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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

RONALD SHEPHARD and HENRY
ROMINES, on behalf of themselves and all
others similarly situated;

Plaintiffs,

vs.

LOWE’S HIW, INC., and DOES 1 through 50,

Defendants

Case No.: 12-CV-03893-JSW

CLASS ACTION

AMENDED

**[PROPOSED] ORDER FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, SETTING OF A FAIRNESS
DETERMINATION HEARING AND
APPROVAL OF NOTICE TO CLASS**

LOWE’S HIW, INC.,

Third-Party Plaintiff

vs.

MERRILL’S GARAGE DOORS, INC., a
California corporation,

Third-Party Defendant.

1 The Court, having reviewed Plaintiffs’ Notice of Motion and Motion for Preliminary
2 Approval of Class Action Settlement, the supporting Points and Authorities, the Declaration of
3 Matthew K. Edling, the parties’ Class Action Settlement Agreement (“Settlement Agreement”), the
4 Notice of Class Action Settlement (“Notice”), the Claim Form, and the Request for Exclusion Form
5 (“Exclusion Form”), and in recognition of the Court’s duty to make a preliminary determination as
6 to the reasonableness of any proposed class action settlement, and if preliminarily determined to be
7 reasonable, to ensure proper notice is provided to Settlement Class Members in accordance with due
8 process requirements; and to conduct a Final Approval Hearing as to the good faith, fairness,
9 adequacy and reasonableness of any proposed settlement, THE COURT HEREBY MAKES THE
10 FOLLOWING DETERMINATIONS AND ORDERS:

11 1. The Court finds, on a preliminary basis, that the Settlement Agreement, incorporated
12 in full by this reference and made a part of this Order of Preliminary Approval, appears to be for an
13 amount that is within the range of reasonableness of a settlement which ultimately could be given
14 final approval by this Court; the Court notes that Defendant Lowe’s HIW, Inc. (now known as
15 Lowe’s Home Centers, LLC) (“Defendant”) has agreed to pay up to the Maximum Settlement
16 Amount of Six Million Five Hundred Thousand Dollars and No Cents (\$6,500,000.00) to the
17 Settlement Class, the Settlement Class Representatives, Settlement Class Counsel, the Claims
18 Administrator, and the California Labor & Workforce Development Agency, in full satisfaction of
19 the claims as more specifically described in the Settlement Agreement. In addition, the Court notes
20 that the Settlement Agreement provides that Defendant has agreed to release all claims for breach of
21 contract and indemnification that Defendant has or may have had against the Installation Company
22 Settlement Class Members (as defined in the Settlement Agreement) based on the allegations in the
23 Lawsuit.

24 2. It further appears to the Court, on a preliminary basis, that the proposed settlement is
25 fair and reasonable to the Settlement Class when balanced against the probable outcome of further
26 litigation relating to class decertification, liability and damages issues, and potential appeals of
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1 rulings. It also appears that settlement at this time will avoid substantial costs, delay and risks that
2 would be presented by the further prosecution of the litigation.

3 3. It further appears to the Court that significant formal and informal discovery,
4 investigation, research, and litigation has been conducted such that counsel for the parties at this
5 time are able to evaluate their respective positions reasonably. It also appears that the proposed
6 settlement has been reached as the result of intensive, informed and non-collusive negotiations
7 between the parties.

8 4. It further appears to the Court, on a preliminary basis and for purposes of settlement
9 only, that the prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure
10 have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that
11 joinder of all members thereof is impracticable; (b) there are questions of law and fact common to
12 the Settlement Class; (c) the common questions of law and fact predominate over questions affecting
13 only individual members of the Settlement Class; (d) Plaintiffs' claims are typical of the claims of
14 the Settlement Class; (e) Plaintiffs will fairly and adequately protect the interests of the Settlement
15 Class; and (f) a class action is superior to other available methods for the fair and efficient resolution
16 of the action.

17 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR ORDER OF
18 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY GRANTED;
19 AND THE COURT HEREBY TEMPORARILY AND CONDITIONALLY CERTIFIES THE
20 CLASS FOR SETTLEMENT PURPOSES ONLY, PURSUANT TO THE TERMS AND
21 CONDITIONS CONTAINED IN THE SETTLEMENT AGREEMENT.

22 5. The Court finds, on a preliminary basis, that Plaintiff Shephard, Plaintiff Merrill's
23 Garage Doors, Inc. ("MGDI"), and Plaintiffs' attorneys have fairly represented and protected the
24 interests of the Settlement Class.

25 6. It further appears to the Court that Rust Consulting, Inc. is qualified to serve as the
26 settlement and claims administrator for purposes of this settlement.

1 ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS
2 FOLLOWS:

3 (a) For purposes of the settlement of this action only, the Court hereby
4 conditionally certifies the following Settlement Class:

5 All persons and installation companies that performed installation services
6 for Defendant in the State of California at any time from June 15, 2008 to
7 the date of preliminary approval of the settlement, pursuant to a General
8 Contractor Agreement or Contract For Installation Services. This class
9 definition includes Type I (“Legacy”) installers, General Contractor
10 installers, their W-2 employees, and the installation companies for which
11 they worked.

12 (b) The Court has already found Plaintiff Ronald Shephard as an adequate
13 representative of the Class and for purposes of the settlement of this action only, appoints MGDI, as
14 representative of Installation Company Class Members, (the “Settlement Class Representatives”);

15 (c) For purposes of the settlement of this action only, the Court hereby appoints
16 the following attorneys as counsel for the Settlement Class (“Settlement Class Counsel”):

17 Jeffrey C. Block, Esq.
18 Erica G. Sorg, Esq.
19 BLOCK & LEVITON LLP
20 155 Federal Street, Suite 400
21 Boston, MA 02110

22 Matthew K. Edling, Esq.
23 Jennifer R. Crutchfield, Esq.
24 COTCHETT, PITRE, & MCCARTHY, LLP
25 840 Malcolm Road, Suite 200
26 Burlingame, CA 94010

27 (d) The Court hereby appoints Rust Consulting, Inc. as the settlement and claims
28 administrator for purposes of this settlement (the “Claims Administrator”).

1 7. The Court finds that the Notice, Claim Form, and Exclusion Form advise of the
2 pendency of the Class Action and of the proposed settlement, of preliminary Court approval of the
3 proposed settlement, claim submission timing and procedures, opt-out timing and procedures,
4 objection timing and procedures, and of the Final Approval Hearing. These documents fairly and
5 adequately advise Settlement Class Members of the terms of the proposed settlement and the
6 benefits available to Settlement Class Members thereunder, as well as their right to opt-out and
7 procedures for doing so, and of the right of Settlement Class Members to file documentation in
8 support of or in opposition to the proposed settlement, and their right to appear at the Final Approval
9 Hearing; the Court further finds that the Notice clearly comports with all constitutional requirements,
10 including those of due process.

11 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
12 THE PROPOSED NOTICE, THE PROPOSED CLAIM FORM AND THE EXCLUSION FORM.

13 8. The mailing to the present and/or last known addresses of the Settlement Class
14 Members who can reasonably be identified, and posting notice for publication at the Commercial
15 Sales Desk inside each of Defendant’s stores in the state of California within three (3) business days
16 of the mailing of Notice to the Settlement Class and leaving it in such location until the Submission
17 Date, constitute an effective method of notifying Settlement Class Members of their rights with
18 respect to the Class Action and settlement.

19 ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS
20 FOLLOWS:

21 (a) On or before 30 days after entry of Preliminary Approval, the Claims
22 Administrator shall mail the Notice, Claim Form (if applicable), and Exclusion Form to each
23 member of the Settlement Class; and

24 (b) All mailings shall be made to the present and/or last known mailing address of
25 the Settlement Class Members based on Defendant’s records, as well as addresses that may be
26 located by the Claims Administrator, who will conduct standard address searches in cases of
27 returned mail. The Court finds that the mailing of notices to Settlement Class Members as set forth
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1 in this paragraph along with notice by publication as described above are the best means practicable
2 by which to reach Settlement Class Members and are reasonable and adequate pursuant to all
3 constitutional and statutory requirements including all due process requirements.

4 9. IT IS FURTHER ORDERED that to be considered valid and timely any:

5 (a) Claim Forms or Request for Exclusion Forms must be mailed to the Claims
6 Administrator and postmarked within the longer of: (i) 60 days after mailing of the Class Notice to
7 members of the Settlement Class (including for those who receive notice by publication as described
8 herein); or (ii) for Settlement Class Members who are re-mailed Notice by the Claims Administrator,
9 30 days from the date the Class Notice is re-mailed to that Class Member at an updated address
10 pursuant to a skip trace; and

11 (b) Objections, both as to the Settlement and Settlement Class Counsel's
12 attorneys' fee request, must be filed with the Court and served on Settlement Class Counsel and on
13 counsel for Defendant within thirty (30) days of the Final Approval Hearing date set forth in
14 paragraph 15 below. To ensure adequate time for the Settlement Class to object to such fee request,
15 Settlement Class Counsel shall file their fee request at least sixty (60) days before the Final Approval
16 Hearing.

17 10. Given the Court's preliminary approval of the Settlement at this time, IT IS
18 FURTHER ORDERED THAT Defendant shall, if it has not already done so, provide notice of this
19 Class Action Settlement to the Attorney General of the United States, the California Attorney
20 General, and any other state attorney general where Settlement Class Members reside within 10 days
21 of the date of this Order in accordance with the Class Action Fairness Act of 2005 ("CAFA"), 28
22 U.S.C. § 1715.

23 11. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before the
24 undersigned on January 9, 2015, ~~2014~~ at 9:00 a.m. at the above-entitled court, located at ~~450~~
25 ~~1301 Clay Street, Oakland, CA 94612~~
~~Golden Gate Avenue, San Francisco, California 94102~~, to consider the fairness, adequacy and
26 reasonableness of the proposed settlement preliminarily approved by this Order of Preliminary
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1 Approval, and to consider the application of Settlement Class Counsel for an award of reasonable
2 attorneys' fees, litigation expenses, incentive awards, and for costs of claims administration incurred.

3 12. IT IS FURTHER ORDERED that pending final determination of whether this
4 proposed settlement should be granted final approval, no Settlement Class Member, either directly or
5 representatively, or in any other capacity, shall commence or prosecute any action or proceeding
6 asserting any of the Settlement Class Members' Released Claims, as defined in the Settlement
7 Agreement, against Defendant in any court or tribunal.

8 13. IT IS FURTHER ORDERED that any party to this case, including Settlement Class
9 Members, may appear at the Final Approval Hearing in person or by counsel, and may be heard to
10 the extent allowed by the Court, in support of or in opposition to the settlement, to inform the
11 Court's determination of the good faith, fairness, reasonableness and adequacy of the proposed
12 Settlement, the requested attorneys' fees and litigation expenses, and any Order of Final Approval
13 and Judgment regarding such settlement, fees and expenses; provided, however, that no person,
14 except Settlement Class Counsel and counsel for Defendant, shall be heard in opposition to such
15 matters unless such person has complied with the conditions set forth in the Notice of Class Action
16 Settlement which conditions are incorporated herein.

17 14. IT IS FURTHER ORDERED that if, for any reason, the Court does not execute and
18 file an Order of Final Approval, or if the Effective Date (as defined in the Settlement Agreement)
19 does not occur for any reason whatsoever, the proposed Settlement Agreement and all evidence and
20 proceedings had in connection therewith, shall be without prejudice to the *status quo ante* rights of
21 the parties to the litigation as more specifically set forth in the Settlement Agreement.

22 15. IT IS FURTHER ORDERED that, pending further order of this Court, all
23 proceedings in this matter except those contemplated herein and in the Settlement Agreement are
24 stayed.

1 The Court expressly reserves the right to adjourn or continue the Final Approval Hearing
2 from time-to-time without further notice to the Settlement Class Members.

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4 **IT IS SO ORDERED.**

5 Dated: June ²⁶~~25~~, 2014

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9 Jeffrey S. White
10 UNITED STATES DISTRICT JUDGE

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