

1 Kane Moon (SBN 249834)
 Lilit Ter-Astvatsatryan (SBN 320389)
 2 **MOON & YANG, APC**
 1055 W. Seventh St., Suite 1880
 3 Los Angeles, California 90017
 Telephone: (213) 232-3128
 4 Facsimile: (213) 232-3125
 E-mail: kane.moon@moonyanglaw.com
 5 E-mail: lilit@moonyanglaw.com

6 Attorneys for Plaintiff NOE ALCAZAR

7 David M. Daniels (SBN 170315)
 Ryan S. Hanlon (SBN 293073)
 8 **ELGUINDY, MEYER & KOEGEL, APC**
 2990 Lava Ridge Court, Suite 205
 9 Roseville, CA 95661
 Telephone: (916) 778-3310
 10 Facsimile: (916) 330-4433
 E-mail: ddaniels@emklawyers.com
 11 E-mail: rhanlon@emklawyers.com

12 Attorneys for Defendant QUALITY FIRST HOME
 IMPROVEMENT, INC.
 13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 FOR THE COUNTY OF SANTA CLARA

16 NOE ALCAZAR, individually, and on behalf of
 17 others similarly situated,
 18 Plaintiff,
 19 vs.
 20
 21 QUALITY FIRST HOME IMPROVEMENT,
 INC., a California corporation; and DOES 1
 22 through 10, inclusive,
 23 Defendants.

Case No.: 20CV367311

Assigned For All Purposes to the Honorable
 Patricia M. Lucas, Department 3

**JOINT STIPULATION OF CLASS ACTION
 AND PAGA ACTION SETTLEMENT AND
 RELEASE**

Action Filed: June 17, 2020
 FAC Filed: August 26, 2020
 SAC Filed: May 16, 2022
 Trial date: Not yet set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT AND**
2 **RELEASE**

3 This Joint Stipulation of Class Action and PAGA Action Settlement and Release (“Settlement” or
4 “Settlement Agreement”) is made and entered into by and between Plaintiff Luwana Diane Mahler (“Plaintiff”
5 or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant Quality
6 First Home Improvement, Inc., (“Quality First”) (“Defendant”) (Defendant and Plaintiff are collectively
7 referred to as the “Parties”).

8 **DEFINITIONS**

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

11 1. “Action” means the action entitled *Noe Alcazar vs. Quality First Home Improvement, Inc.* Case
12 No.: 20CV367311, Santa Clara Superior Court.

13 2. “Plaintiff” means: Luwana Diane Mahler.

14 3. “Class Representative” means: Plaintiff Luwana Diane Mahler.

15 4. “Qualified Settlement Fund” or “QSF” means: fund within the meaning of Treasury
16 Regulation section 1.468B-1, 26 C.F.R. § 1.468B-1 et seq., which is established by the Settlement
17 Administrator for the benefit of Class Members, PAGA Class Members, Plaintiff and Class Counsel.

18 5. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved
19 by the Court for Plaintiff’s Counsel’s litigation and resolution of the Action, and all costs incurred and to be
20 incurred by Plaintiff’s Counsel in the Action, including, but not limited to, costs associated with documenting
21 the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s
22 approval of the Settlement, administering the Settlement, and expenses for any experts. Plaintiff’s Counsel will
23 request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement of the Class Settlement Amount,
24 or \$333,333.33. The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of
25 any costs and expenses associated with Plaintiff’s Counsel’s litigation and settlement of the Action, not to
26 exceed \$25,000, subject to the Court’s approval. Defendant has agreed not to oppose Plaintiff’s Counsel’s
27 request for fees and reimbursement of costs and expenses as set forth above.

28 6. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or

1 “Phoenix”, a third-party class action settlement administrator agreed to by the Parties and approved by the Court
2 for the purposes of administering this settlement. The Parties each represent that they do not have any financial
3 interest in the Settlement Administrator that could create a conflict of interest.

4 7. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount
5 to the Settlement Administrator for administering this Settlement, including, but not limited to, printing,
6 distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, tax
7 reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, and
8 other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The
9 Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any
10 such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs
11 necessary to administer the settlement. The Settlement Administration Costs are currently estimated to be no
12 more than Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500). To the extent actual Settlement
13 Administrations Costs are greater than Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500). such
14 excess amount will be deducted from the Class Settlement Amount.

15 8. “Class Counsel” means Moon & Yang, APC.

16 9. “Class List” means a complete list of all Class Members that Defendant will diligently and in
17 good faith compile from their records and provide to the Settlement Administrator within fourteen (14) calendar
18 days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft
19 Office Excel spreadsheet and will include each Class Member’s full name; most recent mailing address and
20 telephone number; Social Security number; and the Workweeks worked by each Class Member during the
21 Class Period (“Individual Workweeks”), the number of PAGA Pay Periods for each Class Member, and any
22 other information the Parties agree is needed to calculate settlement payments.

23 10. “Class Period” means: from June 17, 2016 through July 1, 2022.

24 11. “PAGA Class Period” means: from June 17, 2019 through July 1, 2022.

25 12. “Class Member(s)” or “Settlement Class” means: all persons who worked for Defendant in
26 California as an hourly paid, non-exempt employee at any time from June 17, 2016 through July 1, 2022.

27 13. “PAGA Class Member(s)” means: all persons who worked for Defendant in California as an
28 hourly paid, non-exempt employee at any time from June 17, 2019 through July 1, 2022.

1 14. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff in
2 recognition of her effort and work in prosecuting the Action on behalf of Class Members, and for her general
3 release of claims. Subject to the Court granting final approval of this Settlement Agreement and subject to the
4 exhaustion of any and all appeals, Plaintiff will request Court approval of Class Representative Enhancement
5 Payments of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500).

6 15. “Class Settlement Amount” means the maximum settlement amount of One Million Dollars
7 and Zero Cents (\$1,000,000.00) to be paid by Defendant in full satisfaction of all claims arising from the Action,
8 which includes all Individual Settlement Payments to Participating Class Members, the Class Representative
9 Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the Labor
10 and Workforce Development Agency Payment, and the Attorneys’ Fees and Costs. Defendant will be
11 separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA,
12 and SDI contributions.

13 16. “Effective Date” means: the sixty-one (61) days after the Court enters an order granting final
14 approval of the Joint Stipulation of Class Action and PAGA Action Settlement and Release and the funding of
15 the Class Settlement Amount in the Qualified Settlement Fund by Defendant.

16 17. “Final Approval” means the Court entering an order granting final approval of the Settlement
17 Agreement.

18 18. “Final Approval Order” means the order granting Final Approval of Class Action and PAGA
19 Action Settlement and Judgement entered by the Court.

20 19. “Operative Complaint” means the Second Amended Complaint filed on May 16, 2022 in this
21 Action. The Operative Complaint no longer includes Noe Alcazar’s individual claims are those were dismissed
22 without prejudice by the Court on November 2, 2022.

23 20. “Individual Settlement Payment” means each Class Member’s share of the Net Settlement
24 Amount, to be distributed to the Class Members who do not opt out.

25 21. “Labor and Workforce Development Agency Payment” means the amount that the Parties
26 have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the Labor
27 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have
28 agreed that Seventy-Five Thousand Dollars and Zero Cents (\$75,000) of the Class Settlement Amount will be

1 allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant to PAGA, Seventy
2 Five Percent (75%), or Fifty-Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$56,250), of the Labor
3 and Workforce Development Agency Payment will be paid to the LWDA, and Twenty Five Percent (25%), or
4 Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750) of the LWDA Payment will be
5 included in the Net Settlement Amount for Settlement Class Members working within the PAGA Class Period.

6 22. "Net Settlement Amount" means the portion of the Class Settlement Amount remaining after
7 deduction of the approved Class Representative Enhancement Payment, Settlement Administration Costs,
8 Labor and Workforce Development Agency Payment, and the Attorneys' Fees and Costs. The Net Settlement
9 Amount will be distributed to Participating Class Members.

10 23. "Notice of Class Action Settlement" means the document, substantially in the form attached as
11 Exhibit A, that will be mailed to Class Members' last known addresses and which will provide Class Members
12 with information regarding the Action and information regarding the settlement of the Action.

13 24. "Notice of Objection" means a Class Member's valid and timely written objection to the
14 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full name,
15 signature, address, and telephone number, (b) a written statement of all grounds for the objection accompanied
16 by legal support, if any, for such objection; and (c) copies of any papers, briefs, or other documents upon which
17 the objection is based. Class Members may (though are not required to) appear at the Final Approval Hearing,
18 either in person or through the objector's own counsel, at his or her own expense and orally object to the
19 Settlement.

20 25. "Participating Class Members" means all Class Members who do not submit valid and timely
21 Requests for Exclusion.

22 26. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement
23 Agreement.

24 27. "Released Claims" means all claims, rights, demands, liabilities, and causes of action, that were
25 or could have been pleaded based on, arising from, or related to, the factual allegations set forth in the Operative
26 Complaint and in the April 4, 2022 Notice and Amended Notice of Labor Code Violations and PAGA Penalties
27 sent to the LWDA and Defendant, including: (i) all claims for unpaid minimum and straight time wages; (ii)
28 all claims for unpaid overtime; (iii) all claims for meal and rest break violations; (iv) all claims for unreimbursed

1 business expenses; (v) all claims for the failure to timely pay wages upon termination; (vi) all claims for failure
2 to timely pay wages during employment; (vii) all claims for wage statement violations; (viii) all claims that
3 could arise under Business & Professions Code §§ 17200, *et seq.* “Released Parties” means Defendant, their
4 officers and directors, and any of their former and present parents, subsidiaries, affiliates, divisions, corporations
5 in common control, predecessors, successors, and assigns, as well as all past and present officers, directors,
6 employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal
7 representatives, if any.

8 28. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
9 request to be excluded from the settlement. The Request for Exclusion must: (a) be signed by the Class
10 Member; (b) contain the name, address, telephone number and the last four digits of the Social Security Number
11 of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included
12 in the settlement; (d) be returned by fax or mail to the Settlement Administrator at the specified address and/or
13 facsimile number; and (e) be faxed or postmarked on or before the Response Deadline. The date of the fax or
14 postmark on the return mailing envelope will be the exclusive means to determine whether a Request for
15 Exclusion has been timely submitted. A Class Member who does not request exclusion from the settlement
16 will be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the settlement
17 is granted final approval by the Court.

18 29. “Response Deadline” means the deadline by which Class Members must postmark or fax to
19 the Settlement Administrator valid Requests for Exclusion or postmark Notices of Objection to the Settlement.
20 The Response Deadline will be Sixty (60) calendar days from the initial mailing of the Notice Packet by the
21 Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response
22 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
23 for Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who
24 is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or court
25 holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service
26 is open. The Response Deadline may also be extended by express agreement between Class Counsel and
27 Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to
28 unilaterally extend the deadline for Class Members to submit a Request for Exclusion or objection to the

1 settlement.

2 30. "Workweeks" means the number of weeks each Class Member worked during the Settlement
3 Class Period. There are currently approximately 38,500 workweeks during the settlement class period. If the
4 total number of workweeks exceeds 42,350 workweeks, Defendant has the unilateral right to either (i) modify
5 the Release Period to run through the week in which the total workweeks exceeded 42,350 without increase to
6 the Class Settlement Amount, or (ii) increase the Class Settlement Amount at a rate of \$25.97 per workweek
7 for each workweek between 42,351 and the total number of workweeks on the date of preliminary approval.

8 31. "Workweek Value" means the value of each compensable Workweek, as determined by the
9 formula set forth in herein.

10 **TERMS OF AGREEMENT**

11 The Plaintiff, on behalf of herself and the Settlement Class, and Defendant, agree as follows:

12 32. Funding of the Class Settlement Amount. Within fourteen (14) calendar days after the
13 Effective Date of the Settlement, Defendant will make a one-time deposit of all Court approved and claimed
14 amounts from the Class Settlement Amount into a Qualified Settlement Account ("QSF") to be established by
15 the Settlement Administrator. Within seven (7) calendar days of the funding of the Settlement, the Settlement
16 Administrator will issue payments to: (a) Participating Class Members and PAGA Class Members; (b) the
17 Labor and Workforce Development Agency; (c) Plaintiff; and (d) Plaintiff's Counsel. The Settlement
18 Administrator will also issue a payment to itself for Court-approved services performed in connection with the
19 settlement.

20 33. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
21 motion by Plaintiff Counsel for attorneys' fees of not more than 1/3 of the Class Settlement of the Class
22 Settlement Amount, or \$333,333.33. The Attorneys' Fees and Costs will also mean and include the additional
23 reimbursement of any costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the
24 Action, not to exceed \$25,000, subject to the Court's approval. Defendant has agreed not to oppose Plaintiff's
25 Counsel's request for fees and reimbursement of costs and expenses as set forth above.

26 34. Class Representative Enhancement Payment. In exchange for a general release, and in
27 recognition of her effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not
28 to oppose or impede any application or motion for Class Representative Enhancement Payment of Seven

1 Thousand Five Hundred Dollars and Zero Cents (\$7,500). Plaintiff will be solely and legally responsible to pay
2 any and all applicable taxes on the payments made pursuant to this paragraph and will indemnify and hold
3 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

4 35. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable
5 costs of administration of the Settlement and distribution of payments from the Class Settlement Amount,
6 which are currently estimated to be no more than Eleven Thousand Five Hundred Dollars and Zero Cents
7 (\$11,500). These costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the
8 required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
9 distributing the Notice Packet calculating and distributing the Class Settlement Amount, and providing
10 necessary reports and declarations.

11 36. Labor and Workforce Development Agency Payment. Subject to Court approval, the Parties
12 agree that Seventy-Five Thousand Dollars and Zero Cents (\$75,000) of the Class Settlement Amount will be
13 allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant to PAGA, Seventy
14 Five Percent (75%), or Fifty-Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$56,250), of the
15 Labor and Workforce Development Agency Payment will be paid to the LWDA, and Twenty Five Percent
16 (25%), or Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750) of the LWDA
17 Payment will be included in the Net Settlement Amount for Settlement Class Members working within the
18 PAGA Class Period.

19 37. Net Settlement Amount. The Net Settlement Amount will be used to satisfy Individual
20 Settlement Payments to Participating Class Members from the Settlement Class in accordance with the terms
21 of this Settlement.

22 38. Individual Settlement Payment Calculations. Individual Settlement Payments will be
23 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class
24 Member worked during the Settlement Class Period and the number of PAGA Pay Periods worked during the
25 PAGA Period. calculations of Individual Settlement Payments will be made as follows:

26 38(a) The Defendant will calculate the total number of weeks worked by each Class
27 Member ("Individual Workweeks") and the total number of Workweeks worked
28 by all Class Members ("Class Workweeks") during the Settlement Class Period.

1 38(b) To determine each Class Member’s Individual Settlement Payment, the
2 Settlement Administrator will use the following formula: Individual Settlement
3 Payment = (Individual Workweeks ÷ Total Workweeks of Participating Class
4 Members) × (Net Settlement Amount).

5 38(c) Each PAGA Employee who worked during the PAGA Period is eligible to receive
6 from the Net Settlement Amount the proportionate amount of the Labor and
7 Workforce Development Agency Payment based on the number of Pay Periods
8 worked during the PAGA Period.

9 38(d) If any Class Member requests to be excluded from the settlement these funds shall
10 remain part of the Net Settlement Amount and shall proportionally increase each
11 participating Class Member’s final Individual Settlement Payment. A Request for
12 Exclusion does not exclude a PAGA Employee from the Released PAGA Claims
13 and the PAGA Employee will receive their portion of the Labor and Workforce
14 Development Agency Payment even if he or she submits a valid Request for
15 Exclusion.

16 39. Settlement Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
18 administration of the Settlement. The Settlement Administrator will provide the following services:

19 39(a) Establish and maintain a Qualified Settlement Fund.

20 39(b) Calculate the Individual Settlement Payment each Class Member and each PAGA Class
21 Member is eligible to receive.

22 39(c) Print and mail the Notice Packet.

23 39(d) Translate the Notice Packet from English to Spanish.

24 39(e) Establish and maintain a toll free information telephone support line to assist Class Members
25 who have questions regarding the Notice Packet.

26 39(f) Conduct additional address searches for mailed Notice Packets that are returned as
27 undeliverable.

28 39(g) Process Requests for Exclusion, calculate Participating Class Members’ Individual Settlement

1 Payment, field inquiries from Class Members, and administer any Requests for Exclusion.
2 This service will include settlement proceed calculation, printing and issuance of Settlement
3 Payment Checks, and preparation of IRS W2 and 1099 Tax Forms. Basic accounting for and
4 payment of employee tax withholdings will also be included as part of this service.

5 39(h) Inform Defendant of its employer-side tax liability, if any.

6 39(i) Provide declarations and/or other information to this Court as requested by the Parties and/or
7 the Court.

8 39(j) Provide weekly status reports to counsel for the Parties.

9 39(k) Posting a notice of final judgment online at Settlement Administrator's website.

10 40. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after receiving the Class
11 List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular
12 First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

13 41. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement
14 Administrator will perform a search based on the National Change of Address Database for information to
15 update and correct for any known or identifiable address changes. Any Notice Packets returned to the
16 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
17 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will
18 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
19 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using
20 the name, address and/or Social Security number of the Class Member involved, and will then perform a single
21 re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request,
22 will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to
23 postmark a Request for Exclusion, or an objection to the Settlement.

24 42. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will
25 provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms;
26 (c) the Settlement Class definition; (d) the total number of Workweeks each respective Class Member worked
27 for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement
28 Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the

1 Settlement Class Period; (g) the deadlines by which the Class Member must postmark or fax Requests for
2 Exclusion or postmark Notices of Objection to the Settlement; (h) the claims to be released, as set forth herein;
3 and (j) the date for the final approval hearing.

4 43. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute
5 the information provided in their Notice Packets. To the extent Class Members dispute the number of
6 Workweeks to which they have been credited or the amount of their Individual Settlement Payment, Class
7 Members may produce evidence to the Settlement Administrator showing that such information is inaccurate.
8 Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
9 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the
10 evidence submitted by the Class Member and will make the final decision as to the number of eligible
11 Workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member may
12 be entitled. All such disputes are to be resolved not later than fourteen (14) calendar days after the Response
13 Deadline.

14 44. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
15 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement
16 Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective
17 submission to advise the Class Member that his or her submission is defective and that the defect must be cured
18 to render the Request for Exclusion valid. The Class Member will have until the later of (a) the Response
19 Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark
20 or fax a revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
21 then the Settlement Administrator will have no further obligation to give notice of a need to cure. If the revised
22 Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

23 45. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement
24 Agreement must sign and postmark or fax a written Request for Exclusion to the Settlement Administrator
25 within the Response Deadline. The date of the postmark on the return mailing envelope or fax receipt
26 confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely
27 submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify
28 jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. The

1 Request for Exclusion does not apply to claims arising under the Private Attorney General Act (California
2 Labor Code Sections 2698 *et seq*). Class Members who submit valid requests for exclusion will still receive a
3 check for their share of the PAGA settlement amount.

4 46. Defendant's Right to Rescind. If 5% or more of the Class Members elect not to participate in
5 the Settlement, Defendant may, at its election, rescind the Settlement Agreement and all actions taken in
6 furtherance of it will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
7 Class Counsel within 14 calendar days after the Settlement Administrator notifies the Parties of the total number
8 of opt-outs. If Defendant exercises its right to rescind, then Defendant will be responsible for all Settlement
9 Administration Costs incurred to the date of rescission.

10 47. Release by Participating Class Members. Any Class Member who does not affirmatively opt-
11 out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all
12 of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered by
13 the Court if it grants final approval to the Settlement. All PAGA Class Members, regardless whether they
14 submit timely and valid Requests for Exclusion from the Settlement Class, will release the PAGA Released
15 Claims during the PAGA Period. The State of California will also release the PAGA Released Claims.

16 48. Objection Procedures. To object to the Settlement Agreement, a Class Member must postmark
17 a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The Notice
18 of Objection must be signed by the Class Member and contain all information required by this Settlement
19 Agreement. The postmark date will be deemed the exclusive means for determining that the Notice of
20 Objection is timely. Class Members who fail to object in the specific and technical manner specified above
21 will be deemed to have waived all objections to the Settlement and will be foreclosed from making any
22 objections and seeking any adjudication or review, whether by appeal or otherwise, to the Settlement
23 Agreement. Class Members who postmark timely Notices of Objection will have a right to appear at the Final
24 Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or
25 their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
26 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class
27 Members with respect to any such objections to this Settlement.

28 49. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement

1 Administrator will provide Defendant's counsel and Class Counsel a weekly report which certifies: (a) the
2 number of Participating Class Members from the Settlement Class who have submitted valid Requests for
3 Exclusion; (b) the Net Settlement Amount claimed by Participating Class Members; and (c) whether any Class
4 Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the
5 Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
6 administration of the Settlement Agreement as needed or requested.

7 50. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to
8 Participating Class Members will be negotiable for at least one hundred eighty (180) calendar days. Those
9 funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-
10 cashed for more than one hundred eighty (180) calendar days after issuance, plus any interest that accrued
11 thereon, will be tendered in accordance with California Code of Civil Procedure §384(b). The Settlement
12 Administrator will transfer the uncashed checks to the Unclaimed Property Fund of the State Controller's
13 office in the name of the Class Member and PAGA Class Member.

14 51. Certification of Completion. Upon completion of administration of the Settlement, the
15 Settlement Administrator will provide a written declaration under oath to certify such completion to the Court
16 and counsel for all Parties.

17 52. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments will
18 be allocated as follows: twenty percent (20%) to settlement of wage claims and eighty (80%) to settlement of
19 claims for interest and penalties. The portion allocated to wages will be reported on an IRS Form W-2 and the
20 portions allocated to non-wages will be reported on an IRS Form-1099 by the Settlement Administrator.

21 53. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will
22 be responsible for issuing to Plaintiff, Participating Class Members, and Plaintiff Counsel any W-2, 1099, or
23 other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
24 Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate
25 government authorities.

26 54. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the
27 payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement,
28 representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and

1 Participating Class Members understand and agree that except for Defendant’s payment of the employer’s
2 portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed
3 on the payments described herein.

4 55. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
5 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
6 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
7 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
8 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
9 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
11 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
12 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
13 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
14 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
15 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
16 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
17 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
18 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
19 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
20 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
21 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
22 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
23 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
24 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
25 THIS AGREEMENT.

26 56. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they
27 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
28 to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released

1 and discharged.

2 57. Release by Class Members. It is the desire of the Plaintiff, Class Members (except those who
3 exclude themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and
4 discharge the claims asserted in the Operative Complaint. Upon the Final Approval by the Court of this
5 Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement,
6 the Class Members shall fully release and discharge the Released Parties from any and all Released Claims for
7 the entire Released Claims Period. This release shall be binding on all Class Members who have not timely
8 submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents,
9 spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the
10 benefit of the Released Parties, who shall have no further or other liability or obligation to any Settlement Class
11 Member with respect to the Released Claims, except as expressly provided herein.

12 58. Release by PAGA Class Members. It is the desire of the Plaintiff, in her capacity as a
13 representative of PAGA Employees, and Defendant to fully, finally, and forever settle, compromise, and
14 discharge the claims asserted in the April 4, 2022 Notice of Labor Code Violations and PAGA Penalties sent
15 to the LWDA and the Operative Complaint. Upon the Final Approval by the Court of this Settlement
16 Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff,
17 the PAGA Class Members, the LWDA, and the State of California shall fully release and discharge the
18 Released Parties from any and all Released PAGA Claims for the entire Released PAGA Claims Period. This
19 release shall be binding on all PAGA Class Members regardless if they submitted a valid and complete Request
20 for Exclusion.

21 59. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and as a
22 condition of receiving any portion of her Class Representative Enhancement Payment, Plaintiff will agree to
23 the additional following General Release: In consideration of Defendant's promises and agreements as set forth
24 herein, Plaintiff hereby fully releases the Released Parties from any and all Released Claims and also generally
25 release and discharge the Released Parties from any and all claims, demands, obligations, causes of action,
26 rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising
27 out of or relating to Plaintiff's employment by Defendant or termination thereof, including but not limited to
28 claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful

1 termination of employment. This release specifically includes any and all claims, demands, obligations and/or
2 causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by
3 the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether or
4 not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically,
5 Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

11 60. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally approve
12 the Settlement as provided herein; (b) the Court strikes or does not approve any material term of this Settlement
13 Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any other
14 reason, then this Settlement Agreement, and any documents generated to bring it into effect including the
15 Memorandum of Understanding, will be null and void, all amounts deposited into the QSF will be returned to
16 Defendant, and the Parties shall be returned to their original respective positions. Any order or judgment entered
17 by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

18 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
19 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a)
20 conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the
21 proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The
22 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified
23 herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement,
24 which sets forth the terms of this Settlement, and will include the proposed Notice Packet; *i.e.*, the proposed
25 Notice of Class Action Settlement, attached as Exhibits A. Class Counsel will be responsible for drafting all
26 documents necessary to obtain preliminary approval. Any failure by the Court to fully and completely approve
27 the Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any
28 of the Action which has the effect of preventing the full and complete approval of the Settlement Agreement as

1 written and agreed to by the Parties, will result in this Settlement Agreement and any Memorandum of
2 Understanding entered into by the Parties, and all obligations under this Settlement Agreement and any
3 Memorandum of Understanding being nullified and voided.

4 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines
5 to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's
6 permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval
7 of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments;
8 (b) the Labor and Workforce Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class
9 Representative Enhancement Payments; and (e) all Settlement Administration Costs. Class Counsel will be
10 responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will also be
11 responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing. With
12 the exception of a failure to approve the full amount of attorneys' fees and costs or Class Representative
13 Enhancement Payment requested by Plaintiff, any failure by the Court to fully and completely approve the
14 Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any of
15 the Action which has the effect of preventing the full and complete approval of the Settlement Agreement as
16 written and agreed to by the Parties, will result in this Settlement Agreement and the Memorandum of
17 Understanding entered into by the Parties, and all obligations under this Settlement Agreement and the
18 Memorandum of Understanding being nullified and voided.

19 63. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or
20 after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its
21 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
22 addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
23 matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this
24 Settlement.

25 64. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth
26 in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits
27 to this Settlement are an integral part of the Settlement.

28 65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the

1 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
2 deemed binding on the Parties.

3 66. Amendment or Modification. This Settlement Agreement may be amended or modified only
4 by a written instrument signed by counsel for all Parties or their successors-in-interest. Any such instrument
5 must specifically reference this Agreement.

6 67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
8 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
9 Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the
10 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their
11 best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the
12 form or content of any document needed to implement the Settlement, or on any supplemental provisions that
13 may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
14 Court to resolve such disagreement.

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

17 69. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be
18 governed by and interpreted according to the laws of the State of California.

19 70. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all
20 Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed
21 counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to
22 be one and the same instrument provided that counsel for the Parties will exchange among themselves original
23 signed counterparts.

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

1 and reasonableness of this Settlement.

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

5 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
6 certification for purposes of this Settlement only; except, however, that either party may appeal any court order
7 that materially alters the Settlement Agreement's terms.

8 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class
9 action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the
10 stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement
11 is not an admission that class action certification is proper under the standards applied to contested certification
12 motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence
13 that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member,
14 other than according to the Settlement's terms.

15 75. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve the
16 dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
17 entering into this Settlement Agreement, Defendant does not admit, and specifically denies, it has violated any
18 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any
19 other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
20 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
21 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
22 connected with it, shall be construed as an admission or concession by Defendant of any such violations or
23 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
24 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
25 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to
26 establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state,
27 local or other applicable law.

28 76. Captions. The captions and section numbers in this Settlement Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of
2 this Settlement Agreement.

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

6 78. Enforcement Action. In the event that one or more of the Parties institutes any legal action or
7 other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare
8 rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from
9 the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in
10 connection with any enforcement actions.

11 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
12 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more
13 strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel
14 for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
15 Parties have contributed to the preparation of this Settlement Agreement.

16 80. Representation By Counsel. The Parties acknowledge that they have been represented by
17 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this
18 Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further,
19 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

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

22 82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith
23 and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement
24 Agreement.

25 83. Confidentiality. Plaintiff, Plaintiff' Counsel, Class Counsel, Defendant and their counsel agree
26 that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or
27 have any communication with the press about the fact, amount or terms of the Settlement Agreement prior to
28 Final Approval. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure

1 obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of
2 obligations stated in this Settlement Agreement. Nothing in this clause shall limit Plaintiff's Counsel's ability
3 to discuss the terms of the settlement with Class Members.

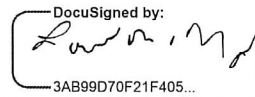
4 84. Binding Agreement. The Parties warrant that they understand and have full authority to enter
5 into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding
6 on all parties, and agree that it will be admissible and subject to disclosure in any proceeding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

9 **SIGNATURES**

10 **READ CAREFULLY BEFORE SIGNING**

11 Dated: December ¹⁵, 2022

PLAINTIFF

12
13  DocuSigned by:
3AB99D70F21F405...

14 Plaintiff LUWANA DIANE MAHLER

15 Dated: December , 2022

DEFENDANT

16
17
18 Defendant QUALITY FIRST HOME
IMPROVEMENT, INC.

19
20 Please Print Name of Authorized Signatory

21 **APPROVED AS TO FORM**

22
23 Dated: December ¹⁵, 2022

MOON & YANG, APC

24
25 

26 KANE MOON
LILIT TER-ASTVATSATRYAN

27 Attorneys for Plaintiff and the Class

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Dated: December , 2022

ELGUINDY, MEYER & KOEGEL, APC

DAVID M. DANIELS
RYAN S. HANLON

Attorneys for Defendant