

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Plaintiffs Aaron and Evelyn Manopla (“Plaintiffs”) and Defendants Home Depot U.S.A., Inc. (“Home Depot”) and Atlantic Water Products, Inc. d/b/a Atlantic Water and Air (“AWP”)(collectively “Defendants”)(hereinafter, “Plaintiffs” and “Defendants” shall be collectively referred to as the “Parties”), by and through their counsel, hereby enter into this Settlement Agreement and Mutual Release providing, subject to Court approval, for the settlement of the claims of Plaintiffs and the Settlement Class against Defendants, as described herein.

RECITALS:

1. WHEREAS, Plaintiffs commenced an action against Defendants in the United States District Court for the District of New Jersey, captioned *Aaron and Evelyn Manopla, on behalf of themselves and all others similarly situated, v. Home Depot USA, Inc., Atlantic Water Products Inc. and John Does 1-25*, Case No. 3:15-cv-01120-PGS-TJB, alleging: (1) negligent violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”); and (2) willful violations of the TCPA;

2. WHEREAS, Plaintiffs specifically alleged that Defendants violated the TCPA by calling Plaintiffs’ cellular telephone using an artificial or prerecorded voice utilizing an automatic telephone dialing system without obtaining prior express consent to do so;

3. WHEREAS, Plaintiffs have asserted these claims on behalf of themselves and a putative class defined in the Third Amended Complaint as “All persons within the United States who received any telephone call/s from Defendants or their agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filing of

the Complaint” (the “Putative Class”);

4. WHEREAS, Plaintiffs sought certification of a class consisting of all individuals who received phone calls on their cellular phones or residential landlines from or on behalf of AWP pertaining to a water test program;

5. WHEREAS, Plaintiffs’ action sought redress, on behalf of themselves and the Putative Class, in the form of statutory penalties and compensatory damages;

6. WHEREAS, Defendants deny the claims of Plaintiffs and the Putative Class, deny that they used an automatic telephone dialing system, and deny that they committed any wrongful act or violated any law or duty including but not limited to the TCPA;

7. WHEREAS, notwithstanding the above, Defendants have concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of Plaintiffs and all members of the Settlement Class, as defined below, that were or could have been asserted in this lawsuit relating to the conduct alleged in the Third Amended Complaint;

8. WHEREAS, Plaintiffs and Defendants have actively litigated the action by, *inter alia*, propounding and responding to extensive written discovery, exchanging voluminous documents, taking several depositions and engaging in significant motion practice including motions to dismiss and motions for summary judgment;

9. WHEREAS, the parties engaged in two mediations, the second occurring on November 30, 2018, wherein the parties attended an all-day mediation with Hunter R. Hughes, Esq. Taking into account the burdens, uncertainty and risks inherent in this litigation, the Parties have concluded that further prosecution and defense of the action

could be protracted, unduly burdensome, and expensive, and Plaintiffs have concluded that it is desirable, fair, and beneficial to the class that the action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement;

10. WHEREAS, this Settlement Agreement has been reached after arms' length negotiations, subject to the Court approval process set forth herein;

11. WHEREAS, Plaintiffs recognize the costs and risks of prosecuting this lawsuit, and believe that their interest, and the interest of all members of the Settlement Class, as defined below, in resolving this action and any and all claims against Defendants are best served by and through the terms contained within this Settlement Agreement;

12. WHEREAS, Defendants also recognize the costs and risks of litigation and believe this settlement is an appropriate means of resolving the disputes between the Parties that are the subject of this lawsuit;

13. WHEREAS, Defendants enter into this Settlement with no admission of liability;

14. WHEREAS, solely for purposes of settlement, the Parties agree to the certification of a Settlement Class, as defined below;

15. WHEREAS, Plaintiffs and Class Counsel (as defined below) believe that the settlement memorialized in this Settlement Agreement offers significant benefits to the Settlement Class Members and is fair, reasonable, adequate and in the best interest thereof; and

16. WHEREAS, this Settlement Agreement is made and entered into by and among Plaintiffs and Defendants and on behalf of the Settlement Class.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Action. “Action” shall mean this above-captioned putative class action pending before the United States District Court for the District of New Jersey, Trenton Vicinage, under Case No. 3:15-cv-01120-PGS-TJB.

B. Claim. “Claim” shall have the meaning set forth in paragraph 3.4 below.

C. Claim Form. “Claim Form” means the document to be submitted by Class Members seeking cash pursuant to this Settlement Agreement. The Claim Form will be available online on Class Counsel’s website and the Settlement Website (defined in paragraphs KK and 5.3.d. below), and the contents of the Claim Form will be approved by the Court. The proposed Claim Form is attached hereto as **Exhibit A**.

D. Claimant. “Claimant” shall mean a Class Member who submits a claim for cash payment as described in paragraph 3.4 of this Settlement Agreement.

E. Claims Period. “Claims Period” shall mean the time period during which Claim Forms may be submitted by Class Members and shall conclude ninety (90) days after the entry of the Preliminary Approval Order (defined below) with respect to this Settlement.

F. Class Counsel. “Class Counsel” shall mean Ross H. Schmierer of DeNittis, Osefchen Prince, P.C., Todd M. Friedman of The Law Offices of Todd M. Friedman, P.C. and Ari Marcus of Marcus & Zelman.

G. Class Counsel Fees and Expense Award. “Class Counsel Fees and Expense Award” means the amount awarded to Class Counsel by the Court for attorneys’ fees, costs, and expenses.

H. Class Email Notice. “Class Email Notice” shall mean the Court-approved form of email notice to Class Members informing them of: (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) the opportunity to submit a claim. The proposed form of this Class Email Notice agreed upon by the Parties is attached hereto as **Exhibit B** and shall be approved by the Court prior to its dissemination.

I. Class Members. “Class Members” shall mean the members of the Settlement Class.

J. Class Postcard Notice. “Class Postcard Notice” shall mean the Court-approved form of postcard notice to Class Members informing them of: (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) the opportunity to submit a claim. The proposed form of this Class Postcard Notice agreed upon by the Parties is attached hereto as **Exhibit C** and shall be approved by the Court prior to its dissemination.

K. Class Long Form Notice. The Class Long Form Notice will contain information about the case and the procedure for Class Members to object to and/or opt out of: (i) the Settlement; (ii) Class Counsel’s application for a Class Counsel Fees and Expenses Award; and the application for a Class Representative Incentive Award. The proposed form of this Class Long Form Notice is attached hereto as **Exhibit D**.

L. Class Representatives. “Class Representatives” shall mean Aaron and Evelyn Manopla.

M. Common Fund. “Common Fund” shall mean the total commitment of Defendants for purposes of this settlement, as described in Section III of this Settlement Agreement, namely Four Million, Three Hundred and Fifty Thousand Dollars (\$4,350,000), paid by or caused to be paid by Defendants for purposes of effectuating this settlement of this Action, the payment and disposition of which is subject to the provisions of this Settlement Agreement.

N. Court. “Court” shall mean the United States District Court for the District of New Jersey.

O. Defendants. “Defendants” shall mean defendant Home Depot U.S.A., Inc. and its parents, subsidiaries and affiliates, along with their predecessor names and/or entities and defendant Atlantic Water Products, Inc. d/b/a Atlantic Water and Air and its parents, subsidiaries and affiliates, along with their predecessor names and/or entities.

P. Defendants’ Counsel. “Defendants’ Counsel” shall collectively refer to King & Spalding LLP (counsel for Home Depot) and Berenson, LLP (counsel for AWP).

Q. Effective Date. “Effective Date” is the date on which this settlement becomes Final within the meaning of paragraph R.

R. Final. With respect to any judgment, this Settlement, any award of any claims, or a Class Counsel Fees and Expenses Award, “Final” means that the time for appeal or writ review has expired or, if an appeal or petition for review is taken and dismissed or the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the judgment is set aside, materially modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the judgment shall not become final.

S. Final Approval Hearing and Order. “Final Approval Hearing” shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order, and “Final Approval Order” shall mean the Court order that approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement.

T. Incentive Award. “Incentive Award” shall mean the \$7,500 payment that the Defendants have agreed may be paid to **each** of the Class Representatives from the Common Fund subject to approval of the Court.

U. Litigation. “Litigation” shall mean the above-captioned putative class action pending before the United States District Court for the District of New Jersey, Trenton Vicinage.

V. Objection Date. “Objection Date” shall mean the date agreed upon by the Parties or otherwise ordered by the Court for Class Members to object to the Settlement Agreement’s terms or provisions in compliance with Section VII of this Settlement Agreement.

W. Opt-Out Deadline. “Opt-Out Deadline” shall mean the date agreed upon by the Parties or otherwise ordered by the Court, by which any Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

X. Opt-Out List. “Opt-Out List” shall mean a written list prepared by Class Counsel and/or the Settlement Administrator of all Class Members who submit timely Requests for Exclusion.

Y. Parties. “Parties” shall mean the named Plaintiffs and Defendants.

Z. Plaintiffs. “Plaintiffs” shall mean Aaron and Evelyn Manopla.

AA. Preliminary Approval. “Preliminary Approval” means that the Court has entered an order preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing and content of notice to Class Members.

BB. Preliminary Approval Order. “Preliminary Approval Order” shall mean the order of the Court preliminarily approving this Settlement Agreement. The proposed form of the Preliminary Approval Order, which is subject to Court approval, is attached hereto as **Exhibit E**.

CC. Publication Notice. “Publication Notice” shall mean the Court-approved form of notice posted on the Settlement Website and in other media outlets as determined by the Settlement Administrator. The proposed form of this Publication Notice agreed upon by the Parties is attached hereto as **Exhibit F** and shall be approved by the Court prior to its publication.

DD. Released Persons. “Released Persons” shall mean Defendants and all of their past, present, and future respective parents, subsidiaries, divisions, affiliates, persons, and entities directly or indirectly under their control in the past, present, or future, Defendants’ respective assignors, predecessors, successors and assigns, and all past, present, or future partners, joint ventures, shareholders, managers, members, directors, officers, employees, independent contractors, agents, attorneys, insurers, reinsurers, accountants, advisors, and representatives of any and all of the foregoing.

EE. Request for Exclusion. “Request for Exclusion” shall mean any request by any Class Member to opt out of, or for exclusion from, the Settlement that complies with the provisions of Section VI of this Settlement Agreement or as otherwise ordered by the Court.

FF. Settlement. “Settlement” shall mean the agreement by the Parties to resolve this Litigation, the terms of which have been memorialized and provided for in this Settlement Agreement.

GG. Settlement Administrator. “Settlement Administrator” means Kurtzman Carson Consultants, LLC (“KCC”).

HH. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement and all the exhibits attached hereto.

II. Settlement Class. “Settlement Class” shall mean:

All persons or entities within the United States who received any telephone calls from or on behalf of Defendants or their agents and/or employees made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice between October 16, 2013 and June 1, 2015.

JJ. Settlement Class Period. “Settlement Class Period” means the period of time from October 16, 2013 through June 1, 2015.

KK. Settlement Website. “Settlement Website” means a website operated and maintained by the Settlement Administrator solely for the purposes of providing notice of the Settlement and making available to the Class Members the documents, information, and online claims submission process referenced in paragraphs 3.4 through 3.7 below.

LL. Valid Claim. “Valid Claim” means a claim submitted in accordance with paragraph 3.5 that is determined to be valid by the Settlement Administrator.

II. REQUIRED EVENTS

2.0. Promptly after execution of this Settlement Agreement by all Parties:

2.1. Class Counsel shall take all reasonable and necessary steps, subject to the Court’s availability, to obtain entry of the Preliminary Approval Order. Defendants shall cooperate with Class Counsel to obtain Preliminary Approval of the Settlement as described in this Settlement

Agreement.

2.2. The Preliminary Approval Order shall be in the same or substantially identical form as that attached hereto as **Exhibit E**, subject to Court approval.

2.3. Class Counsel will use their best reasonable efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order. Defendants shall cooperate with Class Counsel to obtain Final Approval of the Settlement as described in this Settlement Agreement.

2.4. In the event that the Court fails to issue the Preliminary Approval Order or Final Approval Order in all material aspects as those proposed to the Court, this Settlement Agreement is voidable by either party, except that any failure to approve the Class Counsel Fees and Expenses Award or Incentive Award in the amounts requested shall not give Plaintiffs the right to void the Settlement Agreement.

2.5. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

III. SETTLEMENT TERMS

3.1 Benefit to Settlement Class Members from the Common Fund. The Common Fund will be used to provide benefits to or on behalf of the Settlement Class as follows:

- a. valid claims for cash benefits submitted by Class Members pursuant to paragraph 3.4 below;
- b. the notice and other administrative costs actually incurred by the Settlement Administrator, as described in paragraph 5.1 below;
- c. check distribution costs;
- d. the Class Counsel Fees and Expenses Award, as described in paragraph 4.1 below, and
- e. the Incentive Award to the Class Representatives, not to exceed \$15,000, as may be ordered by the Court and as described in paragraph 4.2 below.

3.2 Total Financial Commitment. Defendants' total financial commitment and obligation under this Settlement Agreement shall not exceed \$4,350,000.00.

3.3 Schedule of Payments into Common Fund and for Other Items.

a. *Establishment of Common Fund.* Defendants shall make payment to the Settlement Administrator within ten (10) business days after the Effective Date to establish the Common Fund.

b. *Notice and Other Administrative Costs.* The cost of mailing the Class Postcard Notice and other administrative costs shall be paid directly by Defendants if payment is due prior to establishment of the Common Fund, in which case Defendants will be credited the amounts paid at the time of establishing the Common Fund. Thereafter, any additional administrative costs shall be paid from the Common Fund.

c. *Class Counsel Fees and Expenses Award.* The Class Counsel Fees and Expenses Award in an amount approved by the Court shall be paid from the Common Fund as described at paragraph 4.1, below.

d. *Incentive Awards.* An amount equal to the Class Representatives' Incentive Award as ordered by the Court, shall be paid from the Common Fund as described at paragraph 4.2, below.

e. *Payment of Valid Claims.* An amount equal to \$4,350,000.00, less the amounts described in paragraphs 3.3.b, 3.3.c, and 3.3.d, shall be paid, within ninety (90) days of the expiration of the Claims Period, from the Common Fund to Class Members who submit Valid Claims.

3.4 Claims. Each Class Member shall be entitled to submit a claim as set forth in paragraph 3.5, that will, if valid, entitle him or her to a cash payment from the Common Fund.

a. *Payments of Claims.* Valid Claims will be paid from the Common Fund after the Claims Period has concluded and after the settlement becomes Final. Each Class Member who qualifies for Payment from filing a Valid Claim shall receive a pro rata payment from the Common Fund after the Claims Period has concluded. Depending on the number of Valid Claims received, the amount of the payment each Class Member will receive may be increased or reduced on a pro-rata basis. The maximum payment each Class Member may receive is \$5000.

3.5 Proof of Claim. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Class Member. A Claimant must include information in the Claim Form – completed online or submitted to the Settlement Administrator by mail or email – his or her name; his or her current mailing address and email address (if any); and his or her telephone number.

3.6 Review of Claims. The Settlement Administrator shall be responsible for

reviewing all claims to determine their validity. The Settlement Administrator shall reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of paragraphs 3.4 and 3.5, above, or is submitted after the close of the Claims Period.

3.7. Uncleared Checks. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance shall be ineligible to receive a cash settlement benefit and Defendants shall have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members. All unpaid funds from uncleared checks shall be paid *Cy Pres* Pursuant to Paragraph 3.8, subject to Court approval.

3.8. Distribution of Unclaimed Settlement Class Benefits After Payment of Valid Claims. Any money remaining in the Settlement Fund after paying all valid and timely claims to Settlement Class Members, attorneys' fees and costs to Class Counsel, any service award to Plaintiffs, and the costs of notice and administration of the settlement will be paid: (1) in a *pro rata* distribution to Settlement Class Members who submitted valid and timely Claim Forms and whose initial payments were cashed (up to the maximum claim amount of \$5,000) and (2) any remaining funds will be donated equally to *Cy Pres* recipients, Legal Services of New Jersey and Clean Water Action, to be approved by the Court. No portion of the Settlement Fund will return to Defendants.

IV. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARD

4.1. Class Counsel shall petition the Court for an award of attorneys' fees to be paid from the Settlement Fund. Defendants have agreed not to oppose this fee petition. Class Counsel intends to seek an amount not to exceed 35% of the total \$4,350,000 value of

the Settlement Fund, plus reimbursement of Class Counsel's costs and expenses not to exceed \$50,000. The Class Counsel Fees and Expense Award, if approved by the Court, shall be payable within twenty (20) business days after the Effective Date.

4.2. Given the efforts of the Named Plaintiffs on behalf of the Class Members, the Parties have also agreed that Plaintiffs may request a one-time Incentive Award in the amount of Fifteen Thousand Dollars (\$15,000.00) to be paid from the Settlement Fund. If approved by the Court, such award shall be paid by \$7,500 check made payable to Evelyn Manopla and a \$7,500 check made payable to Aaron Manopla and shall be delivered to Class Counsel within twenty (20) business days after the Effective Date.

V. CLAIMS ADMINISTRATION AND NOTICE TO CLASS MEMBERS

5.1 KCC shall be the Settlement Administrator, subject to Court approval, to help implement the terms of the proposed Settlement Agreement. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation, (a) notifying the appropriate state and federal officials about the settlement in accordance with the Class Action Fairness Act, (b) distribution and publication of notice and Claim Forms to Class Members, (c) answering inquiries from Class Members and/or forwarding such written inquiries to Class Counsel, (d) receiving and maintaining on behalf of the Court and the Parties any Class Member correspondence regarding requests for exclusion to the settlement, (e) establishing the Settlement Website, (f) receiving and processing claims and distributing payments to Class Members, and (g) otherwise assisting with implementation and administration of the Settlement Agreement terms.

5.2 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following

performance standards:

a. The Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of the Settlement Agreement in communications with Classmembers;

b. The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendants and/or Defendants' Counsel, and shall periodically report on claims, objectors, and other pertinent information regarding the Settlement.

c. The Settlement Administrator shall seek clarification, instruction or authorization for performance of its duties and expenditure or disposition of cash from both Class Counsel and from Defendants' Counsel.

5.3 Notice Requirements to Class Members.

a. The Settlement Administrator within 30 days of Preliminary Approval of the Settlement, will send via email an Email Notice to the Class Members defined by the Settlement Class for whom AWP has email addresses in its possession. The Settlement Administrator within 50 days of the Preliminary Approval of the Settlement, shall send out a second Email Notice to the Class Members defined by the Settlement Class for whom AWP has email addresses in its possession. In addition, the Settlement Administrator will send via U.S. mail a Class Postcard Notice to Class Members defined by the Settlement Class for whom AWP has a valid postal address but no email address. The Class Email Notice and Postcard Notice will contain information informing Class Members of (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) the website information for Class Members to obtain a Claim Form, *see Exhibit A*, in order to submit a

claim. The form of this Email Notice shall be agreed upon by the Parties in substantially the form attached as **Exhibit B** and the form of this Postcard Notice shall be agreed upon by the Parties in substantially the form attached as **Exhibit C**, both as shall be approved by the Court prior to dissemination.

b. The Settlement Administrator shall be responsible, subject to Court approval, for emailing the Class Email Notice or mailing the Class Postcard Notice to all persons whom AWP's records indicate may be Class Members, at their last known email or postal addresses. Should the Settlement Administrator receive any undelivered Class Email Notices or Class Postcard Notices, it will conduct one skip trace or postal look-up to search for a new address for the said Class Member and resend the Class Postcard Notice to any newly found Class Member address.

c. The Settlement Administrator shall be responsible, subject to the Court approving the same, for posting the Publication Notice online and at other media outlets as determined by the Settlement Administrator and approved by the Court. The Class Publication Notice shall be agreed upon by the Parties in substantially the form attached as **Exhibit F**.

d. The Settlement Administrator shall create a Settlement Website, www.AWP-HomeDepotTCPA.com, which will contain information describing the settlement and will contain the Class Postcard Notice, *see* **Exhibit C**, the Class Long Form Notice, *see* **Exhibit D**, a Claim Form, *see* **Exhibit A**, Class Counsel's contact information, a copy of the Settlement Agreement, and a copy of Plaintiffs' Third Amended Complaint. The cost for the Settlement Website will be paid to KCC from the Settlement Fund. The Class Postcard Notice and the Class Long Form Notice and Claim Form will also be posted by

Class Counsel in a prominent location on Class Counsel's website www.denittislaw.com.

e. The Claims Period shall run for a period of ninety (90) days, commencing on the date the Preliminary Approval Order is entered.

f. The Settlement Administrator shall publish all Class Member Email Notices, Class Postcard Notices, post the Publication Notice and create the Settlement Website within thirty (30) days of Preliminary Approval.

g. Proof of Notice. No later than ten (10) days prior to the Final Approval Hearing, the Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel, attesting that notice was published and mailed in a manner consistent with the terms of this Settlement Agreement.

i. All claim forms must be postmarked, emailed, faxed or delivered to the Settlement Administrator no later than 90 days from the date of the Preliminary Approval Order.

j. Within 90 days of the Effective Date, the Settlement Administrator shall send checks via first class mail distributing the Settlement Fund to eligible Class Members who have, in a timely manner, submitted Valid Claims. Should a check be returned as insufficiently addressed, the Claims Administrator will use its best efforts to conduct a postal look-up to locate the proper address of the Class Member in order to re-mail the check to the proper address. The costs for processing and mailing out checks to Class Members will be paid to KCC from the Settlement Fund.

VI. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

6.1 Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Settlement Administrator, Class Counsel and

Defendants' Counsel at the addresses set forth in the Class Long Form Notice. Any Request for Exclusion must be postmarked or delivered not later than twenty (20) days prior to the date of the Final Approval hearing. Any Request for Exclusion shall state the name, address and telephone number of the person requesting exclusion, proof that they are a Class Member, and contain a clear statement communicating that such person elects to be excluded from the Settlement Class and elects to be excluded from any judgment entered pursuant to this Settlement.

6.2. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

6.3. The Settlement Administrator shall report the names of all individuals who have submitted a Request for Exclusion to the Court no less than ten (10) days prior to the Final Approval Hearing.

6.4. This Settlement Agreement is voidable by Defendants if more than five percent (5%) of the Settlement Class requests exclusion from the Settlement.

VII. OBJECTIONS BY CLASS MEMBERS

7.1. The Parties will request that the Court enter an order requiring any Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, to file a written notice of objection with the Court no later than twenty (20) days prior to the Final Approval Hearing ("Objection Date"). Such objections shall state the name, address and telephone number of the person, whether the person is represented by counsel or has consulted with counsel, and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection

asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person wishes to be considered.

7.2. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objections to the Settlement Agreement, in accordance with such Class Member's due process rights. The Preliminary Approval Order and Class Long Form Notice will require all Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon the Settlement Administrator, Class Counsel and Defendants' Counsel at the addresses set forth in the Class Long Form Notice, by no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

VIII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT

8.1. By this Settlement Agreement and the following Release, Plaintiffs and each member of the Settlement Class, as well as their respective spouses, former spouses, children, assigns, agents, successors, heirs, representatives, guardians, executors, and administrators hereby completely release and fully discharge the Released Persons from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, rights, demands, charges, complaints, liabilities, damages, losses, set-offs, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether in law or equity,

known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, accrued or unaccrued, liquidated or unliquidated, punitive or compensatory, from the beginning of the world until today, that arise out of or in any way relate or pertain to: (a) the claims that were, or could have been, asserted in the Action against the Released Persons and any and all other named or unnamed persons or entities, (b) the use by Defendants or any Released Persons of any “automatic telephone dialing system” or “artificial or prerecorded voice,” and (c) any violation or alleged violation of federal, state, or common law or regulation regarding unwanted telephone calls (collectively, the “Released Claims”). All Released Claims by Plaintiffs and members of the Settlement Class shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

8.2. Plaintiffs and the members of the Settlement Class hereby expressly agree that, upon the Effective Date, each will waive and release any and all provisions, rights, and benefits conferred either (a) by Section 1542 of the California Civil Code or (b) by any law of any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, with respect to the claims released pursuant to this Settlement Agreement and Release. Thus, on the Effective Date, all members of the Settlement Class who have not successfully opted out shall be deemed to have, with respect to the subject matter of the Action, expressly waived the benefits of any statutory provisions or common law rules that provide, in sum or substance, that a general release does not extend to claims that the person does not know or suspect to exist in the person’s favor at the time of executing the release.

8.3. This Settlement Agreement and Release does not affect the rights of Class

Members who timely and properly request exclusion from the Settlement Agreement.

8.4. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

8.5. Upon issuance of the Final Approval Order and the Effective Date of the Settlement: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the terms and provisions hereof; (ii) Defendants shall not be subject to liability or expense of any kind to any Class Members except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, prosecuting, or assisting others in initiating, asserting, or prosecuting any and all released claims against Defendants in any federal or state court in the United States or any other tribunal, in arbitration, or with any federal, state, or local government agency or with any administrative or advisory body. Notwithstanding the foregoing, this Settlement Agreement and Release shall not preclude any member of the Settlement Class from cooperating with governmental, regulatory, and law enforcement agencies to the extent required by law.

IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1. Class Counsel, who are signatories hereof, represent and warrant that they have

the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid and binding obligation.

9.2. Defendants and their representatives, who are signatories hereof, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Defendants of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

X. MISCELLANEOUS PROVISIONS

10.1. This Settlement Agreement, and the exhibits and related documents hereto, are not to be used in evidence and shall not at any time be construed or deemed to be any admission or concession by Defendants with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendants specifically deny all of the allegations made in connection with this lawsuit. This provision shall survive the expiration or voiding of the Settlement Agreement.

10.2. This Settlement Agreement is entered into only for purposes of Settlement. In the event that this Settlement Agreement is not finally approved in all material ways as written, then this Settlement Agreement, including any releases or dismissals hereunder, is

canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation, and all Parties shall be restored to their prior positions as if the Settlement Agreement had not been entered into.

10.3. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

10.4. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties.

10.5. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.6. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

10.7. Except as otherwise provided in this Settlement Agreement, Plaintiffs shall not be responsible for Defendants' costs of the Litigation, and Defendants shall not be responsible for Plaintiffs' costs.

10.8. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

10.9. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

10.10. Integrated Agreement. All of the Exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the Exhibits hereto constitute the entire, fully integrated agreement between Plaintiffs and Defendants and cancel and supersede all prior written and unwritten agreements and understandings between Plaintiffs and Defendants pertaining to the Settlement of Plaintiffs' and the Settlement Class's claims against Defendants in the Litigation.

10.11. Dispute Resolution. The Parties agree that any disputes regarding the terms and conditions of this Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or as to any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved shall be submitted to the Court.

10.12. Notices. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses:

If to Plaintiffs or Class Counsel:

Ross H. Schmierer, Esq.
DeNittis Osefchen Prince, P.C.
525 Route 73 North, Suite 410
Marlton, NJ 08053

If to Home Depot:

S. Stewart Haskins, Esquire
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, GA 30309

If to AWP:

D.S. Berenson, Esquire
Berenson, LLP
1400 N. 14th Street
Arlington, VA 22209

IN WITNESS WHEREOF, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED:

Aaron Manopla, as an Individual and as Class Representative

DATED:

Evelyn Manopla, as an Individual and as Class Representative

DATED:

HOME DEPOT U.S.A., INC.

By: _____

Name:
Title:

DATED: ATLANTIC WATER PRODUCTS, INC. d/b/a
ATLANTIC WATER AND AIR

By: _____
Name:
Title:

DATED: DeNITTIS OSEFCHEN PRINCE, P.C.

By: _____
Ross H. Schmierer, Attorney for
Plaintiffs Aaron and Evelyn Manopla

DATED: LAW OFFICES OF TODD M.
FRIEDMAN, P.C.

By: _____
Todd M. Friedman, Attorney for
Plaintiffs Aaron and Evelyn Manopla

DATED: MARCUS & ZELMAN

By: _____
Ari Marcus, Attorney for
Plaintiffs Aaron and Evelyn Manopla

DATED: STARR, GERN, DAVIDSON & RUBIN

By: _____
Lisa Geraghty, Attorney for
Defendant Home Depot

DATED:

KING & SPALDING, LLP

By: _____
S. Stewart Haskins, Attorney for
Defendant Home Depot

DATED:

BERENSON, LLP

By: _____
D.S. Berenson, Attorney for
Defendant AWP

DATED:

CAPEHART SCATCHARD

By: _____
Laura D. Ruccolo, Attorney for
Defendant AWP