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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EARL GODHIGH, an individual, LISA GLASS, an individual, DANIEL OLIVARES, SR., an individual, CYNTHIA OROZCO, an individual, ALAN BOHN, an individual

Plaintiffs,

vs.

SEARS HOME IMPROVEMENT PRODUCTS, INC.; a corporation,

Defendant.

Case No. C 09-765 SI

CLASS ACTION

[Assigned for all purposes to the Hon. Susan J. Illston]

~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION STIPULATION OF SETTLEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), the parties seek an order approving the settlement of this action in accordance with the terms of the Class Action Stipulation of Settlement ("**Stipulation**")<sup>1</sup>, including Exhibits A through E attached thereto. Having read and considered the **Stipulation**, the parties' joint Motion for Preliminary Approval of the Class Action Settlement, and having read all of the other pleadings, papers, and filings in this matter,

<sup>1</sup> The definitions for all capitalized, bold terms can be found in the **Stipulation**.

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1 IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

2 1. The **Stipulation**, including the definitions applicable to the **Stipulation**, is  
3 incorporated by reference into this Order.

4 2. The terms and conditions of the proposed settlement between plaintiffs Earl  
5 Godhigh, Lisa Glass, Daniel Olivares, Sr., Cynthia Orozco, and Alan Bohn ("**Plaintiffs**"),  
6 and Sears Home Improvement Products, Inc. ("**SHIP**") appear to be fair, reasonable, and  
7 adequate as required by Federal Rule of Civil Procedure 23(e)(2); the **Stipulation** and the  
8 Exhibits thereto are preliminarily approved pending the **Final Settlement Hearing** as  
9 provided herein; and the proposed settlement shall be submitted to the **Class Members**.

10 3. For the purposes of effectuating this proposed settlement only, the **Class** is  
11 conditionally certified for settlement purposes only, **Plaintiffs** are conditionally appointed  
12 as class representatives authorized to act on behalf of the **Class**, and **Plaintiffs' Attorneys**  
13 are conditionally appointed as counsel for the **Class** as required pursuant to Federal Rule  
14 of Civil Procedure 23(g), without prejudice to **SHIP's** right to contest class certification if  
15 the proposed settlement described in the **Stipulation** is not fully implemented.

16 4. The **Court** finds that (i) the proposed **Settlement** resulted from arm's-length  
17 negotiations and was the result of a full-day mediation session before an impartial,  
18 respected and experienced mediator; (ii) the proposed **Settlement** was concluded only  
19 after counsel for both parties had conducted adequate discovery and investigation; and (iii)  
20 the terms of the proposed **Settlement** as evidenced by the **Stipulation** are sufficiently fair,  
21 reasonable and adequate to warrant sending the **Notice** in the form attached as Exhibit A to  
22 the **Stipulation** to the **Class Members** and holding a full hearing on the proposed  
23 **Settlement**.

24 5. The **Final Settlement Hearing** shall be held at 9:00 a.m. on June 18, 2010,  
25 in Courtroom 10, United States District Court for the Northern District of California, 450  
26 Golden Gate Avenue, San Francisco, California 94102, to determine final approval of the  
27 **Settlement**, including: (i) whether the **Action** should be finally certified as a class action  
28 solely and exclusively for settlement purposes; (ii) whether the proposed settlement should

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1 be given final approval as fair, reasonable and adequate as required by Federal Rule of  
2 Civil Procedure 23(e)(2) and in the best interests of each of the **Parties** and the **Class**  
3 **Members**; (iii) whether a final judgment should be entered as required by the **Stipulation**  
4 and Exhibit E thereto; (iv) whether the **Class Members** should be bound by the Release of  
5 Claims set forth in the **Stipulation**; (v) whether **Class Representative Enhancement**  
6 awards should be made to **Plaintiffs** as set forth in Part III.I. of the **Stipulation**; (vi) the  
7 amount of **Plaintiffs' Attorneys' award of Plaintiffs' Attorneys' Fees and Plaintiffs'**  
8 **Expenses** not to exceed 30% of \$350,000 (e.g., \$105,000); and (vii) any other matter that  
9 may be relevant to the **Settlement**. The **Final Settlement Hearing** is subject to  
10 continuation or adjournment by the Court without further notice.

11 6. The **Court** approves the **Notice**, Proof of Claim Form, and Request for  
12 Exclusion Form, which are attached as Exhibits A, B, and C to the **Stipulation**.

13 7. The **Court** approves the appointment of Simpluris, Inc. as the **Claims**  
14 **Administrator** to attend to mailings of the **Notice** to potential **Class Members**, and  
15 administration of this settlement.

16 8. In accordance with Part III.E.2. of the **Stipulation**, within ten (10) business  
17 days after the **Preliminary Approval Date**, **SHIP** shall provide the **Claims**  
18 **Administrator** with the names, most current mailing addresses, total workweeks worked  
19 during the **Class Period**, and Social Security numbers for the **Class** from **SHIP's** records.

20 9. In accordance with Part III.E.3. of the **Stipulation**, within twenty (20) **Days**  
21 of receipt of the mailing address information, **the Claims Administrator** shall, using the  
22 information provided by **SHIP**, along with any updated information obtained from the  
23 National Change of Address database which the **Claims Administrator** shall use to  
24 confirm mailing information, mail the **Notice** to all identified **Class Members** by first-  
25 class, regular U.S. Mail to the most recent address known for each **Class Member**.

26 Attached to the **Notice** will be a Proof of Claim Form and Request for Exclusion Form, in  
27 the form attached to the **Stipulation** as Exhibits B and C respectively, and as approved by  
28

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February 22, 2010,

March 15, 2010,

1 the **Court**. Upon completion of these steps by the **Claims Administrator**, the **Parties**  
2 shall be deemed to have satisfied their obligation to provide the **Notice** to the **Class**.

3 10. The **Court** finds that mailing of the **Notice** as provided for in this Order and  
4 the **Stipulation** constitutes the best notice practicable under the circumstances, constitutes  
5 due and sufficient notice of the matters set forth therein to all persons entitled to receive  
6 notice, fully satisfies the requirements of due process and Federal Rule of Civil Procedure  
7 23, and fully and satisfactorily advises potential **Class Members** of their rights to object to  
8 or to exclude themselves from the proposed settlement.

9 11. The **Court** approves the claim submittal and review process as required by  
10 the **Stipulation**. Any **Class Member** who wishes to receive a **Settlement Payment** must  
11 timely submit a properly completed and signed Proof of Claim Form, on or before May 6,  
12 2010, and must satisfy all of the requirements set forth in Parts III.G.1. and III.G.2. of the  
13 **Stipulation**. Deficient or untimely Proof of Claim Forms will be handled in accordance  
14 with Parts III.G.2. and III.G.3. of the **Stipulation**.

15 12. **Class Members** who wish to exclude themselves from the **Class** must  
16 submit a Request for Exclusion Form to the **Claims Administrator** postmarked by the  
17 **Objection/Exclusion Deadline Date**. <sup>April 29, 2010,</sup> In order to be properly excluded from the **Class**, the  
18 **Class Member** must satisfy all of the requirements set forth in Part III.F.2. of the  
19 **Stipulation**. All **Class Members** who do not submit a timely Request for Exclusion Form  
20 shall be bound by any final order and judgment, regardless of whether or not they chose to  
21 submit a Proof of Claim Form, and, as a result, they shall be barred from asserting any  
22 claims against the **Released Parties** arising from the **Settlement Class Released Claims**,  
23 and they shall be conclusively deemed to have released any and all such claims. Any  
24 **Class Member** who timely submits a Request for Exclusion Form will not receive a  
25 **Settlement Payment**.

26 13. The **Court** will also consider objections to the proposed settlement at the  
27 **Final Settlement Hearing**. **Class Members** who wish to object to the proposed  
28 settlement must serve and file written objections and a written notice of intention to appear

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1 at the **Final Settlement Hearing** in the form and manner required by the **Stipulation**.  
2 Such written notice of intention to appear and objections must be filed with the **Court** and  
3 served on the **Parties'** counsel by the **Objection/Exclusion Deadline Date**. **Class**  
4 **Members** who fail to file and serve timely written objections and notice of intention to  
5 appear and object in the manner specified in the **Stipulation** shall be deemed to have  
6 waived any objections and shall be foreclosed from making any objection (whether by  
7 appeal or otherwise) to the **Settlement**. No later than thirty (30) **Days** before the **Final**  
8 **Settlement Hearing**, counsel for the **Parties** shall serve on opposing counsel all written  
9 objections to the **Settlement** and/or notices of intention to appear and object that have been  
10 received.

11 14. No later than thirty (30) **Days** before the **Final Settlement Hearing**, the  
12 **Claims Administrator** shall provide the **Parties** with a complete, accurate and verified  
13 list of all **Class Members** who have timely requested exclusions from the **Settlement**  
14 **Class**.

15 15. **Plaintiffs' Attorneys** shall file their application for **Plaintiffs' Attorneys'**  
16 **Fees and Plaintiffs' Expenses** on or before <sup>April 2</sup> ~~April 22~~, 2010. **Plaintiffs and Plaintiffs'**  
17 **Attorneys** shall file all appropriate documents in support of their request for final approval  
18 on or before June 4, 2010.

19 16. This Order shall become null and void, and shall be without prejudice to the  
20 rights of the **Parties**, all of whom are restored to their respective positions existing  
21 immediately before this **Court** entered this Order, if: (i) the proposed **Settlement** is not  
22 finally approved by the **Court**, or does not become final, pursuant to the terms of the  
23 **Stipulation**; or (ii) the proposed **Settlement** is terminated in accordance with the  
24 **Stipulation** or does not become effective under the terms of the **Stipulation** for any other  
25 reason.

26 In such event, (i) **SHIP** will not be deemed to have consented to certification of any  
27 class, and will retain all rights to fully object to or oppose any motion for class  
28 certification, including certification of the identical class provided for herein or any other

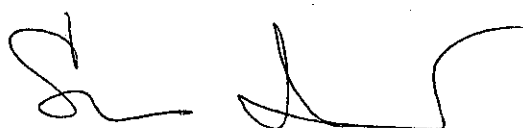
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1 class(es); (ii) the proposed **Settlement** and **Stipulation** shall become null and void and be  
2 of no further force and effect, and all negotiations, proceedings, documents prepared, and  
3 statements made in connection therewith shall be without prejudice to the parties, shall not  
4 be deemed or construed to be an admission or confession by the parties of any fact, matter,  
5 or proposition of law, and shall not be used in any manner for any purpose, and all parties  
6 to the **Action** shall stand in the same position as if the **Stipulation** had not been negotiated,  
7 made, or filed with the **Court**; and (iii) this Order shall be of no force or effect and shall  
8 not be construed or used as an admission, concession or declaration by or against **SHIP** of  
9 any fault, wrongdoing, breach or liability, or used to support the certification of any class,  
10 nor shall the Order be construed or used as an admission, concession or declaration by or  
11 against **Plaintiffs** or the **Class Members** that their claims lack merit or that the relief  
12 requested in the **Action** is inappropriate, improper or unavailable, or as a waiver by any  
13 party of any defenses or claims he, she or it may have.

14 17. The **Parties** are hereby authorized, without needing further approval from  
15 the **Court**, to adopt such amendments and/or modifications of the **Stipulation** as are not  
16 materially inconsistent with the terms and conditions of the proposed settlement or this  
17 Order and do not limit or impair the rights of **Class Members** under the proposed  
18 settlement.

19 18. The **Action** is stayed and all trial and related pre-trial dates are vacated, and  
20 **Plaintiffs** and the **Class Members** are hereby enjoined from further prosecuting the  
21 **Action**, subject to further orders of the Court at the **Final Settlement Hearing**.

22 IT IS SO ORDERED

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26 Dated: 2/8/10 

JUDGE OF THE UNITED STATES  
DISTRICT COURT