply each individual Aggrieved Employee’s PAGA  
19 Workweeks by the PAGA Workweek Value. Each Aggrieved Employee will be issued an IRS Form  
20 1099 in connection with these Individual PAGA Payments, which will be counted as penalties rather  
21 than wages for tax purposes, and Aggrieved Employees will be solely and legally responsible to pay  
22 any and all applicable taxes on the payments made pursuant to this paragraph and will hold Defendants  
23 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments.  
24 The Parties agree that the formula described herein is reasonable and that the payments are designed to  
25 provide a fair payment to each Aggrieved Employee.

26 37. Settlement Administration Costs. The Settlement Administrator will be paid up to  
27 \$32,500 for the reasonable costs of administration of the Settlement and calculation and distribution of  
28 payments. These costs, which will be paid from the Gross Settlement Amount, will include payment

1 for, *inter alia*, the required tax reporting on the Individual Class Payments, the issuing of 1099 and/or  
2 W-2 IRS Forms, preparing, distributing, and tracking Notices of Class Action Settlement,  
3 confirming/auditing claims for payments for compliance with the Settlement, calculating and  
4 distributing all payments to be made pursuant to the Settlement, providing reports and declarations,  
5 hosting settlement documents on a website accessible to Class Members, and providing any required  
6 notices of the proposed settlement to the appropriate federal and state officials as required by  
7 applicable law.

8         38.     Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to  
9 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary  
10 Approval Order for: (i) conditional certification of the Settlement Class for settlement purposes only,  
11 (ii) preliminary approval of the proposed Settlement Agreement, and (iii) setting a date for a Final  
12 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice of  
13 Class Action Settlement to be sent to all Class Members as specified herein. In conjunction with the  
14 Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the  
15 terms of this Settlement, and will include the proposed Notice of Class Action Settlement.

16         39.     Notifying LWDA of Settlement. Contemporaneous with Plaintiffs filing the motion for  
17 preliminary approval of the Settlement, Plaintiffs' counsel will serve a copy of the motion and this  
18 Agreement on the LWDA pursuant to Labor Code § 2699(1)(2).

19         40.     Delivery of the Class List. "Class List" means a complete list of all Class Members that  
20 Defendants will diligently and in good faith compile from their records. The Class List will include  
21 the following information from Defendants' records: each Class Member's full name; most recent  
22 mailing address; and Social Security number. The Settlement Administrator is required to abide by  
23 Home Depot's data security protocols, which are attached as Exhibit D. Within fourteen (14) calendar  
24 days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator;  
25 Plaintiffs' counsel will not receive a copy of the list. However, within five (5) days of receipt of the  
26 Class List from Defendants, the Settlement Administrator shall provide to Class Counsel and  
27 Defendants' counsel a copy of the administration spreadsheet, with identifying information redacted  
28 except for that of Plaintiffs, so that the Parties can review the estimated calculations of Class

1 Workweeks, PAGA Workweeks, and payment thereto to ensure accuracy. The Settlement  
2 Administrator shall not use the Class List or any information contained therein for any purpose other  
3 than to administer the Settlement in accordance with this Agreement. Upon completion of the  
4 administration of the Settlement, the Settlement Administrator shall destroy the Class List and any  
5 information contained therein or return it and all copies to Defendants.

6 41. Notices of Class Action Settlement. Within five (5) calendar days after providing Class  
7 Counsel and Defendants' counsel the redacted administration spreadsheet, assuming the Parties have  
8 no changes to said spreadsheet, the Settlement Administrator will mail a Notice of Class Action  
9 Settlement to all Class Members via regular First-Class U.S. Mail, using the most current, known  
10 mailing addresses identified in the Class List. The Notice of Class Action Settlement will be in the  
11 form attached as Exhibit C, or as provided by Court order, and will include, but not be limited to,  
12 information regarding the nature of the Action; a summary of the substance of the Settlement,  
13 including Defendants' denial of liability; the definition of the Settlement Class and Aggrieved  
14 Employees; the procedure and time period for objecting to the Settlement and participating in the Final  
15 Approval hearing; how settlement payments will be calculated; the Class Workweeks credited to each  
16 Class Member and his/her estimated Individual Class Payment; the PAGA Workweeks credited to  
17 each Aggrieved Employee and his/her estimated Individual PAGA Payment; a statement that the Court  
18 has preliminarily approved the Settlement; a statement that Class Members will release the Released  
19 Class Claims unless they opt out; and information regarding the opt-out procedure.

20 42. Confirmation of Contact Information. Prior to mailing, the Settlement Administrator  
21 will perform a search based on the National Change of Address Database for information to update and  
22 correct for any known or identifiable address changes. Any Notices of Class Action Settlement  
23 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be  
24 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto, and the  
25 Settlement Administrator will indicate the date of such re-mailing on the Notice of Class Action  
26 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly attempt  
27 to determine the correct address using an Accurint search/skip-trace, and will then perform a single re-  
28 mailing. With regard to any Notice of Class Action Settlement that is returned as non-deliverable, and



1 for which the Settlement Administrator is able to determine a reliable address using reasonable and  
2 customary methods, such Notice of Class Action Settlement shall be re-mailed no later than three (3)  
3 business days after it is received by the Settlement Administrator. The Response Deadline will be  
4 extended an additional fourteen (14) calendar days beyond the 45 calendar days otherwise provided in  
5 the Notice of Class Action Settlement for all Class Members whose notice is re-mailed. The  
6 Settlement Administrator will inform the Class Member of the extended deadline with the re-mailed  
7 Notice of Class Action Settlement. With regard to any Class Member whose Notice of Class Action  
8 Settlement is returned as non-deliverable, and for whom the Settlement Administrator is unable to  
9 determine a reliable address using reasonable and customary methods, their Individual Class Payment  
10 and Individual PAGA Payment (if any) will be held by the Settlement Administrator and distributed as  
11 described in Paragraph 50 below.

12       43.    Disputed Information on Notices of Class Action Settlement. Class Members will have  
13 an opportunity to dispute the information provided in their Notices of Class Action Settlement,  
14 provided they file a dispute with the Settlement Administrator in writing postmarked no later than 45  
15 days after the mailing of the Notices of Class Action Settlement (plus an additional 14 calendar days  
16 for Class Members whose Notice of Class Action Settlement is re-mailed), or such other deadline  
17 specified by the Court. To the extent that any Class Member disputes the number of Class Workweeks  
18 or PAGA Workweeks stated on his/her Notice of Class Action Settlement, he or she may produce  
19 evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement  
20 Administrator will advise the Parties of such dispute, allow Defendants ten (10) business days after  
21 being notified in writing to respond with any additional information or records, and then decide the  
22 dispute. Defendants' records will be presumed correct, but the Settlement Administrator will evaluate  
23 the evidence submitted by the Class Member and will make the final decision as to the merits of the  
24 dispute.

25       44.    Requests for Exclusion. Any Class Member who does not affirmatively opt out of the  
26 Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of  
27 the Settlement Agreement's terms, including those pertaining to the Released Class Claims, as well as  
28 any Judgment that may be entered by the Court if it grants final approval of the Settlement. Any Class

1 Member wishing to opt-out from the Settlement Agreement must sign and postmark a written “Request  
2 for Exclusion” to the Settlement Administrator within the Response Deadline (plus an additional 14  
3 calendar days for Class Members whose Notice of Class Action Settlement is re-mailed). The Request  
4 for Exclusion must: (i) set forth the name, address, and telephone number of the Class Member  
5 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement  
6 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;  
7 and (v) be postmarked on or before the Response Deadline (plus an additional 14 calendar days for  
8 Class Members whose Notice of Class Action Settlement is re-mailed). The postmark date will be the  
9 exclusive means to determine whether a Request for Exclusion has been timely submitted. The Parties  
10 and their attorneys will not solicit or encourage any Class Member, directly or indirectly, to opt out of  
11 the Settlement Agreement. Any such action or attempt to do so will be deemed a material breach of the  
12 Agreement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment,  
13 any Aggrieved Employees who submit a timely and valid Request for Exclusion are deemed to release  
14 the Released PAGA Claims identified in Paragraph 30 of this Agreement and are eligible for an  
15 Individual PAGA Payment.

16 45. Defective Submissions. If a Class Member’s Request for Exclusion is defective as to  
17 the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).  
18 The Settlement Administrator will attempt to contact the Class Member by telephone and mail the  
19 Class Member a cure letter within three (3) business days of receiving the defective submission to  
20 advise the Class Member that his or her submission is defective and that the defect must be cured to  
21 render the Request for Exclusion valid. The Class Member will have until (i) the Response Deadline  
22 or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date is later (or such other  
23 deadline specified by the Court), to postmark a revised Request for Exclusion. If the revised Request  
24 for Exclusion is not postmarked within that period, it will be deemed untimely.

25 46. Objection Procedures. The Parties will propose the following procedure to object to the  
26 Settlement Agreement (“Objection”). A Class Member must mail a written Objection to the Settlement  
27 Agreement to the Settlement Administrator before the Response Deadline (plus an additional 14  
28 calendar days for Class Members whose Notice of Class Action Settlement is re-mailed). The

1 Objection must include: (a) the objector's full name, signature, address, and telephone number, and (b)  
2 a written statement of all grounds for the Objection. The postmark date of the Objection will be  
3 deemed the exclusive means for determining that the Objection is timely. Plaintiffs and Class Counsel  
4 will not have the right to revoke this Settlement in the event the Court approves a different procedure  
5 for making an Objection. Class Members who fail to object in the manner specified above will be  
6 deemed to have waived all Objections to the Settlement and will be foreclosed from making any  
7 Objections, whether by appeal or otherwise, to the Settlement Agreement, with one exception being  
8 that the Court may permit such Class Members to speak regarding his or her objection if they attend  
9 the final approval hearing. A Class Member who mails a timely Objection as described above need not  
10 appear to have their Objection considered by the Court. At no time will any of the Parties or their  
11 counsel seek to solicit or otherwise encourage Class Members to submit Objections to the Settlement  
12 Agreement or appeal from the Order and Judgment.

13 47. Reports Regarding Settlement Administration. The Settlement Administrator will  
14 provide Class Counsel and Defendants' counsel a weekly report that certifies the number of Class  
15 Members who have submitted valid Requests for Exclusion, Objections, and disputes regarding dates  
16 they performed work and/or calculations of Class Workweeks or PAGA Workweeks. Additionally, the  
17 Settlement Administrator will provide to Class Counsel and Defendants' counsel any updated reports  
18 regarding the administration of the Settlement Agreement as needed or requested and will immediately  
19 forward to the Parties any objections mailed to the Settlement Administrator.

20 48. Defendants' Limited Right to Cancel. If seven and a half percent (7.5%) or more of the  
21 Class Members submit valid and timely Requests for Exclusion, any Defendant shall have the absolute  
22 right, in its sole discretion, and notwithstanding any other provisions of the Settlement Agreement, to  
23 withdraw from, and cancel the Settlement Agreement in its entirety, whereupon the Settlement  
24 Agreement will be null and void for all purposes, and may not be used or introduced in further  
25 litigation. The right can be exercised only by a writing stating clearly that such Defendant is canceling,  
26 and withdrawing from, the Settlement Agreement, which is sent by such Defendant's counsel to Class  
27 Counsel, counsel for the other defendants, and the Settlement Administrator by mail or email no later  
28 than five (5) business days after Defendants receive notice of the number of Requests for Exclusion

1 from the Settlement Administrator. Within fifteen (15) days of the Settlement Administrator receiving  
2 the writing from such Defendant that it is canceling and withdrawing from the Settlement Agreement,  
3 the Settlement Administrator shall provide the Parties with a report of all Settlement Administration  
4 Costs incurred, and such Defendant will be responsible for paying any Settlement Administration Costs  
5 already incurred as well as further costs, if any, for providing notice to the Class Members of such  
6 Defendant's election to withdraw from or cancel the Settlement Agreement. If the right provided in  
7 this paragraph is not so exercised, it shall be waived and cannot later be exercised.

8       49. Final Settlement Approval Hearing and Entry of Judgment. After expiration of the  
9 Response Deadline (plus an additional 14 calendar days if there are any Class Members whose Notice  
10 of Class Action Settlement was re-mailed), a Final Approval/Settlement Fairness Hearing will be  
11 conducted to determine the Final Approval of the Settlement Agreement along with the amounts  
12 properly payable for: (i) Individual Class Payments; (ii) Individual PAGA Payments; (iii) the LWDA  
13 Payment; (iv) the Class Representative Service Payments; (v) Attorneys' Fees and Costs; and (vi) all  
14 Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held  
15 earlier than sixteen (16) court days after the Response Deadline (plus an additional 14 calendar days if  
16 there are any Class Members whose Notice of Class Action Settlement was re-mailed). Class Counsel  
17 will be responsible for drafting all documents necessary to obtain final approval, and will provide  
18 Defendants' counsel reasonable opportunity to review and provide comments regarding such  
19 documents before they are filed. Class Counsel will also be responsible for drafting the attorneys' fees  
20 and costs application.

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

23       51. Invalidity of Any Provision. Before declaring any provision of this Settlement  
24 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
25 possible consistent with applicable precedents so as to define all provisions of this Settlement  
26 Agreement as valid and enforceable.

27       52. Rights of Termination. Except as set forth above, if the Court or, in the event of an  
28 appeal, any appellate court modifies the scope of the release or any Defendant's financial obligations,

1 or any judicial findings set forth in the Preliminary Approval Order or Final Approval Order and  
2 Judgment, any Defendant may terminate this Settlement by providing written notice of termination to  
3 Class Counsel, counsel for the other defendants, and the Settlement Administrator. Within fifteen (15)  
4 days of the Settlement Administrator receiving notice from such Defendant of such termination, the  
5 Settlement Administrator shall provide the Parties with a report of all Settlement Administration Costs  
6 incurred, and such Defendant will be responsible for paying any Settlement Administration Costs  
7 already incurred as well as further costs, if any, for providing notice to the Class Members of such  
8 Defendant's election to withdraw from or cancel the Settlement Agreement.

9       53.     Judgment and Continued Jurisdiction. Contemporaneous with Plaintiffs filing the  
10 motion for final approval of the settlement, the Parties will present an agreed form of the Proposed  
11 Judgment to the Court for its consideration. The Court, in its discretion, may enter a Judgment  
12 approved by it. After entry of the Judgment, the Court will have continuing jurisdiction solely for  
13 purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)  
14 Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under  
15 court rules or as set forth in this Settlement Agreement. In the event that a motion to enforce this  
16 Agreement is required to be filed due to a party's failure to comply with the terms herein, the  
17 prevailing party shall be awarded reasonable attorneys' fees and costs, which shall be in addition to any  
18 amounts to be paid under this settlement. The Settlement Administrator will give Class Members  
19 notice of the Judgment granting final approval by posting it to an internet website that will be  
20 established and maintained by the Settlement Administrator.

21       54.     Funding of the Gross Settlement Amount. Within ten (10) days after the Effective Date,  
22 Defendants will deposit the Gross Settlement Amount into a settlement fund to be established by the  
23 Settlement Administrator by check, Automated Clearing House (ACH) transfer, or wire transfer, unless  
24 a Class Member moves to intervene in the Action or moves to vacate judgment within ten (10) days  
25 after the day the Court enters a judgment granting final approval of the settlement, in which case  
26 Defendants will deposit the Gross Settlement Amount into the settlement fund to be established by the  
27 Settlement Administrator within ten (10) days after the final date for the would-be aggrieved party to  
28 file a timely appeal, or, if any timely appeals or motions for reconsideration or review are filed, the

1 date of final resolution of any such appeals or motions for reconsideration or review have been finally  
2 concluded.

3 55. Withdrawal of Claims, Charges, and Tolling Agreements. Plaintiffs and Class Counsel  
4 agree that they will not file any other litigation or other claim against any Defendant on behalf of the  
5 Settlement Class alleging any Released Class Claims or Released PAGA Claims.

6 56. Distribution and Timing of Individual Settlement Payments. Within five (5) days of the  
7 receipt of the Gross Settlement Amount, the Settlement Administrator shall provide Class Counsel and  
8 Defendants' counsel the administration spreadsheet, with identifying information redacted save for that  
9 of Plaintiffs, regarding the final calculations for purposes of distributing the Gross Settlement Amount.  
10 The Parties must submit any requested changes to the spreadsheet, or confirm that they do not have  
11 any requested changes, within five (5) days of receipt. Within ten (10) days of the Parties confirming  
12 that they do not have requested changes to the spreadsheet, the Settlement Administrator will issue  
13 payments to: (i) Participating Class Members; (ii) Aggrieved Employees; (iii) the LWDA; (iv)  
14 Plaintiffs for the Class Representative Service Payments; and (v) Class Counsel for attorneys' fees and  
15 costs, unless a Class Member moves to intervene in the Action or moves to vacate judgment from  
16 when the Settlement Administrator receives the Gross Settlement Amount to ten (10) days of the  
17 Parties confirming that they do not have requested changes to the spreadsheet, in which case the  
18 Settlement Administrator will issue payments within ten (10) days after the final date for the would-be  
19 aggrieved party to file a timely appeal, or, if any timely appeals or motions for reconsideration or  
20 review are filed, the date of final resolution of any such appeals or motions for reconsideration or  
21 review have been finally concluded.. The Parties and the Settlement Administrator shall cooperate in  
22 finalizing the calculations as contained in the spreadsheet prior to the distribution of funds from the  
23 Gross Settlement Amount to comply with the time specifications herein. The Settlement Administrator  
24 will also issue a payment to itself for Court-approved services performed in connection with the  
25 Settlement upon providing the certificate of completion described in Paragraph 58.

26 57. Unclaimed Funds. Participating Class Members and Aggrieved Employees will be  
27 mailed checks for their Individual Class Payments and Individual PAGA Payments within ten (10)  
28 days of the Parties confirming they have no changes to the administration spreadsheet provided by

1 Settlement Administrator, as detailed in Paragraph 56. Skip tracing is to be performed on missing or  
2 unclaimed addresses of any Participating Class Members who cannot be located to send Individual  
3 Class Payments and Individual PAGA Payments. The Settlement Administrator may send Participating  
4 Class Members who are also Aggrieved Employees a single check combining the Individual Class  
5 Payment and the Individual PAGA Payment. Checks will remain negotiable for 120 days (“Check-  
6 Cashing Deadline”). If any Participating Class Member does not cash his or her check within the  
7 deadline specified herein, the check will be void. This limitation shall be printed on the face of each  
8 check. The voidance of checks shall have no effect on any Participating Class Member’s or Aggrieved  
9 Employee’s release of claims, obligations, representations, or warranties as provided herein, which  
10 shall remain in full effect. The funds remaining after the Check-Cashing Deadline from the 25% of the  
11 PAGA Penalties that were allocated to Aggrieved Employees shall be tendered by the Settlement  
12 Administrator to the California State Controller’s Office in the name of and for the benefit of such  
13 Aggrieved Employees. Unclaimed funds remaining in the Net Settlement Fund after the Check-  
14 Cashing Deadline, together with any undistributed interest, shall be tendered by the Settlement  
15 Administrator to the California State Controller’s Office in the name of and for the benefit of such  
16 Participating Class Members.

17 58. Certification of Completion. Upon completion of administration of the Settlement,  
18 within ten (10) days after the Second Check-Cashing Deadline, the Settlement Administrator will  
19 provide a written declaration under oath to certify such completion to the Court and counsel for all  
20 Parties and to specify that monies, if any, have been provided by the Settlement Administrator via  
21 proper escheatment procedures to the California State Controller’s Office, in the name of and for the  
22 benefit of such Participating Class Members and Aggrieved Employees.

23 59. No Credit Towards Benefit Plans. The Individual Class Payments made to Participating  
24 Class Members under this Settlement, as well as any other payments made pursuant to this Settlement,  
25 will not be utilized to calculate any additional benefits under any benefit plans for which any Class  
26 Members may be eligible, including, but not limited to: (i) profit-sharing plans, (ii) bonus plans,  
27 (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans,  
28 and (viii) any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will

1 not affect any rights, contributions, or amounts to which any Class Members may be entitled under any  
2 benefit plans.

3           60.     Tax Treatment of Payments to Participating Class Members From the Net Settlement  
4 Amount. All payments to Participating Class Members identified in the Class Badge Data as  
5 “Employees” of J.W. or Carpet Pros will be allocated as follows: eighty percent (80%) as penalties,  
6 expense reimbursements, and interest for which IRS Forms 1099-MISC will be issued and twenty  
7 percent (20%) as wages for which IRS Forms W-2 will be issued. For all other Participating Class  
8 Members in the Class Badge Data (“Subcontractor Workers”), the payments will be allocated as  
9 follows: To the extent that the payments correspond to Class Workweeks on or after January 1, 2015,  
10 they will be allocated as penalties, expense reimbursements, and interest for which IRS Forms 1099-  
11 MISC will be issued. To the extent that the payments correspond to Class Workweeks before January  
12 1, 2015, eighty percent (80%) will be allocated as penalties, expense reimbursements, and interest for  
13 which IRS Forms 1099-MISC will be issued and twenty percent (20%) will be allocated as wages for  
14 which IRS Forms W-2 will be issued. These allocations reflect that, for the period since January 1,  
15 2015, Plaintiffs principally claim that Defendants are liable to the Subcontractor Workers under  
16 California Labor Code section 2810.3, which does not require an employment relationship. The  
17 Settlement Administrator will issue all W-2 and 1099-MISC forms. J.W. and Carpet Pros will be  
18 solely responsible for any employer taxes due on payments to Participating Class Members. Plaintiffs  
19 and Participating Class Members understand and agree that, except for any employer payroll taxes,  
20 they will be solely responsible for the payment of any and all taxes and penalties assessed on the  
21 payments as described herein. Defendants make no representation as to the tax treatment or legal  
22 effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not  
23 relying on any statement, representation, or calculation by Defendants or by the Settlement  
24 Administrator in this regard.

25           61.     Administration of Taxes by the Settlement Administrator. The Settlement Administrator  
26 will be responsible for issuing to Plaintiffs, Participating Class Members, Aggrieved Employees, and  
27 Class Counsel any W-2, 1099, and/or other tax forms as may be required by law for all amounts paid  
28 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding the



1 Participating Class Member’s share of all payroll taxes and penalties to the appropriate government  
2 authorities.

3           62.    Non-Publicity. The Parties and their respective counsel, in consideration of their  
4 respective promises and agreements as set forth herein, will not publicize the Settlement (including  
5 electronically, by way of any web page, blog, tweet, social media, or other electronic means) except for  
6 the specific exceptions stated herein. This shall not apply to or limit the public filing of motions or  
7 other case materials in the Action related to seeking and obtaining Court approval of the Settlement,  
8 attorneys’ fees and costs of Class Counsel, the Class Representative Service Payments to Plaintiffs, and  
9 the other relief set forth in the Settlement. The Parties understand and agree that there may be media  
10 coverage of the Settlement not initiated by Plaintiffs or Defendants, directly or indirectly, as a result of  
11 the public filings. Notwithstanding the foregoing, Plaintiffs, Defendants, and their respective counsel  
12 agree that no Party shall issue any press release to the news media, nor shall any Party communicate in  
13 any way with news media concerning the Settlement or the Action except in response to specific  
14 questions, which responses shall be limited to a statement that “this litigation has been resolved to the  
15 satisfaction of all parties” and then refer media to court filings. If Class Counsel describe or list this  
16 Settlement on their website or other online media, they may not mention Defendants by name, but may  
17 refer to Defendants only as “companies for whom individuals perform flooring installation work.”  
18 Class Counsel may also refer to this Settlement, after the filing of the motion for preliminary approval  
19 of the Settlement, in other court filings where prior experience is discussed. Nothing in this paragraph  
20 shall prevent any Defendant from disclosing and discussing information concerning the Settlement, the  
21 Settlement Amount, or the circumstances surrounding or giving rise to the Settlement, prior to the  
22 filing of the preliminary approval motion either internally among company management or to the  
23 extent otherwise required by law. Nothing in this paragraph shall restrict any Defendant from  
24 communicating with their current employees about their pay practices or any changes thereto. Nothing  
25 in this paragraph shall restrict Class Counsel from communicating with Class Members about the  
26 Settlement in their role as Class Counsel after Preliminary Approval, or limit the right of any  
27 Defendant to disclose the terms and circumstances of the Settlement to employees who have  
28 responsibility for overseeing or managing any Defendant’s litigation, law firms, accounting firms,

1 and/or insurers that represent any Defendant, or persons who have an obligation to be informed about  
2 any Defendant's litigation. For purposes of this section, media includes all print and digital media,  
3 including but not limited to newspapers, newsletters, magazines, articles, radio, blogs, websites, and  
4 social media sites.

5 63. Confidential Documents. Within 60 days of the Effective Date, each Party shall return,  
6 or confirm the destruction of, any documents or information that another Party designated as  
7 confidential pursuant to an applicable agreement or protective order.

8 64. No Prior Assignments. The Parties and their respective counsel represent, covenant,  
9 and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to  
10 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,  
11 cause of action or right herein released and discharged.

12 65. Warrantees and Representations. Plaintiffs and Class Counsel warrant and represent  
13 that (a) they are not currently aware of any unalleged facts or legal theories upon which any claims or  
14 causes of action could be brought against any Defendant, except such facts and theories encompassed  
15 within the Released Class Claims or Released PAGA Claims; (b) they have no current intention of  
16 asserting any other claims against any Defendant in any judicial or administrative forum (other than  
17 the Action); (c) they do not currently know of or represent any persons who have expressed any  
18 interest in pursuing litigation or seeking any recovery against any Defendant; (d) they will not solicit  
19 the representation of any other current or former person who performed flooring installation work as  
20 an installer or helper to bring an action against any Defendant; and (e) they will not disclose or use any  
21 confidential information obtained in the Action for any purpose other than the representation of  
22 Plaintiffs in the Action. The Parties acknowledge, understand, and agree that the representations and  
23 warrantees described in this paragraph are essential to the Settlement Agreement and that Defendants  
24 would not enter into this Settlement were it not for these representations and warrantees. This  
25 paragraph does not prohibit discussions between Class Counsel and Plaintiffs regarding the Action, this  
26 Settlement, or the claims, or from discussing with Class Members who initiate contact with Class  
27 Counsel whether to participate in the Settlement or opt-out of the Settlement. Further, nothing in this  
28 provision is intended to violate California Rule of Professional Conduct 5.6(a)(2).

1           66.    Nullification of Settlement Agreement. In the event that: (i) the Court does not finally  
2 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other  
3 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be  
4 null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement  
5 will likewise be treated as void from the beginning. In the event that the Settlement is terminated or  
6 cancelled or fails to become effective, the Parties shall be deemed to have reverted *nunc pro tunc* to  
7 their respective status as of the date and time immediately before the execution of this Agreement and  
8 they shall proceed in all respects as if this Agreement had not been executed, and without prejudice in  
9 any way from the negotiation, fact, or terms of this Settlement.

10           67.    Exhibits Incorporated by Reference. The terms of this Settlement Agreement include  
11 the terms set forth in any attached Exhibits, which are incorporated by reference as though fully set  
12 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

13           68.    Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
14 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements  
15 may be deemed binding on the Parties.

16           69.    Amendment or Modification. This Settlement Agreement may be amended or modified  
17 only by a written instrument signed by all Parties and their counsel or their successors-in-interest, and  
18 approved by the Court.

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

21           71.    California Law Governs. All terms of this Settlement Agreement and Exhibits hereto  
22 will be governed by and interpreted according to the laws of the State of California.

23           72.    Execution and Counterparts. This Settlement Agreement is subject only to the  
24 execution of all Parties. However, the Settlement may be executed in one or more counterparts. All  
25 executed counterparts and each of them, including facsimile and PDF or other scanned copies of the  
26 signature page, will be deemed to be one and the same instrument for all purposes in effectuating and  
27 enforcing this Settlement Agreement.

1           73.    Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that  
2 either party may appeal any court order that materially alters the Settlement Agreement’s terms.

3           74.    Waiver. No waiver of any condition or covenant contained in this Settlement or failure  
4 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a  
5 further waiver by such party of the same or any other condition, covenant, right or remedy.

6           75.    Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
7 conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against  
8 one party than another merely by virtue of the fact that it may have been prepared by counsel for one  
9 of the Parties, it being recognized that, because of the arm’s-length negotiations between the Parties,  
10 all Parties have contributed to the preparation of this Settlement Agreement.

11          76.    Representation by Counsel. The Parties acknowledge that they have been represented  
12 by counsel throughout all negotiations that preceded the execution of this Settlement, and that this  
13 Settlement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class  
14 Counsel warrant and represent that there are no liens on the Settlement Agreement.

15          77.    Cooperation and Execution of Necessary Documents. All Parties agree to cooperate in  
16 the administration of the Settlement and to make all reasonable efforts to control and minimize the  
17 costs and expenses incurred in administration of the Settlement, and will cooperate in good faith and  
18 execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement  
19 Agreement. If the Parties are unable to reach agreement on the form or content of any document  
20 needed to implement the Settlement, or on any supplemental provisions that may become necessary to  
21 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such  
22 disagreement. Additionally, the Parties agree they shall not appeal, move for reconsideration, or move  
23 to vacate any order or judgment entered by the Court granting final approval of the Settlement.

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

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

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**SIGNATURES**

**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFFS**

Dated: \_\_\_\_\_, 2023

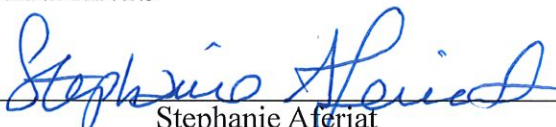
By \_\_\_\_\_  
Jaime Ugarte

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Julian Pineda

**DEFENDANTS**

Dated: February 21, 2023

By   
Stephanie Aferiat  
Home Depot U.S.A., Inc.

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
John Wallace  
J.W. Floor Covering, Inc.


Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Saeed Paymozd  
S.P. Carpet Pros, Inc.

**APPROVED AS TO FORM**

**ARNS DAVIS LAW FIRM**

Dated: \_\_\_\_\_, 2023

By   
Robert S. Arns  
Attorneys for Plaintiffs

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**AKIN GUMP STRAUSS HAUER &  
FELD LLP**

Dated: 2/21, 2023

By Donna M. Mezas  
Donna M. Mezas  
Attorneys for Defendant  
Home Depot U.S.A., Inc.

**CAHILL & CAMPITIELLO LLP**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Lawrence G. Campitiello  
Attorneys for Defendant  
J.W. Floor Covering, Inc.

**LAW OFFICE OF PATRICIA MURPHY**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Patricia A. Murphy  
Attorneys for Defendant  
S.P. Carpet Pros, Inc.

**SIGNATURES**

**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFFS**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Jaime Ugarte

Dated: \_\_\_\_\_, 2023

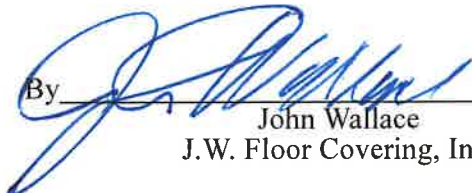
By \_\_\_\_\_  
Julian Pineda

**DEFENDANTS**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Stephanie Aferiat  
Home Depot U.S.A., Inc.

Dated: Feb. 21, 2023

By  \_\_\_\_\_  
John Wallace  
J.W. Floor Covering, Inc.

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Saeed Paymozd  
S.P. Carpet Pros, Inc.

**APPROVED AS TO FORM**

**ARNS DAVIS LAW FIRM**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Robert S. Arns  
Attorneys for Plaintiffs



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**AKIN GUMP STRAUSS HAUER &  
FELD LLP**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_

Donna M. Mezas  
Attorneys for Defendant  
Home Depot U.S.A., Inc.

**CAHILL & CAMPITIELLO LLP**

Dated: 2-21-, 2023

By  \_\_\_\_\_

Lawrence G. Campitiello  
Attorneys for Defendant  
J.W. Floor Covering, Inc.

**LAW OFFICE OF PATRICIA MURPHY**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_

Patricia A. Murphy  
Attorneys for Defendant  
S.P. Carpet Pros, Inc.

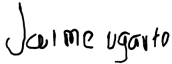
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**SIGNATURES**


**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFFS**

Dated: 2/22/2023, 2023

By   
Jaime Ugarte

Dated: 2/21/2023, 2023

By   
Julian Pineda

**DEFENDANTS**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Stephanie Aferiat  
Home Depot U.S.A., Inc.

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
John Wallace  
J.W. Floor Covering, Inc.

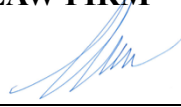
Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Saeed Paymozd  
S.P. Carpet Pros, Inc.

**APPROVED AS TO FORM**

**ARNS DAVIS LAW FIRM**

Dated: \_\_\_\_\_, 2023

By   
Robert S. Arns  
Attorneys for Plaintiffs

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**AKIN GUMP STRAUSS HAUER &  
FELD LLP**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Donna M. Mezas  
Attorneys for Defendant  
Home Depot U.S.A., Inc.

**CAHILL & CAMPITIELLO LLP**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Lawrence G. Campitiello  
Attorneys for Defendant  
J.W. Floor Covering, Inc.

**LAW OFFICE OF PATRICIA MURPHY**

Dated: February 21, 2023

By *Patricia A. Murphy*  
Patricia A. Murphy  
Attorneys for Defendant  
S.P. Carpet Pros, Inc.

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**SIGNATURES**

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**PLAINTIFFS**

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Jaime Ugarte

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
Julian Pineda

**DEFENDANTS**

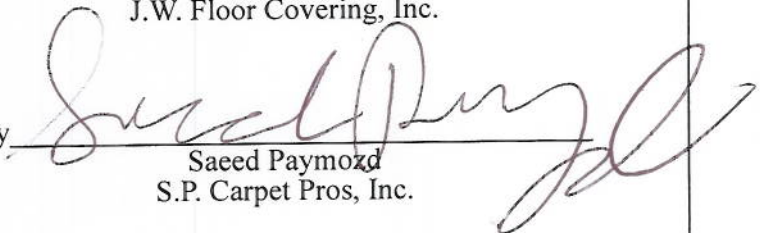
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Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_  
John Wallace  
J.W. Floor Covering, Inc.


Dated: 2/21/23 2023

By   
Saeed Paymozd  
S.P. Carpet Pros, Inc.

**APPROVED AS TO FORM**

**ARNS DAVIS LAW FIRM**

Dated: \_\_\_\_\_, 2023

By   
Robert S. Arns  
Attorneys for Plaintiffs

## EXHIBIT C

**CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES**

---

**If you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. Floor Covering, Inc. (“J.W.”) and S.P. Carpet Pros, Inc. (“Carpet Pros”), on Home Depot jobs, at any time between March 8, 2012 through [], you may be entitled to payment from a settlement in a class action lawsuit.**

---

*A court authorized this notice. This is not a solicitation from a lawyer.*

The class action settlement described below will resolve claims brought on behalf of persons who performed flooring installation work as installers or helpers in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, for unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage statements, false time statements, failure to reimburse expenses, unfair competition, fraud/misrepresentation, insufficient funding of contracts, and negligence. Although the court has not determined whether the claims have merit, and J.W., Carpet Pros, and Home Depot (collectively, “Defendants”) deny that they violated the law, the settlement provides monetary compensation to resolve these claims.

The proposed settlement has two main parts: (1) a class settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Your legal rights are affected whether you act or not. Read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>DO NOTHING</b>	<p><b>Receive compensation, but lose the right to bring a separate lawsuit.</b></p> <p>If you do nothing, you will receive compensation for the claims asserted in the lawsuit. You will also give up your right to sue any Defendant separately for the claims alleged in the lawsuit. Your Individual Class Payment will be based on the amount of time you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between March 8, 2012 through []. Your Individual PAGA Payment (if any) will be based on the amount of time you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between January 15, 2015 through [].</p>
<b>ASK TO BE EXCLUDED FROM CLASS SETTLEMENT BUT NOT PAGA SETTLEMENT</b>	<p><b>Receive no Individual Class Payment. Keep your right to bring a separate lawsuit.</b></p> <p>If you ask to be excluded from the class settlement you will not receive an Individual Class Payment for the class claims in the settlement, but you will retain the right to file your own claim. You cannot be excluded from the PAGA portion of the proposed settlement. Defendants must pay Individual PAGA Payments to all aggrieved employees and such employees must give up their rights to pursue Released PAGA Claims (defined below).</p>
<b>OBJECT TO CLASS SETTLEMENT BUT NOT PAGA SETTLEMENT</b>	<p><b>Object to the class settlement.</b></p> <p>If you wish to object to the class settlement, you must remain a member of the class. You cannot object to the class settlement if you ask to be excluded from it.</p>

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court presiding over this case has not yet decided whether to finally approve the settlement. You will receive the payments described in this notice only if the Court finally approves the settlement and after all objections and appeals, if any, are resolved.

## **BASIC INFORMATION**

### **1. Why Did I Get This Notice?**

---

Defendants' records indicate that you were eligible to perform flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, at some time between March 8, 2012 and []. You are therefore a member of a proposed class action lawsuit alleging claims for unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage statements, false time statements, failure to reimburse expenses, unfair competition, fraud/misrepresentation, insufficient funding of contracts, and negligence.

This notice describes the class action lawsuit, the proposed settlement of the lawsuit, and your legal rights and options. If the Court approves the settlement, you will receive the Individual Class Payment described in this notice (after any objections and appeals are resolved), unless you exclude yourself from the class settlement, and you will receive the Individual PAGA Payment described in this notice (if eligible and after any objections and appeals are resolved).

The Court presiding over the case is the Superior Court of California for the County of Los Angeles, and the case is known as *Ugarte v. Professional Flooring Installation, Inc., et al.*, Case No. BC613043.

### **2. What Is This Lawsuit About?**

---

Plaintiffs Jaime Ugarte (“Ugarte”) and Julian Pineda (“Pineda”) (collectively, “Plaintiffs”) allege claims against Defendants for unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage statements, false time statements, failure to reimburse expenses, unfair competition, fraud/misrepresentation, insufficient funding of contracts, and negligence. Plaintiffs also allege a claim for civil penalties under California’s Private Attorneys General Act (“PAGA”). The court has not determined whether the claims in this lawsuit have merit. Each Defendant denies that it engaged in, or is responsible for, any wrongful conduct or violated the law in any way, and contends that its policies and practices comply with all legal requirements.

### **3. Why Is This A Class Action?**

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In a class action lawsuit, one or more persons, called plaintiffs or class representatives, sue on behalf of other people (“class members”) who have similar claims. If the Court certifies a class, then the claims of all class members are resolved in a single lawsuit. The Court has not yet determined if the claims can proceed as a class action, but Plaintiffs and Defendants are requesting that the Court certify a class for purposes of the settlement.

### **4. Why Is There A Settlement?**

---

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, all parties avoid the risks and cost of a trial, and class members will receive an Individual Class Payment. Plaintiffs and their attorneys think the settlement is best for the proposed class.

## **WHO IS IN THE SETTLEMENT**

### **5. How Do I Know If I Am Part Of The Settlement?**

---

You are eligible for an Individual Class Payment if you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between March 8, 2012 and []. You are eligible for an Individual PAGA Payment if you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between January 15, 2015 and [] (“aggrieved employees”).

## THE TERMS OF THE SETTLEMENT

### **6. What Does The Settlement Provide?**

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The settlement provides an Individual Class Payment for each person who performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between March 8, 2012 and [], based on their inclusion in either (i) the database compiled for California workers indicating that an individual maintained an active badge during the period from March 8, 2012 through [] (the “Class Badge Data”), or (ii) J.W.’s or Carpet Pros’ records indicating that an individual who is not reflected in the Class Badge Data performed flooring installation work in California on Home Depot jobs during the relevant period (“Class Service Provider Records”), and who does not exclude himself or herself from the settlement. Additionally, the settlement provides an Individual PAGA Payment for each person who performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between January 15, 2015 and [], based on their inclusion in either (i) the database compiled for California workers indicating that an individual maintained an active badge during the period from January 15, 2015 through [] (the “PAGA Badge Data”); or (ii) J.W.’s or Carpet Pros’ records indicating that an individual who is not reflected in the PAGA Badge Data performed flooring installation work in California on Home Depot jobs during the relevant period (“PAGA Service Provider Records”). The settlement provides for a total Gross Settlement Fund of \$3,200,000 to resolve all of the claims asserted in the lawsuit as well as claims for certain fees and expenses. Approximately [] will be paid to the class for the class settlement (“Net Settlement Amount”). This is the approximate amount that will remain after the payment of fees and costs to Class Counsel, settlement administration costs, enhancement payments for Plaintiffs, Individual PAGA Payments, and penalties payable to the California Labor Workforce Development Agency from the Gross Settlement Fund, should those be approved by the Court. This amount is an estimate only. The actual Net Settlement Amount available for distribution will depend on the amounts that the Court approves for attorneys’ fees, costs, enhancement payments, and settlement administration costs. The total amount of PAGA civil penalties to be paid from the Gross Settlement Amount is \$20,000—25% will be paid to the aggrieved employees (\$5,000) and 75% will be paid to the LWDA (\$15,000) in settlement of PAGA claims.

The entirety of the Net Settlement Amount will be distributed to class members based on the length of time they performed flooring installation work as an installer or helper for or on behalf of either or both J.W. and Carpet Pros on Home Depot jobs. Uncashed checks will be sent to the California State Controller’s Office in the name of and for the benefit of Settlement Class Members who do not opt out. The 25% of the PAGA penalties (\$5,000) will be distributed to aggrieved employees based on the length of time they performed flooring installation work as an installer or helper for or on behalf of either or both J.W. and Carpet Pros on Home Depot jobs. The value of any settlement checks from the amount allocated to the aggrieved employees that are not cashed shall be submitted to the California State Controller’s Office in the name of and for the benefit of such aggrieved employees.

You do **not** have to file a claim form to receive your payments under the settlement.

### **7. What Claims Does The Settlement Release?**

---

If the settlement is approved, all class members who do not submit a timely request for exclusion will waive their claims against Defendants. This means that, if you do not timely exclude yourself from the settlement, you cannot sue any Defendant or be part of any other lawsuit against any Defendant alleging the same claims as this lawsuit. If the settlement is approved, all aggrieved employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the class settlement. The specific releases are follows:

Released Class Claims. After the judgment is final and Defendants have fully funded the Gross Settlement Fund, Plaintiffs and all Class Members (including any assigned agents/representatives) who do not submit a valid and timely Request for Exclusion shall, for the period March 8, 2012 through [], fully and finally waive, release, and forever discharge Defendants from any and all claims (i) asserted in the Action, or (ii) arising from, or derivative of, the claims or factual allegations asserted in the Action, including those concerning any Defendant’s practices regarding payment of wages, meal and rest periods, final pay, wage statements, time statements, and expense reimbursement. The released class claims include, but are not limited to, any claims, rights, demands, liabilities, and causes of action of any kind or nature in law or in equity, under any theory, whether contract, common law, constitutional, statutory or otherwise, of any jurisdiction, foreign or domestic, whether known or unknown,



anticipated or unanticipated, for unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage statements, false time statements, failure to reimburse expenses, unfair competition, fraud/misrepresentation, insufficient funding of contracts, and negligence, and for damages, restitution, penalties, interest, costs, attorneys' fees, expenses, equitable relief, injunctive relief, and any other relief premised on the alleged violations.

Released PAGA Claims. After the judgment is final and Defendants have fully funded the Gross Settlement Fund, Plaintiffs and all aggrieved employees (including any assigned agents/representatives) shall, for the period January 15, 2015 through [], fully and finally waive, release, and forever discharge Defendants from any and all claims for PAGA penalties predicated on the alleged California Labor Code violations (i) asserted in the Action, or (ii) arising from, or derivative of, the claims or factual allegations asserted in the Action, including those concerning any Defendant's practices regarding payment of wages, meal and rest periods, final pay, wage statements, time statements, and expense reimbursement. The released PAGA claims include all claims for penalties, attorneys' fees, litigation costs, interest, and any other relief available under PAGA that Plaintiffs alleged in the Action or could have sought based on the claims and factual allegations alleged in the Action.

## **8. What Fees Will Be Paid From The Settlement Amount Before Payments Are Made To Class Members?**

---

Subject to Court approval, the following payments will be paid from the total Gross Settlement Fund before Individual Class Payments are made to class members:

- Fees and costs incurred by a neutral company, Phoenix Class Action Administration Solutions (the "settlement administrator"), estimated not to exceed \$32,500, for processing the settlement, including sending this Notice, processing requests for exclusion, and calculating and distributing settlement payments.
- Attorneys' fees for Class Counsel of \$1,066,560, plus out-of-pocket costs incurred in litigating this lawsuit of approximately \$\_\_\_\_\_. These amounts are intended to compensate and reimburse Class Counsel for their work litigating the case and obtaining the settlement, and the work remaining to be performed to complete the settlement process.
- Service Awards of \$7,500 to compensate Ugarte and Pineda, respectively, for their services on behalf of the Class in initiating and prosecuting the Action.
- A payment of \$20,000 for the State's portion of the settlement allocated to claims brought under PAGA—25% will be paid to the aggrieved employees (\$5,000) and 75% will be paid to the LWDA (\$15,000).

## **9. How Much Is My Settlement Payment?**

---

If you do not opt out of the class, you will receive an Individual Class Payment based on the number of workweeks you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, between March 8, 2012 through [], as calculated based on the Class Badge Data or Class Service Provider Records. If eligible, you will also receive an Individual PAGA Payment based on the number of workweeks you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot Jobs, between January 15, 2015 through [], as calculated based on the PAGA Badge Data or PAGA Service Provider Records. Persons who performed flooring installation work as an installer or helper in California for longer periods of time are entitled to a greater share of the settlement funds than those who worked for shorter periods of time.

Based on the Class Badge Data or Class Service Provider Records, the total number of weeks you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, during the applicable time period is estimated to be ("Your Class Workweeks"), and your estimated Individual Class Payment is .

Based on the PAGA Badge Data or PAGA Service Provider Records, the total number of weeks you performed flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, during the applicable time period is estimated to be ("Your PAGA Workweeks"), and your estimated Individual PAGA Payment is .

The amounts in this section are estimates only. The payments you actually receive will depend on the amounts the Court approves for attorneys' fees, costs, enhancement payments, and settlement administration costs. If no amount

is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the settlement because you didn't perform flooring installation work as an installer or helper in California for or on behalf of either or both J.W. and Carpet Pros, on Home Depot jobs, during the period from January 15, 2015 through []. You should speak with your own accountant or other tax professional about the tax implications of your settlement payment(s).

#### **10. What If The Information About My Workweeks Is Incorrect?**

---

The number of Your Class Workweeks and Your PAGA Workweeks shown above is based on the Class Badge Data or Class Service Provider Records, or PAGA Badge Data or PAGA Service Provider Records, respectively, and is presumed to be accurate. If you disagree with the numbers shown for Your Class Workweeks or Your PAGA Workweeks, you may dispute those numbers by writing to the settlement administrator at the following address no later than []:

[]

In your note to the settlement administrator, you must explain why you believe the numbers are incorrect. Please be sure to include any supporting documentation (such as payment history reports, W-2's, or tax or other records that support your position). The settlement administrator will make a final determination regarding your settlement share after reviewing your submission.

#### **11. What Am I Giving Up To Stay In The Class And Get Compensation?**

---

Unless you exclude yourself, you will be part of the settlement class, which means that you cannot file your own lawsuit or be part of any other lawsuit or proceeding that makes the same claims as this case. It also means that all of the Court's orders will apply to you and legally bind you. If you are part of the settlement class, you shall be deemed to have released Defendants (and any of their respective affiliates, employees, directors, officers, shareholders, agents, attorneys, successors and assigns) from any and all claims of any kind that were, or could have been, asserted in this lawsuit based on the allegations regarding unpaid regular and overtime wages, missed meal and rest periods, untimely final wages, inaccurate wage statements, false time statements, failure to reimburse expenses, unfair competition, fraud/misrepresentation, insufficient funding of contracts, and negligence. You cannot be excluded from the PAGA portion of the proposed settlement. Defendants must pay Individual PAGA Payments to all aggrieved employees and such employees must give up their rights to pursue Released PAGA Claims (defined above).

### **EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT**

#### **12. How Do I Exclude Myself From This Class Settlement?**

---

To exclude yourself from the class settlement, you must send a letter by U.S. mail (or express mail carrier) stating that you wish to be excluded from the settlement class in *Ugarte v. Professional Flooring Installation, Inc., et al.*, Case No. BC613043. You must include your full name, address, telephone number, and signature. Your request must be postmarked no later than [], and sent to:

[]

You cannot exclude yourself on the phone or by email. If you exclude yourself because you may wish to file your own lawsuit, be aware that there is a time limit to file your claims.

#### **13. If I Don't Exclude Myself, Can I Sue For the Same Claims Later?**

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No. Unless you exclude yourself, you are giving up the right to sue any Defendant for the claims covered by this settlement.

#### **14. If I Exclude Myself, Can I Still Get A Settlement Payment?**

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If you exclude yourself from the settlement, you will not receive the Individual Class Payment described above. You will still receive the Individual PAGA Payment described above (if any).

## THE LAWYERS SEEKING TO REPRESENT YOU

### **15. Do I Have A Lawyer In This Case?**

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Arns Davis Law is seeking to represent you and all settlement class members. If the Court approves the representation, Arns Davis Law will become “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

### **16. How Will The Lawyers Be Paid?**

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Class Counsel will ask the Court for attorneys’ fees of up to \$1,066,560 of the Gross Settlement Fund. Class Counsel will also seek reimbursement from the Settlement Fund for expenses they incurred in pursuing the lawsuit, such as filing fees, expert fees, and travel expenses. Class Counsel will file an application to the Court no later than [] setting forth the actual amount of attorneys’ fees and expenses they will be seeking from the Gross Settlement Fund for their work on behalf of the class members. You can obtain a copy of Class Counsel’s application for attorneys’ fees and expenses after [] by contacting Class Counsel.

### **17. Will There Be Enhancement Payments To The Named Plaintiffs?**

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The settlement also provides that Ugarte and Pineda may seek an enhancement payment of up to \$17,500 and \$7,500, respectively. The enhancement payments are intended to compensate Plaintiffs for initiating the lawsuit, investing their time to assist with the case, and providing information and assistance to Class Counsel.

## OBJECTING TO THE SETTLEMENT

### **18. How Do I Object To The Settlement?**

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If you wish to object to the settlement, or to Plaintiffs’ requests for attorneys’ fees, costs or enhancement payments, you may send a letter stating your objection. You should reference the case *Ugarte v. Professional Flooring Installation, Inc., et al.*, Case No. BC613043, and include your full name, address, telephone number, and signature, and the reasons you object to the settlement. If you intend to appear at the fairness hearing through an attorney, you should also list the attorney(s) representing you who will appear at the fairness hearing. For a written objection to be considered, you must send it to the following address, postmarked no later than []:

[]

Alternatively, you may appear, or through your own attorney, at the fairness hearing on [] to state your objection to the Court (even if you did not submit a written objection). See below, paragraph no. 21, for information on the Court’s current social distancing procedures for attendance at hearings. You cannot exclude yourself from the class settlement if you wish to object.

### **19. What Is The Difference Between Objecting And Excluding Myself?**

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By objecting, you are informing the Court that you do not like some aspect of the settlement. You can object only if you stay in the settlement class.

If you exclude yourself, you are informing the Court that you do not want to be part of the class settlement. If you exclude yourself, you cannot object because the case no longer affects you.

## THE COURT’S FAIRNESS HEARING

### **20. When And Where Will The Court Decide To Approve The Settlement?**

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The Court will hold a fairness hearing on August 1, 2023, in Department 14, Superior Court of California for the County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, to consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will then decide whether to finally approve the settlement. The Court will also decide on the amount of fees and costs to be paid to Class Counsel and how much the named Plaintiffs will receive as enhancement payments.

### **21. Do I Have To Come To The Hearing?**

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No. Class Counsel will answer any questions the Court may have, but you are welcome to attend the hearing at your

own expense. The Court's remote appearance technology, LACourtConnect, is available for appearances in Civil matters. To register to appear remotely, visit <https://my.lacourt.org/laccwelcome>. If you choose to attend the hearing in person, please note that face masks are strongly recommended inside all Los Angeles County courthouses in alignment with Los Angeles County Department of Public Health guidance. If you submit a written objection to the settlement, you do not have to attend the hearing. As long as your objection is received on time, the Court will consider it.

**22. May I Speak At The Hearing?**

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If you do not exclude yourself from the class settlement, you may ask the Court's permission to speak at the hearing about the settlement or your objection.

**IF YOU DO NOTHING**

**23. What Happens If I Do Nothing At All?**

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If you do nothing, you will receive your Individual Class Payment and Individual PAGA Payment (if any) if the Court approves the settlement.

**GETTING MORE INFORMATION**

**24. Are There More Details About The Settlement?**

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This notice summarizes the settlement. More details are in the formal settlement agreement. You can get a copy of the settlement agreement or the notice of final judgment by writing to the settlement administrator at the address below or visiting the following website: [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You can also get a copy of the settlement agreement or notice of final judgment by visiting the Clerk's Office (Room 255 at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012), but you are encouraged to schedule an appointment beforehand by calling the courthouse at (213) 310-7000. **Please do not contact the Court with questions.**

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POSTAGE

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<<City>>, <<ST>> <<ZIP>>-<<ZIP4>>

1 **Ugarte v. Professional Flooring Installation, Inc.**  
2 **LA Superior Court Case No. BC613043**

3 CERTIFICATE OF SERVICE

4 I, the undersigned, declare as follows:

5 I am a citizen of the United States, over the age of 18 years and not a party to, nor interested in, the  
6 above-entitled action. I am an employee of Arns Davis Law Firm, A Professional Corporation, and my business  
address is 515 Folsom Street, 3<sup>rd</sup> Floor, San Francisco, CA 94105

7 On February 22, 2023, I served the following: **SECOND AMENDED JOINT STIPULATION OF**  
8 **CLASS ACTION SETTLEMENT AND RELEASE**

9 on all interested parties in the above cause, by:

10  X  **ONLY BY ELECTRONIC TRANSMISSION** Only by emailing the document(s) to the  
11 persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the  
12 Coronavirus (COVID-19) pandemic because this office will be working remotely, not able to send physical mail as  
usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission  
was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy,  
upon request only, when we return to the office at the conclusion of the national emergency.

13 The envelopes were addressed as follows:

14 Donna M. Mezias  
15 Dorothy F. Kaslow  
[dmezias@akingump.com](mailto:dmezias@akingump.com)  
[dkaslow@akingump.com](mailto:dkaslow@akingump.com)  
16 AKIN, GUMP, STRAUSS, HAUER & FELD  
580 California Street, Suite 1500  
San Francisco, CA 94104  
17 P: 415-765-9500  
F: 415-765-9501  
18 *Counsel for Home Depot U.S.A., Inc*

19 **Lawrence G. Campitiello**  
20 CAHILL & CAMPITIELLO LLP  
11440 W. Bernardo Court, Suite 214  
San Diego, CA 92127  
21 Telephone: (442) 777-5708  
[lcampitiello@cahillcampitiello.com](mailto:lcampitiello@cahillcampitiello.com)  
22 *Counsel for J.W. Floor Covering, Inc.*

Gregory W. Knopp  
Jonathan S. Christie  
**Victor A. Salcedo 310 229 1080**  
[christiej@akingump.com](mailto:christiej@akingump.com)  
[gknopp@akingump.com](mailto:gknopp@akingump.com)  
[vsalcedo@akingump.com](mailto:vsalcedo@akingump.com)  
23 AKIN, GUMP, STRAUSS, HAUER & FELD  
1999 Avenue of the Stars, Suite 600  
Los Angeles, CA 90067  
24 T: 310-229-1000  
F: 310-229-1001  
*Counsel for Home Depot U.S.A., Inc*

**Patricia Murphy**  
[pmurphy@pmurphylaw.com](mailto:pmurphy@pmurphylaw.com)  
25 LAW OFFICE OF PATRICIA MURPHY  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104  
26 P: 415-992-4356  
F: 415-384-6035  
*Counsel for S.P. Carpet Pros, Inc.*

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and  
28 correct:

Executed on February 22, 2023 at San Francisco, California.

  
\_\_\_\_\_  
GRISELIA FLORES