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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE COUNTY OF SAN BERNARDINO

24 Robert Garcia, individually, and on behalf all
25 others similarly situated,

26 Plaintiffs,

27 v.

28 HD Supply Management, Inc., and DOES 1
to 100, inclusive,

Defendant.

CASE NO.:
[Unlimited Jurisdiction]

STIPULATION OF RESOLUTION

1 This Stipulation of Resolution is made by and between the Named Plaintiff, Robert
2 Garcia, on his own behalf and on behalf of all members of the Settlement Class, as defined below,
3 on the one hand, and HD Supply Management, Inc., a Florida Corporation ("Defendant") on the
4 other hand (collectively the "Parties"), in the lawsuit entitled., filed in San Bernardino County
5 Superior Court, Case No. ____ (the "Litigation"). This Stipulation of Resolution resolves all
6 claims that were asserted or could have been asserted against Defendant pertaining to the claims
7 in the Litigation.

8 **I. DEFINITIONS**

9 **A. Administrative Costs.** All administrative costs of settlement, including cost of
10 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
11 by the Settlement Administrator in connection with the execution of its duties under this
12 Stipulation of Settlement.

13 **B. Agreement.** The terms "Agreement" or "Settlement Agreement" are used
14 synonymously herein to mean this Stipulation of Resolution for purposes of Resolution.

15 **C. Class Counsel.** The term "Class Counsel" as used herein means: the law firm of
16 Messrelian Law, Inc. , who are (or were at some time) counsel for and acting on behalf of Named
17 Plaintiff and the Settlement Class. The term Class Counsel shall be used synonymously with the
18 term Plaintiffs' Counsel.

19 **D. Court.** The term "Court" as used herein means the Superior Court of the State of
20 California for the County of San Bernardino.

21 **E. Final.** The term "Final" means: (1) the date of final affirmation of the Final
22 Approval from any appeal, the expiration of the time for, or the denial of, a petition to review the
23 Final Approval, or if review is granted, the date of final affirmation of the Final Approval
24 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the
25 Final Approval or the final dismissal of any proceeding to review the Final Approval, provided
26 that the Final Approval is affirmed and/or not reversed in any part; or (3) if no appeal is filed, the
27 expiration date of the time for the filing or noticing of any appeal from the Court's Final Approval
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1 of the Resolution, as determined under Rule 8.104(a) of the California Rules of Court; or (4) if
2 no objections to this Agreement are timely filed, or if any objections to this Agreement which
3 are timely filed are subsequently withdrawn, the Date of Final Approval.

4 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final
5 Approval” as used herein mean the date the final formal judgment is entered by the Court at the
6 Final Fairness and Approval Hearing in accordance with the terms herein, approving this
7 Agreement.

8 **G. Defendant.** The term “Defendant” as used herein means HD Supply
9 Management, Inc.

10 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
11 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
12 Unemployment Tax Act, and any similar state taxes and contributions required of employers,
13 such as for unemployment insurance.

14 **I. Litigation.** The term “Litigation” as used herein means the action entitled Robert
15 Garcia v. HD Supply filed in San Bernardino County Superior Court, Case No. _____.

16 **J. Named Plaintiff.** The term “Named Plaintiff” as used herein means Robert
17 Garcia.

18 **K. Net Settlement Amount.** The term “Net Settlement Amount” as used herein
19 means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
20 Administrative Costs, enhancements to the Named Plaintiffs, and penalties paid pursuant to
21 California’s Private Attorneys General Act (“PAGA”) (“PAGA Settlement”) as provided in
22 Sections XIII, VIII, XIV, XV, and XVI, respectively.

23 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
24 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
25 interest, and shall be supplemented by any portion of the requested attorneys’ fees and Litigation
26 costs, Administrative Costs, and the enhancement to the Named Plaintiff which is not approved
27 by the Court.

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1 **M. Resolution.** The term “Resolution” as used herein means this Agreement to
2 resolve the Litigation.

3 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
4 means ILYM Group Inc., which will be responsible for the administration of the Settlement
5 Payment, as defined below, and all related matters.

6 **O. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
7 used synonymously herein to means this Stipulation of Settlement.

8 **P. Settlement Amount.** The term “Settlement Amount” as used herein mean a fund
9 in the sum of One Hundred Fifty Thousand dollars and zero cents (\$150,000.00), which shall be
10 fully paid by Defendant, and from which all: Net Settlement Payments, Court approved
11 attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant to
12 Section VIII, the enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties,
13 interest, and Taxes pursuant to Section XV, and the PAGA Settlement pursuant to Section XVI
14 shall be paid, except as provided herein.

15 **Q. Settlement Class.** For settlement purposes only, the Parties agree to the
16 certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as “All
17 persons within the State of California who are or were employed by Defendant in the State of
18 California in the position of Store Sales Associate or comparable position during the Settlement
19 Period (the “Settlement Class”).

20 **R. Settlement Period.** The term “Settlement Period” as used herein means the
21 period from May 1, 2016 to June 26, 2020 (“the Settlement Period”).

22 **II. BACKGROUND**

23 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and
24 all others similarly situated, that Defendant violated California state wage and hour laws, the
25 California Business and Professions Code Section 17200 *et seq.*, and PAGA, as a result of
26 Defendant’s California wage and hour policies and practices. Specifically, Plaintiff alleges that
27 Defendant failed to pay its employees at or above the applicable minimum wage rates, failed to
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1 both provide overtime pay and to pay overtime at the legally required rates, failed to pay all
2 wages earned, failed to provide meal breaks (including first and second meal breaks), failed to
3 authorize and permit legally compliant rest breaks each day based on the hours worked by each
4 employee, and failed to reimburse business expenses. Plaintiffs further allege that the
5 aforementioned resulted in the employees receiving inaccurate wage statements, and the
6 underpayment of wages to employees upon termination and/or resignation.

7 Class Counsel conducted informal discovery that yielded information and documentation
8 concerning the claims set forth in the Litigation, such as Defendant's policies and procedures
9 regarding the payment of wages, the provision of meal and rest breaks, time keeping policies,
10 including recording hours, issuance of wage statements, and providing all wages at separation,
11 as well as information regarding the number of putative class members and the mix of current
12 versus former employees, the average number of hours worked, the wage rates in effect, and
13 length of employment for the average putative class member.

14 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
15 negotiations with Defendant concerning possible resolution of the claims asserted in the
16 Litigation. On May 29, 2020, the Parties participated in a mediation before mediator Steve Pearl
17 that resulted in a tentative settlement of the Litigation, subject to finalization of a formal
18 Stipulation for Resolution and approval of the Court. The Parties signed a Memorandum of
19 Understanding at the conclusion of the mediation, and have since engaged in extension
20 negotiations about the terms and conditions of the Resolution. The Parties have now entered into
21 a more detailed, formalized Settlement Agreement for submission to the Court for preliminary
22 and final approval.

23 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
24 claims asserted in the Litigation and has concluded, taking into account the sharply contested
25 issues involved, the expense and time necessary to pursue the Litigation through trial and any
26 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
27 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
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1 the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement, that a
2 settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
3 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf
4 and on behalf of the Settlement Class, have agreed to settle the Litigation with Defendant on the
5 terms set forth herein.

6 **D.** Defendant has concluded that, because of the substantial expense of defending
7 against the Litigation, the length of time necessary to resolve the issues presented herein, the
8 inconvenience involved, and the concomitant disruption to their business operations, it is in their
9 best interests to accept the terms of this Agreement. Defendants deny each of the allegations and
10 claims asserted against it in the Litigation. However, Defendants nevertheless desire to settle the
11 Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
12 and for the purpose of putting to rest the controversies engendered by the Litigation.

13 **E.** This Agreement is intended to and does effectuate the full, final and complete
14 resolution of all allegations and claims that were asserted, or could have been asserted, in the
15 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

16 **III. JURISDICTION**

17 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
18 Litigation includes claims that, while Defendant deny them in their entirety, would, if proven,
19 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
20 Final Approval of the Resolution and after the Court has ordered the entry of Judgment, pursuant
21 to California *Code of Civil Procedure* Section 664.6 and California Rules of Court, Rule
22 3.769(h), the Court shall retain jurisdiction of this action solely for the purpose of interpreting,
23 implementing, and enforcing this Resolution consistent with the terms set forth herein.

24 **IV. STIPULATION OF CLASS CERTIFICATION**

25 The Parties stipulate to the certification of this Settlement Class for purposes of
26 Resolution only. This Stipulation is contingent upon the Preliminary and Final Approval and
27 certification of the Settlement Class only for purposes of Resolution. Should the Resolution not
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1 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally
2 to class certification as part of the Resolution shall have no bearing on, and shall not be admissible
3 in connection with, the issue of whether a class should be certified in a non-settlement context in
4 the Litigation. Defendant expressly reserves the right to oppose class certification should this
5 Resolution be modified or reversed on appeal or otherwise not become final.

6 **V. MOTION FOR PRELIMINARY APPROVAL; DEFENDANT’S ANSWER**

7 The Named Plaintiff will bring a motion before the Court for an order preliminarily
8 approving the Resolution including the Notice of Proposed Class Action Resolution, and
9 including certification of the Settlement Class for settlement purposes only. Prior to the Date of
10 Final Approval, Defendant shall file an Answer to the Complaint, thereby making a general
11 appearance in the Action and subjecting themselves to the Court’s jurisdiction.

12 The date that the Court grants Preliminary Approval of this Agreement will be the
13 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval;
14 on the same date on which it is filed with the Court, Class Counsel shall concurrently submit it
15 to the Labor & Workforce Development Agency in compliance with Labor Code § 2698 *et seq.*,
16 the Private Attorneys General Act (“PAGA”).

17 **VI. STATEMENT OF NO ADMISSION**

18 A. Defendant denies liability to Named Plaintiff and to the Settlement Class upon
19 any claim or cause of action. This Agreement does not constitute, and is not intended to
20 constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
21 allegations or claims made against it in the Litigation.

22 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
23 any statements, discussions or communications, nor any materials prepared, exchanged, issued
24 or used during the course of the negotiations leading to this Agreement or the Resolution, is
25 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
26 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
27 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
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1 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
2 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly
3 or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other
4 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,
5 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
6 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in
7 any proceeding before the Court that has as its purpose the interpretation, implementation, or
8 enforcement of this Agreement or any orders or judgments of the Court entered in connection
9 with the Resolution.

10 C. None of the documents produced or created by Named Plaintiff or the Settlement
11 Class in connection with the claims procedures or claims resolution procedures constitute, and
12 they are not intended to constitute, an admission by Defendant of any violation of any federal,
13 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
14 duty at law or in equity.

15 D. The Parties agree that class certification pursuant to California Code of Civil
16 Procedure Section 382 under the terms of this Agreement is for settlement purposes only.
17 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
18 that any class should be certified or given collective treatment in the Litigation or in any other
19 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
20 Agreement will be admissible in any court or other tribunal regarding the propriety of class
21 certification or collective treatment. In the event that this Agreement is not approved by the
22 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
23 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
24 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
25 way any of their objections or defenses in the Litigation.

26 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

27 **A. Release as to All Settlement Class Members.**

1 Upon the Date of Final Approval, and subject to the occurrence of the Effective Date,
2 Named Plaintiff and all members of the Settlement Class, except those that make a valid and
3 timely request to be excluded from the Class, waive, release, discharge, and promise never to
4 assert in any forum any and all claims against Defendant, their respective subsidiaries, affiliates,
5 predecessors or successors in interest, or the officers, directors, shareholders, employees,
6 attorneys, agents, assigns, insurers, re-insurers, of any of them, that were alleged in the Litigation
7 or which could have been alleged based on the facts asserted in the Litigation and which arose
8 during the Settlement Period during their employment in California. These claims include, but
9 are not limited to: Failure to Pay Overtime; Failure to Pay Minimum Wage; Failure to Provide
10 Meal Periods; Failure to Provide Rest Periods; Failure to Provide Itemized Wage Statements;
11 Waiting Time Penalties; Failure to Provide Indemnification for Business Expenses; Improper
12 Deductions from Wages; Misclassification of Employees as Independent Contractors; Unfair
13 Competition; PAGA; Failure to Provide Records (Labor Code sections 226(b); 1198.5 and 432)
14 and any other applicable provisions of state or federal law, including the applicable IWC wage
15 order.

16 **B. Publicity.**

17 Named Plaintiff and his counsel agree that they have not and will not publish the
18 Resolution. In response to any inquiries Named Plaintiff will state that “the case was resolved
19 and it was resolved confidentially.” Named Plaintiff’s counsel shall not report the Resolution in
20 any medium or in any publication, shall not post or report anything regarding the claims of
21 Plaintiffs or the Putative Class or the Resolution on their website which identify Named Plaintiffs
22 or Defendant by name, and shall not contact any reporters or media regarding the Resolution.
23 However, Named Plaintiff’s attorneys are authorized to make a limited disclosure to the Court
24 and the LWDA for the purposes of obtaining the approval of the Settlement and may discuss the
25 settlement with the Class Members. This disclosure is limited to court filings, submission to, and
26 communications with, the LWDA, and responding to inquiries by Class Members, and neither
27 Plaintiff nor his counsel or representatives are permitted to disseminate or publish, distribute or
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1 discuss the information provided to the Court in those filings outside the filings themselves and
2 any hearing held on those filings, unless ordered otherwise by the Court.

3 **VIII. SETTLEMENT ADMINISTRATOR**

4 Named Plaintiff and Defendant, through their respective counsel, have selected ILYM
5 Group, Inc. as the Settlement Administrator to administer the Resolution, which includes but is
6 not limited to distributing and responding to inquiries about the Notice of Proposed Class Action
7 Resolution, determining the validity of any opt-outs, calculating all amounts to be paid from the
8 Settlement Amount, and establishing and administering a qualified settlement fund. Charges and
9 expenses of the Settlement Administrator, estimated to be \$10,000.00, will be paid from the
10 Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the
11 allocated \$10,000.00 will come from the Settlement Amount. If the actual Settlement
12 Administrator fees are less than the Parties' estimation, the difference between the actual and
13 estimated Settlement Administrator fees will be paid to the participating class members.

14 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

15 **A. Notice.**

16 Named Plaintiffs and Defendant, through their respective attorneys, have jointly prepared
17 a Notice of Class Action and Proposed Resolution (the "Notice") (**Exhibit A**), which will be
18 transmitted to the members of the Settlement Class based on the following timeframe:

19 As soon as practicable following Preliminary Approval of the Resolution, but no later
20 than twenty (20) calendar days after the Court's Preliminary Approval order, Defendant will
21 provide to the Settlement Administrator the following information about each Settlement Class
22 member ("Class List"): (1) name; (2) last known home address; (3) number of workweeks as a
23 class member during the Settlement Period; and (4) social security number. Defendant further
24 agree to consult with the Settlement Administrator prior to the production date to ensure that the
25 format will be acceptable to the Settlement Administrator.

26 The Settlement Administrator shall run all the addresses provided through the United
27 States Postal Service NCOA database (which provides updated addresses for any individual who
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1 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
2 address) to obtain current address information, and shall mail the Notice to the members of the
3 Settlement Class via first-class regular U.S. Mail using the most current mailing address
4 information available within ten (10) calendar days of the receipt of the Class List from
5 Defendant. The Notice shall provide the members of the Settlement Class forty-five (45) days'
6 notice of all applicable dates and deadlines.

7 The Notice will also include information regarding the nature of the Litigation; a
8 summary of the terms of the Resolution; the definition of the Settlement Class; a statement that
9 the Court has preliminarily approved the Resolution; the nature and scope of the claims being
10 released; the procedure and time period for objecting to the Resolution, the date and location of
11 the Final Approval hearing; information regarding the opt-out procedure; Defendant' calculation
12 of the number of eligible workweeks that each Settlement Class member has worked as an
13 employee in California at any time during the Settlement Period ("Eligible Workweeks"), and
14 the average potential recovery for each proposed Settlement Class member. The Notice shall
15 enclose the Claim Form.

16 The Notice will identify the number of Eligible Workweeks that each Class Member was
17 employed and inform the employee of their right to dispute this number by writing to, and
18 submitting relevant evidence to, the Settlement Administrator within forty five (45) days of the
19 postmark date of the Notice. Absent any challenge, the number of workweeks identified on the
20 Notice shall be deemed accurate. The resolution of any disputes concerning the number of
21 Eligible Workweeks is discussed in Section X, below.

22 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
23 submit the applicable and available information, including name, Social Security number, and
24 original mailing address, to a company that specializes in address skip tracing in an attempt to
25 locate a more current address. If the Settlement Administrator is successful in locating a new
26 address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned
27 with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline
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1 date, shall be sent to the forwarding address affixed thereto.

2 The Settlement Administrator will mail a reminder post-card to those Settlement Class
3 members who have not responded to the Notice fourteen (14) days before the expiration of the
4 claim period encouraging Settlement Class members to respond before the deadline.

5 No later than fifteen (15) days before the Final Approval Hearing, the Settlement
6 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting
7 to the completion of the Notice process, including the number of attempts to obtain valid mailing
8 addresses for re-sending of any returned Notices, as well as the number of workweek disputes,
9 opt-outs and deficiencies that the Settlement Administrator received.

10 **B. Objections.**

11 In order for any Settlement Class member to object to this Resolution, or any term of it,
12 the person making the objection must not submit a request for exclusion (i.e., must not opt out).
13 A Settlement Class member making an objection, personally or through an attorney, must submit
14 his or her objection to the Settlement Administrator by mail postmarked by no later than forty-
15 five (45) days after the Notice was initially mailed to the Settlement Class members. If the
16 Settlement Class Member timely submits a written objection, he or she, may appear personally
17 or through an attorney, at his or her own expense, at the Final Approval hearing to present his or
18 her objection directly to the Court. However, any attorney who will represent an individual
19 objecting to this Resolution must file a notice of appearance with the Court and serve Class
20 Counsel and Defense Counsel no later than forty-five (45) days after the Notice of Proposed
21 Class Action Resolution was initially mailed to the Settlement Class members. If a Settlement
22 Class member objects to the Resolution, the Settlement Class member will remain a member of
23 the Settlement Class and if the Court approves this Agreement, the Settlement Class member will
24 be bound by the terms of the Resolution and Final Approval in the same way and to the same
25 extent as a Settlement Class member who does not object. The date of mailing of the Notice to
26 the objecting Settlement Class member shall be conclusively determined according to the records
27 of the Settlement Administrator. The Court retains final authority with respect to the

1 consideration and admissibility of any Settlement Class member objections. Any Settlement
2 Class member who submits an objection must also participate in the settlement.

3 Named Plaintiffs waive any right to object to the Resolution, and hereby endorse the
4 Resolution as fair, reasonable and adequate and in the best interests of the Settlement Class.

5 **C. Opportunity to be Excluded.**

6 In order for any Settlement Class member to validly exclude himself or herself from the
7 Settlement Class and the Resolution (i.e., to validly opt out), a written request for exclusion
8 (“Request to be Excluded”) must be signed by the Settlement Class member or his or her
9 authorized representative and must be sent to the Settlement Administrator, postmarked by no
10 later than forty five (45) days after the date the Settlement Administrator initially mails the Notice
11 to the Settlement Class members. The Notice shall contain instructions on how to opt out.

12 The date of the initial mailing of the Notice, and the date the signed Request to be
13 Excluded was postmarked, shall be conclusively determined according to the records of the
14 Settlement Administrator. Any Settlement Class member who timely and validly submits a
15 Request to be Excluded from the Settlement Class and the Resolution will not be entitled to any
16 portion of the Net Settlement Amount, will not be bound by the terms and conditions of the
17 Resolution, and will not have any right to object, appeal, or comment thereon.

18 Any member of the Settlement Class who does not timely file and mail a Request to be
19 Excluded from the Settlement Class will be deemed included in the Settlement Class in
20 accordance with this Resolution and be mailed a share of the Net Settlement Amount. Named
21 Plaintiff waives any right to be excluded from the Settlement Class.

22 **D. Cooperation.**

23 The Parties and their respective counsel agree not to encourage members of the
24 Settlement Class to opt out of from or to object to the Resolution, directly or indirectly, through
25 any means. However, if a Settlement Class member contacts Class Counsel, Class Counsel may
26 discuss the terms of the Resolution and the Settlement Class member’s options.

27 **X. CLAIMS PROCEDURE**

1 Named Plaintiff and Defendant have agreed upon the following procedure to resolve all
2 disputes of the Settlement Class during the Settlement Period.

3 **A. Workweek Information.**

4 In the Notice each member of the Settlement Class will receive a calculation of the total
5 number of his or her Eligible Workweeks during the Settlement Period.

6 If a member of Settlement Class does not dispute the number of Eligible Workweeks set
7 forth in the Notice the member of the Settlement Class does not need to do anything. If the
8 member of the Settlement Class disputes the number of Eligible Workweeks set forth in the
9 Notice, such person must follow the directions in the Notice, including preparing a statement
10 setting forth the number of Eligible Workweeks that such person believes in good faith is correct
11 and stating that the member of the Settlement Class authorizes the Settlement Administrator to
12 review the Settlement Class member's personnel file to determine such information and attaching
13 any relevant documentation in support thereof. The member of the Settlement Class must mail
14 the signed and completed statement no later than forty-five (45) days after the date of the mailing
15 of the, or the number of Eligible Workweeks set forth in the Notice will govern the Net Settlement
16 Payments to the member of the Settlement Class.

17 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
18 with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing
19 the dates the Settlement Class member was employed and the pertinent leave(s) taken, which
20 records Defendant agree to make available to the Settlement Administrator.

21 After consulting with Class Counsel and counsel for Defendant, the Settlement
22 Administrator shall compute the number of Eligible Workweeks to be used in computing the
23 Settlement Class member's pro rata share of the Net Settlement Amount. In the event there is a
24 disparity between the dates a Settlement Class member claims he or she worked during the
25 Settlement Period and the dates indicated by Defendant's records, Defendant's records will control
26 unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the
27 Settlement Class member, in which case the paycheck stub(s) will control. The Settlement
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1 Administrator's decision as to the total number of Eligible Workweeks shall be final and non-
2 appealable. The Settlement Administrator shall send written notice of the decision on any such
3 claim to the Settlement Class member, to Class Counsel, and counsel for Defendant within ten
4 (10) calendar days of receipt of the dispute.

5 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

6 **A. Distribution Formula.**

7 Members of the Settlement Class who do not submit valid Requests for Exclusion will
8 receive a lump sum payment as good and valuable consideration for the waiver and release of
9 claims set forth in Section VII(A), above, in an amount determined by the Settlement
10 Administrator in accordance with the provisions of this Agreement.

11 The lump sum payment to each member of the Settlement Class not excluding him/
12 herself, will be determined by dividing the Net Settlement Amount by the total number of Eligible
13 Workweeks worked by all members of the Settlement Class (excluding those who opt-out of the
14 settlement) during the Settlement Period (the "Weekly Amount") and then multiplying the
15 Weekly Amount by the number of Eligible Workweeks worked by the individual class member
16 as determined by the Settlement Administrator in accordance with Section X, above, less any
17 applicable withholding taxes based on the Parties stipulated allocation of the Net Settlement
18 Amount as provided for in Section XV, below.

19 **B. Funding of Resolution.**

20 Within twenty (20) calendar days following the date on which the settlement becomes
21 Final, Defendant will deposit the full Settlement Amount into an interest-bearing trust account
22 for the benefit of the participating Settlement Class members and Class Counsel, through the
23 Settlement Administrator. At no time prior to Final Approval of the Resolution shall Defendant
24 be required to escrow any portion of the Settlement Amount.

25 **C. Time for Distribution.**

26 The Settlement Administrator shall cause the Net Settlement Payments, Court approved
27 enhancement to the Named Plaintiffs, Court approved attorney's fees and Litigation costs,
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1 Administrative Costs, and PAGA Settlement to be mailed no later than eighteen (18) calendar
2 days following the date on which the settlement is funded in accordance with section XI(B).

3 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
5 search and, if another address is identified, shall mail the check to the newly identified address.
6 Any settlement checks remaining uncashed after one hundred eighty (180) days shall cause that
7 Settlement Class Member's payment to be distributed to Controller of the State of California to
8 be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for
9 the benefit of that Settlement Class Member. The Parties agree that this disposition results in no
10 "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement
11 will be paid out to Settlement Class Members. Therefore, Defendant will not be required to pay
12 any interest on said amount. In the event that a Settlement Class Member's Individual Settlement
13 Payment is distributed to the Controller of the State of California, the terms of the final judgment
14 and the Release of Claims will nevertheless be binding upon that Settlement Class Member.

15 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

16 The amounts paid under this Agreement do not represent a modification of any previously
17 credited hours of service under any employee benefit plan, policy or bonus program sponsored
18 by Defendant. Such amounts will not form the basis for additional contributions to, benefits
19 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
20 Defendant, policies or bonus programs. Any payments made under the terms of this Resolution
21 shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages,
22 or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus
23 program. Defendant retain the right to modify the language of their benefit plans, policies and
24 bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
25 Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring
26 term as defined by applicable plans, policies and bonus programs for purpose of eligibility,
27 vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not

1 required by this Resolution.

2 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

3 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall
4 not seek or receive an amount in excess of thirty-three and one third percent (33.33%) of the
5 Settlement Amount (estimated at \$50,000.00), for all past and future attorneys' fees necessary to
6 prosecute, settle and administer the Litigation and this Resolution. Additionally, Defendant shall
7 not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an
8 amount in excess of \$15,000.00 from the Settlement Amount, which represents all past and future
9 Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this
10 Resolution. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court shall
11 be deducted from the Settlement Amount for the purpose of determining the Net Settlement
12 Amount. The "future" aspect of these amounts include, without limitation, all time and expenses
13 expended by Class Counsel in defending the Resolution and securing Final Approval (including
14 any appeals therein). There will be no additional charge of any kind to either the members of the
15 Settlement Class or request for additional consideration from Defendant for such work. This
16 amount shall include all attorneys' fees, Litigation costs and expenses for which Named Plaintiffs
17 and Class Counsel could claim under any legal theory whatsoever. No later than eighteen (18)
18 calendar days following the date on which the settlement is funded in accordance with section
19 XI (B), the Settlement Administrator shall disburse payment from the Settlement Amount for the
20 amount of attorneys' fees and Litigation costs approved by the Court to Class Counsel. Should
21 the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount
22 that Class Counsel ultimately seeks, then the unapproved portion or portions shall revert into the
23 Net Settlement Amount to be distributed between the participating Settlement Class Members on
24 a pro-rata basis.

25 **XIV. ENHANCEMENT TO THE NAMED PLAINTIFF**

26 Defendant shall not oppose an application by Named Plaintiff and Named Plaintiff shall
27 not seek or receive an amount in excess of \$5,000.00 for his participation in and assistance with
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1 the Litigation, and in exchange for their General Release. Any enhancement awarded to the
2 Named Plaintiffs by the Court shall be deducted from the Settlement Amount for the purpose of
3 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court
4 approves an enhancement of less than \$5,000.00 to Named Plaintiff, then the unapproved portion
5 shall revert into the Net Settlement Amount to be distributed between the participating Settlement
6 Class Members on a pro-rata basis.

7 **XV. TAXATION AND ALLOCATION**

8 The Parties agree that all employment taxes and other legally required withholdings will
9 be withheld from payments to the members of the Settlement Class and the Named Plaintiffs
10 based on the Parties stipulated allocation of the Net Settlement Amount as provided for in this
11 Section.

12 The amount of federal income tax withholding will be based upon a flat withholding rate
13 for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as
14 amended or supplemented. Income tax withholding will also be made pursuant to applicable
15 state and/or local withholding codes or regulations.

16 For withholding tax characterization purposes and payment of taxes, the Net Settlement
17 Payments shall be deemed and are allocated by the Parties as follows (“Net Settlement
18 Allocation”):

- 19 (i) 85% divided equally as penalties and interest; and
- 20 (ii) 15% wages.

21 W-2 Forms and/or 1099 Forms will be distributed at times and in the manner required by
22 the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code,
23 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
24 this Agreement, the processes set forth in this section may be modified in a manner to bring
25 Defendant into compliance with any such changes.

26 **XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

27 In order to implement the terms of this Resolution and to settle claims alleged under
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1 PAGA, the Parties agree to allocate Five Thousand Dollars and Zero Cents (\$5,000.00) of the
2 settlement to PAGA of which \$3,750 (75%) will be paid as penalties to the California Labor and
3 Workforce Development Agency (“LWDA”). Defendant, through the Settlement Administrator,
4 agrees to the establishment a PAGA Settlement fund. Within eighteen (18) calendar days
5 following the date on which the settlement is funded in accordance with section XI(B), the
6 Settlement Administrator shall disburse the PAGA Settlement to LWDA.

7 **XVII. COURT APPROVAL**

8 This Agreement and the Resolution are contingent upon Final Approval by the Court and
9 the entry of judgment. Named Plaintiffs and Defendant agree to take all steps as may be
10 reasonably necessary to secure both Preliminary Approval and Final Approval of the Resolution,
11 to the extent not inconsistent with the terms of this Agreement, and will not take any action
12 adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of the
13 Resolution in all respects. Named Plaintiffs and Defendant expressly agree that they will not file
14 any objection to the terms of this Stipulation of Resolution or assist or encourage any person or
15 entity to file any such objection.

16 //

17 //

18 **XVIII. MISCELLANEOUS PROVISIONS**

19 **A. Stay of Litigation.**

20 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
21 Final Approval of the Resolution by the Court.

22 **B. Interpretation of the Agreement.**

23 This Agreement constitutes the entire agreement between Named Plaintiffs and
24 Defendant. Except as expressly provided herein, this Agreement has not been executed in
25 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
26 written representations or terms shall modify, vary or contradict its terms. In entering into this
27 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
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1 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
2 enforced under the laws of the State of California, both in its procedural and substantive aspects,
3 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
4 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
5 Court of the State of California for the County of San Bernardino, and Named Plaintiffs and
6 Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection
7 therewith. The foregoing is only limited to disputes concerning this Agreement and in no way
8 limits or negates the enforceability and effect of the underlying arbitration agreements signed by
9 employees of Defendant, specifically including but not limited to Named Plaintiffs, obligating
10 them to arbitrate any and all claims on an individual (and not on a class, collective, or
11 representative) basis. Named Plaintiff, on his own behalf and on behalf of the Settlement Class,
12 and Defendant participated in the negotiation and drafting of this Agreement and had available
13 to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor
14 Defendant may claim that any ambiguity in this Agreement should be construed against the other.

15 The terms and conditions of this Agreement constitute the exclusive and final
16 understanding and expression of all agreements between Named Plaintiff and Defendant with
17 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
18 signed by the original signatories and approved by the Court.

19 **C. Further Cooperation.**

20 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
21 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
22 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
23 possible.

24 **D. Confidentiality of Documents.**

25 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
26 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
27 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
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1 documents are ordered to be disclosed by the Court or by a subpoena.

2 **E. Counterparts.**

3 The Agreement may be executed in one or more actual or non-original counterparts, all
4 of which will be considered one and the same instrument and all of which will be considered
5 duplicate originals.

6 **F. Authority.**

7 Each individual signing below warrants that he or she has the authority to execute this
8 Agreement on behalf of the party for whom or which that individual signs.

9 **G. No Third-Party Beneficiaries.**

10 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries
11 of this Agreement, but there are no third-party beneficiaries.

12 **H. Force Majeure.**

13 The failure of any party to perform any of its obligations hereunder shall not subject such
14 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
15 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
16 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
17 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
18 terrorist acts, acts or failures to act of any third parties, or any other similar or different
19 circumstances or causes beyond the reasonable control of such party.

20 **I. Deadlines Falling on Weekends or Holidays.**

21 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
22 or legal holiday, that deadline shall be continued until the following business day.

23 **J. Severability.**

24 In the event that any one or more of the provisions contained in this Agreement shall for
25 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
26 unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel,
27 on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such
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1 invalid, illegal, or unenforceable provision had never been included in this Agreement.

2 **K. Opt-Out Threshold.**

3 If 10% of more of the members of the Settlement Class exercise their rights to exclude
4 themselves and opt out of the Resolution, Defendant may, in its sole discretion, unilaterally
5 withdraw from and terminate the Resolution no later than five (5) days prior to the date of the
6 Final Approval Hearing. In the event of Defendant' withdrawal, no party may use the fact that
7 the Parties agreed to the Resolution for any reason, and Defendant shall pay all administration
8 expenses incurred through the date of its termination of the Resolution.

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Date: September 29, 2020,

On behalf of himself and all others similarly situated

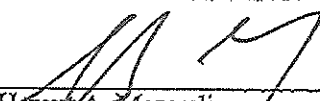
By: 
Robert Garcia

Date: September __, 2020

By: _____
By:
For.

Date: September 29, 2020

MESSRELIAN LAW INC.

By: 
Harold A. Messrelian
Attorney for Plaintiffs

Date: September __, 2020

FISHER & PHILLIPS LLP

By: _____
Todd B. Scherwin
Boris Sorsher
Danielle S. Krauthamer
Attorneys for Defendant

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4 themselves and opt out of the Resolution, Defendant may, in its sole discretion, unilaterally
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6 Final Approval Hearing. In the event of Defendant' withdrawal, no party may use the fact that
7 the Parties agreed to the Resolution for any reason, and Defendant shall pay all administration
8 expenses incurred through the date of its termination of the Resolution.

9
10 Date: October __, 2020, situated

On behalf of himself and all others similarly

11
12
13 By: _____
Robert Garcia

14 Date: October 1, 2020

15
16 By: *Anne Stevens*
17 By:
For. HD Supply Management, Inc.

18 Date: October __, 2020

MESSRELIAN LAW

19
20 By: _____
21 Harout A. Messrelian
Attorney for Plaintiffs

22 Date: October 19, 2020

FISHER & PHILLIPS LLP

23
24 By: *Dominic J. Krauthamer*
25 Todd B. Scherwin
26 Boris Sorsher
Danielle S. Krauthamer
Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Robert Garcia v. HD Supply Management Inc.
Superior Court of California – San Bernardino County
Case No. CIVSB2028067

IF YOU WERE EMPLOYED BY HD SUPPLY MANAGEMENT INC. IN CALIFORNIA AS A STORE SALES ASSOCIATE OR COMPARABLE POSITION WHO WORKED ANY TIME FROM MAY 1, 2016 THROUGH JUNE 26, 2020, YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS AND REPRESENTATIVE ACTION SETTLEMENT

The Court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
DO NOTHING	You will receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
EXCLUDE YOURSELF	<u>You will not receive a share of the Settlement.</u> ¹ This is the only option that allows you to file your own lawsuit against Defendant for the claims released in this Settlement.
OBJECT	If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement.

WHAT IS IN THIS NOTICE

1.	Why Should You Read This Notice?	Page 2
2.	What Is the Class Action Settlement?	Page 2
3.	What Is the Case About?	Page 2
4.	How Much Can I Expect to Receive?	Page 3
5.	Why Did the Defendant Join in This Notice?	Page 3
6.	Who Is the Plaintiff in This Class Action?	Page 3
7.	Who Are the Attorneys Representing the Parties?	Page 4
8.	What Are My Rights? How Will My Rights Be Affected?	Page 4
9.	How Will the Attorneys for the Class Be Paid?	Page 6

¹ Regardless of whether you exclude yourself from the Settlement, you will still receive a portion of the settlement for release of the penalty claim pursuant to the Private Attorneys General Act, Labor Code sections 2698-2699.6 ("PAGA"). Pursuant to current law and the Court's Order, you are unable to Opt-Out of the PAGA portion of the settlement.

1. *Why Should You Read This Notice?*

You have received this Notice because records indicate that you are a member of the Settlement Class settled in this action.

The Settlement Class is comprised of all persons within the State of California who are or were employed by HD Supply Management Inc. (the “Defendant”) in the State of California in the position of Store Sales Associate or comparable position during the Settlement Period defined as May 1, 2016 to June 26, 2020.

This Notice tells you of your rights to share in the Settlement. There was a Preliminary Approval hearing on October 6, 2021, at 9:00 a.m., in the San Bernardino County Superior Court. Judge David Cohn determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and that a final determination of the issues will be made at the final approval hearing. Judge David Cohn also ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on _____, 2021, at _____ a.m./p.m. in Department S-26, of the San Bernardino County Superior Court located at 247 W. Third Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued to another date without further notice. Due to the ongoing COVID-19 pandemic, face masks and/or facial coverings are required and mandatory at all times to enter the courthouse. You may also appear at the Final Approval Hearing remotely. Class Members should contact the court clerk for Department S-26 at 909-708-8866 for instructions on how to appear remotely.

2. *What is the Class Action Settlement?*

The Court must approve the terms of the Settlement described herein as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the class. You may get money from the class and representative action settlement. This Notice will explain the terms of the Settlement and the amount of money you may receive under the Settlement.

3. *What Is the Case About?*

Plaintiff contends that Defendant violated the California Labor Code by: (i) failing to pay all wages owed, including minimum wage, overtime, double time, and overtime wages at the legal overtime pay rate; (ii) failing to provide all meal periods; (iii) failing to provide legally-compliant rest periods; (iv) failing to indemnify for business expenses; (v) failing to timely furnish accurate itemized wage statements; (vi) failing to timely pay all former employees all wages owed; and (vii) unfair business practices. Plaintiff also seeks civil penalties under the Private Attorneys General Act (“PAGA”) as set forth in Labor Code sections 2698-2699.6, which allows a private citizen to pursue civil penalties on behalf of the State of California Labor Workforce Development Agency (“LWDA”) related only to the above Released Claims.

Defendant denies the allegations raised in the lawsuit and believes it has no liability for any of Plaintiff’s or the Class Members’ claims under any statute, wage order, common law, or

equitable theory.

The Parties reached a Settlement subject to Court approval as represented in the Stipulation of Resolution (the "Settlement" or "Settlement Agreement"). Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, Defendant has decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, Defendant does not admit, concede, or imply that it has done anything wrong or legally actionable.

4. How Much Can I Expect to Receive?

Defendant will pay a total sum of \$150,000 (the "Settlement Amount"), which includes all Net Settlement Payments to Class Members, attorneys' fees (not to exceed \$50,000) and litigation costs (up to \$15,000) costs of administering the Settlement (not to exceed \$10,000), statutory penalties, interest, and employer taxes, a payment to the LWDA under PAGA (\$3,750), and the Enhancement to the Named Plaintiff (not to exceed \$5,000).

Each participating Class Member will receive approximately \$_____ for each Eligible Workweek worked in the Settlement Period.

Defendant's records indicate that you worked approximately ___ Eligible Workweeks during the Settlement Period.

Based on these records, it is expected that you will receive approximately <<EstIndPmt>> from this Settlement as a Class Member.

It is expected that you will receive approximately <<Est PAGA payment>> as your portion of the payment related to the PAGA claims. You will receive this amount even if you opt-out of the Settlement.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement.

5. Why Did the Defendant Join in This Notice?

Defendant does not admit any claim alleged in the lawsuit and denies that it owes money for any of the claims in this matter. Defendant is settling the lawsuit as a compromise. Defendant reserves the right to object to and defend itself against any claim if, for any reason, the Settlement fails. The Court file has the Settlement documents with more information on the lawsuit.

6. Who Is the Plaintiff in This Class Action?

Robert Garcia is the Named Plaintiff and class representative in this Class Action lawsuit. He is acting on behalf of himself and on behalf of other members of the class.

7. Who Are the Attorneys Representing the Parties?

Class Counsel

Harout Messrelian, Esq.
Messrelian Law Inc.
500 N. Central Ave., Suite 840
Glendale, Ca 91203
Telephone: 818-484-6531
Facsimile: 818-956-1983
Email : hmessrelianlaw@gmail.com

Defense Counsel

Todd B. Scherwin, Esq.
Danielle S. Krauthamer, Esq.
Boris Sorsher, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

8. What are my Rights? How Will My Rights Be Affected?

Class Counsel, appointed and approved by the Court for Settlement only, will represent you.

Participating in the Settlement

Under the Settlement, you will **automatically** receive a settlement payment unless you opt out by following the opt-out procedure set forth below.

This Notice of Settlement states the total number of Eligible Workweeks you worked for Defendant during the Settlement Period. Your individual settlement payment as a Class Member will be based on that number. If you believe the information on this Notice is correct, then you do not need to take any further action to receive your settlement payment.

If you believe the workweek information shown above is incorrect, you must submit a written workweek dispute stating why you believe the listed workweeks are not correct. The workweek dispute must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than _____, 2021. You should submit to the Settlement Administrator documentation to support the number of workweeks you believe you worked during the Settlement Period. If there is a dispute about the workweeks you worked, the Settlement Administrator will review the records to resolve the dispute.

NOTE: UNLESS YOU DISPUTE THE WORKWEEK INFORMATION LISTED ABOVE OR OPT OUT OF THE SETTLEMENT, YOU WILL RECEIVE MONEY FROM THE SETTLEMENT BASED ON THE AMOUNTS SET FORTH ABOVE.

If you are a current employee of the Defendant, your decision as to whether or not to participate in this Settlement will not affect or in any way impact your employment.

Objecting to the Settlement

If you wish to **Object to the Settlement in writing**, you must submit a written Objection stating why you object to the Settlement. The Objection must be signed by you and include your full name, address, telephone number, and last four digits of your Social Security number. The Objection must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than _____, 2021. Late Objections will not be considered.

You may also, if you wish, appear at the Final Approval Hearing set for

_____, 2021 at _____ a.m./p.m. in Department S-26, of the San Bernardino County Superior Court and discuss your objections with the Court and the Parties, whether or not you submitted a prior written objection. You may appear on your own, or through a counsel retained by you at your expense. The Final Approval Hearing may be continued to another date without further notice.

IF YOU OBJECT TO THE SETTLEMENT, YOU WILL STILL RECEIVE YOUR SHARE OF THE SETTLEMENT IF THE COURT APPROVES THE SETTLEMENT.

Opting Out of the Settlement

If you wish to be excluded from participating in the Settlement, you must complete and sign a written request to Opt-Out to the Settlement Administrator via fax or at the address below requesting to be excluded from the Settlement. To be considered valid, your Opt-Out must be signed by you, and contain your name, address, telephone number, and the last four digits of your Social Security number. Your Opt-Out also must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your Opt-Out must be faxed or postmarked no later than _____, 2021. Late Opt-Outs will not be considered.

If you timely mail a complete and valid Opt-Out, you will no longer be a member of the Class and you will **not** be eligible to object to the terms of the Settlement or receive money under the Settlement except for that portion of the settlement allocated to PAGA penalty payments. Except for the PAGA release, you will not be bound by the terms of the Settlement, and may pursue any valid claims you may have, at your own expense, against Defendant. Individuals otherwise meeting the definition of Class Members who exclude themselves from the Class pursuant and were employed during the PAGA period shall still receive a payment for the amount of each such individual's estimated share of the PAGA payment that was included by the Settlement Administrator in calculating the claim amount and shall still be bound by the PAGA release.

The Judgment, whether favorable or not, will bind all Class Members who do not request exclusion. Any Class Member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

Effect of the Settlement on Your Rights

Upon the Date of Final Approval, and subject to the occurrence of the Effective Date, all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Class, waive, release, discharge, and promise never to assert in any forum any and all claims against Defendant, their respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, that were alleged in the Litigation or which could have been alleged based on the facts asserted in the Litigation and which arose during the Settlement Period during their employment in California. These claims include, but are not limited to: Failure to Pay Overtime; Failure to Pay Minimum Wage; Failure to Provide Meal Periods; Failure to Provide Rest Periods; Failure to Provide Itemized Wage Statements; Waiting Time Penalties; Failure to Provide Indemnification for Business Expenses; Improper Deductions from Wages; Misclassification of Employees as Independent Contractors; Unfair Competition; PAGA; Failure to Provide Records (Labor Code sections 226(b); 1198.5 and 432) and any other applicable provisions of state or federal law, including the applicable IWC wage order.

“PAGA Notice” means the September 23, 2019 letter that Class Counsel sent to the LWDA pursuant to Labor Code §2699.3(a)/(c) seeking to exhaust Plaintiff’s administrative remedies under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §§2698, *et seq.*, and specifically alleging that Defendant failed to pay the overtime wages at the legal overtime pay rate, failed to provide meal periods, failed to provide rest periods, failed to indemnify for business expenses, failed to provide accurate itemized wage statements, failed to properly maintain employee records, failed to timely pay wages, and owes statutory and/or civil penalties pursuant to the Labor Code.

“PAGA Released Claims” means any and all released claims that arise under PAGA.

Regardless of whether an individual opts out of the Settlement, all Class Members will be deemed to have released HD Supply Management Inc. of all PAGA Released Claims.

9. *How Will the Attorneys for the Class Be Paid?*

The attorneys for the Named Plaintiff and the Settlement Class will be paid from the total Settlement Amount. Class Counsel will ask the Court to award them fees of approximately 33 1/3% (one-third) of the Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel, Harout Messrelian (818) 484-6531 or email him at hmessrelianlaw@gmail.com, or contact the Settlement Administrator at the contact information listed below. Please refer to the Settlement Administrator.

HD SUPPLY MANAGEMENT Settlement Administrator
c/o ILYM Group, Inc.
[ADDRESS]
[PHONE NUMBER]
[WEBSITE]

You can find a copy of the Settlement Agreement as well as the Motions for Preliminary and Final Approval on the website of the HD Supply Management Settlement Administrator which is XXXXXXXX.

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.

By Order of the San Bernardino County Superior Court, the Honorable David Cohn.