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12 Attorneys for defendant Home Depot U.S.A., Inc.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 JOHN BARRERA, JR., ERVAN
17 WILLIAMS, JR., and EDGAR
18 PADILLA, as individuals and on
behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 THE HOME DEPOT U.S.A., INC.,
22 and DOES 1 through 10, inclusive,

23 Defendants.
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Case No. CV 12-05199 LHK (HRL)

[Hon. Lucy H. Koh]

AMENDED SETTLEMENT

AGREEMENT

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1 Plaintiff Edgar Padilla (“plaintiff”), on behalf of himself and all members of
2 the settlement class as defined herein, and defendant Home Depot U.S.A., Inc.
3 (“defendant”) by and through their respective counsel, hereby agree and enter into
4 this settlement agreement (“Agreement”) to resolve all class claims asserted in the
5 above referenced action as set forth herein. The class claims alleged in this action
6 will be dismissed with prejudice as provided below.

7 **I. THE LITIGATION**

8 1. On September 4, 2012, plaintiff John Barrera Jr. filed *John Barrera,*
9 *Jr., v. Home Depot U.S.A., Inc. and Does 1 through 10* in Santa Clara County
10 Superior Court. Defendant removed this action to the Northern District of
11 California. On June 11, 2013, plaintiff filed an amended complaint captioned *John*
12 *Barrera, Jr., Ervan Williams, Jr., and Edgar Padilla, as individuals and on behalf*
13 *of all others similarly situated v. Home Depot U.S.A., Inc., and Does 1 through 10,*
14 which added two additional plaintiffs, Ervan Williams, Jr., and Edgar Padilla, and
15 class claims. On February 18, 2014, plaintiffs filed a second amended complaint
16 dismissing plaintiff Williams from the action and dismissing plaintiff Barrera as a
17 class representative (“Complaint”).

18 2. Plaintiff alleges that Home Depot violated sections 201 and 203 of the
19 California Labor Code by failing to pay all wages due to involuntarily terminated
20 associates in California immediately upon termination. Plaintiff asserts claims on
21 behalf of himself and the putative class under section 203 of the California Labor
22 Code and the California Labor Code Private Attorneys General Act of 2004
23 (“PAGA”) (collectively “the class claims”).

24 3. Plaintiff has not yet moved for class certification in the litigation.
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1 problems that would have been associated with litigating the class claims on a class
2 wide basis.

3 3. Nevertheless, Home Depot has determined that further defense in this
4 action would be protracted and expensive and that it is desirable to fully and finally
5 settle the class claims upon the terms and conditions set forth herein. In deciding
6 to settle, Home Depot also has taken into account the uncertainty and risks inherent
7 in any litigation, especially in a complex action like this.

8 4. Nothing in the Agreement or any action taken to implement it, or any
9 statements, discussions, or communications, materials prepared, exchanged, issued,
10 or used during the course of settlement negotiations will be used in any fashion in
11 any other proceeding or be considered evidence of a violation of any federal, state,
12 or local law, statute, regulation, rule, or executive order, or any obligation at law or
13 in equity. However, notwithstanding the above, the Agreement may be used in any
14 proceeding that has as its purpose interpretation or enforcement of the Agreement
15 or any orders or judgments of the Court entered in connection therewith.

16 IV. TERMS OF THE SETTLEMENT

17 The parties hereby agree that, subject to approval of the Court, the released
18 claims will be finally and fully released, resolved, relinquished, discharged, and
19 settled, and the class claims will be dismissed with prejudice and without costs, as
20 to the plaintiff and the putative class, upon and subject to the terms and conditions
21 of this Agreement.

22 A. Class Certification

23 1. For settlement purposes only, the parties agree to class certification of
24 the settlement class, pursuant to Fed. R. Civ. P. 23(b)(3). The parties agree that
25 class certification is solely for purposes of settlement. Nothing in the Agreement
26 will be construed as an admission or acknowledgment by Home Depot that any
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1 class is proper except as provided in this paragraph. Neither the Agreement nor its
2 approval will be admissible in any court or other tribunal regarding the propriety of
3 class certification. In the event that the Agreement is not approved by the Court or
4 any appellate court, is terminated, or fails to be enforceable, Home Depot will not
5 be deemed to have waived or limited any objections or defenses in the action.

6 2. For settlement purposes only, the class will include plaintiff and any
7 person who worked in one or more Home Depot retail stores in California and,
8 based on Home Depot's records, was involuntarily terminated by Home Depot at
9 any time from September 4, 2009 through the date an order is entered by the Court
10 preliminarily approving the Agreement, and was paid wages after his or her date of
11 termination (the "settlement class"). The settlement class includes approximately
12 7,900 members (based on Home Depot data from May 2014).

13 B. Notice To Class Members

14 1. The parties will submit an amended motion for preliminary approval
15 no later than August 29, 2014, 2014.

16 2. The parties will retain Gilardi & Co. LLC as settlement administrator
17 to provide notice of the settlement to class members and to distribute settlement
18 payments. The parties agree to cooperate fully to resolve any issues identified by
19 the settlement administrator. All costs of settlement administration, including all
20 mailings, will be paid from the settlement fund.

21 3. Within 15 calendar days after the date the Court enters an order
22 approving preliminarily the settlement, the parties will provide the settlement
23 administrator with the final list of class members agreed upon by the parties. The
24 list will include for each class member their (i) name, (ii) last known address, (iii)
25 date of termination, (iv) date of payment of final wages, (v) daily rate of pay, and
26 (vi) social security number.

1 4. Within 30 calendar days after the date the Court enters an order
2 approving preliminarily the settlement, the settlement administrator will mail to
3 each member of the settlement class a notice of preliminary approval via first-class
4 regular U.S. mail (“notice”). Before notice is mailed, the settlement administrator
5 will conduct a search of all settlement class member addresses using the NCOA
6 database to obtain current addresses. The notice will be in the form attached hereto
7 as exhibit A or as otherwise approved by the Court. The notice will include a brief
8 summary of the class claims and key terms of the Agreement, including definition
9 of the settlement class; Home Depot’s denial of liability; information regarding the
10 objection and opt-out processes; a statement that the Court preliminarily approved
11 the settlement; and the process for participating in the final approval hearing. The
12 settlement administrator will use available databases in an effort to locate members
13 of the settlement class whose notice was returned as undeliverable. Plaintiffs may
14 provide updated address information to the settlement administrator.

15 5. Any class member who wishes to opt-out of the settlement must file a
16 written request to do so with the settlement administrator within 90 days of the
17 mailing date of the notice. The parties agree that each individual settlement class
18 member retains sole discretion to opt-out under this provision. Neither party will
19 solicit or otherwise persuade or attempt to solicit or persuade any settlement class
20 member to participate in, opt out of, or object to the settlement.

21 6. All objections to the settlement must be filed in the Court and served
22 upon all counsel of record no later than 90 days after the mailing of the notice.
23 Objections must state their basis and if any objector intends to appear at the final
24 approval hearing, either in person or through counsel, he or she must include such
25 fact and state the purpose for his or her appearance in the objection. The parties
26 will be permitted to respond in writing to objections within the time period set by
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1 the Court. Settlement class members who fail to file and serve timely written
2 objections will be deemed to have waived any objections and will be foreclosed
3 from making any objection to the settlement.

4 7. If 50 or more class members properly opt out of the settlement, Home
5 Depot will have the right, in its sole discretion, notwithstanding any other language
6 in the Agreement, to withdraw from and cancel the Agreement in its entirety. Such
7 cancellation and withdrawal will render the Agreement null and void. The right to
8 withdraw from the settlement can be exercised only by a writing stating that Home
9 Depot is withdrawing from the Agreement, sent by counsel for Home Depot to
10 plaintiff's counsel, Polaris Law Group LLP, Diversity Law Group, P.C., and Hyun
11 Legal, APC, by email and by mail, no later than 10 days after the expiration of the
12 opt-out period. If Home Depot elects to withdraw from the settlement, it will be
13 responsible for the payment of all settlement administration costs incurred through
14 the date of withdrawal.

15 C. Waiver And Release

16 1. Plaintiff and all members of the settlement class (except any class
17 member who opts-out pursuant to paragraph B.5 above), on behalf of himself or
18 herself, his or her heirs, descendants, dependents, executors, administrators,
19 assigns, and successors, fully and finally release and discharge Home Depot, its
20 prior and present subsidiaries and affiliates, and their respective prior and present
21 predecessors, successors, assigns, representatives, officers, directors, agents, and
22 employees (collectively "Home Depot") from any and all claims and rights that
23 they may have, whether now known or unknown, suspected or unsuspected, as of
24 the date an order is entered preliminarily approving the settlement, arising out of
25 the alleged late payment of wages due at termination, including all claims alleged
26 in the Complaint for violations of section 203 of the California Labor Code based
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1 upon the late payment of wages due at termination, and the California Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”) based on the alleged violations
3 of section 203, and that could have been alleged based upon the circumstances and
4 facts asserted in the fourth and fifth causes of action in the Complaint, including all
5 claims for attorney’s fees, litigation costs, penalties, and interest, from September
6 4, 2009 through the date the Court enters an order finally approving the settlement
7 (collectively “released claims”). This release, however, does not include a release
8 of plaintiff Barrera’s individual claims for wrongful termination, harassment, and
9 retaliation under the FEHA and CFRA. Plaintiff Padilla agrees to a general release
10 of all claims against Home Depot, which is attached hereto as exhibit B.

11 2. Upon final approval of the settlement, the parties will submit to the
12 Court an order granting final approval of the settlement and dismissing the class
13 claims with prejudice. The “effective date” of the settlement is defined as the date
14 after the appeal period for the order granting final approval has expired (i.e., 30
15 days after the final approval order is entered) or, if an appeal is filed, the date after
16 any such appeal is completed and the appeal has resulted in an affirmance of the
17 order granting final approval. On the effective date, the waiver and release of
18 claims set forth in paragraph C.1 above will be final and binding on plaintiff and
19 all members of the settlement class who have not exercised their right to opt-out of
20 the settlement in accordance with paragraph B.5. The order entered by the Court
21 finally approving the settlement will have every preclusive effect permitted by law,
22 and be final and binding, upon all settlement class members.

23 3. With respect to any and all released claims, the parties stipulate and
24 agree that, on the effective date, the plaintiff and class members will be deemed
25 expressly to have waived the provisions, rights, and benefits of California Civil
26 Code section 1542, which provides as follows:

1 A general release does not extend to claims which the
2 creditor does not know or suspect to exist in his or her
3 favor at the time of executing the release, which if known
4 by him or her must have materially affected his
5 settlement with the debtor.

6 Plaintiff and class members hereafter may discover facts in addition to or
7 different from those which they now know or believe to be true with respect to any
8 or all of the released claims (including unknown claims), but plaintiff and each
9 class member will be deemed by operation of the judgment to have fully, finally,
10 and forever released, relinquished, resolved, discharged, and settled all the released
11 claims (including unknown claims), suspected or unsuspected, contingent or non-
12 contingent, whether or not concealed or hidden, which have existed, now exist, or
13 come into existence in the future, including but not limited to conduct which is
14 negligent, intentional, with or without malice, or a breach of any law or duty
15 without regard to the discovery or existence of such different or additional facts.

16 4. The parties acknowledge that the above waivers and releases were
17 expressly negotiated and are material elements of the Agreement.

18 D. Settlement Amounts

19 1. Home Depot, in exchange for the obligations and commitments made
20 by plaintiff and class members herein, agrees to pay a maximum gross settlement
21 amount of \$1,500,000 (the "settlement fund"). This sum includes all amounts to
22 be paid as attorney's fees, interest, costs, settlement payments, statutory and civil
23 penalties, taxes, settlement administration expenses, and plaintiff enhancements.
24 This is the maximum amount Home Depot is obligated to pay under the Agreement
25 and plaintiff and class members herein agree not to seek any additional amounts
26 from Home Depot, other than those set forth in this Agreement for settlement of
27 the asserted claims.

1 2. The parties agree to allocate \$25,000 from the settlement fund to the
2 settlement of plaintiff's claim brought pursuant to section 2699 of the California
3 Labor Code. In compliance with section 2699(i) of the California Labor Code, 75
4 percent of that amount will be paid to the California Labor Workforce and
5 Development Agency within two weeks after the effective date. The remaining 25
6 percent will remain part of the settlement fund.

7 3. Plaintiff agrees to seek no more than \$2,500 from the settlement fund
8 as an enhancement in consideration for his service as class representative and
9 execution of the waivers and releases attached hereto as exhibit B. Defendant will
10 not oppose plaintiff's request for an enhancement provided plaintiff seeks no more
11 than \$2,500. The parties agree that this payment will not be considered wages.
12 Therefore, no payroll tax deductions or income tax withholdings will be made from
13 the enhancement. The settlement administrator will issue a Form 1099 to plaintiff
14 for the full amount of the enhancement and plaintiff will be solely responsible for
15 paying any federal, state, or local taxes owed on such amount. Plaintiff agrees to
16 indemnify and hold Home Depot harmless from all liability, including all penalties,
17 interest, and other costs, that may be imposed by the Internal Revenue Service or
18 other agency for any tax or obligations that may arise from payments made to
19 plaintiff under this Agreement.

20 4. Plaintiff and Home Depot and their counsel agree to cooperate with
21 the settlement administrator and each other to the extent reasonably necessary to
22 carry out the provisions of this sub-section.

23 5. Defendant will not oppose plaintiff's request for up to 25 percent of
24 the settlement fund as payment for plaintiff's counsels' attorney's fees and up to
25 \$25,000 for plaintiff's counsels' request for their reasonable litigation expenses
26 necessary to prosecute and settle this litigation. The settlement administrator will
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1 issue to plaintiff's counsel an IRS 1099 form for the full amounts disbursed; such
2 amounts will be provided to the settlement administrator by written instructions
3 from plaintiff's counsel. Plaintiff's counsel will be solely responsible for paying
4 any taxes owed on these amounts and within 10 days after the effective date will
5 provide W-9 forms to the settlement administrator. The settlement administrator
6 will transmit attorney's fees and litigation expenses to plaintiff's counsel within 15
7 calendar days after the effective date by check or wire transfer.

8 6. To the extent the Court approves a lesser amount for the enhancement
9 or attorney's fees, the unapproved amount will be allocated back to the settlement
10 fund.

11 E. Payments To Class Members

12 1. The net settlement fund will consist of the gross settlement amount
13 less deductions for attorney's fees, litigation costs, enhancement to the plaintiff,
14 PAGA penalties, and all costs of the settlement administrator. Payments from the
15 net settlement fund will be distributed to class members based upon the estimated
16 percentage value of their waiting time penalties as compared to that of the entire
17 settlement class, which will be calculated using the termination date, date of final
18 wage payment, and estimated daily wage rate in the defendant's records for each
19 class member, which records will be presumed to be correct.

20 2. Settlement payments to settlement class members will be considered
21 penalties and not be subject to withholding taxes. Each settlement class member
22 will be solely responsible for paying any federal, state, or local taxes owed as a
23 result of any payments received pursuant to this Agreement and each settlement
24 class member agrees to indemnify and hold Home Depot harmless from all liability
25 regarding any tax or other obligations owed by such individual member of the class
26 under this Agreement.

1 objection and opt-out period, the parties will file a joint motion for final approval
2 of the settlement. Home Depot will have the right to review and comment on the
3 motion for attorney's fees before it is filed. The parties agree to take all necessary
4 actions to secure the final approval of the Agreement.

5 3. Plaintiff will request dismissal of the class claims with prejudice as
6 part of the motion for final approval; the individual claims by plaintiff Barrera for
7 wrongful termination, retaliation, and harassment will not be dismissed. Dismissal
8 with prejudice of the class claims is a material term of the Agreement and must be
9 ordered as part of the order granting final approval. In addition, the order granting
10 final approval will provide that the Court retain jurisdiction to enforce the terms of
11 the settlement.

12 4. If this Agreement is not approved by the Court or is disapproved on
13 appeal, the Agreement will be null and void in its entirety, unless expressly agreed
14 to in writing by the parties.

15 G. Miscellaneous

16 1. Stay of Litigation. The parties agree to the stay of all proceedings in
17 the litigation, except such proceedings as may be necessary to complete and
18 implement the Agreement, pending final approval of the Agreement.

19 2. Interpretation of the Agreement. The Agreement will be interpreted
20 and enforced under the laws of the state of California without regard to its conflict
21 of laws provisions. Any claim arising out of or relating to the Agreement, or the
22 subject matter hereof, will be resolved exclusively in the United States District
23 Court for the Northern District of California, and the parties hereby consent to the
24 personal jurisdiction of the Court over them solely in connection herewith.

25 3. Final Agreement. The terms and conditions of this Agreement
26 constitute the exclusive and final agreement between the parties with respect to the
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1 resolution of the class claims. The Agreement is based solely on its terms and not
2 in reliance upon any representations or promises other than those contained herein.
3 The Agreement may be modified only by a writing signed by all of the original
4 signatories and approved by the Court.

5 4. Enforcement. The United States District Court for the Northern
6 District of California will have jurisdiction to interpret and enforce this Agreement.

7 5. Counterparts. The Agreement may be executed in one or more actual
8 or copied counterparts, all of which will be considered the same instrument and
9 duplicate originals.

10 6. Authority. Each individual signing below warrants that he or she has
11 the authority to execute the Agreement on behalf of the party indicated.

12 7. No Prevailing Party. No party or class member will be considered a
13 prevailing party for any purpose. Except as otherwise provided for herein, each
14 party will bear its own fees and costs. However, in connection with any litigation
15 or motion practice alleging a breach of this settlement agreement, the prevailing
16 party will be entitled to recover reasonable attorney's fees and costs.

17 8. Confidentiality of Terms of the Agreement. The parties agree, both
18 before and after final approval of the settlement, not to disclose the terms of the
19 settlement, except in required court filings, if required by legal process, or to
20 financial and tax consultants. For example, the parties and their counsel will not
21 issue a press release or hold a press conference regarding the settlement. The
22 parties and their counsel agree not to respond to press inquiries regarding the
23 settlement, except to refer reporters to papers filed with the Court. Nothing in this
24 paragraph, however, will limit the right of Home Depot to disclose the terms and
25 circumstances of the settlement to Home Depot employees who have either direct
26 or indirect responsibility for overseeing or managing Home Depot litigation, law
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1 firms that represent Home Depot, or persons who have an obligation to remain
2 informed of Home Depot litigation. Notwithstanding the above, the parties and
3 their counsel may disclose that “this litigation has been resolved to the satisfaction
4 of all parties.” Plaintiff’s counsel may communicate with class members for
5 purposes of effectuating this Agreement, but in no event will plaintiff’s counsel
6 solicit any class member to opt out of the settlement. Plaintiff’s counsel cannot
7 post on their websites information about the settlement, except that they may post
8 court-filed documents on their web sites.

9 In the event defendant believes that plaintiff or his counsel have violated this
10 provision, counsel for the parties will meet and confer informally in an effort to
11 resolve the dispute. If any such dispute cannot be resolved informally between the
12 parties, it will be submitted to the Court for resolution.

13 9. Confidential Documents. Pursuant to the parties’ stipulation
14 regarding confidential discovery material, the parties will return or confirm the
15 destruction of any confidential information within 60 days after the effective date,
16 assuming the settlement sum has been paid.

17 10. CAFA Notices. Defendant agrees to timely submit CAFA notices to
18 the appropriate government officials within 10 days after filing of the parties’ joint
19 motion for preliminary approval of the settlement.

20 11. Neutral Reference. Home Depot has a standard neutral reference
21 policy. Plaintiff agrees to refer any requests for an employment reference to Home
22 Depot’s employment verification service at www.theworknumber.com or (1-800-
23 367-5690) and to provide Home Depot’s company code for this service, which is
24 87843. All such calls will be responded to with a neutral employment reference
25 consisting solely of information regarding dates of employment and positions held.
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1 IN WITNESS HEREOF, the parties have executed this Settlement

2 Agreement as follows:

3
4
5 Dated: August __, 2014

6 _____
7 Plaintiff Edgar Padilla

8 Dated: August __, 2014

9 _____
10 William L. Marder (SBN 170131)
11 POLARIS LAW GROUP LLP
12 501 San Benito Street, Suite 200
13 Hollister, CA 95023
14 Telephone: (831) 531-4214
15 Facsimile: (831) 634-0333

16 Dated: August __, 2014

17 _____
18 Larry W. Lee (SBN 228175)
19 DIVERSITY LAW GROUP, P.C.
20 550 South Hope Street, Suite 2655
21 Los Angeles, CA 90071
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23 Facsimile: (213) 488-6554

24 Dated: August __, 2014

25 _____
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Facsimile: (213) 488-6554

Attorneys for plaintiff Edgar Padilla

Dated: August __, 2014

Sean Nguyen
Corporate Counsel, Employee Relations
Home Depot U.S.A., Inc.

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Dated: August __, 2014

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Facsimile: (415) 765-9501

Attorneys for defendant Home Depot U.S.A., Inc.

Exhibit A

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

This notice affects your rights. Please read it carefully.

<<First>> <<Last>>

<<Address1>>

<<Address2>>

<<City>> <<State>> <Zip>>

To: All former employees of Home Depot who worked in one or more Home Depot retail stores in California and, based on Home Depot's records, were involuntarily terminated by Home Depot at any time from September 4, 2009 through [the date the Court enters an order preliminarily approving the Agreement], and were paid wages after his or her date of termination (the "Class")

On _____, 2014, the Honorable Lucy H. Koh of the United States District Court, Northern District of California – San Jose Courthouse, granted preliminary approval of this class action settlement and ordered the litigants to notify all class members of the settlement. **You have received this notice because defendant's records indicate that you may be a class member and, therefore, are entitled to a payment from the settlement.**

To participate in the settlement and to receive your payment, you will not need to do anything. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at __:00 a.m. on _____, 2015 in Courtroom 8 - 4th Floor of the United States District Court, Northern District of California – San Jose Courthouse, located at 280 South 1st Street, San Jose, CA 95113. You are not required to attend the Hearing.

Summary of the Litigation

On September 4, 2012, plaintiff John Barrera, Jr. filed *John Barrera, Jr. v. Home Depot U.S.A., Inc.*, and Does 1 through 10 in Santa Clara County Superior Court. Defendant removed this action to the Northern District of California. On June 11, 2013, plaintiffs filed an amended complaint captioned John Barrera, Jr., Ervan Williams, Jr., and Edgar Padilla, as individuals and on behalf of all others similarly situated v. Home Depot U.S.A., Inc., and Does 1 through 10, which added two additional plaintiffs, Ervan Williams, Jr., and Edgar Padilla ("plaintiff"), and class claims. On February 25, 2014, the parties filed a stipulation permitting the filing of a second amended complaint dismissing plaintiff Williams from the action and dismissing

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

plaintiff Barrera as a class representative. On February 26, 2014, the Court approved the parties' stipulation and ordered that the second amended complaint become the operative complaint in this case. The class action portion of the second amended complaint alleges that Home Depot failed to pay all wages due to members of the Class immediately upon termination.

The action alleges violations of the California Labor Code and the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). Plaintiff seeks penalties for the alleged late payment of final wages, attorney's fees, and expenses on behalf of class members.

After the exchange of relevant information and evidence, the defendant and plaintiff (collectively the "parties") agreed to enter into a settlement of plaintiff's class action claims.

Counsel for plaintiff, and the attorneys appointed by the Court to represent the class, Diversity Law Group, P.C., Polaris Law Group, LLP, and Hyun Legal, APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

Defendant has conducted a thorough investigation regarding the allegations raised by plaintiff in this lawsuit. Based on its investigation, which focused on concrete data, available facts, and all applicable law, defendant determined that it was not and should not be held liable regarding Plaintiff's claims. Despite defendant's good faith belief that it is not liable for any of the claims asserted by plaintiff, defendant settled this lawsuit to obtain dismissal of the class lawsuit and to avoid the (i) distraction and diversion of personnel and resources and (ii) expense, burden, and risks associated with litigation. By agreeing to settle, defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with plaintiff of the class action claims.

Summary of Settlement Terms

The parties have agreed to settle the underlying class claims in exchange for the Class Settlement Amount of \$1,500,000. This amount is inclusive of (1) individual settlement payments to the class members; (2) a class representative enhancement payment of up to \$2,500

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

to plaintiff Edgar Padilla for his services on behalf of the class; (3) not more than \$375,000 in attorney's fees and not more than \$25,000 in costs; (4) payment of \$25,000 to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with PAGA, and (5) claims administrator's fees and expenses estimated to be \$*****. After deducting the class representative enhancement payment, attorney's fees, costs, the payment to the LWDA, and the claims administrator's fees and expenses, a total of approximately \$***** ("Net Settlement Amount") will be available to be distributed to the class members.

You will not need to do anything to receive your portion of the Net Settlement Amount. Upon final approval of this settlement, your share of the Net Settlement Amount will be mailed to you, unless you otherwise exclude yourself or opt-out.

The class member's share of the Net Settlement Amount will be distributed to each class member who does not opt out based on the proportional value of each class member's waiting time penalties as compared to the total value of the entire class's waiting time penalties, which will be calculated using the termination date, date of final wage payment, and estimated daily wage rate from Home Depot's records for each class member. Specifically, the value of each class member's waiting time penalties will be determined by multiplying each class member's daily wage rate by the number of days his or her final wages were paid after the termination date. The value of each class member's waiting time penalty will then be added up for the entire class, and each class member's share of the net settlement fund will be based upon the proportional value of his or her waiting time penalty.

Settlement payments to class members will not be subject to withholding taxes. Each class member will be solely responsible for paying any taxes (federal, state, or local) owed as a result of any payments received under the Agreement. Each class member agrees to indemnify and hold Home Depot harmless from all liability regarding any tax or other obligations owed by such individual class members under the Agreement. If a class member fails to negotiate his or her settlement check within 180 days after receipt of the check, the settlement administrator will forward 50 percent of the amount to the Legal Aid Society-Employment Law Center of San Francisco, California, a cy pres charitable organization designated by plaintiff, and 50 percent to The Homer Fund, a 501(c)(3) charitable organization designated by Home Depot. Further, the pro rata amounts allocated to each class member who opts out of the settlement will also be included in this payment to these organizations.

Your Information and Options Under the Settlement

The parties have estimated the maximum amount of waiting time penalties for the entire class to be about \$3.6 million. Based upon records maintained by Home Depot, your employment with

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

Home Depot was terminated on *****; you were paid your final wages on *****; and your estimated daily wage rate is *****. The approximate value of the net settlement amount made available to the class is \$*****. According to this information, your individual settlement payment is estimated to be approximately \$*****.

Option 1 – Do Nothing and Receive Your Payment

If you want to receive money from the settlement, you will not need to do anything. Upon final approval of this settlement, your share of the Net Settlement Amount will be mailed to you.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you must exclude yourself from participating by submitting a written request to the claims administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must set forth your name, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by first class U.S. mail or equivalent, to the address below.

Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 1110
Corte Madera, CA 94976-1110
Telephone: (877) 261-5521

The written request to be excluded must be postmarked no later than _____, 2014. If you submit a request for exclusion that is not postmarked by _____, 2014, your request for exclusion will be rejected and you will be included in the settlement class.

Option 3 – If You Want to Inform the Court that you Object to the Settlement

If you wish to object to the settlement because you find it unfair, unreasonable, or inadequate, you may file with the Court an objection stating why you object to the settlement. Your objection must state your full name, address, telephone number, dates of employment with

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

defendant, and the basis for your objection. The objection must be filed with the Court and mailed to the [Claims Administrator Address], and the attorneys listed below:

DIVERSITY LAW GROUP, P.C.
Larry W. Lee
550 S. Hope Street, Suite 2655
Los Angeles, CA 90071

AKIN GUMP STRAUSS HAUER &
FELD LLP
DONNA M. MEZIAS
580 California Street, Suite 1500
San Francisco, CA 94104

All objections must be filed with the Court not later than _____2014. Late objections will not be considered. By filing an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Settlement Fairness Hearing set for _____ at _____m. in Courtroom 8 of the United States District Court, Northern District of California - San Jose Courthouse, located at 280 South 1st Street, San Jose, CA 95113, and discuss your objection with the Court and the parties at your own expense.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. In addition, you will be deemed to have released or waived the following claims ("Released Claims):

If approved by the Court, the settlement will be binding on all members of the settlement class and will bar any class member who does not timely opt out of the settlement from bringing certain claims against Home Depot described below. After final approval by the Court, the settlement fully and finally releases and discharges Home Depot, its prior and present subsidiaries, affiliates, and their respective prior and present predecessors, successors, assigns, representatives, officers, directors, agents, and employees from any and all claims and rights that they may have, whether now known or unknown, suspected or unsuspected, as of the date an order is entered preliminarily approving the settlement, arising out of the alleged late payment of wages due at termination, including all claims alleged in the Complaint for violations of section 203 of the California Labor Code based upon the late payment of wages due at termination, and the California Labor Code Private Attorneys General Act of 2004 ("PAGA") based on the alleged violations of

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

section 203, and that could have been alleged based upon the circumstances and facts asserted in the fourth and fifth causes of action in the Complaint, including all claims for attorney's fees, litigation costs, penalties, and interest, from September 4, 2009 through the date the Court enters an order finally approving the settlement.

In addition, class members who do not opt out of the settlement will waive any and all rights and benefits under section 1542 of the California Civil Code with respect to the Released Claims, which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Thus, subject to and in accordance with the provisions of the Agreement, even if the settlement class members may hereafter discover facts in addition to or different from those facts which they now know or believe to be true with respect to any or all of the released claims (including unknown claims), plaintiff and each class member who does not timely opt out of the settlement will be deemed by operation of the judgment to have, fully, finally, and forever released, relinquished, resolved, discharged, and settled any and all of the released claims (including unknown claims), suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

If you choose **Option 2**, you will no longer be a class member, you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

If you choose **Option 3**, and should the Court overrule your objection, you will receive your share of the Net Settlement Amount and be deemed to have released the Released Claims.

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Barrera v. Home Depot U.S.A., Inc. United States District Court, Northern District of California
Case No. 12-05199 LHK (HRL)
NOTICE OF CLASS ACTION SETTLEMENT

If you do not want to be deemed to have released the Released Claims, you must exclude yourself from the settlement by following Option 2.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the case, which may be inspected at the Office of the Clerk of the United States District Court, Northern District of California – San Jose Courthouse, located at 280 South 1st Street, San Jose, CA 95113, during regular business hours of each court day.

All inquiries by class members regarding this Class Notice and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Claims Administrator toll free at 1-*-***-******

Exhibit B

EXHIBIT B

GENERAL RELEASE

THIS GENERAL RELEASE (the “release”) is made and entered into by Edgar Padilla (“plaintiff”).

WHEREAS, plaintiff is a party to the class action complaint (“Complaint”) captioned *John Barrera, Jr., Ervan Williams, Jr., and Edgar Padilla, as individuals and on behalf of all others similarly situated v. Home Depot U.S.A., Inc., and Does 1 through 10*, No. C 12 5199 LHK (HRL), in the United States District Court for the Northern District of California;

WHEREAS, the parties to the above action have agreed to finally and fully resolve the class claims asserted in the complaint as set forth in the accompanying Settlement Agreement (“Agreement”);

WHEREAS, Home Depot has agreed to pay plaintiff certain amounts pursuant to the Agreement and to provide him with certain rights and benefits subject to the execution of this General Release.

NOW THEREFORE, in consideration of the promises herein and in the Agreement, including the monetary payment set forth in paragraph D.3 of the Agreement, plaintiff agrees as follows:

1. Release of All Claims. Plaintiff on behalf of himself, and his heirs, descendants, dependents, representatives, agents, executors, administrators, assigns, and successors, hereby fully, finally, irrevocably, and unconditionally releases, discharges, or covenants not to sue Home Depot, its prior and present subsidiaries and affiliates, and their respective prior and present predecessors, successors, assigns, representatives, officers, directors, agents, and employees (collectively “Home Depot”), with respect to any and all claims, liens, covenants, grievances, demands, causes of action, obligations, damages and liabilities, known or unknown, anticipated or unanticipated, contingent or non-contingent, that he has had in the past or now has against Home Depot through the date of execution of this release (except for claims and rights arising out of this release). Without limitation, this release includes any and all statutory, contract, wrongful discharge, discrimination, wage and hour, retaliation, or other claims arising under federal or California law, including but not limited to Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, the Civil Rights Act of 1866, 42 U.S.C. § 1981, the Family and Medical Leave Act, the California Family

Rights Act, the California Labor Code, and/or the California Fair Employment and Housing Act, relating in any way to the terms or conditions of plaintiff's employment with Home Depot, the events leading up to this release, the lawsuit captioned *John Barrera, Jr., Ervan Williams, Jr., and Edgar Padilla, as individuals and on behalf of all others similarly situated v. Home Depot U.S.A., Inc., and Does 1 through 10* in the United States District Court for the Northern District of California, the termination of plaintiff's employment with Home Depot, and/or the events leading up to such termination, provided, however, that plaintiff is not releasing any claims that arise after he signs this release, or any claims that he cannot waive by operation of law. Additionally, nothing in this release precludes plaintiff from filing a charge or participating in any investigation or proceeding before any federal or state agency, including the Equal Employment Opportunity Commission ("EEOC"). However, by signing this release, plaintiff waives the right to bring a lawsuit against Home Depot and waives his right to individual monetary recovery in any action or lawsuit initiated by a federal or state agency, such as the EEOC, against Home Depot for any and all claims released herein.

2. Waiver of California Civil Code Section 1542. Plaintiff expressly waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542 and does so understanding and acknowledging the significance and consequences of his waiver of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3. Warranties.

a. Plaintiff represents that, except for the Complaint, he has no pending complaints or charges against Home Depot with any state or federal court or any local, state, or federal agency, division, or department, asserting any claims that are released by him in this release.

b. Plaintiff represents and warrants that he has not assigned or subrogated any of his rights, claims, or causes of action, including any claims referenced in this release, or authorized any other person or entity to assert such

claim or claims on his behalf, and he agrees to indemnify and hold harmless Home Depot against any assignment of said rights, claims, and/or causes of action.

c. Plaintiff represents and warrants that he is represented by counsel in connection with this release and that he has had adequate opportunity to consider this release and to consult with his counsel prior to signing it.

4. Subject to Final Approval of Agreement. This General Release will not be binding unless the Agreement is granted final approval. Should the Agreement not be granted final approval, this General Release shall be null and void.

THIS RELEASE INCLUDES KNOWN AND UNKNOWN CLAIMS.

PLAINTIFF FULLY UNDERSTANDS THE FINAL AND BINDING EFFECT OF THIS RELEASE. THE ONLY PROMISES MADE TO PLAINTIFF ABOUT THIS RELEASE ARE CONTAINED IN THE SETTLEMENT AGREEMENT TO WHICH THIS RELEASE IS AN EXHIBIT OR IN THIS RELEASE. PLAINTIFF IS SIGNING THIS RELEASE VOLUNTARILY.

IN WITNESS WHEREOF, plaintiff has executed this General Release on the date set forth below.

Date: _____

Edgar Padilla

Approved As to Form:

DIVERSITY LAW GROUP, P.C.

Date: _____

By: _____

Larry W. Lee, Esq.
Attorneys for Edgar Padilla

