

# Exhibit 1

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and between Kayce Smith (“Plaintiff”), on behalf of herself and a class and collective of allegedly similarly situated individuals that she seeks to represent (collectively referred to as “Class Members”),<sup>1</sup> and JKS Home Improvement, LLC and Jeremy Sager (collectively, “Defendants”) (together with Plaintiff and the Class Members, the “Parties”).<sup>2</sup>

### **1. RECITALS AND BACKGROUND**

WHEREAS, on November 30, 2023, Plaintiff commenced a proposed class and collective action lawsuit against Defendant by filing a Complaint in the United States District Court for the Northern District of New York asserting various claims under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) seeking redress for Defendant’s alleged failure to pay minimum wage and overtime, and failure to provide required certain wage notices and statements (the “Litigation”);

WHEREAS, on January 22, 2024, Defendant filed an Answer to Plaintiff’s Complaint, generally denying the allegations in the Complaint;

WHEREAS, on May 29, 2024, the Parties participated in a mediation overseen by Stan Matusz, Esq. (the “Mediator”). The Parties were not able to reach a resolution at the mediation, but subsequently agreed in principle to resolve the wage and hour claims in the Litigation on a class-wide basis for \$200,000.00;

WHEREAS, the purpose of this Agreement is to settle fully and finally all Released Claims (as defined below) between Plaintiff, Class Members, Defendants, and Releasees (as defined below);

WHEREAS, Defendants deny all of the allegations made by Plaintiff in the Litigation and deny any and all liability and damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation;

WHEREAS, without admitting or conceding any liability or damages whatsoever and without admitting that wages and/or other amounts improperly were withheld from any employees, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation;

WHEREAS, Plaintiff’s Counsel (as defined below) has analyzed and evaluated the merits of the claims made against Defendants in the Litigation, and the impact of this Agreement on Plaintiff’s and Class Members’ class/collective action, and based upon Plaintiff’s Counsel’s analysis and evaluation of a number of factors, and recognizing the substantial risks of continued

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<sup>1</sup> The term “Class Members” as used herein shall refer to both the FLSA Class Members and NYLL Class Members (both defined below), unless otherwise specifically indicated.

<sup>2</sup> While Brittany Sager is a defendant, she is not a signatory to this Agreement. If the Court grants preliminary approval of the Settlement, Plaintiff will dismiss all claims against Brittany Sager with prejudice.

litigation, including the possibility that, if not settled now, the Litigation might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiff's Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interest of the Plaintiff and Class Members;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

## 2. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 2.1 Agreement.** "Agreement" means this Settlement Agreement and Release.
- 2.2 Authorized Claimant.** "Authorized Claimant" means the Plaintiff and any Class Member who timely submits a Claim Form. The Plaintiff shall be an Authorized Claimant regardless of whether she timely submits a Claim Form.
- 2.3 Bar Date.** The "Bar Date" will be the date that is sixty (60) days from the mailing of Notice to the Class Members.
- 2.4 Claim Form.** "Claim Form" shall mean the form, a copy of which is attached to the Class Notice, that Class Members other than the Plaintiff must sign and submit by the Bar Date in order to be an Authorized Claimant and receive a Settlement Payment.
- 2.5 Claimed Net Settlement Fund.** "Claimed Net Settlement Fund" is the amount of the Net Settlement Fund claimed by Authorized Claimants.
- 2.6 Claims Administrator or Settlement Claims Administrator.** The "Claims Administrator" or "Settlement Claims Administrator" will be selected by the Parties, subject to approval by the Court, to mail the Notices and administer the calculation, allocation, and distribution of the Qualified Settlement Fund ("QSF"). The Settlement Claims Administrator's fees shall be borne by the QSF. The Parties have preliminarily identified Arden Claims Service as the Settlement Claims Administrator.
- 2.7 Class Counsel.** "Class Counsel" or "Plaintiff's Counsel" shall mean Brett R. Gallaway and Jason S. Giaimo of McLaughlin and Stern, LLP, 260 Madison Avenue, New York, New York 10016.
- 2.8 Class Members.** "Class Members" shall be defined as Plaintiff and all members of the FLSA Class and NYLL Class.
- 2.9 Class List.** The "Class List" means the list of all potential Class Members, identified by: (i) name; (ii) last known address; (iii) last known telephone number(s) (to the extent

Defendants possess this information); (iv) Social Security number; (v) dates of employment from November 30, 2017 to the date of execution of this Agreement; and (vi) number of shifts worked from November 30, 2017 to the date of execution of this Agreement. The Class List is to be used by Class Counsel and the Settlement Claims Administrator to effectuate this settlement and may not be used for any other purpose. The Class List shall be provided to Class Counsel in Microsoft Excel format.

- 2.10 Court.** “Court” means the United States District Court for the Northern District of New York.
- 2.11 Covered Positions.** “Covered Positions” means all current and former hourly paid and non-exempt employees of Defendants employed at any time from November 30, 2017 through the signing of this Agreement.
- 2.12 Days.** “Days” means business days if the specified number is less than 10, and calendar days if the specified number is 10 or greater. To the extent any actions are required to be taken by a certain Day and such Day falls on a Saturday or Sunday, such action must be taken by the following Monday. To the extent any actions are required to be taken by a certain Day and such Day falls on a legal holiday, such action must be taken by the next weekday.
- 2.13 Defendants.** “Defendants” shall mean JKS Home Improvement, LLC and Jeremy Sager.
- 2.14 Defendants’ Counsel.** “Defendants’ Counsel” shall mean Dawn J. Lanouette, Hinman Howard & Kattell, LLP.
- 2.15 Effective Date.** “Effective Date” of the Final Settlement Agreement will be either: (i) thirty (30) days after the entry of the Final Approval Order by the Court approving this Agreement, with the time to appeal from such Final Approval Order having expired and no notice of appeal or timely motion to extend the time to appeal having been filed; or (ii) if a timely notice of appeal has been filed, fourteen (14) days after the date that the latest of the following, if applicable, has occurred: (a) the final affirmance of an appeal of the Final Approval Order; (b) the expiration of the time for a petition for a writ of certiorari to review any affirmance on appeal of the Final Approval Order; (c) if a writ of certiorari is granted, the final affirmance of the Final Approval Order following review pursuant to the grant of that writ; or (d) the final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on certiorari to review the Final Approval Order
- 2.16 Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.
- 2.17 Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, dismissing the Litigation with prejudice, and entering a judgment consistent with the Parties’ settlement terms.
- 2.18 FLSA Class.** “FLSA Class” shall be defined as all workers who were employed by Defendants, in Covered Positions between November 30, 2020 and the date of preliminary

approval of this Settlement and who submitted a Claim Form and endorse their settlement checks.

- 2.19 FLSA Class Member.** “FLSA Class Member” shall be defined as all Class Members who timely submit a Claim Form and endorse their Settlement Checks and release all NYLL and FLSA claims against Defendant.
- 2.20 Litigation.** The “Litigation” shall be defined as the lawsuit that Plaintiff filed in the United States District Court for the Northern District of New York bearing the civil action number 3:23-cv-01509-AMN-ML.
- 2.21 Maximum Settlement Amount.** “Maximum Settlement Amount” or “Settlement Amount” means Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), which is the maximum amount Defendants will pay to settle the Litigation as set forth in this Agreement, exclusive of payments made to cover Defendants’ share of payroll taxes.
- 2.22 Motion for Final Approval.** “Motion for Final Approval” means the motion Plaintiff will file seeking final approval of this Agreement after entry of the Preliminary Approval Order and distribution of Notice.
- 2.23 Net Settlement Fund.** “Net Settlement Fund” means the remainder of the Maximum Settlement Amount after deductions for: (i) Court-approved Settlement Claims Administrator’s fees and costs; (ii) Court-approved attorneys’ fees and costs for Class Counsel; and (iii) a Court-approved Service Award to Plaintiff.
- 2.24 Notice(s) or Class Notice(s).** “Notice” or “Class Notice” means the Court approved Notice of Proposed Settlement of Class Action and Collective Action Lawsuit and Fairness Hearing, including Claim Forms, and notice of an opportunity to opt out and/or object to the proposed Settlement. The Notice will be mailed to all potential Class Members’ last known address that Defendants have on file.
- 2.25 NYLL Class.** “NYLL Class” shall be defined as all workers who were employed in Covered Positions by Defendants between November 30, 2017 through the date of preliminary approval of this Settlement, who timely return Claim Forms, and who do not opt out of the New York Labor Law claims brought pursuant to the Litigation.
- 2.26 NYLL Class Member.** “NYLL Class Member” shall be defined as all Class Members who timely return a Claim Form, who do not submit an Opt-Out Statement pursuant to this Agreement, who will be deemed to have accepted the settlement and the terms of this Agreement, who will be bound by the Judgment in this case, and who have any NYLL Released Class Claims released and dismissed with prejudice.
- 2.27 Objector.** “Objector” means an individual who files an objection to this Agreement and does not include any individual who opts out of this Agreement.
- 2.28 Opt-Out Statement.** “Opt-Out Statement” is a written signed statement as part of the Class Notice that an individual Class Member has decided to opt out and not be included in this Agreement and not release any NYLL or FLSA claims.

- 2.29 Plaintiff or Named Plaintiff.** “Plaintiff” or “Named Plaintiff” shall be defined as Kayce Smith.
- 2.30 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement and directing the manner and timing of providing Notices to the Class Members.
- 2.31 Qualified Settlement Fund or QSF.** “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Claims Administrator for the Settlement Amount paid by Defendant. The QSF will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement and the Court’s Preliminary Approval Order and Final Approval Order. Interest, if any, earned on the QSF will become part of the Net Settlement Fund.
- 2.31 Releasees.** “Releasees” shall mean Defendants and their present and former affiliates, related entities, divisions, subsidiaries, parents, predecessors, successors, any merged entity or merged entities and/or any of their present and former officers, partners, members, directors, employees, agents, attorneys, shareholders, members, owners, insurers or reinsurers, employee retirement or benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them.
- 2.32 Reserve Fund.** “Reserve Fund” means the fund created from uncashed checks described in Section 4.4(B)(2).
- 2.33 Settlement Checks.** “Settlement Checks” means the set of checks issued to Class Members for their share of the Net Settlement Fund calculated in accordance with this Agreement.
- 2.34 Unredeemed Funds.** “Unredeemed Funds” means any money still remaining in the Net Settlement Fund on the later of one hundred eighty-one (181) days after the Settlement Checks are issued or fifty (50) days after the last reissued settlement check is issued, whichever is later. Unredeemed Funds, other than those used for the Reserve Fund, shall revert back to Defendants.

### **3. INITIAL PROCEDURAL ISSUES**

**3.1 Binding Agreement.** Subject to Court-approval, this Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.

#### **3.2 Preliminary Approval Motion.**

- (A) After the Parties’ execution of this Agreement and on or before August 19, 2024, Class Counsel will file a Motion for Preliminary Settlement Approval

(“Preliminary Approval Motion”) with the Court. The Preliminary Approval Motion will seek: (i) preliminary approval of this Agreement; (ii) the setting of date(s) for individuals to submit Claim Forms, Opt-Out Statements or provide objections to this Agreement, which date will be sixty (60) days from the mailing of Notice to the Class Members; (iii) the appointment of the Claims Administrator to administer the settlement; (iv) the appointment of Plaintiff’s Counsel as counsel for the NYLL Class and FLSA Class; and (v) the scheduling of a Fairness Hearing for Final Approval of the settlement before the Court at the earliest practicable date. Plaintiff will provide Defendants with a copy of the Preliminary Approval Motion at least three (3) days before filing it. Defendants will not oppose the Preliminary Approval Motion provided it is consistent with the terms of this Settlement Agreement.

- (B) If the Court denies the Preliminary Approval Motion, unless the parties jointly agree to seek reconsideration of the ruling, to appeal the ruling, or to seek Court approval of a renegotiated settlement, the Litigation will continue as if no settlement had been attempted, and this Agreement shall be null and void. Defendants retain the right to contest whether the Litigation should be maintained as a class action and to contest the merits of the claims being asserted in the Litigation, including without limitation, contesting whether the Litigation is appropriate to proceed as a class and/or collective action.
- (C) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and Final Judgment and Dismissal.

### **3.3 Retention and Responsibilities of the Settlement Claims Administrator.**

- (A) Within five (5) days after the granting of the Preliminary Approval Motion, the Parties shall engage the Court-approved Settlement Claims Administrator whose fee shall be paid from the Qualified Settlement Fund.
- (B) The Settlement Claims Administrator will be responsible for:
  - (1) preparing, printing, and disseminating the Court-approved Notices and Text Notices to potential Class Members, including Claim Forms;
  - (2) copying counsel for all Parties on material correspondence and promptly notifying all counsel for the Parties of any material requests or communications made by any potential Class Member;
  - (3) furnishing to counsel for the Parties copies of any requests for exclusion, objections or other written or electronic communications from Class Members which the Claims Administrator receives within three (3) days of receipt;
  - (4) keeping track of all Opt-Out Statements, requests for exclusion, including maintaining the original mailing envelope in which the request was mailed;



- (5) keeping track of returned Notices, including Claim Forms;
- (6) within five days of receipt, ascertaining current address and addressee information for each Notice and Text Notice returned as undeliverable and re-mailing or re-text messaging of Notices or Text Notices to the current address or mobile telephone number;
- (7) calculating distribution amounts to Class Members in accordance with this Agreement;
- (8) preparing and mailing the Settlement Checks and any related tax reporting forms to Plaintiff, Class Members, Class Counsel, and any other party, entity, or individual for whom receipt of such documents is necessary or required; and
- (9) calculating any employer-side payroll taxes required pursuant to the settlement and providing such information to Defendants' Counsel so that all payments required by Defendants pursuant to the terms of this Agreement can be made in a timely manner;
- (10) timely responding to inquiries from potential Class Members, Class Counsel, or Defendants' Counsel consistent with the Administrator's duties specified herein;
- (11) distributing any Court-approved Service Award;
- (12) promptly apprising Class Counsel and Defendant's Counsel of the activities of the Administrator and maintaining adequate records of its activities, including the dates of the mailing of Notice(s), returned mail and other communications and attempted written or electronic communications with potential Class Members
- (13) promptly providing copies to Class Counsel and Defendant's Counsel of any Opt-Out Statements or objections submitted by potential Class Members;
- (14) distributing Class Counsel's attorneys' fees, expenses, and costs in accordance with this Agreement and the Orders of the Court;
- (15) distributing notices pursuant to, and otherwise timely complying with the requirements of, the Class Action Fairness Act ("CAFA");
- (16) establishing and maintaining a website for potential Class Members to access, learn about the case and submit electronic Claim Forms;
- (17) providing a final report, deliverable to Class Counsel and Defendants' Counsel, detailing the results of the class mailings and participation;
- (18) mailing all required tax forms to Class Members and to Class Counsel as provided herein;



(19) filing all necessary tax forms required under applicable tax laws and regulations as a result of the terms of this Agreement with the appropriate governmental agencies;

(20) providing Class Counsel with any necessary documents regarding the claims administration process that Class Counsel may need in order to file a Motion for Final Approval of the Settlement; and

(21) such other tasks upon which the Parties mutually agree.

- (C) The Parties will have equal access to the Settlement Claims Administrator, and the Settlement Claims Administrator will provide regular reports to the Parties, but no less frequently than every two (2) weeks, regarding the status of the mailing of the Notices to Class Members, the identity and number of Class Members who submit Claim Forms, object to, and/or opt out of the Settlement, and the distribution and redemption of the Settlement Checks.
- (D) In addition, no later than fifteen (15) days prior to the Fairness Hearing, the Settlement Claims Administrator shall certify jointly to Class Counsel and Defendants' Counsel (i) a list of all Class Members who filed a timely objection, (ii) a list of all Class Members who timely returned a Claim Form, and (iii) a list of all Class Members who requested to opt out of the Settlement at any time during the opt-out period. Throughout the period of claims administration, the Settlement Claims Administrator will provide reports to the Parties upon request by either Party, regarding the status of the mailing of the Notices to Class Members, the claims administration process, and distribution of the Settlement Checks or any other aspect of the claims administration process.
- (E) The Parties agree to reasonably cooperate with the Settlement Claims Administrator, provide accurate information, to the extent reasonably available, necessary to calculate the Settlement Checks, and reasonably assist the Settlement Claims Administrator in locating potential Class Members and updating information concerning potential Class Members.

**3.4 Class Notices.** The Class Notices will inform potential Class Members about this settlement and will also advise them of the opportunity to opt in by submitting a Claim Form or object, to appear at the Fairness Hearing, and how to submit a Claim Form. A copy of the Class Notice and Claim Form for mailing and emailing is attached hereto as Exhibit A.

**3.5 Process for Notice to Class Members and Submission of Claim Forms.**

- (A) Within twenty-one (21) days after the Court issues the Preliminary Approval Order, Defendants' Counsel will provide the Settlement Claims Administrator and Class Counsel with the Class List.

- (B) Within fourteen (14) days of receipt of the Class List, the Settlement Claims Administrator will mail to all potential Class Members, *via* First Class United States Mail, postage prepaid, the Court-approved Class Notice.
- (C) The Settlement Claims Administrator will take all reasonable steps to obtain the correct address of any potential Class Members for whom a Notice and Claim Form is returned by the post office as undeliverable, including one skip trace, and shall attempt one re-mailing. The Settlement Claims Administrator will notify Class Counsel and Defendants' Counsel of any Notice and Claim Form sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Notice and Claim Form returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement. The Settlement Claims Administrator shall also mail a Class Notice and Claim Form to any potential Class Member who timely requests that a second copy be mailed.
- (D) A potential Class Member will have sixty (60) days from the date the Settlement Claims Administrator first mails the Claim Form to return the completed Claim Form to the Settlement Claims Administrator. To be effective, a Claim Form must be received by the Settlement Claims Administrator by the Bar Date or, if received after the Bar Date, post-marked by the Court-authorized Bar Date. To the extent that the envelope does not contain a post-mark, the mailing date shall be presumed to be the day before the Settlement Claims Administrator received the Claim Form, unless a Class Member provides proof that establishes a different mailing date.

### **3.6 Class Member Opt-Outs.**

- (A) Class Members who choose to opt out of the settlement as set forth in this Agreement must mail *via* First Class United States Mail, a written, signed statement ("Opt-Out Statement") to the Settlement Claims Administrator that states he or she is opting out of the settlement, and include his or her name, address, and telephone number, and a statement indicating his or her intention to opt out such as: "I opt out of the JKS Home Improvement wage and hour settlement." To be effective, an Opt-Out Statement must be mailed by the Bar Date. In the event that the Settlement Claims Administrator receives an Opt-Out Statement after the Bar Date that does not contain a post-mark, the mailing date shall be presumed to be the day before the Settlement Claims Administrator received the Opt-Out Statement, unless a Class Member provides proof that establishes a different mailing date.
- (B) The end of the time period to opt-out of the settlement ("Opt-Out Period") shall be the Bar Date. The Bar Date will be the date that is sixty (60) days from the mailing of Notice to the Class Members.
- (C) The Settlement Claims Administrator will stamp the received date on the original of each Opt-Out Statement that it receives and shall serve copies of each Opt-Out Statement on Class Counsel and Defendant's Counsel not later than three (3) days after receipt thereof. The Settlement Claims Administrator will, within 24 hours of the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class

Counsel and Defendant's Counsel by e-mail, and will provide an update to any such list within one (1) day should the Settlement Claims Administrator receive an Opt-Out Statement after the Opt-Out Period. The Settlement Claims Administrator will retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files.

- (D) Any NYLL Class Member who timely returns a Claim Form and who does not submit an Opt-Out Statement pursuant to this Agreement will be deemed to have accepted the Settlement and the terms of this Agreement, will be bound by the Judgment in this case, and have any Released Class Claims released and dismissed with prejudice. An FLSA Class Member must submit a Claim Form and endorse his or her Settlement Check to be deemed to have accepted the settlement and the terms of this Agreement and be bound by the Judgment in this case and have any Released Class Claims released and dismissed with prejudice. Only those Class Members who timely complete and return a Claim Form post-marked by the Bar Date will be deemed Authorized Claimants. Defendants will only fund amounts allocated to each Authorized Claimant who returns a timely Claim Form and otherwise does not submit an Opt-Out Statement, except for the amounts otherwise provided for herein.

### **3.7 Objections to Settlement.**

- (A) Potential Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Claims Administrator *via* First-Class United States Mail, postage prepaid, and be mailed by the Bar Date. The statement must include all reasons for the objection, and any reasons not included in the statement will not be considered. The statement must also include the name, job title, address, and telephone number for the potential Class Member making the objection. The Settlement Claims Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendant's Counsel by e-mail no later than three (3) days after receipt thereof. Class Counsel will file the date-stamped objections with their Motion for Final Approval. In the event that the Settlement Claims Administrator receives an objection after the Bar Date that does not contain a post-mark, the mailing date shall be presumed to be the day before the Settlement Claims Administrator received the objection, unless a Class Member provides proof that establishes a different mailing date.
- (B) An Objector also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections. An Objector may withdraw his or her objections at any time. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her written objections. A Class Member who has submitted an Opt-Out Statement may not submit objections to the Settlement.

- (C) The parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

### **3.8 Fairness Hearing and Motion for Final Approval and Dismissal.**

- (A) No later than seven (7) calendar days before the Fairness Hearing, Plaintiff will submit a Motion for Final Approval and Judgment. No later than three (3) calendar days before the submission of the Motion for Final Approval, Plaintiff will send a draft to Defendants' Counsel for their review. The Fairness Hearing shall be held at the Court's convenience.
- (B) At the Fairness Hearing and in the Motion for Final Approval, the parties will request that the Court: (i) certify the NYLL Class and FLSA Class for purposes of settlement; (ii) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all NYLL Class Members who timely submit Claim Forms and who have not timely opted out of the settlement and binding on all FLSA Class Members who timely submit Claim Forms and endorse their Settlement Checks; (iii) order the Settlement Claims Administrator to distribute Settlement Checks to Authorized Claimants; (iv) order any Court-approved Service Award, to be paid from the QSF, to Plaintiff as described in this Agreement; (v) order Court-approved attorneys' fees and costs to be paid to Class Counsel from the QSF; (vi) order Court-approved Claims Administrator's fees to be paid to the Claims Administrator from the QSF; (vii) order the dismissal with prejudice of all claims asserted in the Litigation and the NYLL claims of all Class Members who did not opt-out; (viii) order entry of Final Judgment in accordance with this Agreement; and (ix) retain jurisdiction as necessary for the purpose of enforcing the administration of the settlement.
- (C) If the Court does not enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside by appeal, the parties will resume the Litigation unless the parties jointly agree to: (i) seek reconsideration or appellate review of the decision denying Final Approval; or (ii) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement.
- (D) If any reconsideration and/or appellate review of the failure to enter a Final Approval Order is denied, or a mutually agreed-upon settlement is not approved, the Litigation will proceed as if no settlement had been attempted. In that event, any class and/or collective certified for purposes of settlement shall be automatically decertified, and Defendants may contest whether this Litigation should be maintained as a class action or collective action and contest the merits of the claims asserted by Plaintiff in this action.
- (E) If the Court does not enter a Final Approval Order, the Settlement Claims Administrator will provide notice to Class Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Authorized Claimants under the Agreement. The contents of such notice shall be agreed to by the Parties, and such notice shall be mailed by the Settlement Claims

Administrator via First Class United States Mail, postage prepaid, to the addresses used by the Settlement Claims Administrator in mailing the Notices.

If the Court fails to enter a Final Approval Order, any amounts paid by Defendants to the Settlement Claims Administrator shall be returned to Defendants within fifteen (15) days after the Court files an opinion or order rejecting or otherwise not approving the settlement.

#### **4. SETTLEMENT TERMS**

##### **4.1 Settlement Amount.**

- (A) Defendant will pay the Maximum Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), which shall fully resolve and satisfy any claim for attorneys' fees, expenses and costs approved by the Court, any and all amounts to be paid to Authorized Claimants as set forth herein, all applicable Service Awards, and Settlement Claims Administrator costs and fees. Other than any applicable employer-side payroll taxes typically borne by the employer, Defendants shall not be required to pay more than the Maximum Settlement Amount.
- (B) Defendants shall fund the Qualified Settlement Fund according to the following schedule:
  - (1) Within 20 days after the Preliminary Approval Order, Defendants shall pay the Maximum Settlement Amount into the Qualified Settlement Fund.
  - (2) Nothing herein shall prevent Defendants from funding the Qualified Settlement Fund, in whole or in part, prior to the date set forth herein.

##### **4.2 Settlement Amounts Payable as Attorneys' Fees, Expenses and Costs.**

- (A) Prior to the Fairness Hearing, Class Counsel shall petition the Court for reimbursement of their reasonable litigation costs and expenses to be paid from the Qualified Settlement Fund. In addition, Class Counsel shall petition the Court for one-third of the Maximum Settlement Amount to be paid from the Qualified Settlement Fund as an award of attorneys' fees. Defendants will not oppose such applications provided the applications are consistent with the terms of this Agreement. Defendants shall have no additional liability for attorneys' fees and costs.
- (B) The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any reduction by the Court of Class Counsel's application for attorneys' fees and

costs shall become part of the Net Settlement Fund and shall be subject to allocation and the reversion of Unredeemed Funds as defined above.

#### **4.3 Service Awards to Named Plaintiff.**

- (A) In return for services rendered to the Class Members, Plaintiff will seek a service award in the total amount of \$10,000. Defendants will not oppose Plaintiff's application for a Service Award as long as the Service Award total is no more than \$10,000 and is otherwise consistent with the terms of this Agreement.
- (B) The outcome of the Court's ruling on the application for the Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Should all or part of any Service Award sought not be approved by the Court, the sum shall revert to the Net Settlement Fund and shall be subject to allocation and the reversion of Unredeemed Funds.
- (C) In consideration for receipt of the Service Award, if any, and their respective shares of the QSF, Named Plaintiff agrees to the release set forth in Section 5.4.

#### **4.4 Net Settlement Fund and Distribution to Authorized Claimants.**

- (A) The allocation to Class Members for Settlement Checks will be made from the Net Settlement Fund.
- (B) A Class Member's proportionate share of the Net Settlement Fund will be determined by the Settlement Claims Administrator pursuant to the following formula:
  - (1) Within 21 days after the Preliminary Approval Order, Defendants will provide Class Counsel for settlement purposes only with the number of shifts worked for each individual Class Member from November 30, 2017 through the date of preliminary approval ("Class Records"). The Class Records will be produced to Class Counsel in Excel or the same or similar format to the sampling of time and payroll records for Class Members that Class Counsel received from Defendants prior to and in anticipation of the mediation. For the sake of clarity, nothing herein shall obligate Defendants to produce records which do not exist or which are otherwise not in their custody or control. The Settlement Claims Administrator, will then create a comprehensive total damage analysis based on the Class Records produced by Defendants' Counsel. These Class Records shall show the total number of shifts in which each Class Member worked during the relevant time frame. Each Class Member will be assigned an individual percentage amount of the Net Settlement Amount based on their respective number of shifts. Each Class Member's percentage amount of the Net Settlement Amount shall be assigned to the Net Settlement Fund and in order to compute that Class Member's share of the Net Settlement Fund (an "Individual Settlement Amount"). For example, if a Class Member's



percentage of the Net Settlement Fund is 0.25%, and the Net Settlement Fund is \$100,000, then that Class Member's Individual Settlement Amount would be \$250.00 (subject to applicable tax withholdings). A Class Member's Share of the Net Settlement Fund will not change regardless of how many Class Members become Authorized Claimants. A Class Member shall only be entitled to receive that Class Member's percentage of the Net Settlement Fund as calculated above if they submit a timely Claim Form. Only Authorized Claimants will be entitled to receive their Individual Settlement Amount. Class Counsel represents that it will not use the Class Records for any purpose other than to effectuate the settlement contemplated by this Agreement.

- (2) **Reserve Fund:** The Settlement Administrator shall keep fifty percent (50%) of the amount from any uncashed checks in an interest-bearing escrow account held by the Settlement Claims Administrator (the "Reserve Fund"). The Reserve Fund shall be used to settle any disputed claims made by (i) Class Members who wish to challenge their Individual Settlement Amount, or (ii) individuals who did not receive the Class Notice or who did not provide a release of their FLSA claims. Any funds remaining in the Reserve Fund on the later of 181 days after the Settlement Checks are issued or 46 days after the last re-issued Settlement Check is issued, whichever is later, that were not used to pay Class Members or used for defense, shall be distributed to one or more of the following *cy pres* organization(s) as approved by the Court: (i) the Doe Fund; (ii) the Partnership for the Homeless; and/or (iii) any similar charitable organization that assists economically disadvantaged individuals in New York in obtaining services, housing and/or employment opportunities.
- (3) **Reversionary Settlement:** This is a reversionary Settlement for any funds remaining in the Net Settlement Fund after all Authorized Claimants have submitted timely Claim Forms. Any additional or unclaimed amounts from the Gross Settlement Amount, with the exception of the Reserve Fund, shall revert back to Defendants if the Settlement becomes effective. Notwithstanding the above, if any amounts from the Gross Settlement Amount remain in the Reserve Fund on the later of 181 days after the Settlement Checks are issued or 46 days after the last re-issued Settlement Check is issued, whichever is later those funds shall be paid to one or more of the following *cy pres* organization(s) as approved by the Court: (i) the Doe Fund; (ii) the Partnership for the Homeless; and/or (iii) any similar charitable organization that assists economically disadvantaged individuals in New York in obtaining services, housing and/or employment opportunities.
- (C) Defendants and the Settlement Claims Administrator shall exchange such information as is necessary for the Claims Administrator to make proper tax withholdings and comply with tax reporting obligations.



- (D) No later than fifteen (15) days after the Effective Date, the Claims Administrator shall mail to all Authorized Claimants their share of the Net Settlement Fund. The Claims Administrator shall use reasonable efforts to make an additional mailing to Authorized Claimants whose checks are returned because of incorrect addresses. Such efforts shall include using Social Security numbers to obtain updated address information. Authorized Claimants will not receive settlement checks without filing claim forms.
- (E) No later than five (5) days after the Final Approval Order, the Claims Administrator shall mail or wire to Class Counsel their share of attorneys' fees and costs due from the Gross Settlement Fund.
- (F) Authorized Claimants will have ninety (90) calendar days from when the Settlement Checks are issued to redeem their settlement payments. If an Authorized Claimant does not redeem their Settlement Checks within the 90-day period, their Settlement Checks will be void and a stop-payment will be placed. If an Authorized Claimants contacts Class Counsel or the Claims Administrator up to one hundred eighty (180) calendar days from when the Settlement Checks are first mailed to request a reissued check, the Claims Administrator will, upon confirming that the Settlement Check in question has not been redeemed, issue a stop payment on the Class Member's original settlement check and reissue that Authorized Claimant's Settlement Check. All such reissued checks will be valid for forty-five (45) days after the date of issue and will be void thereafter.
- (G) Any money still remaining in the Net Settlement Fund on the later of one hundred eighty-one (181) days after the Settlement Checks are issued or forty-six (46) days after the last reissued settlement check is issued, whichever is later, shall revert back to Defendants.

#### **4.5 Tax Characterization of Payments to Class Members.**

- (A) All payments made to Authorized Claimants from the Net Settlement Fund shall be allocated as follows: fifty percent (50%) of such payments shall be allocated to the payment of wages (for which a Form W-2 will be issued) subject to taxes and withholdings, and fifty percent (50%) shall be non-wage income and not be subject to payroll taxes and withholdings (for which a Form 1099-MISC will be issued).
- (B) The payment of a Service Award shall be non-wage income (for which a Form 1099-MISC will be issued) and not be subject to payroll taxes and withholdings.
- (C) Defendants will provide the Settlement Claims Administrator such information in Defendants' possession as is necessary for the Settlement Claims Administrator to make proper tax withholdings, issue and file tax-related forms, and comply with all tax reporting obligations.

**5. RELEASE OF CLASS CLAIMS**

**5.1 Release of Class Claims.** Upon the Effective Date, and except as to such claims as may be created by this Agreement, Plaintiff and all NYLL Class Members who have not opted out of this Settlement (regardless of whether they submit a Claim Form), on their behalf and on behalf of their respective current, former, and future heirs, spouses, executors, administrators, agents, and attorneys, fully releases Defendants and Releasees from any and all wage and hour claims against Defendants and Releasees that have been brought or could have been brought under the New York Labor Law, the New York Minimum Wage Act, and the New York Wage Theft Prevention Act, and or the regulations under such statutes, laws, and wage order, or common law, for work performed at or on behalf of Releasees, whether known or unknown, including without limitation any such claims for unpaid wages, overtime, failure to maintain and furnish employees with proper Rate of Pay notices and/or wage statements, meal break claims, liquidated damages, statutory penalties, and attorneys' fees and costs related to such claims, through the date that the Court issues an Order granting final approval of this Agreement.

**5.2 Release of Claims for FLSA Class Members Who Cash Their Settlement Check.** Plaintiff and each FLSA Class Member who timely submits a Claim Form and endorses their Settlement Checks shall forever and fully release Releasees from any and all wage and hour claims against Releasees that have been brought or could have been brought under the FLSA and the regulations thereunder for work performed at or on behalf of Releasees, including without limitation any such claims for unpaid wages, overtime, liquidated damages and attorneys' fees and costs related to such claims, through the date that the Court issues an Order granting final approval of this Agreement.

**5.3 Settlement Checks.** All Settlement Checks shall contain, on the back of the check, the following limited endorsement:

**“RELEASE OF CLAIMS:**

By endorsing this check, I consent to join the case entitled *Smith v. JKS Home Improvement*, and I hereby release Releasees from all wage-and-hour claims under the Fair Labor Standards Act, the New York Labor Law and/or any other applicable wage-and-hour law, rule or regulation brought or which could have been brought in the litigation, including, but not limited to, minimum wage and overtime claims, and record keeping and notice requirements.”

Any modification or amendment of the above language by a Class Member, at Defendants' discretion, may not be accepted, and may void the Settlement Check. The Administrator shall provide Defendants signed copies of each Settlement Check after they have been cashed.

**5.4 Release of Plaintiff's Claims.**

(A) **General Release of Plaintiff.** In addition to the waiver and release contained in 5.1 above, upon the Effective Date, Plaintiff, knowingly and voluntarily, on her behalf

and on behalf of her respective current, former, and future heirs, spouses, executors, administrators, agents, and attorneys, fully releases and discharges Releasees from any and all claims arising up to and as of the date of this Agreement, both known and unknown, which Plaintiff has or may have against Releasees relating to the time she worked for Releasees. While nothing in this agreement shall prohibit or restrict Plaintiff from providing information to, or otherwise assisting in, an investigation by the Equal Employment Opportunity Commission (“EEOC”), Plaintiff agrees not to seek, or in any way obtain or accept, any monetary award, from an administrative charge filed against Defendant with the EEOC. This Release shall include, but not be limited to, any alleged violation of: The Civil Rights Act of 1991; The Equal Pay Act; The Employee Retirement Income Security Act of 1974; The Immigration Reform and Control Act; The Consolidated Omnibus Budget Reconciliation Act; The Age Discrimination in Employment Act; The Americans with Disabilities Act of 1990; The Fair Labor Standards Act; The Fair Credit Reporting Act; The Worker Adjustment and Retraining Act; The Occupational Safety and Health Act; The New York Corrections Law, including Sections 750-755 thereof; The Family and Medical Leave Act of 1993; the New York Worker Adjustment and Retraining Act; The New York Civil Rights Law; the New York Paid Sick Leave Law; The New York Paid Family Leave Act, New York State Labor Law, New York Human Rights Law, and any other federal, state, and/or local law or ordinance. This release includes all claims for all damages arising from any such released claims, including claims for back pay, front pay, compensatory damages, punitive damages, liquidated damages, penalties, interest, and attorneys’ fees, and costs.

## 6. DENIAL OF LIABILITY

Defendants have agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that terms have been reached because this Settlement will (i) avoid the further expense and disruption of Defendants’ business due to the pendency and expense of litigation, and (ii) put the potential litigation, and all disputes between the Parties, to rest. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendants or the Releasees, nor as an admission that a class should be certified, for any purpose other than settlement purposes.

## 7. INTERPRETATION AND ENFORCEMENT

**7.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court’s approval of this Agreement and all of its terms. Each party, upon the request of the other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

**7.2 No Assignment.** Class Counsel and Plaintiff, on behalf of the Class Members, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to,

any interest in the Litigation, or any related action.

**7.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

**7.4 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Plaintiff and all Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.

**7.5 Arms'-Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms'-length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

**7.6 Captions.** The captions or headings of the Sections and Paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

**7.7 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

**7.8 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction or authority to modify the terms of the Agreement or to increase Defendants' payment obligations hereunder.

**7.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

**7.10 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

**7.11 When Agreement Becomes Effective; Counterparts.** Subject to the Court's approval, this Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

**7.12 Signatures.** This Agreement is valid and binding if signed by the authorized representatives of Plaintiff and Defendants.

**7.13 Facsimile, Electronic, and Email Signatures.** Any signature made or electronically made and/or transmitted by facsimile or e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or e-mail.

**7.14 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

  
\_\_\_\_\_  
JKS Home Improvement, LLC  
By:  
Its:

Date: 7/25/24, 2024

  
\_\_\_\_\_  
Jeremy Sager

Date: 7/25/24, 2024

\_\_\_\_\_  
Kayce Smith

Date: \_\_\_\_\_, 2024



# EXHIBIT A



**COVER LETTER (to be sent on Settlement Claims Administrator letterhead)**

**DATE**

**NAME**

**ADDRESS**

**CITY, STATE ZIP CODE**

**Re: NOTICE OF CLASS ACTION SETTLEMENT WITH  
JKS HOME IMPROVEMENT, LLC  
(*Smith v. JKS Home Improvement, LLC, et al., 3:23-cv-01509-AMN-ML*)**

Dear **[NAME]**,

According to JKS Home Improvement, LLC's records, you worked as a non-exempt, hourly paid employee during the time period covered by the above-referenced class action lawsuit for unpaid wages. The Parties have reached a settlement in that lawsuit under which you are eligible to receive a portion of the settlement. Enclosed herein is a Court approved Notice, Claim Form, and Form W-9. **In order to receive payment under the settlement, you must sign the two enclosed forms entitled "CLASS MEMBER CLAIM FORM" and "SUBSTITUTE FORM W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER."** You will not receive money from the settlement unless you submit a Claim Form and IRS Form W-9 by **[DATE]**. **In order to receive your settlement amount, both these forms must be mailed or emailed to the address listed in the Claim Form.**

For full information about the settlement and how to claim your share of the settlement, please contact Plaintiff's attorney Brett Gallaway at (212) 448-1100 or [bgallaway@mclaughlinstern.com](mailto:bgallaway@mclaughlinstern.com).

Sincerely,

**[Settlement Claims Administrator]**

**NOTICE OF PROPOSED CLASS ACTION LAWSUIT SETTLEMENT  
AND FAIRNESS HEARING**

**TO: PERSONS WHO WORKED AS A NON-EXEMPT HOURLY PAID EMPLOYEE AT JKS HOME IMPROVEMENT, LLC BETWEEN NOVEMBER 30, 2017 AND [DATE OF EXECUTION OF PRELIMINARY APPROVAL].**

Based on information in the records of JKS Home Improvement, LLC (“JKS”), you were employed as a non-exempt hourly paid employee between November 30, 2017 and [DATE OF PRELIMINARY APPROVAL] and are entitled to participate in the proposed settlement of the case captioned *Smith v. JKS Home Improvement, LLC, et al.*, No.: 3:23-cv-01509-AMN-ML (the “Lawsuit”). The Lawsuit was brought by Kayce Smith.

Under the terms of the parties’ settlement (“Settlement” or “Settlement Agreement”), you may claim money under the Settlement. **A CLAIM FORM IS ENCLOSED WITH THIS NOTICE. YOU WILL RECEIVE MONEY FROM THIS SETTLEMENT ONLY IF YOU RETURN THE ATTACHED CLAIM FORM AND A VALID AND FULLY EXECUTED IRS FORM W-9 TO THE CLAIMS ADMINISTRATOR ON OR BEFORE [INSERT DATE].**

**1. WHAT IS THE PURPOSE OF THIS NOTICE?**

**PLEASE READ THIS NOTICE CAREFULLY.** It contains important information about your rights concerning the settlement of the Lawsuit. If the Court approves the Settlement Agreement, each Class Member will be bound by its terms related to New York Labor Law claims unless he/she affirmatively opts-out of the Settlement Agreement.

The Court has ordered that this Notice be sent to you to inform you of your rights under the Settlement Agreement resolving the Lawsuit.

**2. WHAT IS THIS CASE ABOUT?**

The Lawsuit asserts claims under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) alleging that JKS failed to properly compensate certain employees for all hours worked, including overtime for hours worked in excess of forty per workweek. The Lawsuit also alleges that employees were not provided with the appropriate notices that JKS was required to provide them with.

JKS denies these allegations in their entirety and maintains that all non-exempt hourly paid employees were paid properly and received all monies owed. The Parties have entered into this Settlement Agreement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. The Court has not made any ruling on the merits of the claims in the Lawsuit, and no party has prevailed in this action.

**3. WHO IS INCLUDED IN THE CLASS?**

The Parties have agreed to settle the Lawsuit for a class consisting of all employees employed at JKS between November 30, 2017 and [DATE OF PRELIMINARY APPROVAL] (“Class Members”). You have received this notice because JKS has identified you as an employee eligible to receive a portion of the Settlement.

**4. HOW WILL MY SHARE OF THE SETTLEMENT FUND BE CALCULATED?**

If the Settlement Agreement is given final approval by the Court, Defendants will pay up to a maximum of \$200,000.00 in total settlement funds. If the Court also approves the payments set forth below, the following payments and expenses will be deducted from the \$200,000.00 prior to distribution of the settlement funds to Class Members:

1. Attorneys’ Fees and Costs: Class Counsel will apply to the Court for approval of costs and attorneys’ fees of one-third of the Settlement Fund after deducting their costs.
  2. Service Awards: If the Court approves such payments, \$10,000 will be paid to the Named Plaintiff, Kayce Smith.
  3. Claims Administrator Costs: Class Counsel will apply to the Court for recovery of all costs of administration of this settlement.
  4. If the Court approves the payments listed above, the remaining Settlement Fund (the “Net Settlement Fund”) will be allocated to Class Members based on the number of shifts worked between November 30, 2017 and [DATE OF PRELIMINARY APPROVAL].
- Once checks are issued, they will be valid for only 90 days.
  - For more information about how individual settlement awards are calculated, you may contact Plaintiff’s Counsel, Brett Gallaway at McLaughlin & Stern, LLP, 260 Madison Avenue, New York, NY 10016 at 212-448-1100 or bgallaway@mclaughlinstern.com.
  - **If you do nothing, you will not receive payment.**

**5. HOW CAN I COLLECT MY SHARE OF THE SETTLEMENT?**

**In order to collect your share of the Settlement, you must fill out the enclosed Claim Form and IRS Form W-9. If you do not fill out a Claim Form or do not provide an IRS Form W-9, you will not receive any money from this settlement.** Attached to this Notice is a Claim Form and IRS Form W-9 which you must fill out and mail, postmarked on or before \_\_\_\_\_, to:

**CLAIMS ADMINISTRATOR’S INFO**

JKS cannot retaliate against you for participating in this Settlement and/or submitting a Claim Form.

It is your responsibility to retain proof of timely mailing or submission of a Claim Form and IRS Form W-9 until receipt of your settlement payment. If you move, you must send the Claims Administrator your new address. It is your responsibility alone to provide a forwarding address to the United States Post Office and your current address to the Claims Administrator.

If you are found eligible to participate in the Settlement, you should not expect to receive any payment until the Settlement is final, which will likely be several months away.

#### **6. WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT?**

Upon the Order Granting Final Approval of the Settlement Agreement, and except as to such rights or claims as may be created by it, each Class Member, on his or her behalf, and on behalf of his or her respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, fully releases and discharges Defendants, Defendants' present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, members, owners, managers, co-joint venture, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, successors and assigns, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity which could be jointly liable with any of them ("Releasees"), from any claims under the New York Labor law and/or any applicable New York State Wage Order or local law, including but not limited to, claims related to the time they worked at JKS, claims for unpaid wages, overtime pay, failure to maintain and furnish employees with proper wage records, paystubs, and/or notices, liquidated damages, attorneys' fees and costs, and all other claims that were or could have been asserted in the Lawsuit under state wage and hour or employment laws, whether known or unknown, through the date of execution of the Settlement Agreement, including but not limited to state law claims for overtime, unpaid wages, interest, liquidated damages, and attorneys' fees and costs related to such claims.

In addition, if you sign and return a Claim Form that is accepted pursuant to this Settlement and endorse your settlement check, you, on your own behalf, and on behalf of your respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, will forever and fully release Defendants and Releasees from any FLSA claims relating to the time you worked at JKS, claims for unpaid wages and/or overtime wages, interest, liquidated damages, and attorneys' fees and costs related to such claims, that were or could have been asserted in the Litigation, whether known or unknown, through the date you sign the Claim Form.

#### **7. HOW DO I OPT OUT OF THE SETTLEMENT CLASS?**

You have the option of opting out of the Settlement Agreement if you do not want to participate in the Settlement or be bound by the release of claims described above. To opt-out of the Settlement Agreement you must do so by [REDACTED]. If you do not opt out, you will be bound by the terms of the Settlement Agreement with regard to your New York Labor Law Claims. To opt out, you must mail a signed letter which specifically states, "I elect to exclude

myself from the settlement in *Smith v. JKS Home Improvement, LLC*, No. 3:23-cv-01509-AMN-ML” postmarked no later than [REDACTED]. You must include your name and address in the letter. If you choose to opt out, send your letter to:

[CLAIMS ADMINISTRATOR]

**8. WHAT IF I HAVE AN OBJECTION TO THE SETTLEMENT?**

If you have not opted out of the Settlement, and if you wish to present objections to the proposed settlement at the Fairness Hearing, you must first do so in writing. You are not required to submit an objection. Written objections must be postmarked no later than [REDACTED] and sent to:

[CLAIMS ADMINISTRATOR]

Written objections must contain your name and address, must be signed by you, and must include reference to the matter of *Smith v. JKS Home Improvement, LLC*, No. 3:23-cv-01509-AMN-ML. If you opt out of the settlement, you may not also object to the settlement.

**9. WHEN IS THE FAIRNESS HEARING?**

A hearing before the Honorable Anne M. Nardacci will be held on [REDACTED] at [REDACTED] at the United States District Court for the Northern District of New York, [REDACTED] (the “Fairness Hearing”). The purpose of this hearing will be for the Court to determine whether the Settlement Agreement is fair, adequate, and reasonable and should be approved by the Court. The Court will consider any comments or objections filed in accordance with the procedures described above.

**10. HOW CAN I EXAMINE COURT RECORDS?**

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you are advised to refer to the underlying documents and papers on file with the Court.

Additionally, if you have questions about this Notice or want additional information, you can contact Brett Gallaway of McLaughlin & Stern, LLP at 212-448-1100 or [bgallaway@mclaughlinstern.com](mailto:bgallaway@mclaughlinstern.com) or the Claims Administrator at the address/phone number listed above.

**CLASS MEMBER CLAIM FORM**

*Smith v. JKS Home Improvement, LLC, et al.*, No. 3:23-cv-01509-AMN-ML

**TO SHARE IN THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND RETURN THIS CLAIM FORM AND THE ENCLOSED IRS FORM W-9. YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT UNLESS YOU SUBMIT BOTH THIS CLAIM FORM AND THE IRS FORM W-9. THE CLAIM FORM MUST BE POSTMARKED OR E-MAILED NO LATER THAN \_\_\_\_\_,**

***Smith v. JKS Home Improvement, LLC***

**[CLAIMS ADMINISTRATOR]**

**[ADDRESS / PHONE/FAX]**

**[Email address]**

The records of JKS Home Improvement, LLC (“JKS”) indicate that you were employed by JKS as a non-exempt hourly paid employee between November 30, 2017 and **[THE DATE OF PRELIMINARY APPROVAL]**. Based on the number of shifts you worked according to JKS’s records, your estimated Individual Settlement Amount is approximately \_\_\_\_\_. Please note that this is just an estimate and is subject to change.

By signing and returning this form and the enclosed IRS Form W-9, you are claiming your Individual Settlement Amount and opting in to the above-captioned lawsuit brought to recover wages under the Fair Labor Standards Act and New York Labor Law. If you do not sign and return this form, you are still bound by the terms of the Settlement unless you opt-out.

By signing and returning this form and the IRS Form W-9, you acknowledge that you are releasing claims against Defendant and Releasees, as set forth in greater detail in the Notice of Settlement.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Sign your name here)

**CORRECTIONS OR ADDITIONAL INFORMATION**

Write any name and address corrections below if any is necessary **OR** if there is no preprinted data to the left, please provide your name and address here:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Daytime Telephone Number:

Evening Telephone Number:

**SUBSTITUTE FORM W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION**

In order to satisfy your tax reporting obligations related to any payment you may receive for the *Smith v. JKS Home Improvement, LLC* settlement to the Internal Revenue Service (“IRS”), please complete and return this Substitute IRS Form W-9 to the Third Party Administrator at the address or email address listed above no later than [REDACTED], [REDACTED].

Thank you,  
[Third Party Administrator]

**TAXPAYER IDENTIFICATION NUMBER**

Name (as shown on your income tax return): \_\_\_\_\_

Exempt payee code (if any) \_\_\_\_\_ Exemption from FATCA reporting code (if any) \_\_\_\_\_

Enter your social security number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**CERTIFICATION**

**Under penalties of perjury, I certify that:**

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholdings because: (a) I am exempt from backup withholdings, or (b) I have not been notified by the IRS that I am subject to backup withholdings as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholdings; and
3. I am a U.S. person (including a U.S. resident alien); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

\_\_\_\_\_  
W-9 Signature

\_\_\_\_\_  
W-9 Signature Date

**Note:** If you have been notified by the IRS that you are subject to backup withholdings, you must cross out item two above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholdings.