

1 Robert S. Arns, State Bar No. 65071
Jonathan E. Davis, State Bar No. 191346
2 Kevin M. Osborne, State Bar No. 261367
Julie C. Erickson, State Bar No. 293111

3 **THE ARNS LAW FIRM**

4 A Professional Corporation
515 Folsom Street, 3rd Floor
5 San Francisco, California 94105
6 Phone: (415) 495-7800
7 Fax: (415) 495-7888

8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 VULFRANO PEREZ and JAMES MERCADO,
Individually and On Behalf Of All Other
Similarly Situated Employees,

12 Plaintiffs,

13 vs.

14 U.S. INSTALLATION GROUP, INC. and
15 HOME DEPOT U.S.A., INC., AND DOES 1
16 THROUGH 100, INCLUSIVE,

17 Defendants.

CASE NO. RG15774021

18 **CLASS ACTION SETTLEMENT AND
19 RELEASE AGREEMENT**

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I. INTRODUCTION

This Class Action Settlement and Release Agreement (“Agreement” or “Settlement”) is entered into between plaintiffs Vulfrano Perez and James Mercado, individually and on behalf of all other similarly situated employees (“Plaintiffs”), on the one hand, and defendant National Flooring Installers, Inc. (“Defendant”), on the other hand, with respect to the following case *Vulfrano Perez and James Mercado, individually and on behalf of all other similarly situated employees of Defendant, Plaintiffs v. U.S. Installation Group, Inc., et al., Defendants*, Alameda County Superior Court Case No. RG15774021 (the “Lawsuit”). This Agreement shall become effective upon the “Effective Date of Settlement” as defined below.

II. DEFINITIONS

1. “Administrator” is defined as Phoenix Settlement Administrators, who shall perform the customary duties of a class action settlement administrator including, but not limited to, the duties enumerated in this Agreement.

2. “Administrator Costs” are defined as the costs, fees, charges, and expenses of the class action settlement administration.

3. “Information Form” refers to **Exhibit 2**, the form approved by the Settling Parties (defined below) and subject to Court approval, which the Administrator will mail to each Class Member (defined below).

4. “The Class” or “The Class Members” are defined as all persons who performed work as flooring installers or flooring installation helpers in California for or on behalf of one or more of the Defendants, at any time during Covered Period (defined below).

5. “Class Counsel” shall refer to Robert S. Arns, Jonathan E. Davis, Kevin M. Osborne, and Julie C. Erickson of The Arns Law Firm.

6. “Class Representative” shall individually refer to plaintiffs Vulfrano Perez and James Mercado.

7. “Court” refers to the Alameda County Superior Court, Department 21, the Honorable Winifred Y. Smith, presiding.

8. “Covered Period” or “Covered Time Frame” shall mean the period commencing

1 on June 12, 2011 through Preliminary Approval (defined below).

2 9. "Defense Counsel" shall refer to Christopher J. Mead and Scott M. McLeod, of
3 Cooper White & Cooper LLP.

4 10. "Effective Date of Settlement" is defined as the day after the expiration of ten
5 (10) days after an order finally approving the Agreement is rendered and not subject to appeal or
6 to any attempt to re-open the judgment or to request to extend the time to seek an appeal; or, if
7 an appeal has been sought, the expiration of ten (10) days after the final disposition of any such
8 appeal and any further proceedings in the Court (and, following any such proceedings, the
9 expiration of all time to notice an appeal or, if an appeal has been sought, the expiration of ten
10 (10) days after the final disposition of any such appeal), which disposition approves the Court's
11 order finally approving the Agreement.

12 11. "Exclusion Request" or "Request for Exclusion" refers to a timely and valid
13 written request to opt-out or exclude oneself from the Settlement sent by any Class Member to
14 the Administrator. A Class Member must submit a Request for Exclusion to exclude himself or
15 herself from the Settlement and from the release of claims pursuant to this Settlement.

16 12. "Final Judgment" shall mean the Order Granting Final Approval of Class Action
17 Settlement and Dismissing the Entire Action with Prejudice and the separate judgment entered
18 thereon by the Court.

19 13. "Gross Settlement Amount" shall mean Five Hundred Twenty Five Thousand
20 Dollars and No Cents (\$525,000.00) as the amount that will be paid by Defendant pursuant to the
21 terms of this Agreement.

22 14. "Individual Settlement Payment" is the payment that each Participating Class
23 Member (defined below) will receive under the terms of this Agreement and shall be calculated
24 based upon the total days worked by each Participating Class Member during the Covered
25 Period, as described in section V.C., below. Each individual Class Member's share of the Net
26 Settlement Amount will be calculated by dividing his or her Adjusted Work Days, as defined
27 below, by the total number of Adjusted Work Days of all Class Members during the Covered
28 Period.

1 alleged violations of California's wage and hour and unfair competition laws by Defendant and
2 is appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.
3 However, Plaintiffs and their counsel recognize that litigation is uncertain, and believe that the
4 present Settlement is in the best interest of the Class Members.

5 **C. Defendant's Contentions**

6 Defendant denies any liability or wrongdoing of any kind associated with the claims
7 alleged in the action, and contend that, for purposes other than settlement, this Lawsuit is not
8 appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.
9 Defendant further contends it has complied with the California Labor Code, California Business
10 and Professions Code, and all applicable Wage Orders of the California Industrial Welfare
11 Commission. Defendant contends it paid its employees all wages due and owing and has fully
12 complied with all California laws and regulations. However, Defendant also agrees that because
13 litigation is uncertain, settlement is in the best interests of all the parties in this Lawsuit.

14 **D. Settlement Reached After Mediation**

15 1. After mediation conducted on October 20, 2016 by Hon. William Cahill (retired),
16 in San Francisco, California, this Settlement was reached after arms-length negotiations by and
17 among the Settling Parties. The Parties continued to negotiate through Judge Cahill through e-
18 mail and phone calls through November 2016.

19 2. The Settling Parties agree that this Settlement reflects their good faith
20 compromise of the claims raised in this Lawsuit, based upon their assessment of the mutual risks
21 and costs of further litigation and assessments of their respective counsel.

22 3. The Settling Parties further agree that the Settlement is fair and reasonable and
23 will so represent to the Court. In addition, Judge Cahill may, at his discretion, execute a
24 declaration supporting the Settlement and the reasonableness of this Settlement, and the Court
25 may, in its discretion, contact Judge Cahill to discuss the Settlement and whether or not it is fair
26 and reasonable.

27 **E. Adequate Investigation and Fair and Reasonable Settlement**

28 Class Counsel has conducted a thorough investigation into the facts of the Lawsuit,

1 including a review of relevant documents and an extensive collection of data of time and pay
2 records for the putative class, and has diligently pursued an investigation of the claims of the
3 Class Members against Defendants. Based on their own independent investigation and
4 evaluation, Class Counsel is of the opinion that this Settlement with Defendant for the
5 consideration, and on the terms set forth in this Agreement, is fair, reasonable, and adequate, and
6 is in the best interests of the Class Members in light of all known facts and circumstances,
7 including the risk of significant delay, the risk the class will not be certified by the Court, the
8 defenses asserted by Defendant and the potential appellate issues.

9 **IV. NO ADMISSION**

10 1. Nothing contained in this Agreement or in the settlement stipulation for
11 settlement entered into at the mediation (the "Stipulation for Settlement") shall be construed or
12 deemed an admission of liability, culpability, negligence, or wrongdoing, on the part of
13 Defendant and its former and present parents, subsidiaries and affiliated corporations and
14 entities, and all of their current and former officers, directors, current and former owners,
15 trustees, members, managers, employees, consultants, partners, insurers, shareholders, joint
16 venturers, agents, successors, assigns and/or legal representatives. Nor shall anything in this
17 Agreement or in the Stipulation for Settlement be construed or deemed an admission that this
18 Lawsuit was or was not properly brought as a class action or a representative action under
19 California Code of Civil Procedure § 382, Business and Professions Code § 17200, or the Private
20 Attorneys General Act. Each of the Settling Parties has entered into this Settlement with the
21 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

22 2. Settlement of the Lawsuit, the negotiation and execution of this Agreement and
23 the Stipulation for Settlement, and all acts performed or documents executed pursuant to or in
24 furtherance of this Agreement or in connection with the Settlement are not, shall not be deemed
25 to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the
26 part of Defendant or its former and present parents, subsidiaries or affiliated corporations or
27 entities, or their current or former officers, directors, current or former owners, trustees,
28 members, managers, employees, consultants, partners, insurers, shareholders, joint venturers,

1 agents, successors, assigns or legal representatives, or of the truth of any of the factual
2 allegations in the operative Complaint in the Lawsuit, or the lack thereof. This Agreement
3 constitutes the settlement documents and shall be inadmissible in evidence in any proceeding,
4 except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

5 **V. TERMS OF THE SETTLEMENT**

6 **A. Gross Settlement Amount**

7 The claims of all the Class Members are settled for the Gross Settlement Amount of Five
8 Hundred Twenty Five Thousand Dollars and No Cents (\$525,000.00) by Defendant. This Gross
9 Settlement Amount is inclusive of attorneys' fees, costs and expenses directly or indirectly
10 related to the Lawsuit (which includes all such fees, costs and expenses incurred to date, as well
11 as all such fees, costs and expenses incurred in documenting the settlement, securing approval of
12 the Settlement, administering and obtaining a judgment and dismissal of the Lawsuit before the
13 Court), Administration Costs, the payment to the LWDA for claims under Private Attorneys'
14 General Act of 2004, Cal. Labor Code §§ 2699 et seq. ("PAGA"), the enhancement payment to
15 the Class Representatives and the employer's portion of FICA, FUTA, and all other state and
16 federal payroll taxes. If there is any reduction in attorneys' fees, costs, enhancement payment,
17 Administrator Costs, and/or PAGA payment, then the funds will be distributed to the Net
18 Settlement Amount. There will be no reversion to Defendant.

19 **B. Net Settlement Amount**

20 The Net Settlement Amount shall be the Gross Settlement Amount, minus the following
21 subject to approval by the Court: (1) the award of attorneys' fees and costs to Class Counsel; (2)
22 the enhancement payment to the Class Representatives; (3) Administrator Costs; (4) PAGA
23 payment to the State of California LWDA; and (5) the employer's portion of FICA, FUTA, and
24 all other state and federal payroll taxes.

25 **C. Payments to Class Members by Defendants**

26 Participating Class Members will be paid from the Net Settlement Amount. All Class
27 Members are classified in Defendants' records by their position as "Installers" or "Helpers."
28 Each Participating Class Member's share of the Net Settlement Amount will be calculated by

1 adding the number of days he or she worked for Defendant as a Helper or Installer in California
2 during the Covered Period. The number of days worked will then be adjusted by a multiplier,
3 based on the variance in each position's average damages (as "Installers" were required to pay
4 for unreimbursed expenses during the class period) to calculate the "Adjusted Work Days." The
5 multipliers for the various positions are as follows: Helpers = 1.00, Installers = 1.84. Each
6 individual Class Member's share of the Net Settlement Amount will be calculated by dividing
7 his or her Adjusted Work Days by the total number of Adjusted Work Days of all Class
8 Members during the Covered Period.

9 **D. Administrator**

10 The Settling Parties have negotiated and selected Phoenix Settlement Administrator to be
11 the Administrator, who shall follow all the Settling Parties' instructions which are not in express
12 contravention to the Agreement as preliminarily approved by the Court.

13 **E. The Class Members' Release of Claims**

14 Upon the Effective Date, the Class Members who do not exclude themselves from the
15 Settlement will release and discharge Defendant, and all of its former and present parents and
16 subsidiaries, including but not limited to U.S. Installation Group, Inc. and their current and
17 former owners, officers, directors, employees, managers, partners, insurers, members,
18 shareholders and agents, and their predecessors and successors, assigns, and legal representatives
19 of all such entities and individuals ("Class Members' Released Parties" or "Released Parties"),
20 from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts,
21 liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in
22 law, equity, or whatever kind of nature, known or unknown, arising from the claims pleaded in
23 the Lawsuit and any claims that could have been pleaded based on the facts pleaded in the
24 Lawsuit, including, without limitation, all claims for failure to accurately calculate and pay
25 overtime compensation, failure to pay for all hours worked, failure to provide meal periods,
26 failure to provide rest periods, failure to provide proper itemized wage statements, failure to keep
27 accurate records, failure to pay or properly pay for hours worked off the clock, failure to pay
28 wages upon termination of employment, waiting time penalties, requiring unlawful releases,

1 violations of the IWC Wage Orders, unfair business practices under the California Labor Code
2 and California Business and Professions Code, and fraud and misrepresentation, including
3 without limitation all claims for restitution or equitable relief, liquidated damages, punitive
4 damages, penalties of any nature whatsoever, attorneys' fees and costs, during the Covered Time
5 Frame, asserted or that could have been asserted against the Class Members' Released Parties
6 based on the facts or claims alleged in the Lawsuit through Preliminary Approval of the
7 Settlement. The claims released by the Class Members include claims under PAGA, for civil
8 penalties based on any of the violations alleged in this Lawsuit, which includes civil penalties
9 under PAGA for violations of the provisions of the applicable Industrial Welfare Commission
10 Wage Orders (including violations pertaining to unpaid wages, meal periods, rest breaks, etc.).
11 Collectively all the claims released are referred to as "Class Members' Released Claims" or
12 "Released Claims." The Class Members' Released Claims include, without limitation, claims
13 meeting the above definition(s) under any and all applicable statutes, including without
14 limitation California Labor Code §§ 203, 204, 206.5, 210, 216, 226, 226.7, 510, 512, 558; 1174,
15 1174.5, 1194, 1197, 1197.1, 1198, and 2802; the California Unfair Competition Act, and in
16 particular, California Bus. & Prof. Code §§ 17200 et seq.; PAGA; California Code of Civil
17 Procedure § 1021.5; and any other provision of the California Labor Code or any applicable
18 California Industrial Welfare Commission Wage Orders, in all of their iterations.

19 **F. Class Representatives' General Release**

20 1. In consideration of the mutual covenants, promises, and representations set forth
21 in this Settlement, Class Representatives, on behalf of themselves and on behalf of their current,
22 former, and future heirs, spouses, children, offspring, executors, trustees, administrators,
23 attorneys, agents, personal and legal representatives, successors, and assigns, do hereby and
24 forever release the Released Parties from all claims, demands, rights, liabilities and causes of
25 action of every nature and description whatsoever, known or unknown, asserted or that might
26 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule
27 or regulation arising out of, relating to, or in connection with any act or omission by or on the
28 part of any of the Released Parties committed or omitted up until the date of the final approval of

1 this Settlement, based on their employment with Defendant, including all claims asserted in the
2 Lawsuit.

3 2. The Class Representatives acknowledge that they are releasing both known and
4 unknown and suspected and unsuspected claims and causes of action arising from the facts
5 alleged in this Lawsuit and are aware that they may hereafter discover legal or equitable claims
6 or remedies presently unknown or unsuspected or facts in addition to or different from those
7 which they now know or believe to be true with respect to the allegations and subject matters in
8 the complaint and other filings in the Lawsuit during the class period or with respect to the
9 Released Claims. Nevertheless, it is the intention of the Class Representatives to fully, finally,
10 and forever settle and release all such matters, and all such claims and causes of action arising
11 from or relating thereto, which exist, hereafter may be determined to exist, or might have existed
12 (whether or not previously or currently asserted in the Lawsuit).

13 3. The Class Representatives further agree that no third party, including but not
14 limited to any private attorney general or any Business & Professions Code § 17200 plaintiff,
15 shall bring any claim released herein on their behalves.

16 4. The Class Representatives further covenant and agree that (a) they will not sue or
17 bring any action or cause of action, including by way of third-party claim, cross-claim, or
18 counterclaim, against any of the Released Parties with respect to any of the Class
19 Representatives' released claims; (b) they will not initiate or participate in bringing or pursuing
20 any class action against any of the Released Parties with respect to any of the Class
21 Representatives' released claims; (c) if involuntarily included in any such class action, the Class
22 Representatives will use their best efforts to withdraw therefrom; and (d) they will not assist any
23 third party in initiating or pursuing a class action suit with respect to any of the Class
24 Representatives' released claims.

25 5. Nothing herein shall preclude the Class Representatives from complying with a
26 lawful order by a court, responding to a duly issued subpoena, or initiating or participating in
27 brining or pursuing any action against any entity that is not a Released Party in this action.

28 6. The Class Representatives make this waiver with full knowledge of their rights

1 and with the specific intent to waive known and unknown claims arising on or before the day of
2 the final approval of the Settlement, and therefore specifically waive the provisions of any
3 statute, rule, decision or other source of law of the United States or of any state of the United
4 States or any subdivision of a state which prevents release of unknown claims.

5 **G. Attorneys' Fees and Costs**

6 1. The Lawsuit alleges a potential claim for attorneys' fees and costs pursuant to,
7 inter alia, the California Labor Code and the Code of Civil Procedure. The Settling Parties agree
8 that any and all such claims for attorneys' fees and costs have been settled in this Agreement
9 subject only to approval by the Court.

10 2. Plaintiffs will request that Class Counsel be awarded attorneys' fees of an amount
11 not to exceed 28 percent of the Gross Settlement Amount (\$147,000) and actual costs. This
12 amount shall be included in the Gross Settlement Amount and deducted therefrom. A Form 1099
13 will be issued to Class Counsel with respect to their awarded attorneys' fees and actual costs.

14 3. If the Court awards Class Counsel with attorneys' fees and costs that are less than
15 the amount requested, that difference shall be allocated to the Net Settlement Amount and
16 distributed to the Participating Class Members.

17 4. Neither Plaintiffs nor Class Counsel, nor any other Class Member, shall seek
18 payment of attorneys' fees or reimbursement of costs or expenses from Defendant except as
19 expressly set forth in this Agreement. In other words, by entering into this Agreement, the
20 Settling Parties waive any and all claims for fees, costs, indemnity or contribution, against any
21 Participating Class Member, Defendant or its counsel, or against Plaintiffs and Class Counsel
22 arising from this Lawsuit. In consideration of their awarded attorneys' fees and expenses, Class
23 Counsel waives any and all claims to any further attorneys' fees and expenses in connection with
24 the Lawsuit.

25 5. Attorneys' fees and actual costs awarded by the Court shall be payable from the
26 Gross Settlement Amount 10 days after full funding of the "Gross Settlement Amount," as
27 described in section VII.1, below, notwithstanding the existence of any timely filed objections
28 thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part

1 thereof, subject to Class Counsel's obligation to make appropriate refunds or repayments to the
2 Gross Settlement Amount plus accrued interest at the same net rate as is earned by the Gross
3 Settlement Amount, if and when, as a result of any appeal or further proceedings on remand, or
4 successful collateral attack, the fee or cost award is reduced or reversed.

5 **H. Enhancement Payment to Class Representatives**

6 1. Class Counsel will request, and Defendant and its counsel will not oppose,
7 payment to the Class Representative Vulfrano Pérez, in the amount not to exceed Twelve
8 Thousand Five Hundred Dollars and No Cents (\$12,500.00) in addition to whatever pro rata
9 portion of the Net Settlement Amount he is otherwise entitled to receive as a Participating Class
10 Member. A Form 1099 will be issued with respect to his awarded enhancement payment.

11 2. Class Counsel will request, and Defendant and its counsel will not oppose,
12 payment to the Class Representative James Mercado, in the amount not to exceed Twelve
13 Thousand Five Hundred Dollars and No Cents (\$12,500.00) in addition to whatever pro rata
14 portion of the Net Settlement Amount he is otherwise entitled to receive as a Participating Class
15 Member. A Form 1099 will be issued with respect to his awarded enhancement payment.

16 3. If the Court awards Class Representatives an enhancement that is less than the
17 amount requested, the difference shall be allocated to the Net Settlement Amount.

18 **I. PAGA**

19 The Settling Parties agree that Fifteen Thousand Dollars and No Cents (\$15,000) of the
20 Gross Settlement Amount will be allocated to settle the PAGA claim, and will be distributed as
21 follows: 75 percent of the apportioned PAGA settlement amount (\$11,250) will be paid to the
22 LWDA, and the remaining 25 percent (\$3,750) will be divided equally among the Participating
23 Class Members and included in their Individual Settlement Payments on a pro rata share basis
24 (based on Adjusted Work Days worked during the Covered Time Frame). The State of California
25 Labor and Workforce Development Agency will be notified of this settlement at the time the
26 Motion for Preliminary Approval of Settlement is filed with the Court.

27 **J. Administration**

28 The Motion for Preliminary Approval shall ask for up to Fifteen Thousand Dollars

1 (\$15,000) from the Gross Settlement Amount for Administrator Costs. Administrator Costs are
2 not to exceed this amount. If the Administrator Costs are less than \$15,000, that difference shall
3 be allocated to the Net Settlement Amount.

4 **K. Distribution to Participating Class Members**

5 1. Defendant agrees to compensate the Participating Class Members based on the
6 days worked. The Parties will use Defendants' records to calculate, and the Class Members shall
7 verify through the notice process, the total days worked by each Participating Class Members in
8 California during the Covered Time Frame. The number of days worked will be adjusted to an
9 "Adjusted Work Days" by applying a multiplier, as described in section V.C., above. Each
10 individual Class Member's share of the Net Settlement Amount will be calculated by dividing
11 his or her Adjusted Work Days by the total number of Adjusted Work Days of all Class
12 Members during the Covered Period. Each Individual Settlement Payment will be calculated by
13 multiplying each individual Class Member's share of the Net Settlement Amount by the Net
14 Settlement Amount. This resulting amount will be subject to tax withholdings as further
15 specified herein.

16 2. The Administrator in consultation with the Defendant shall be responsible for
17 issuing the payments and calculating and withholding all required state and federal taxes, if any,
18 from the Individual Settlement Payments to the Participating Class Members.

19 3. The Parties and their counsel will support each and every provision of this
20 Agreement before the Court and will work together as necessary to obtain the Court's approval
21 of its form and content.

22 4. Once the memorialized Agreement and other settlement documents are approved
23 by the Court, the payments to each Participating Class Member will be paid in accordance with
24 the provisions set forth in this Agreement.

25 5. The Administrator shall never be empowered to make payments to Participating
26 Class Members exceeding the total Net Settlement Amount or deviate from the payment formula
27 agreed upon by the Settling Parties.

1 **L. Tax Allocation.**

2 The Settling Parties agree that, because the Individual Settlement Payments are for
3 settlement of alleged unpaid wages, interest, and statutory penalties, only a portion of the
4 recovery will be subject to tax withholdings. For Helpers, 60 percent of the Individual Settlement
5 Payments will be subject to tax withholding and this portion of the payments will be reported on
6 an IRS Form W-2 for wages, and 40 percent of the Individual Settlement Payments will be for
7 penalties and interest to be paid without withholding and reported on an IRS Form 1099. For
8 Installers, 30 percent of the Individual Settlement Payments will be subject to tax withholding
9 and this portion of the payments will be reported on an IRS Form W-2 for wages, and 70 percent
10 of the Individual Settlement Payments will be for expenses, penalties, and interest to be paid
11 without withholding and reported on an IRS Form 1099. The Administrator will be responsible
12 for issuing any required state and federal reporting documents (such as IRS Forms W-2s and
13 1099s) to Participating Class Members, Class Counsel, the State of California and the Class
14 Representatives.

15 **VI. THE EFFECTIVE DATE OF SETTLEMENT**

16 This Agreement shall become effective and deemed final only upon the Effective Date of
17 Settlement. No money will be distributed to Participating Class members until after the Effective
18 Date of Settlement as set forth herein.

19 **VII. DEPOSITS AND PAYMENT**

20 1. Defendant agrees to pay the total amount of the payments due to the Class
21 Representatives, Class Counsel, the LDWA, the Administrator, the Participating Class Members,
22 and the employer's portion of state and federal taxes in five (5) equal installments: \$105,000.00
23 will be paid in cash to a fund established by the Class Administrator by 12:00 p.m., on the 10th
24 day following final approval of the Settlement and on the 25th of every month thereafter until it
25 has paid a total of \$525,000.00.

26 2. The amounts owed to Class Counsel for attorney's fees and actual costs shall be
27 paid as described in section V.G.5., above. The amounts owed to Class Representatives, the
28 LDWA, the Administrator, and the Participating Class Members, shall be paid by the

1 Administrator once all installments are received in distributions pursuant to the following
2 payment schedule:

3 a. The "First Settlement Distribution" shall be within 10 days of full funding
4 of the "Gross Settlement Amount," as described in section VII.1, above.

5 b. The "Second Settlement Distribution" shall be made within 120 days of
6 full funding of the "Gross Settlement Amount," as described in section VII.1, above.

7 3. The Administrator will mail the First Settlement Distribution to all Participating
8 Class Members on the prescribed date. The amount of each check issued at the time of the First
9 Settlement Distribution shall be the Participating Class Member's pro rata share of the Net
10 Settlement Amount at the time of the distribution, as defined in section II.14. ("Individual
11 Settlement Payment"), above. Participating Class Members must cash Individual Settlement
12 Payments from the First Settlement Distribution within ninety (90) calendar days after they are
13 mailed. If a check is returned to the Administrator, the Administrator will make all reasonable
14 efforts to re-mail it to the Participating Class Member the correct address. If the check remains
15 uncashed by the expiration of the 90-day period, the Administrator will keep an accounting of
16 such funds, including the identification of the Participating Class Member. The Administrator
17 will then return the unclaimed funds to the Net Settlement Amount. In such event, the
18 Participating Class Member will nevertheless remain bound by the Settlement and the releases
19 contained herein.

20 4. The Administrator will mail the Second Settlement Distribution to all
21 Participating Class Members who cashed checks issued at the time of the First Settlement
22 Distribution. The amount of each check issued in the Second Settlement Distribution shall be the
23 Participating Class Member's pro rata share of the remaining funds in the Net Settlement
24 Amount at the time of the distribution, as defined in section II.14. ("Individual Settlement
25 Payment"), above. Participating Class Members must cash Individual Settlement Payments from
26 the First Settlement Distribution within ninety (90) calendar days after they are mailed. If a
27 check is returned to the Administrator, the Administrator will make all reasonable efforts to re-
28 mail it to the Participating Class Member the correct address. If the check remains uncashed by

1 the expiration of the 90-day period, the Administrator will issue the unclaimed funds along with
2 any other residue of the Net Settlement Amount to the parties' designated *cy pres* recipient, as
3 described in section VII.6., below.

4 5. In the event any Participating Class Member who, for reason of being
5 inadvertently omitted from Defendant's records or not receiving notice of the settlement, did not
6 cash his or her check prior to the lapse of the 120-day period following the First Settlement
7 Distribution comes forward to counsel for the Parties or to the Class Administrator with a valid,
8 albeit late, claim prior to the Second Settlement Distribution, the Administrator shall issue to
9 such Participating Class Member his or her pro rata share of the First Settlement Distribution and
10 his or her pro rata share of the Second Settlement Distribution at the time of the Second
11 Settlement Distribution, as defined in section II.14. ("Individual Settlement Payment"), above. In
12 this manner, the Net Settlement Amount at the time of the Second Settlement Distribution will be
13 treated as a reserve fund for late or unanticipated claims.

14 6. After payments due to the Class Representatives, Class Counsel, the LDWA, the
15 Administrator, the Participating Class Members, and the employer's portion of state and federal
16 taxes, are paid, any remaining unpaid portion of the Gross Settlement Amount, if any, shall be
17 paid as follows: 25% of the total remaining unpaid portion to the California State Treasury for
18 deposit in the Trial Court Improvement and Modernization Fund; 25% of the total remaining
19 unpaid portion to the California State Treasury for deposit in the Equal Access Fund of the
20 Judicial Branch; and 50% of the total remaining unpaid portion to Legal Aid At Work (formerly
21 known as the Legal Aid Society – Employment Law Center), located at 180 Montgomery Street,
22 Suite 600, in San Francisco, California, 94104-4244, as a *cy pres* beneficiary.

23 VIII. NOTICE TO CLASS MEMBERS

24 A. Notice Process

25 1. Each Class Member will be fully advised of the Settlement. The Settling Parties
26 have jointly drafted a Notice of Pendency of Class Action Settlement ("Notice"). The Settling
27 Parties' agreed upon proposed Notice is included herewith at **Exhibit 1**. The Notice includes, but
28 is not limited to: information regarding the nature of the Lawsuit; a summary of the substance of

1 the Settlement; the Class Member definition; the release of claims; the work week dispute
2 procedure; the procedure and time period to request exclusion from, or object to the settlement;
3 the date set for the final approval hearing; and the formula used for the Individual Settlement
4 Payments. The Notice will be mailed with an Information Form (**Exhibit 2**) (the "Notice
5 Packet"). The Notice Packet and all accompanying documents shall be in English and Spanish.

6 2. Within 14 days after the Court grants Preliminary Approval, Defendant shall
7 provide the Administrator with the name, last known mailing address and telephone number (if
8 readily available) of each Class Member, along with a listing of the total number of work days
9 each Class Member worked during the Covered Period.

10 3. The Administrator shall mail the Notice Packet to the Class Members via first-
11 class regular U.S. mail within 14 days of receiving the Class Member information from
12 Defendant. Prior to mailing, the Administrator will perform a search based on the National
13 Change of Address Database to update and correct for any known or identifiable address
14 changes. For each Notice Packet returned as undeliverable, without a forwarding address, the
15 Administrator will perform a single computer and/or "skiptrace" search to obtain an updated
16 address.

17 4. Class Members will have sixty (60) days from the mailing of the Notice Packet to
18 submit a Request For Exclusion or to submit any objections (which periods shall run
19 concurrently).

20 5. All Requests For Exclusion will be submitted to the Administrator, who will
21 timely certify jointly to Class Counsel and Defense Counsel the forms that were timely and
22 correctly submitted.

23 6. Defendant's payroll records will be presumptively determinative in any dispute
24 over entitlement to payment or over membership in the Class.

25 7. The Settling Parties agree to take all steps required to comply with California
26 Rule of Court Rule 3.769.

27 8. The Administrator shall provide Class Counsel, at least twenty (20) days prior to
28 the final fairness and approval hearing, with a declaration specifying the due diligence it has

1 undertaken with regard to the mailing of the Notice Packet. Class Counsel, in consort with
2 Defense Counsel, shall then file a motion for final approval of the Settlement and a motion for
3 fees and costs before the final approval hearing date, and will provide the declaration from the
4 Administrator to the Court in connection with the final approval motion documents.

5 **B. Contents of Information Form**

6 The Administrator will mail to all Class Members a Notice Packet that includes an
7 Information Form (**Exhibit 2**). The Information Form will notify the recipients that they need not
8 return the document to receive a settlement award, will state the number of days worked in the
9 Relevant Period, and will enable them to dispute the days worked or update their address.

10 **C. Dispute Procedures for Class Members**

11 1. Each Information Form will include a notice of work days form listing the total
12 “Individual Days Worked,” which will be the total number of days worked by an individual
13 Class Member during the Covered Time Frame according to Defendants’ payroll records.

14 2. To the extent a Class Member disputes the information listed on his or her Class
15 Information Form of work days, the Class Member may produce evidence to the Administrator
16 showing such other dates he or she contends should be shown on the form. Defendants’ records
17 will be presumed determinative. The Class Counsel and Defense Counsel will meet and confer to
18 evaluate the evidence submitted by the Class Member. If the counsel cannot agree, the dispute
19 will be submitted to the Court whose decision as to which information should be applied will be
20 binding.

21 **D. Requirements for Participation in Class Settlement Class Members**

22 All Class Members, who do not request exclusion, will automatically be eligible to
23 participate in this Settlement and become a Participating Class Member and receive their
24 Individual Settlement Payments.

25 **E. Requirements for Exclusion from Class Settlement**

26 1. In order for a Class Member to validly and effectively request exclusion from, and
27 opt out of, this Settlement, the Class Member must submit a timely and valid written Request for
28 Exclusion directly to the Administrator.

1 approval hearing.

2 2. Failure to Object: Any Class Member who fails to file a timely written objection
3 shall be foreclosed from objecting to this Settlement, unless otherwise authorized by the Court
4 prior to entry of final approval.

5 3. Responses to Objections: Counsel for the Settling Parties shall file any response
6 to any objections filed by objecting Class Members at least seven (7) calendar days before the
7 final fairness and approval hearing.

8 **X. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

9 1. The Settling Parties will work together expeditiously to obtain preliminary and
10 final approval of this Settlement. Promptly upon execution of the Agreement, the Settling Parties
11 shall apply to the Court for the entry of an Order Granting Preliminary Approval of the
12 Settlement providing for, among other things, the following:

13 a. Scheduling a final fairness and approval hearing on the question of
14 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as
15 to the Class Members, and providing that such final fairness and approval hearing be scheduled
16 for a date that is no earlier than the date required to ensure compliance with California Rules of
17 Court Rule 3.769;

18 b. Approving as to form and content the proposed Notice (**Exhibit 1**);

19 c. Approving as to form and content the proposed Information Form and
20 instruction (**Exhibit 2**);

21 d. Directing the mailing of the Notice Packet by first class mail to the Class
22 Members;

23 e. Preliminarily approving the Settlement;

24 f. Preliminarily certifying the class for settlement purposes only;

25 g. Approving Robert S. Arns, Jonathan E. Davis, Kevin M. Osborne, and
26 Julie C. Erickson of the Arns Law Firm as Class Counsel; Vulfrano Perez and James Mercado as
27 Class Representatives; and Phoenix Settlement Administrators as Administrator; and

28 h. Preliminarily approving the requested Class Counsel's attorneys' fees and

1 costs, Class Representatives' enhancement payments, the LWDA allocation, and allocated
2 Administration Costs subject to the Court's final approval at the final fairness and approval
3 hearing.

4 2. For clarity, Class Counsel shall not file the motion for preliminary approval of
5 Settlement until Class Counsel obtains Defense Counsel's express approval as to said motion and
6 all accompanying exhibits and other documents related to this Settlement. After Defense Counsel
7 gives the required approval, Class Counsel shall not modify any language in the motion or the
8 accompanying exhibits absent Defense Counsel's express approval.

9 **XI. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

10 1. Class Counsel will move for final approval of the Settlement, which motion will
11 include a request for final approval of an award of the Class Representative's enhancement
12 payments and Class Counsel's attorneys' fees and costs pursuant to the Settlement, which motion
13 and requests Defendant will not oppose subject to the limits in the Agreement. Defense Counsel
14 shall review and approve the final approval papers before filing, excluding Class Counsel's
15 request for attorneys' fees.

16 2. If the Court does not grant final approval of the Settlement, or if the Court's final
17 approval of the Settlement is reversed or materially modified on appellate review, then this
18 Settlement will become null and void as discussed further below.

19 3. In connection with seeking final approval by the Court of the Settlement, Class
20 Counsel will submit a proposed Order Granting Final Approval of Class Action Settlement and
21 Dismissing the Action. The Settling Parties agree that, in connection with final approval of the
22 Settlement, the Court will enter judgment pursuant to California Rule of Court 3.769(h). These
23 documents shall provide for, among other things, the following:

24 a. Approving the Settlement, adjudging the terms thereof to be fair,
25 reasonable and adequate, and directing consummation of its terms and provisions;

26 b. Approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of costs (up to the maximum discussed above);

28 c. Approving the Class Representative's enhancement payments (up to the

1 maximums discussed above);

2 d. Approving the PAGA award payment to LWDA (up to the maximum
3 discussed above);

4 e. Certifying the Class for purposes of this Settlement only;

5 f. Entering judgment on the Lawsuit and permanently barring the Class
6 Representative and all Class Members from prosecuting any of the claims released in this
7 Agreement against Defendant and the Released Parties; and

8 g. Waiving all rights to appeal.

9 **XII. EFFECT OF NON-APPROVAL**

10 1. If this Settlement is not preliminarily or finally approved by the Court or if Final
11 Judgment is not entered dismissing the Lawsuit with prejudice, this Agreement shall be null and
12 void.

13 2. In such event, the following provisions will become effective:

14 a. Nothing in this Agreement shall be construed as a determination,
15 admission, or concession of any issue in this Lawsuit or in any other action or proceeding, and
16 nothing in this Agreement may be offered into evidence for any purpose;

17 b. The Settling Parties expressly reserve their rights with respect to the
18 prosecution and defense of the Lawsuit as if this Agreement never existed;

19 c. Plaintiffs may, at their discretion, move to enter and enforce the
20 Stipulation for Settlement executed by Settling Parties on October 10, 2016; and

21 d. Defendant and the Class Representative shall be equally responsible for
22 any costs for notice administration incurred by the Administrator through that date.

23 e. The Administrator shall return to Defendant any portion of the Gross
24 Settlement Fund deposited with the Administrator.

25 **XIII. PARTIES' AUTHORITY**

26 The respective signatories to the Settlement represent that they are fully authorized to
27 enter into this Settlement and bind the respective Settling Parties to its terms and conditions.

1 **XIV. MUTUAL COOPERATION**

2 The Settling Parties agree to fully cooperate with each other to accomplish the terms of
3 this Settlement, including but not limited to executing such documents and taking such other
4 action as may reasonably be necessary to implement the terms of this Settlement. The Settling
5 Parties shall use their best efforts, including all efforts contemplated by this Settlement and any
6 other efforts that may become necessary by order of the Court, or otherwise, to effectuate the
7 terms of this Settlement. As soon as practicable after execution of this Agreement, Class Counsel
8 shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps
9 to secure the Court's approval of the Settlement and entry of a Final Judgment.

10 **XV. NO PRIOR ASSIGNMENTS**

11 The Settling Parties represent, covenant, and warrant that they have not directly or
12 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
13 any person or entity any portion of any liability, claim, demand, action, cause of action or right
14 released and discharged in this Settlement.

15 **XVI. NOTICES**

16 Unless otherwise specifically provided herein, all notices, demands or other
17 communications given hereunder shall be in writing and shall be deemed to have been duly
18 given as of the third business day after mailing by United States registered or certified mail,
19 return receipt requested, addressed as follows:

20 a. To the Class:

21 Robert S. Arns
22 Jonathan E. Davis
23 Kevin M. Osborne
24 Julie C. Erickson
25 The Arns Law Firm
26 515 Folsom St., 3rd Floor
27 San Francisco, CA 94105

28 To Defendant:

Christopher J. Mead
Scott M. McLeod
Cooper, White & Cooper LLP
201 California Street, 17th Floor

1 San Francisco, California 94111

2 **XVII. CONSTRUCTION**

3 The Settling Parties agree that the terms and conditions of this Settlement are the result of
4 lengthy, intensive arms-length negotiations between the Settling Parties and that this Settlement
5 shall not be construed in favor of or against any Party by reason of the extent to which any Party
6 or his/her/its counsel participated in the drafting of this Settlement.

7 **XVIII. MODIFICATION**

8 This Agreement may not be changed, altered, or modified, except in writing and signed
9 by the Settling Parties, and approved by the Court. This Agreement may not be discharged
10 except by performance in accordance with its terms or by a writing signed by the Settling Parties.

11 **XIX. INTEGRATION CLAUSE**

12 This Agreement contains the entire agreement between the Settling Parties relating to the
13 settlement contemplated hereby, and replaces all prior or contemporaneous agreements,
14 understandings, representations, and statements, whether oral or written and whether by a party
15 or such party's legal counsel. No rights under this Settlement may be waived except in writing.
16 In entering into this Agreement, the Settling Parties recognize California Civil Code Section
17 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written
18 agreement is to be construed according to its terms and may not be varied or contradicted by
19 extrinsic evidence.

20 **XX. BINDING ON ASSIGNS**

21 This Settlement shall be binding upon and inure to the benefit of the Settling Parties and
22 their respective heirs, trustees, executors, administrators, successors and assigns.

23 **XXI. COUNTERPARTS**

24 This Settlement may be executed by electronic transmission, facsimile and in
25 counterparts, and when each Settling Party has signed and delivered at least one such
26 counterpart, each counterpart shall be deemed an original, and, when taken together with other
27 signed counterparts, shall constitute one Agreement, which shall be binding upon and effective
28 as to all Settling Parties.

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Dated: September __, 2017

PLAINTIFF AND CLASS REPRESENTATIVE

By: _____
VULFRANO PEREZ

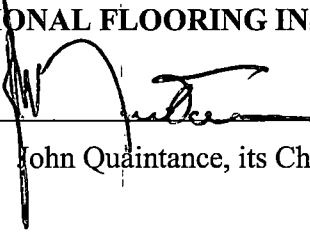
Dated: September __, 2017

PLAINTIFF AND CLASS REPRESENTATIVE

By: _____
JAMES MERCADO

Dated: September 13, 2017

NATIONAL FLOORING INSTALLERS, INC.

By:  _____
John Quaintance, its Chief Executive Officer