

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”), effective as of the date of the last signature below, is made by and between Plaintiff Jonathan Weisberg (“Weisberg”), individually and on behalf of the class of the Settlement Class as further defined herein, and Defendant HD Supply, Inc. (“HDS”) (collectively, Weisberg, the Settlement Class and HDS are the “Parties”), subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Class Counsel and the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Approval Order and Final Judgment, all claims of the Settlement Class against HDS consistent with the TCPA claims asserted in *Jonathan Weisberg, individually and on behalf of all others similarly situated, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx) (the “Action”), pending before the United States District Court for the Central District of California, shall be settled and compromised upon the terms and conditions set forth herein.

RECITALS

A. There is pending in the United States District Court for the Central District of California, a civil action entitled *Jonathan Weisberg, individually and on behalf of all others similarly situated, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx).

B. Weisberg commenced the Action on October 21, 2015 against HDS by filing a putative class action complaint asserting causes of action for: (1) negligent violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and (2) willful violation of the TCPA. Weisberg alleges that HDS violated the TCPA by sending text messages to Weisberg’s cellular telephone using an automatic telephone dialing system (“ATDS”) without obtaining prior express consent to do so (the “Texts”). HDS denies these allegations.

C. For over a year, the Parties have actively litigated the Action. Among other things, the Parties have propounded and responded to extensive written discovery, and exchanged voluminous documents.

D. On October 26, 2016, the Parties attended an all-day mediation with the Honorable Louis M. Meisinger. 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 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.

E. HDS denies that it committed any wrongful act or violated any law or duty. HDS also denies that Weisberg, or the class he seeks to represent, is entitled to any form of damages or relief based on the conduct alleged in the Action. In addition, HDS maintains that it has meritorious defenses to all claims alleged in the Action and it is prepared to defend the Action. This Settlement Agreement, and all related documents, shall not be construed as any admission or concession by HDS, or any of the Released Parties (defined in Section 16 below), of any fault, liability, wrongdoing or damage whatsoever.

F. Weisberg and his counsel believe that the claims asserted in the Action have merit. However, taking into account the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation and any subsequent appeal, Weisberg and his counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. Weisberg and his counsel have concluded that the terms and conditions of

this Settlement Agreement are fair, reasonable and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree, subject to approval by the Court, as follows:

1. Definitions

In addition to the terms defined at various points within this Settlement Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

1.1 “Action” means *Jonathan Weisberg, individually and on behalf of all others similarly situated, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx), pending before the United States District Court for the Central District of California.

1.2 “CAFA Notice” means the notice required under 28 U.S.C. §1715.

1.3 “Claim Form” means the form made available for use by Class Members on the back of the Mail Notice and on the Settlement Website for the purpose of making a claim for recovery under the Settlement.

1.4 “Claims Administrator” means Epiq Systems, Inc.

1.5 “Class Counsel” means Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C.

1.6 “Class Period” means the period from October 21, 2011 and October 21, 2015.

1.7 “Court” means the United States District Court for the Central District of California.

1.8 “Defendant” means HDS.

1.9 “Escrow Account” means the account to be established consistent with the terms and conditions described below.

1.10 “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff.

1.11 “Final Approval Order” means the order that the Court enters upon finally approving the Settlement. The Parties shall tender the form of Final Approval Order attached hereto as **Exhibit E** for the Court’s consideration.

1.12 “Final Hearing Date” means the date set by the Court for the hearing on final approval of the Settlement.

1.13 “Final Judgment” means the entry by the Court of a judgment finally approving the settlement of the Action pursuant to the terms of this Settlement Agreement. That judgment shall have become final either by expiration of time for appeal or, if a Class Member objects to the settlement and files an appeal, by either a dismissal of said appeal or final appellate

court decision in favor of, and affirming, the judgment and the Settlement Agreement in all material respects.

1.14 “Mail Notice” means the form of notice to be mailed by the Claims Administrator to all Class Members with a known address. Mail Notice shall take a form substantially the same as that attached hereto as side one of **Exhibit A**.

1.15 “Notice Deadline” means (30) days from the date the Court grants Plaintiff’s Motion for Preliminary Approval.

1.16 “Opt-Out Period” means the period that begins the day after the earliest date on which the Class Mail Notice is first mailed or published, and that ends no later than 30 days prior to the Final Hearing Date. The Opt-Out deadline will be specified in the Class Mail Notice.

1.17 “Opt-Out and Objection Deadline” means one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval.

1.18 “Parties” means Plaintiff and Defendant, who are “Parties” to this Settlement Agreement.

1.19 “Plaintiff” means Jonathan Weisberg.

1.20 “Preliminary Approval” means the date that the Court enters and order granting preliminary approval of the Settlement.

1.21 “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement. The Parties shall tender the form of Preliminary Approval Order attached hereto as **Exhibit D** for the Court’s consideration.

1.22 “Publication Notice” means the notice of the Settlement to be accomplished through print and internet media as described at Section 9.3 of this Agreement.

1.23 “Q & A Notice” means the notice concerning the Settlement to be posted on the Settlement Website as described in Section 9.2 of this Agreement.

1.24 “HDS” means defendant HD Supply, Inc. and its parents, subsidiaries and affiliates, along with their predecessor names and/or entities.

1.25 “Released Claims” means all claims to be released as specified in Section 16 of this Agreement. The “Releases” means all of the releases contained in Section 16 of this Agreement.

1.26 “Released Parties” means those persons and entities released in Section 16 of this Agreement.

1.27 “Releasing Parties” means Plaintiff and all members of the Settlement Class who do not timely and properly opt out of the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

1.28 “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and the attached exhibits.

1.29 “Settlement Class” means the proposed class as defined at Section 2.1 of this Agreement.

1.30 “Settlement Class Member” means any person or entity included in the Settlement Class who does not timely and properly opt out of the Settlement.

1.31 “Settlement Fund” means the fund established under Section 4 of this Agreement.

1.32 “Settlement Website” means the website to be created and operated by the Claims Administrator to facilitate Class Members’ access to settlement-related information and necessary settlement-related forms.

1.33 “Service Award” means any Court-ordered payment to Plaintiff in addition to any payment due Plaintiff as a Settlement Class Member.

1.34 “Valid Claim Form” means a timely-submitted Claim Form that satisfies the criteria set forth at Section 10.2 of this Agreement.

1.35 “Valid Exclusion Request” means a timely-submitted opt-out or exclusion request that satisfies the criteria set forth at Section 11 of this Agreement.

2. Settlement Class

2.1 Proposed Class Definition. For settlement purposes, the Parties have agreed to define the class as follows:

All persons or entities within the United States who received texts from HDS using an alleged ATDS between October 21, 2011 and October 21, 2015.

2.2 Estimated Class Size. The Parties have entered into this Settlement Agreement on the basis of their estimation that the Class consists of approximately 13,298 members (“Class Members”). HDS has made no representations about the estimated class size, and instead the foregoing is based upon information provided by third party service providers engaged by HDS to make the Texts described above.

3. Certification of Settlement Class and CAFA Compliance

3.1 The Parties desire and intend to seek Court approval of the settlement and a final judgment and order dismissing with prejudice the claims of Weisberg and the Class Members as set forth in this Settlement Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the settlement, to secure the Court’s approval of the settlement, and to oppose any interventions and objections to the settlement, including objections by any regulatory authority. Class Counsel (as defined in Section 1.3 above) reserves the right to appeal any award of attorney’s fees and costs that is less than, and HDS’s counsel reserves the right to appeal any award of attorney’s fees and costs that is more than, the amount the Parties agreed to in Section 4 below. The proposed Preliminary Approval Order is attached as **Exhibit D** hereto. The proposed Final Approval Order is attached as **Exhibit E** hereto.

3.2 Upon full execution of this Settlement Agreement, Plaintiff will file a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) in accordance with the terms of this Settlement Agreement. HDS will not oppose a motion to certify the Settlement Class for that purpose only, and reserves all its defenses and objections to

certification of the proposed class. The Motion for Preliminary Approval will seek an order that: (a) preliminarily approves the settlement of the Action; (b) certifies a Class for settlement purposes as defined in Section 2.1 above; (c) approves and appoints Weisberg as representative of the Class; (d) approves and appoints Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C. as Class Counsel; (e) approves the forms provided for in this Settlement Agreement for giving notice of the Settlement to the Class, as provided in Section 9 of this Agreement (the “Notice Forms”); (f) approves the methods provided for in this Agreement for giving notice of the Settlement as provided in Section 9 of this Agreement; (g) approves the Claim Form attached as side two of **Exhibit A** hereto and the claims process described in Section 10; (h) sets deadlines for providing notice to the Class and for Class Members to submit requests for exclusion/opt-out, entry of an appearance, or objections to the proposed settlement. The Parties will thereafter seek final approval of the settlement and entry of a “Final Judgment” (as defined in Section 14 below).

3.3 If the Court declines to approve the Settlement, or if the Court changes the Settlement Class composition or the terms of the Settlement in any way not acceptable to one or more of the Parties after reasonable consultation with the other Party, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed upon appeal or review in any way not acceptable to one or more of the Parties, that Party or those Parties shall, after reasonable consultation with the other, have the right to terminate the Settlement. In that event, there will have been no admission of liability and no waiver of any claim or defense of any kind whatsoever.

3.4 HDS shall be responsible for providing the CAFA Notice, as required by 28 U.S.C. § 1715, but may delegate that responsibility to the Claims Administrator. Prior to the deadline for Settlement Class Members to opt out and/or object to this Settlement, HDS shall file proof of compliance with CAFA Notice requirements of 28 U.S.C. §1715.

4. The Settlement Fund

4.1 In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section 16 and the dismissal of the Action upon Final Approval, within one hundred and eighty (180) days following Final Approval HDS shall deposit the sum of One Million, Two-Hundred Twenty-Five Thousand Dollars (\$1,225,000) into an Escrow Account held by the Claims Administrator to create the Settlement Fund.

4.2 The Settlement Fund shall be used to provide the exclusive recovery and relief for the Class, any reasonable attorneys’ fees and costs approved and awarded by the Court, any incentive award approved and awarded by the Court, and the costs of claims administration, including class notice. HDS shall not, under any circumstances, be obligated to pay any other additional amounts, besides those referenced in this paragraph, to the Settlement Fund in connection with this Settlement Agreement. No interest shall accrue on the Settlement Fund.

4.3 The Settlement Fund at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed on HDS or its counsel or Plaintiff and Class Counsel with respect to income earned by the Settlement Fund during any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. HDS and its counsel and/or Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes.

4.4 The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason.

5. Recovery for the Class

Class Members who submit a Valid Claim Form, as set forth in Section 10.2 below, will receive a pro rata share of the Settlement Fund in the form of a check (after any attorneys' fees and costs awarded by the Court, any Service Award to Weisberg awarded by the Court, and any costs of claims administration are deducted from the Settlement Fund). There shall be permitted only one claim per cellular telephone number for each Class Member regardless of the number of Texts received.

6. Attorney's Fees and Costs for Class Counsel

Class Counsel shall move the Court for an award of attorneys' fees and costs incurred in connection with the Action to be paid to Class Counsel from the Settlement Fund. HDS shall not object to such a motion so long as the attorneys' fees requested are not more than 25% of the Settlement Fund and the litigation costs do not exceed \$50,000. Any attorneys' fees and costs approved by the Court shall be paid to Class Counsel from the Settlement Fund. This Settlement Agreement is not conditioned on the Court's approval of any attorneys' fees and costs sought by Class Counsel. No interest will accrue on any attorneys' fees or costs awarded by the Court to Class Counsel.

7. Service Award for Named Plaintiff

Class Counsel shall move the Court for a Service Award for Weisberg for his service as class representative in this Action, in an amount not to exceed \$7,500, to be paid from the Settlement Fund. Court approval of any Service Award will not be a condition of the Settlement. HDS shall not object to a Service Award that does not exceed \$7,500.

8. Third-Party Claims Administrator

8.1 The costs and expenses related to claims administration shall be paid from the Settlement Fund. Because the costs and expenses of claims administration will affect each Class Member's pro rata share of the Settlement Fund, the costs and expenses of claims administration shall be overseen by Class Counsel. HDS's counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of claims administration.

8.2 Claims administration shall be conducted by a third party administrator, Epiq Systems, Inc. (the "Claims Administrator"), which is located at 2029 Century Park East Suite 1520, Los Angeles, CA 90067. The Claims Administrator's telephone number is (310) 712-6200.

8.3 Subject to the oversight of Class Counsel and HDS's counsel, the Claims Administrator shall be responsible for, among other things, the following: (a) providing notice to Class Members as set forth in Section 9 below; (b) providing settlement checks to Class Members entitled to receive a settlement check pursuant to Section 10.1 below; (c) creating and maintaining the Settlement Website as set forth in Section 9.2 below; (d) maintaining a toll-free telephone number as set forth in Section 9.3 below; and (e) acting as a liaison between Class Members and the Parties regarding the settlement. In addition, at HDS's election, the Claims Administrator will be responsible for (f) providing the CAFA Notice referenced in Section 3.4. The Claims Administrator shall be permitted to communicate without restriction with Class Counsel and HDS's counsel.

8.4 All costs and expenses related to claims administration shall be paid from the Settlement Fund as invoiced by the Claims Administrator in order to do what is necessary for claims administration.

9. Notice of Settlement

9.1 Mail Notice.

9.1.1 In the event of Preliminary Approval, HDS shall create a list of Class Members, including the telephone number and last known address for each Class Member to the extent available from its existing business records. As soon as practicable, but in no event more ten (10) days after Preliminary Approval, HDS shall deliver the list of Class Members to the Claims Administrator. The Claims Administrator will treat the information regarding the Class Members in a confidential manner pursuant to the protective order entered in the Action.

9.1.2 The Claims Administrator will provide individual notice, via First Class U.S. Mail, to all Class Members with known addresses ("Mail Notice"). Prior to mailing the Mail Notice, the Claims Administrator will update the address information provided by HDS through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. Any Mail Notice returned to the Claims Administrator with a new forwarding address will be re-mailed to the Class Member at the new forwarding address.

9.1.3 The Claims Administrator will perform a reverse telephone number lookup for the Class Members for whom Defendant does not have address information. The address information obtained through a reverse phone number lookup will be used to facilitate Mail Notice to the Class Members.

9.1.4 The Claims Administrator will mail the Class Members the Mail Notice as soon as reasonably practicable but no later than thirty (30) days from the date the Court grants the Motion for Preliminary Approval (the "Notice Deadline"). The Claims Administrator will file a declaration with the Court, as part of the final approval papers, stating that these procedures were followed.

9.1.5 The Mail Notice to the Class will consist of a double postcard that contains a summary description of the Settlement Agreement, identifies the Claims Administrator, and directs recipients to the Settlement Website from which additional information about the settlement, including the Claim Form, can be obtained. The back of the Mail Notice contains the Claim Form. The Mail Notice will be substantially in the form of side one of **Exhibit A** attached hereto.

9.2 Settlement Website Notice.

9.2.1 The Claims Administrator shall create an Internet website for this Action, where settlement information and claim submission will be made available ("Settlement Website"). The Settlement Website will: (a) inform Class Members of the basis of the claims raised in the Action and the payment under this settlement; (b) advise Class Members about how to submit opt out/exclusion notices from the settlement and the deadlines for Class Members to submit requests for exclusion/opt-out or objections to the proposed settlement ("Opt-Out and Objection Deadline"); (c) instruct that Class Members should direct questions about the Action or proposed settlement to Class Counsel; and (d) inform Class Members to their right to appear in the Action through their own attorney. This notice will be in a question and answer format and will contain a full copy of the release (the "Q & A Notice") and will be substantially in the form of **Exhibit B** attached hereto.

9.2.2 In addition, the Settlement Website will provide access to copies of the Mail Notice, Q & A Notice, Claim Form, the Settlement Agreement, the Preliminary Approval Order, Weisberg's fee brief, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms. These documents shall be available on the Settlement Website no later than the Notice Deadline and remain so at least until Final Approval. The Claims Administrator shall secure a URL for the Settlement Website selected by Class Counsel and approved by HDS. The content and format of the website will be agreed upon by the parties. Ownership of the Settlement Website URL shall be transferred to HDS within ten (10) days of the date on which operation of the Settlement Website ceases. The Settlement Website shall be maintained for at least one hundred and eighty (180) days, and shall be fully operational on the day the Mail Notice is sent to Class Members.

9.3 Publication Notice.

In order to reach Class Members for whom current address information is unknown, notice will be provided by publication by (1) one insertion of the Publication Notice in USA Today in an advertisement size of at least 1/6 of a page and (2) sponsored link and banner advertising on the Internet for a duration of one month no later than 30 days after mailing the Mail Notice of at least Ninety Million (90 Million) total impressions (collectively "Publication Notice"). The Publication Notice will be substantially in the form of **Exhibit C** attached hereto. The Publication Notice, when combined with the Settlement Website Notice and Mail Notice shall be sufficient to obtain an opinion of sufficient notice from the Claims Administrator's notice expert. The Claims Administrator shall be responsible for completing the publication of Publication Notice no later than ninety (90) days after the date of the Court's Order granting preliminary approval of this settlement. The costs of Publication Notice will be paid from the Settlement Fund.

9.4 Settlement Call Center.

The Claims Administrator shall designate a toll-free number for receiving calls related to the settlement ("Settlement Call Center"). Anyone may call the Settlement Call Center from anywhere in the United States to ask questions of the Claims Administrator about the settlement. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Mail Notice and Website Notice shall include the toll-free number for the Settlement Call Center. The Settlement Call Center shall be maintained from the date Mail Notice is provided through at least the next ninety (90) days. Once this time period has expired, for a period of at least thirty (30) days, either a live person or a recording will advise any caller to the Settlement Call Center that the details regarding the settlement may be reviewed on the Settlement Website.

10. **Claims Process**

10.1 Potential Claimants

Each Class Member who does not timely and validly request exclusion from the settlement as required in this Settlement Agreement shall be a Class Member bound by this Settlement Agreement and Final Judgment to be entered following the hearing for final approval of the settlement. Each Class Member shall be entitled to make only one claim per cell phone number called by HDS regardless of the number of Texts received during the class period.

10.2 Valid Claim Forms

10.2.1. In order to receive a settlement payment pursuant to Section 4, a Class Member must submit a valid and timely claim form, substantially in the form attached hereto

as side two of **Exhibit A** (“Claim Form”). A Claim Form is valid and timely if it: (a) includes the Class Member’s full name and address; (b) includes the cellular telephone number called by HDS during the Class Period; (c) is postmarked or submitted online by the last date of the 90-day “Claim Period,” as specified in the Claim Form and on the Mail Notice and Website Notice, which will be one hundred and twenty (120) days following entry of the Preliminary Approval Order; (d) is correct and truthful; and (e) is not successfully challenged under Section 10.2.2 (“Valid Claim Form”).

10.2.2 HDS reserves the right, but not the obligation, to challenge a claim by submitting written objection to the Claims Administrator, with notice to Class Counsel and the Class Member making the claim. The Claims Administrator will provide HDS’s Counsel with copies of the Claim Forms to review on a weekly basis. The Claims Administrator shall have full and final authority to determine the validity of all claims based on the criteria set forth in the definition of “Valid Claim Form” at Section 10.2.1 of this Settlement Agreement.

11. Right to Opt Out of Settlement

11.1 Class Members have the right to opt out and exclude themselves from the settlement by mailing a valid exclusion request (“Valid Exclusion Request”) to the Claims Administrator. The Valid Exclusion Request must be postmarked on or before the Opt-Out and Objection Deadline specified on the Notice Forms, which is one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval. The Claims Administrator will provide copies of such exclusion requests to Class Counsel and counsel for HDS promptly upon receipt.

11.2 The Valid Exclusion Request shall also: (1) be in writing; (2) include the name and number of this case, as well as the Class Member’s name, address, and telephone number; and (3) be signed by the Class Member.

11.3 Except for those Class Members who have properly and timely mailed a Valid Exclusion Request, all Class Members will be bound by this Settlement Agreement and the Final Judgment to be entered following the hearing for final approval of the Settlement Agreement.

11.4 If five (5) percent (*i.e.*, 665) or more Class Members opt-out of the Settlement Agreement by timely submitting a Valid Exclusion Request, then HDS, in its sole discretion, shall have the right to terminate the settlement. In the event that the settlement is terminated pursuant to this Section, the Parties will be returned to the status quo ante as if no settlement had been negotiated or entered into as set forth in Section 17 below.

12. Right to Object to Settlement

12.1 Any Class Member who intends to object to this Settlement Agreement must mail his or her objection(s) (the “Objection”) in writing to the Court at:

Clerk of the Court
Central District of California
Courtroom 22
312 N. Spring St.
Los Angeles, CA 90012

and must mail a copy of the Objection to Class Counsel and HDS’s counsel at the following addresses:

Class Counsel
Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St. Suite 780
Woodland Hills, CA 91367

and

HDS's Counsel
Alexander H. Cote, Esq.
Scheper, Kim & Harris LLP
601 W. Fifth St. 12th Floor
Los Angeles, CA 90071

To be considered timely, an Objection must be postmarked on or before the Opt-Out and Objection Deadline specified on the Settlement Website, which is one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval.

12.2 Any Objection must set forth the name and case number of this matter, the objecting Class Member's name, address, telephone number and all arguments, citations and evidence supporting the Objection, and a statement concerning whether the objecting Class Member intends to appear at the hearing for final approval of the class action settlement, and whether the objecting Class Member intends to appear at the hearing with or without counsel. Additionally, the Objection shall include the name and case number for all other cases in which the Class Member has submitted an objection to a proposed class action settlement, whether any such objection to a proposed class action settlement was submitted on the Class Member's own behalf or on behalf of a represented third party. The Claims Administrator will provide to Class Counsel and HDS's Counsel all copies of any objections mailed or otherwise transmitted to the Claims Administrator.

12.3 Any Class Member who fails to submit a timely Objection pursuant to this Section and as detailed on the Settlement Website shall have waived any right to object to the Settlement Agreement and shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means.

13. Right to Enter an Appearance

On or before the date specified on the Settlement Website, which is one hundred and thirty (130) days after the date the Court grants the Motion for Preliminary Approval, a Class Member may enter an appearance through an attorney if he or she so desires. The Class Member is solely responsible for any fees, costs or expenses of his or her attorney.

14. Final Judgment

14.1 HDS shall not be obligated to pay any sum pursuant to this Settlement Agreement except upon Final Judgment. However, in the event that Final Approval of this Settlement is not granted, HDS will reimburse the Claims Administrator for reasonable costs incurred in administering the settlement, including but not limited to time spent to prepare documents and testimony in support of the Motion for Preliminary Approval or final approval motion. Any appeal regarding the attorney's fees or costs or incentive payments to Weisberg shall not affect other payments that are not the subject of such an appeal.

14.2 By entering Final Judgment, the Court shall:

14.2.1 Approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement, to the extent the Parties have not done so already, according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Weisberg and all other Class Members, as well as their heirs, executors and administrators, successors and assigns;

14.2.2 Certify the Class pursuant to Federal Rule of Civil Procedure 23 for settlement purposes;

14.2.3 Find that the Notice Forms and the Notice Program implemented pursuant to the Settlement Agreement: (a) constitute the best practicable notice, (b) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to accept, object to or exclude themselves from the proposed settlement and to appear at the fairness hearing, (c) constitute reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and any Rules of the Court;

14.2.4 Find that Class Counsel and Weisberg adequately represented the Class for purposes of entering into and implementing the settlement;

14.2.5 Incorporate the Release set forth in Section 16 below, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties from any claims or liabilities arising from or related to the facts, circumstances, or subject matter of this Action;

14.2.6 Bar and enjoin Weisberg and all Class Members who have not been excluded from the Class from: (a) filing, commencing, prosecuting, intervening in, promoting, or participating (as class members or otherwise) in, any lawsuit in any jurisdiction based on or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action; and (b) organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

15. Payments Upon Final Judgment

15.1 Within thirty (30) days of Final Judgment, the Claims Administrator shall pay to Class Counsel, from the Settlement Fund, any reasonable attorney's fees and costs awarded by the Court. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account. Class Counsel may request that attorneys' fees and costs be paid into a qualified settlement fund, pursuant to United States Treasury Reg. § 1.468B.

15.2 Within thirty (30) days of Final Judgment, incentive award shall be paid to Weisberg from the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account.

15.3 Within thirty (30) days of Final Judgment, and after all attorney's fees and costs awarded to Class Counsel and all costs of claims administration have been paid out of the Settlement Fund, the Claims Administrator shall calculate the pro rata share that each Class Member who submitted a Valid Claim Form is entitled to receive and mail a settlement check to each Class Member who submitted a Valid Claim Form and who has a Valid Address equal to his or her pro rata share of the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payments shall be made within thirty (30) days of creation of the Escrow Account. The settlement checks to Class Members shall state on their face that the check will expire and become void if not cashed within ninety (90) days of the date of the check.

15.4 The settlement checks shall be sent via U.S. Mail to the addresses provided by Class Members who submitted a Valid Claim Forms. In the event a settlement check is returned to the Class Administrator as undeliverable, the Class Administrator shall attempt to identify a new Valid Address pursuant to the process described at Section 9.1.2 above or other reasonable means and shall re-send the settlement check if a valid address can be identified.

15.5 Any funds from uncashed settlement checks, including settlement checks to Class Members who submitted Valid Claim Forms but whose current Valid Address could not ultimately be determined, shall be delivered to a *cy pres* recipient selected by the parties and approved by the Court.

16. Release Upon Final Judgment

16.1 Weisberg and each Class Member, (other than those persons who have timely and properly filed an Exclusion Request), on behalf of themselves and their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them (collectively the "Releasing Persons"), hereby jointly and severally release and discharge HDS and all of its former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their respective former, present and future officers, directors, shareholders, employees, servants, agents, attorneys, representatives, independent contractors and vendors (collectively the "Released Parties") from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands, of whatever character, known or unknown, to the date hereof, arising out of, relating to, or in connection with the Texts, any other text messaging by HDS or any of its agents, or the administration of this settlement.

16.2 Each Party acknowledges that it/he may hereafter discover facts different from, or in addition to, those which it/he now claims or believes to be true with respect to the claims released herein, and agrees that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional or unknown facts. The Parties hereby expressly waive any rights they may have under California Civil Code Section 1542, which section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties further expressly waive any rights they may have under any similar statute of any other state.

16.3 In entering into this Settlement Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake by any other Party or by any third party. If either Party should discover subsequent to Final Judgment that any fact relied upon by it/him in entering into this Settlement Agreement was untrue, or that any fact was concealed from it/him, or that

its/his understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation, any alleged right or claim to set aside or rescind this Settlement Agreement. This Settlement Agreement is intended to be, and is final and binding between the Parties hereto, regardless of any claims of misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

17. Effect of Court's Denial of Preliminary or Final Approval of Settlement

There is no settlement if the Court does not preliminarily approve the settlement or finally approve the settlement in substantially the same form as set forth herein, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth herein. In such event, (a) this Settlement Agreement is terminated and is of no force and effect and no party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the settlement, certifying the Class, approving the Notice Forms or Notice Program, and providing notice to the Class shall be vacated; (c) the Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement Agreement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Settlement Agreement was fully executed; and (e) neither the settlement nor any of its provisions or the fact that this Settlement Agreement has been made shall be admissible in this Action or in any other action for any purpose whatsoever.

18. Representations and Warranties

Each of the Parties to this Settlement Agreement acknowledges, represents, warrants and/or agrees as follows:

18.1 Assignment of Claims.

He/It has not hereto assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action disposed of by this Settlement Agreement.

18.2 Legal Advice.

He/It has had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein, including the waiver of rights under California Civil Code Section 1542 or any other similar statute of any other state.

18.3 Investigation.

He/It has been represented in the negotiations for, and in preparation of, this Settlement Agreement by counsel of his/its choice; he/it has read this Settlement Agreement and has had it fully explained to them by such counsel to the extent necessary; and that he/it is fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. He/It has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.

18.4 Authority and Capacity to Execute Settlement Agreement.

The person executing this Settlement Agreement on his/its behalf has full authority and capacity to execute this Settlement Agreement and to give the releases and other promises contained herein.

19. No Admission of Liability

This Settlement Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by HDS of any liability of any kind. HDS denies any liability in connection with any such claims and intends merely to avoid further litigation of the Action.

20. Return of Confidential Documents

Within thirty-five (35) days of Final Judgment, the original and all copies of all confidential or highly confidential documents and/or information subject to the Protective Order entered in this Action shall be returned to the designating party or destroyed with a certification that no copies have been retained or that all copies have been destroyed by the receiving party.

21. No Publicity Beyond Notice Procedure

Neither Class Counsel nor Weisberg will issue press releases or make other public statements regarding the settlement unless HDS agrees to such press releases or public statements in advance. However, Class Counsel may post Court orders regarding the Action and brief summaries of those orders on their website/s without permission from HDS, so long as any reference in such order(s) to materials subject to the Protective Order in the Action is properly redacted. Neither Class Counsel nor Weisberg will make a statement of any kind to any third party regarding the settlement prior to applying for preliminary approval, with the exception of communications with the Claims Administrator. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the settlement. This provision shall not prohibit Class Counsel from communicating with any Class Member regarding the Action or the settlement; provided, however, that Class Counsel must comply with all confidentiality agreements and any Protective Order in the Action in communicating with Class Members and will not disclose information that is not a part of the public record.

22. Choice of Law and Jurisdiction

This Settlement Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California.

23. Construction of Agreement

Each Party has participated in the drafting and preparation of this Settlement Agreement. Hence, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such Party solely by reason of such Party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Settlement Agreement is held to be illegal or unenforceable, the remainder of this Settlement Agreement shall be binding and enforceable.

24. Headings or Pronouns

Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa.

25. Entire Agreement

This Settlement Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement, have been made by any party hereto.

26. Waiver, Modification and Amendment

No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

27. Successors and Assigns

This Settlement Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

28. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

29. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff
and the Class:

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St. Suite 780


Woodland Hills, CA 91367

For HDS:

Alexander H. Cote, Esq.
Scheper, Kim & Harris LLP
601 W. Fifth St. 12th Floor
Los Angeles, CA 90071

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: 02/09/2017 _____



JONATHAN WEISBERG, as an Individual
and as Class Representative

DATED: _____

HD SUPPLY, INC.

By _____
Name:
Title:

APPROVED AS TO FORM AND CONTENT

DATED: _____

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

By _____
Todd M. Friedman, Attorneys for Plaintiff
Jonathan Weisberg

DATED: _____

SCHEPER, KIM & HARRIS, LLP.

By _____
Alexander H. Cote, Attorneys for Defendant
HD Supply, Inc.

Woodland Hills, CA 91367

For HDS:

Alexander H. Cote, Esq.
Scheper, Kim & Harris LLP
601 W. Fifth St. 12th Floor
Los Angeles, CA 90071

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

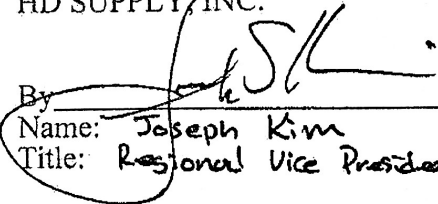
DATED: _____

JONATHAN WEISBERG, as an Individual
and as Class Representative

DATED: 2/10/2017

HD SUPPLY, INC.

By _____

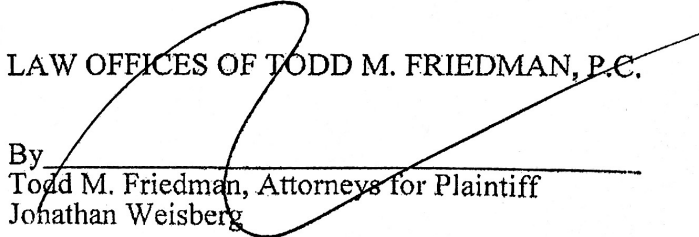

Name: Joseph Kim
Title: Regional Vice President

APPROVED AS TO FORM AND CONTENT

DATED: 2/10/2017

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

By _____


Todd M. Friedman, Attorneys for Plaintiff
Jonathan Weisberg

DATED: 2/16/2017

SCHEPPER, KIM & HARRIS, LLP.

By 
Alexander H. Cote, Attorneys for Defendant
HD Supply, Inc.

EXHIBIT A

Legal Notice

You may be Eligible for a Payment from a Class Action Settlement.

Subject to Court approval, a Settlement has been reached in the class action lawsuit of *Jonathan Weisberg, individually and on behalf of all others similarly situated v. HD Supply, Inc.*, Case No.: 2:15-cv-08248-FMO (MRWx) (C.D. Cal.) (the “Lawsuit”). The Lawsuit alleges that HD Supply, Inc. (“HDS” or “Defendant”) sent marketing text messages to mobile subscribers on their mobile telephones without their consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”). HDS denies any wrongdoing, but has agreed to settle the Lawsuit to avoid further litigation.

Am I a Settlement Class Member? You are receiving notice because records indicate that HDS contacted you by text message on your mobile phone between October 21, 2011 and October 21, 2015.

How do I get a payment? If you are a Settlement Class Member and want to be a part of the Settlement Class, you need to complete and submit the enclosed Claim Form, either by mailing it to [Address] or submitting it online at [web address]. Your Valid Claim Form must be submitted online or postmarked no later than 120 days following entry of the Order Preliminarily Approving the Settlement. After the Settlement’s Effective Date and after the Court grants final approval of the Settlement, you will then receive a check in the mail for an amount that shall be calculated pro rata based on the number of Valid Claim Forms that are submitted by the Settlement Class. **Failure to timely submit a valid claim form will make you a Settlement Class Member and bind you to the terms of the Settlement Agreement, but will also forfeit your right to claim your portion of the Settlement Fund.**

What are my rights? If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by submitting an Opt-Out Form, which can be accessed at the Settlement Website address below. **The deadline to exclude yourself is [date]. If you exclude yourself from the Settlement Class, or fail to timely submit a Valid Claim Form, you will not receive any money from the Settlement.** If you do not exclude yourself, you will release any claims against HDS with regard to the text messages sent to you between October 21, 2011 and October 21, 2015, and will not be able to sue HDS for any claim relating to those text messages. **If you do not exclude yourself and remain in the Settlement Class, you may object to the Settlement by [date].** The Court will hold a hearing on [date] to consider whether to approve the Settlement and plaintiff’s request for attorneys’ fees and expenses. You may appear and speak at the hearing, but you are not required to. You may also hire an attorney at your own expense to appear or speak for you at the hearing.

All capitalized terms in this notice are defined in the Settlement Agreement.

For more information about the Settlement, visit www.hdssettle.com or call XXX-XXX-XXXX.

EXHIBIT B

IMPORTANT LEGAL NOTICE:

YOU MAY BE ENTITLED TO BENEFITS FROM A CLASS ACTION SETTLEMENT

A proposed settlement has been reached in a class action alleging that HD Supply, Inc. (“HDS” or “Defendant”) sent marketing text messages to individuals’ mobile phones without their consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* Defendant strongly denies any claims of wrongdoing, but has agreed to settle the lawsuit (defined below) to avoid the burden and cost of further litigation. You are a Settlement Class member if HDS’ records indicate that your mobile number received a promotional and/or marketing text message from HDS between October 21, 2011 and October 21, 2015. Capitalized terms used in this Notice, other than those defined in this Notice, shall have the same meaning as set forth in the Settlement Agreement.

Your Legal Rights Are Affected Even If You Do Not Act. Please Read This Notice Carefully.

A SUMMARY OF YOUR RIGHTS AND CHOICES

You May:	Summary:	Due Date:
Submit a Claim Form to Opt In to Join the Settlement Class	If you are a valid Settlement Class Member and wish to receive your portion of the Settlement Fund, you need to complete and submit the enclosed Claim Form, either by mailing it to [Address] or submitting it online at [web address]. After the Settlement’s Effective Date and the Court’s final approval of the Settlement, you will then receive a check in the mail for an amount that shall be calculated pro rata based on the number of Valid Claim Forms that are submitted by the Settlement Class.	[Valid Claim Form must be submitted online or postmarked by 120 days following Entry of Preliminary Approval Order]
Do Nothing	If you do nothing, you will become a Class Member bound by the terms of the Settlement Agreement and Final Judgment, thus forfeiting your right to sue on your own regarding any claims that are part of the settlement. However, your failure to timely submit a Valid Claim Form will forfeit your right to receive your portion of the Settlement Fund. All unclaimed Settlement Funds will then be given to The Public Justice Foundation.	[130 days following Entry of Preliminary Approval Order]
Ask to Be Excluded	You can opt out of the settlement by submitting a Valid Exclusion Request to the Claims Administrator. If you do so, you will not be eligible to receive a settlement payment. But you will retain the right to sue on your own regarding any claims that are part of the settlement.	[Valid Exclusion Form must be submitted online or postmarked by 130 days following Entry of Preliminary Approval Order]
Submit an Objection	You may remain a part of the settlement and write to the Court and object to the settlement. You may appear and speak at the Final Approval Hearing on your own or through a lawyer hired by you at your own expense. If the	[130 days following Entry of

	settlement is approved over your objection, however, you will receive a check in the mail in an amount to be determined based off of your pro rata share of the Net Settlement Fund after the settlement's Effective Date and after the Court grants final approval of the settlement. You will be bound by the settlement and give up your right to sue on your own regarding any claims that are part of the settlement.	Preliminary Approval Order].
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**THESE RIGHTS AND OPTIONS
– AND THE DEADLINES TO EXERCISE THEM –
ARE EXPLAINED IN THIS NOTICE.**

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1. Why is there a Notice?

The purpose of this Notice is to inform potential class members about the proposed settlement of a class action lawsuit. This Notice explains:

- What the lawsuit and the settlement are about.
- Who is a member of the Settlement Class.
- Who represents the Settlement Class Members in the lawsuit.
- What your legal rights and choices are.
- How and by when you need to act.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people, called “Named Plaintiffs” or “Class Representatives,” sue on behalf of people who the Named Plaintiff believes has similar claims. The people together are called the “Class” or “Class Members.” In this case, the Named Plaintiff and the company being sued, the Defendant, have reached a proposed settlement. A Court is considering whether to approve the settlement, so it has allowed, or “certified,” this case as a class action for settlement purposes only. All decisions that the Court makes concerning the settlement will affect everyone in the Settlement Class.

3. What lawsuit is involved in this settlement?

A class action was filed in the United States District Court for the Central District of California entitled *Jonathan Weisberg, individually and on behalf of all others similarly situated. v. HD Supply, Inc.*, Case No. 2:15-cv-08248-FMO (MRWx) (C.D. Cal.). This lawsuit is referred to as the “Class Action.”

4. What is this Class Action about?

This Class Action alleges that Defendant violated a federal law by sending text messages to individuals’ mobile phones without their consent.

Defendant strongly denies any wrongdoing, but has agreed to settle the Lawsuit in order to avoid the burden and cost of further litigation.

5. Why is there a Settlement?

The Court did not decide in favor of the Named Plaintiff or Defendant. The Class Representative and Class Counsel (listed below) believe that the claims asserted in the Class Action have merit, but believe that the settlement is in the best interests of the Settlement Class. Class Counsel has evaluated information made available in the course of the lawsuit and settlement negotiations and have taken into account the risks and uncertainties of proceeding with the Class Action. Those risks include the uncertainty of obtaining and maintaining class certification, prevailing on the merits, proving substantial damages at trial, and prevailing on post-trial motions and likely appeals. Based upon the consideration of these and other factors, including the substantial time and expense of further litigation, Class Counsel believe that it is in the best interests of the Settlement Class to settle the Class Action on the terms described below.

Defendant strongly denies any wrongdoing and does not believe it has any liability to the Class Representative or the Settlement Class. However, Defendant believes that it is in its best interest to settle the Class Action under the terms of the Settlement Agreement and obtain closure on these matters to avoid the uncertainty, expense, and diversion of business resources resulting from further litigation.

The Parties engaged in settlement negotiations, participated in mediation before a professional mediator, and shared information pertaining to the claims asserted in the Class Action before reaching the settlement.

This Notice does not imply that any court has found or would have found that Defendant violated the law, that a class would have been certified, or that any member of the class would have recovered any amount of damages if the Class Action were not settled.

WHO IS IN THE SETTLEMENT?

6. Am I a Member of the Settlement Class?

You are a member of the Settlement Class if:

- Records indicate that you were contacted by HDS on your mobile phone in connection with the promotional and/or marketing campaign between October 21, 2011 and October 21, 2015.
- You are not a current or former employee, officer, director, agent, or legal representative of HDS, or its affiliated entities.

THE TERMS OF THE PROPOSED SETTLEMENT

This Notice provides a summary of some, but not all, of the terms of the Settlement Agreement. [\[Click here\]\(link to www.hdssettle.com\)](#) to see a copy of the entire Settlement Agreement. The Settlement Agreement must be approved by the Court and become “Final” before any benefits are paid.

7. What benefits will I receive as a member of the Settlement Class?

After the Court grants final approval of the Settlement, each Settlement Class Member who submitted a Valid Claim Form as described above will receive a check in the mail for an amount that shall be calculated pro rata based on the number of Valid Claim Forms that are submitted by the Settlement Class.

8. Is there any money available now?

No. No money or benefits are available now because the Court has not yet decided whether to approve the settlement and because it is not yet final. There is no guarantee that money or benefits will ever be distributed.

YOUR RIGHTS AND OPTIONS

This Notice is being sent to you so that you can decide whether to participate in the settlement.

9. What happens if I do nothing?

If you do nothing, you will become a Class Member bound by the terms of the Settlement Agreement and Final Judgment, thus forfeiting your right to sue on your own regarding any claims that are part of the settlement. **However, your failure to timely submit a Valid Claim Form will forfeit your right to receive**

your portion of the Settlement Fund. All unclaimed Settlement Funds will then be given to The Public Justice Foundation.

10. If I remain in the Settlement Class, what claims do I give up?

If you remain in the Settlement Class, you give up your right to sue in court or arbitration or be part of any other lawsuit or arbitration against Defendant or its affiliates regarding any issues related to the Released Claims (please see the Settlement Agreement for the claims that will be released). Additionally, all of the Court's orders will apply to you and legally bind you.

11. Why would I ask to be excluded?

You may want to exclude yourself from the Settlement Class if you already have filed (or intend to file) a lawsuit or arbitration against Defendant or its affiliates for the Released Claims and want to continue that lawsuit or arbitration individually, on your own behalf. If you do not exclude yourself, you will be legally bound by all orders of the Court regarding the Settlement Class, the Settlement Agreement, and the Released Claims. All Settlement Class Members who do not ask to be excluded will be forever barred from asserting against Defendant and its affiliates any and all actions, claims, causes of action, proceedings, or rights of any nature and description whatsoever regarding the Released Claims, as more fully described in the Settlement Agreement. Settlement Class Members who request exclusion shall **not** be entitled to recover any benefits from the settlement. Settlement Class Members who request exclusion will **not** receive a check in the mail after the settlement becomes Final.

12. How do I exclude myself from the Settlement Class?

You may exclude yourself ("opt out") from the Settlement Class by submitting an Opt-Out Form available at the Settlement Website, [\[www.hdssettle.com\]](http://www.hdssettle.com). You may submit this form electronically through the Settlement Website or you may print out the form and mail it to the Settlement Administrator. If you choose to mail your Opt-Out Form, please send it to the following address:

[insert]

The Opt-Out Form must be submitted electronically or postmarked **no later than [130 days following entry of the Order Preliminarily Approving the Settlement]**.

If you exclude yourself from the settlement, you cannot object to the settlement and you will **not** receive any money or other benefits from the Settlement.

However, you may rescind your request for exclusion by providing written notice of withdrawal to the Settlement Administrator no more than fourteen (14) days after the Final Approval Hearing.

13. Can I object to the settlement?

Yes, but **not** if you exclude yourself from the Settlement Class. Objecting is simply telling the Court that you do not like something about the settlement but that you elect to remain in the Settlement Class. All objections that are served on the Settlement Administrator by the deadline of **[130 days following entry of the Order Preliminarily Approving the Settlement]** will be considered at the Final Approval Hearing on **[class notice date + 70 days]**. If you do not serve an objection, you waive your right to appeal any Court order or judgment related to the settlement. If the settlement is ultimately approved over your objection, you will receive a check in the mail in the amount of your pro rata share of the net Settlement Fund less attorney's fees, costs of suit and administration costs, after the settlement's Effective Date and after the Court grants final approval of the settlement. You will be bound by the settlement and give up your right to sue on your own regarding any claims that are part of the settlement.

To object to the settlement, you must submit a written objection to the Clerk of the Court, by the objection deadline. Please note you must submit an objection to the Settlement Administrator if you intend to appear and speak at the Final Approval Hearing.

Your written objection must include:

- The name and case number of this lawsuit;
- Your full name, address, and mobile telephone number;
- A written statement of all grounds for your objections accompanied by any legal support for such objections;
- Copies of any papers, briefs or other documents upon which your objection is based;
- A written statement as to whether you intend to appear at the Final Approval Hearing;
- A declaration setting forth any other objections submitted by you or your counsel (if any) to any class action settlement submitted in any court (whether state, federal or otherwise) in the United States in the previous five (5) years, along with the case name(s) and case number(s) of any other such matters to which you have objected; and
- If you intend to appear at the Final Approval Hearing through counsel at your own expense, you must also identify the attorney(s) representing you who will appear at the Final Approval Hearing.

The deadline to submit your objection is **[130 days following entry of the Order Preliminarily Approving the Settlement]**. The address for the Clerk of the Court is:

Clerk of the Court
U.S. District Court for the Central District of California
350 West First Street
Los Angeles, CA 90012

You must also mail a copy of your Objection to Class Counsel and HDS' Counsel at the following addresses:

CLASS COUNSEL

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21550 Oxnard Street, Suite 780
Woodland Hills, CA 91367

HDS' COUNSEL

Alexander H. Cote, Esq.
Scheper, Kim & Harris, LLP
601 West Fifth Street, Floor 12
Los Angeles, CA 90071

14. When is the Final Approval Hearing?

The Court will hold a Final Approval Hearing on **[insert date]**, at **[insert]** in Courtroom 6D of the United States District Court for the Central District of California, the Honorable Fernando M. Olguin presiding, located at 350 West First Street, 6th Floor, Los Angeles, California 90012. The date of the Final Approval Hearing may change, so please refer to the settlement website to confirm the date and time of the Final Approval Hearing. At the Final Approval Hearing, the Court will consider if:

- The settlement is fair, reasonable, and adequate;
- The settlement should be approved; and
- Any objections to the settlement and, if so, whether those are valid.

15. Do I have to attend the Final Approval Hearing?

No. Your attendance at the Final Approval Hearing is not required even if you submit a written objection. However, you or your attorney may attend the hearing at your own expense.

16. What is required if I object and want to attend the Final Approval Hearing?

In addition to the requirements for submitting objections, as listed above in question 13, if you and/or your attorney intend to appear at the Final Approval Hearing, you must provide to the Settlement Administrator (who shall forward it to Class Counsel and Defense Counsel) and file with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing no later than thirty (30) days before the Final Approval Hearing or as the Court may otherwise direct.

The address for the Clerk of the Court is:

Clerk of the Court
U.S. District Court for the Central District of California
350 West First Street
Los Angeles, CA 90012

You may file the notice of intention to appear in person or electronically in the case of *Jonathan Weisberg, et al. v. HD Supply, Inc.*, Case No. 2:15-cv-08248-FMO (MRWx) (C.D. Cal.) in the United States District Court for the Central District of California.

17. May I speak at the Final Approval Hearing?

Yes, you may speak at the Final Approval Hearing to object to the proposed settlement, but only if you have submitted a written objection and filed a notice of intention to appear as described above (unless the Court provides otherwise). You may also enter an appearance through an attorney hired at your own expense.

THE LAWYERS REPRESENTING YOU

18. Does the Settlement Class have a lawyer?

Yes. The Court appointed the **Law Offices of Todd M. Friedman, P.C.** to represent you and the other Settlement Class Members. They are called “Class Counsel.” More information about this law firm, their practices, and their lawyers is available at <http://www.toddflaw.com>.

19. Should I hire my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, you may hire an attorney at your own expense to represent you and speak on your behalf.

20. How will Class Counsel be paid?

If the Court approves the Settlement Agreement at the Final Approval Hearing, then Class Counsel will ask the Court for an award of reasonable attorneys’ fees and costs in an amount not to exceed \$356,250.

21. Will the Class Representative request any payments in addition to the Settlement Benefits?

Yes. The Class Representative in this Class Action is Named Plaintiff Jonathan Weisberg. Class Counsel will request that the Court grant an incentive award of up to \$7,500 for the Class Representative.

22. Where can I get more information?

This Notice is only a summary of relevant court documents. [\[Click here\]\(link to www.hdssettle.com\)](#) to see complete copies of case-related documents. If you have further questions, you may:

- Call the toll free number: [\[Insert\]](#)
- Write to the Settlement Administrator:

[insert]

- If you wish to contact Class Counsel regarding the settlement, you may contact them directly as follows:

Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Law Offices of Todd M. Friedman,
P.C.
21550 Oxnard Street, Suite 780
Woodland Hills, CA 91367
Tel.: (877)- 619-8966

23. May I contact the Court or Defendant directly?

Please do not contact the Court, Defendant or Defense Counsel regarding this settlement. They cannot provide you any advice.

EXHIBIT C

If you received an unsolicited text message from HD Supply, Inc. between October 21, 2011 and October 21, 2015, a class action settlement may affect your rights

Consumers filed a class action lawsuit against HD Supply, Inc. (“HD Supply”), a major nationwide distributor of various industrial products and services, claiming that it violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §§ 227, *et seq.*, by sending thousands of unsolicited text messages to the cellular telephones of over 13,000 consumers nationwide. The lawsuit, *Jonathan Weisberg, on behalf of himself and all others similarly situated v. HD Supply, Inc.*, Case No. 2:15-cv-08248-FMO (MRWx), is pending in the U.S. District Court for the Central District of California. The Court decided this lawsuit should be on behalf of a “Class,” or group of people that could include you, and has also preliminarily approved a compromise settlement between the two parties on class-wide basis. This settlement will allow every eligible consumer to claim a portion of the Settlement Fund.

ARE YOU INCLUDED?

You are included in the Class if you received any marketing and/or promotional text message from HD Supply between October 21, 2011 and October 21, 2015.

WHAT IS THE CASE ABOUT?

The TCPA was enacted in 1991 to address the ever-growing issue of businesses that use auto-dialing technology to make unsolicited contact with consumers, without regard for their rights and privacy. This lawsuit claims the HD Supply violated the TCPA by sending thousands of unconsented-to marketing and/or promotional text messages to the cell phones of over 13,000 consumers nationwide, thereby causing said consumers to incur data and/or messaging charges from their cell phone carrier. HD Supply denies all of the claims in the lawsuit, but has agreed in principle to a class-wide settlement in the amount of \$1,225,000.00 (“Settlement Fund”) that will be divided among eligible Class Members. The Settlement Fund, which must still receive the Court’s Final Approval prior to disbursement, will be used to compensate eligible Class Members for receiving the text messages from HD Supply. The amount that each eligible Class Member is to receive from the Settlement Fund will be determined pro rata based on a number of factors, chief among them being the number of eligible class members that submit a valid claim for their portion.

WHO REPRESENTS ME?

The Court has appointed the Law Offices of Todd M. Friedman, P.C. to represent you and other Class members as Class Counsel. You do not have to pay Class Counsel or anyone else to participate. You may hire your own lawyer to represent you at your own expense. Jonathan Weisberg is a Class member like you, and the Court has appointed him to serve as the “Class Representative.”

GETTING MORE INFORMATION?

If you want detailed information or other documents about this lawsuit and your rights call, visit the website: [www.\[casewebsite.com\]](http://www.[casewebsite.com]), call 1-____-____-____, write to **Class Action Administrator, [PO Box 0000, City, ST 00000-0000]**, or call Class Counsel at 1-____-____-____.

EXHIBIT D

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**UNITED STATE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**JONATHAN WEISBERG,
Individually And On Behalf Of All
Others Similarly Situated,**

Plaintiffs,

v.

HD SUPPLY, INC.,

Defendant.

**Case No.: 2:15-cv-08248-FMO-
MRW**

CLASS ACTION

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT
AND CERTIFYING SETTLEMENT
CLASS**

Assigned to the Honorable Fernando M.
Olguin

DATE: MARCH 16, 2017

TIME: 10:00 A.M.

COURTROOM: 6D

1 Plaintiff's Motion for Preliminary Approval of a Class Action Settlement and
2 Certification of a Settlement Class came on for hearing on Thursday, March 16, 2017
3 at 1:30 p.m. before this Court. The Court, having considered the Motion and the
4 Parties' proposed settlement, grants Plaintiff's Motion as follows:

5 1. The Court has reviewed the terms of the Parties' Agreement and
6 preliminarily finds that the Agreement appears sufficiently fair, reasonable, and
7 adequate to warrant dissemination of class notice of the proposed settlement and
8 scheduling a formal fairness hearing. The Court finds that the Agreement contains
9 no obvious deficiencies and that the Parties entered into the settlement in good faith,
10 following arm's length negotiations between their respective counsel. The Court
11 adopts the definitions set forth in the Agreement and all defined words or phrases
12 used in this Order shall have the same meaning as in the Agreement.

13 2. The Court certifies the following class for settlement purposes only
14 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

15 *"All persons or entities within the United States who received texts from HDS*
16 *using an alleged ATDS between October 21, 2011 and October 21, 2015"*

17 Excluded from the Settlement Class is Defendant and its subsidiaries and
18 affiliates, employees, officers, directors, agents and representatives and its family
19 members; Class Counsel; all judicial officers who have presided over the Lawsuit;
20 and all persons who timely elect to become Opt-Outs from the Settlement Class in
21 accordance with this Order.

22 3. The Court finds that, for the purpose of settlement only, the
23 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the class.
24 Joinder of all class members in a single proceeding would be impracticable, if not
25 impossible, because of their numbers and dispersion. Common issues exist among
26 class members and predominate over questions affecting individual class members.
27 Plaintiff's claims are typical of those of the Settlement Class. Plaintiff and his
28 counsel will fairly and adequately protect the interests of the Settlement Class.
Plaintiff has no interest antagonistic to those of the Settlement Class and has retained

1 counsel experienced and competent to prosecute this matter on behalf of the class.
2 Finally, a class settlement is superior to other available methods for a fair resolution
3 of the controversy.

4 4. For purposes of settlement, the Court appoints Named Plaintiff
5 Jonathan Weisberg to serve as class representative. Further, pursuant to Rule
6 23(g)(1) of the Federal Rules of Civil Procedure, the Court appoints Todd M.
7 Friedman and Adrian R. Bacon of The Law Office of Todd M. Friedman, P.C. to
8 serve as Class Counsel.

9 5. Pursuant to Rule 23(c)(2)(B) and Rule 23(e) of the Federal Rules of
10 Civil Procedure, the Court orders that the Settlement Class be given notice of the
11 pendency of this action and the Parties' proposed settlement. The Court finds that
12 the Class Notice dissemination procedure set forth in Section 9 of the Agreement (i)
13 is the best practicable notice; (ii) is reasonably calculated, under the circumstances,
14 to apprise Settlement Class Members of the pendency of the Lawsuit and of their
15 right to object or to exclude themselves from the proposed settlement; (iii) is
16 reasonable and constitutes due, adequate and sufficient notice to all persons entitled
17 to receive notice; and (iv) meets all applicable requirements as set forth by law.
18 Thus, the Court adopts and incorporates the Class Notice dissemination procedures
19 set forth in Section 9 of the Agreement into this Order.

20 6. The Court approves the Class Notice, Long Form Class Notice,
21 Publication Notice and Opt-Out Form, which are attached as Exhibits A, B, and C
22 to the Agreement. The Court also approves the creation of a Settlement Website by
23 the Settlement Administrator.

24 7. The Court appoints Epiq Systems, Inc. as Settlement Administrator to
25 disseminate notice to the Settlement Class and administer the settlement. The Court
26 orders Epiq Systems, Inc. to: (i) create the Settlement Website; (ii) complete
27 dissemination of the Class Notice to the Settlement Class by 30 days after
28 preliminary approval; (iii) file proof of the dissemination of the Class Notice to the
Settlement Class at least fourteen (14) days before the Final Approval Hearing; (iv)

1 establish a post office box in Epiq Systems, Inc.'s name to be used for receiving opt-
2 out requests, objections, notices of intention to appear, and any other
3 communications from Settlement Class Members; (v) promptly furnish Class
4 Counsel, Defense Counsel, and Defendant with copies of any and all opt-out
5 requests, objections, notices of intention to appear, or other communications from
6 Settlement Class Members that come into its possession; and (vi) provide the Opt-
7 Out List to Class Counsel and Defense Counsel no later than seven (7) days after the
8 opt-out period and file a declaration with the Court at least fourteen (14) days before
9 the Final Approval Hearing attesting to the completeness and accuracy thereof.

10 8. The Court orders the Settlement Administrator to provide a list of
11 objectors to Class Counsel and Defense Counsel no later than seven (7) days after
12 the completion of the one hundred and thirty (130) day period in which Settlement
13 Class Members may object to the settlement, and then file a declaration with the
14 Court at least fourteen (14) days before the Final Approval Hearing attesting to the
15 completeness and accuracy thereof and attaching a copy of all objections received.

16 9. The Court sets a Final Approval Hearing on September 14, 2017 at 1:30
17 P.M. to consider the fairness, reasonableness, and adequacy of the proposed
18 settlement and Agreement and determine whether it should finally be approved by
19 the Court. At that time, the Court will hear any applications for attorneys' fees,
20 expenses, and/or incentive awards.

21 10. The Court sets August 17, 2017 as the deadline for filing the final
22 approval motion and the application for the Attorneys' Fee Award.

23 11. The Court sets _____, 2017 [one hundred and thirty (130) days from
24 the date the Court grants the Motion for Preliminary Approval] as the deadline by
25 which Settlement Class Members must submit any: (i) request for exclusion from
26 the Settlement Class; or (ii) objection to the Agreement, the proposed settlement, or
27 to the Attorneys' Fee Award. The procedures and requirements for opting out of the
28 Settlement Class or objecting to the Agreement, the proposed settlement, or to the
Attorneys' Fee Award are set forth below.

1 12. The Court sets August 31, 2017 as the deadline for filing any reply
2 memorandum in further support of final approval of the proposed settlement or the
3 Attorneys' Fee Award application.

4 13. The Court orders that any Settlement Class Member who wishes to
5 exclude him/herself from the Settlement Class may either submit an online Opt-Out
6 Form electronically through the Settlement Website or print and mail the online form
7 to the Settlement Administrator. Any Settlement Class Member who does not
8 submit a timely written request for exclusion from the Settlement Class will be
9 bound by all proceedings, orders, and judgments in the Lawsuit, even if such
10 Settlement Class Member has previously initiated or subsequently initiates
11 individual litigation or other proceedings encompassed by the Release.

12 14. The Court orders that any Settlement Class Member who becomes an
13 Opt-Out may rejoin the Settlement Class by providing written notice to the
14 Settlement Administrator no later than fourteen (14) days after the Final Approval
15 Hearing.

16 15. The Court orders that any Settlement Class Member who does not
17 exclude him/herself from the Settlement Class and who wishes to object to the
18 fairness, reasonableness, or adequacy of the Agreement, the proposed settlement, or
19 to the Attorneys' Fee Award must serve on the Settlement Administrator no later
20 than _____, 2017 [one hundred and thirty (130) days from the date the Court
21 grants the Motion for Preliminary Approval] a statement of the objections signed by
22 the Settlement Class Member. The objection shall be in writing, signed by the
23 Settlement Class Member, and shall contain all of the following information: (i) the
24 objector's full name, address, email, and mobile telephone number; (ii) a written
25 statement of all grounds for the objections accompanied by any legal support for
26 such objections; (iii) copies of any papers, briefs, or other documents upon which
27 the objection is based; (iv) a written statement as to whether the objector intends to
28 appear at the Final Approval Hearing; (v) a declaration setting forth any other
objections submitted by the objector, or the objector's counsel, to any class action

1 settlement submitted in any court, whether state, federal or otherwise, in the United
2 States in the previous five (5) years; and (vi) if the objector intends to appear at the
3 Final Approval Hearing through counsel, the objection must also identify the
4 attorney(s) representing the objector who will appear at the Final Approval Hearing.
5 Any Settlement Class Member who does not submit a timely written objection in
6 accordance with the procedures stated herein shall be foreclosed from seeking any
7 adjudication or review of this settlement by appeal or otherwise.

8 16. The Court orders that any Settlement Class Member, who submits a
9 written objection and who intends to make an appearance at the Final Approval
10 Hearing, provide to the Settlement Administrator (who shall forward it to Class
11 Counsel and Defense Counsel) and file with the Clerk of the Court the written
12 objection as well as a notice of intention to appear at the Final Approval Hearing no
13 later than thirty (30) days before the Final Approval Hearing.

14 17. The Court orders that any attorney hired by a Settlement Class Member
15 will be at the Settlement Class Member's sole expense for the purpose of objecting
16 to this Agreement, to the proposed settlement, or to the Attorneys' Fee Award and
17 such attorney shall provide to the Settlement Administrator (who shall forward it to
18 Class Counsel and Defense Counsel) and file with the Clerk of the Court the written
19 objection by the deadline specified in paragraph 15 above as well as file a notice of
20 intention to appear at the Final Approval Hearing no later than thirty (30) days before
21 the Final Approval Hearing.

22 18. The Court orders that (i) the submission of an objection allows Class
23 Counsel or Defendant's Counsel to notice the deposition of the objector consistent
24 with the Federal Rules of Civil Procedure at an agreed-upon location and to seek any
25 documentary evidence or tangible items that are relevant to the objection; (ii) the
26 failure by an objector to make himself or herself available for deposition or to
27 comply with expedited discovery requests may result in the Court striking the
28 objector's objection and denying that person the opportunity to make an objection
or to be heard; and (iii) the Court may tax the costs of any such discovery to the

1 objector or the objector's counsel should the Court determine that the objection is
2 frivolous and/or made for an improper purpose.

3 19. The Court preliminarily enjoins all Settlement Class Members unless
4 and until they have timely excluded themselves from the Settlement Class from: (i)
5 filing, commencing, prosecuting, intervening in or participating as a plaintiff,
6 claimant or class member in any other lawsuit or administrative, regulatory,
7 arbitration or other proceeding against Defendant in any jurisdiction based on,
8 relating to or arising out of the claims and causes of action or the facts and
9 circumstances giving rise to the Lawsuit and/or the Released Claims; or (ii) filing,
10 commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or
11 other proceeding against Defendant as a class action on behalf of any Settlement
12 Class Members who have not timely excluded themselves (including by seeking to
13 amend a pending complaint to include class allegations or seeking class certification
14 in a pending action), based on, relating to or arising out of the claims and causes of
15 action or the facts and circumstances giving rise to the Lawsuit and/or the Released
16 Claims.

17 **IT IS SO ORDERED.**

18 Dated: _____, 2017

19 _____
20 Honorable Fernando M. Olguin
21 United States District Court Judge
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**UNITED STATE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**JONATHAN WEISBERG,
Individually And On Behalf Of All
Others Similarly Situated,**

Plaintiffs,

v.

HD SUPPLY, INC.,

Defendant.

**Case No.: 2:15-cv-08248-FMO-
MRW**

CLASS ACTION

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

Assigned to the Honorable Fernando M.
Olguin

DATE: TBD
TIME: 10:00 A.M.
COURTROOM: 6D

ORDER AND FINAL JUDGMENT

1
2 On February 9, 2017, after active litigation, extensive arms’ length
3 negotiations and a mediation session before the Honorable Louis M. Meisinger
4 (Ret.) of ADR Services, Inc., and subsequent settlement discussions, Plaintiff
5 Jonathan Weisberg (“Plaintiff”) and Defendant HD Supply, Inc. (hereinafter referred
6 to as “HDS” or “Defendant”) (herein jointly referred to as the “Parties”) entered in
7 to a Class Action Settlement Agreement (hereinafter referred to as the “Agreement”),
8 which is subject to review under Fed. R. Civ. P. 23. On February 10, 2017, Plaintiff
9 filed the Agreement, along with Plaintiff’s Motion for Preliminary Approval of Class
10 Action Settlement and Certification of Settlement Class (hereinafter referred to as
11 the “Preliminary Approval Motion”).

12 In compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-
13 2, 119 Stat. 4, Defendant served written notice to the proposed class action
14 settlement on the persons who had the primary Federal regulatory or supervisory
15 responsibility with respect to Defendant.

16 On March 9, 2017, based upon the Agreement, the Preliminary Approval
17 Motion, and the record, the Court entered an Order of Preliminary Approval of Class
18 Action Settlement (hereinafter referred to as the “Preliminary Approval Order”). (Dkt.
19 No. ____). Pursuant to the Preliminary Approval Order, the Court, among other things:
20 (i) preliminarily certified (for settlement purposes only) a class of plaintiffs (hereinafter
21 referred to as the “Class Members”) with respect to the claims asserted in the Action;
22 (ii) preliminarily approved the proposed settlement; (iii) appointed Plaintiff Jonathan
23 Weisberg as the Class Representative; (iv) appointed Todd M. Friedman and Adrian
24 R. Bacon of The Law Offices of Todd M. Friedman, P.C. as Class Counsel; and (v) set
25 the date and time of the Final Approval Hearing for _____, 2017, at ____
26 A.M./P.M. (Dkt. No. ____).

27 _____, 2017, Class Counsel timely filed their motion for
28 Attorneys’ Fees, costs and incentive award.

1 On _____, 2017, Plaintiff filed the Motion for Final Approval
2 Class Action Settlement Agreement (hereinafter referred to as the “Final Approval
3 Motion”). Pursuant to their Final Approval Motion, the Parties request final
4 certification of the settlement class under Fed. R. Civ. P. 23(b)(3) and final approval
5 of the proposed class action settlement.

6 _____, 2017, a Final Approval Hearing was held pursuant to Fed.
7 R. Civ. P. 23 to determine whether the lawsuit satisfies the applicable prerequisites
8 for class action treatment and whether the proposed settlement is fundamentally fair,
9 reasonable, adequate, and in the best interests of the Class Members and should be
10 approved by the Court. The Court has read and considered the Agreement, Final
11 Approval Motion and the record. All capitalized terms used herein have the
12 meanings defined herein and/or in the Agreement.

13 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

14 1. The Court, for purposes of this Order and Final Judgment (“Final
15 Judgment”) adopts the capitalized terms and their definitions set forth in the
16 Agreement, as executed by the Parties and filed with the Court on
17 _____, 2017. (Dkt. No. ____).

18 2. The Court has personal jurisdiction over the Named Plaintiff and all
19 members of the Settlement Class and the Court has subject matter jurisdiction to
20 approve this settlement and the Agreement (including all exhibits thereto).

21 3. The Court finds that the prerequisites of Rule 23(a) and Rule 23(b)(3)
22 of the Federal Rules of Civil Procedure have been satisfied in that: (i) the number of
23 members of the Settlement Class is so numerous that joinder of all members is
24 impracticable; (ii) there are questions of law and fact common to the Settlement
25 Class; (iii) the claims of the Plaintiffs are typical of the claims of the Settlement
26 Class; (iv) the Plaintiffs have represented, and will fairly and adequately represent,
27 the interests of the Settlement Class; (v) questions of law and fact common to the
28 Settlement Class predominate over any questions affecting only individual members

1 of the Settlement Class; and (vi) a class action is superior to other available methods
2 for the fair and efficient adjudication of the controversy.

3 4. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the
4 Action is hereby finally certified, for settlement purposes only, as a class action on
5 behalf of the following Settlement Class members with respect to the claims asserted
6 in the Action:

7 *“All persons or entities within the United States who received texts from HDS*
8 *using an alleged ATDS between October 21, 2011 and October 21, 2015”*

9 Excluded from the Settlement Class is Defendant and its subsidiaries and
10 affiliates, employees, officers, directors, agents and representatives and its family
11 members; Class Counsel; all judicial officers who have presided over the Lawsuit;
12 and all persons who timely elected to become Opt-Outs from the Settlement Class
13 in accordance with the Preliminary Approval Order.

14 5. The Court grants final approval to this Agreement as being fair,
15 reasonable, and adequate as to all Parties and in compliance with all requirements of
16 Due Process and applicable law, as to and in the best interests of all Parties, and
17 directs the Parties and their counsel to implement and consummate this Agreement
18 in accordance with its terms and provisions.

19 6. To the extent permitted by law and without affecting the other
20 provisions of the Final Judgment, this Final Judgment is intended by the Parties and
21 the Court as binding on and having res judicata and preclusive effect in all pending
22 and future lawsuits or other proceedings encompassed by the Release (as set forth in
23 Paragraph I.24) maintained by or on behalf of Named Plaintiff and all other
24 Settlement Class Members, as well as their agents, heirs, executors or administrators,
25 successors and assigns.

26 7. The Court hereby finds that the Class Notice sent to Settlement Class
27 Members: (i) constituted the best practicable notice, (ii) constituted notice that was
28 reasonably calculated under the circumstances to apprise Settlement Class Members

1 of the pendency of the Lawsuit, of their right to object to or exclude themselves from
2 the proposed settlement, of their right to appear at the Final Approval Hearing, and
3 of their right to monetary and other relief; (iii) constituted reasonable, due, adequate,
4 and sufficient notice to all persons entitled to receive notice; and (iv) met all
5 applicable requirements of Due Process and any other applicable law.

6 8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
7 hereby finally certifies plaintiff Jonathan Weisberg (“Named Plaintiff”) as the
8 representative of the Settlement Class.

9 9. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, the
10 Court certifies Todd M. Friedman and Adrian R. Bacon of The Law Office of Todd
11 M. Friedman, P.C. as Class Counsel.

12 10. The Court finds that Class Counsel and Plaintiffs adequately
13 represented the Settlement Class for purposes of entering into and implementing the
14 proposed settlement and the Settlement Agreement.

15 11. The Court hereby adjudges that Named Plaintiff and the Settlement
16 Class have conclusively compromised, settled, dismissed, and released any and all
17 Released Claims against Defendant and the Releasees.

18 12. Class Counsel are hereby awarded _____ in attorneys’ fees,
19 which sum the Court finds to be fair and reasonable, and _____ in
20 reimbursement of expenses. The Court specifically finds that these fees and costs
21 are reasonable in light of the benefit provided to the Settlement Class under the
22 settlement. This award and the reimbursement of expenses shall be paid from the
23 Settlement Fund by the Settlement Administrator no later than 7 business days after
24 the Effective Date.

25 13. In addition to any recovery that the Named Plaintiff may receive under
26 the settlement and in recognition of the Named Plaintiff's efforts on behalf of the
27 Settlement Class, Plaintiff Jonathan Weisberg is hereby awarded \$7,500.00 as an
28 incentive award directly related to Plaintiff’s representation of the Settlement Class.

1 This award shall be paid to Plaintiff by the Settlement Administrator from the
2 Settlement Fund via a check made out to “Jonathan Weisberg” and delivered to Class
3 Counsel no later than 7 business days after the Effective Date.

4 14. The Court orders the Settlement Administrator to take all steps
5 necessary to create the Settlement Fund and distribute the monies in accordance with
6 this Agreement and the Court’s Orders pertaining to the settlement.

7 15. Without affecting the finality of the Final Order and Judgment for
8 purposes of appeal, the Court hereby reserves jurisdiction over the Settlement
9 Administrator, Defendant, the Named Plaintiff, and the Settlement Class as to all
10 matters relating to the administration, consummation, enforcement, and
11 interpretation of the terms of the settlement and Final Order and Judgment and for
12 any other necessary purposes.

13 16. The Court orders that upon the Effective Date, the Named Plaintiff and
14 all Settlement Class Members who have not been excluded from the Settlement
15 Class shall be barred from asserting any Released Claims against Defendant and/or
16 any Releasee, and shall have released any and all Released Claims against Defendant
17 and all Releasees.

18 17. The Court determines that the Agreement and the settlement provided
19 for herein and any proceedings taken pursuant thereto are not and should not in any
20 event be offered or received as evidence of, a presumption, concession, or an
21 admission of liability or of any misrepresentation or omission in any statement or
22 written document approved or made by Defendant or any Releasee or the suitability
23 of these or similar claims to class treatment in active litigation and trial; provided,
24 however, that reference may be made to this Agreement and the settlement provided
25 for herein in such proceedings as may be necessary to effectuate this Agreement.

26 18. The Court approves the Opt-Out List and determines that the Opt-Out
27 List is a complete list of all Settlement Class Members who have timely requested
28 exclusion from the Settlement Class and, accordingly, shall neither share in nor be

1 bound by the Final Order and Judgment; provided that any Opt-Out who
2 subsequently provides written notice to the Settlement Administrator within fourteen
3 (14) days of the Final Approval Hearing that he or she is rejoining the Settlement
4 Class shall be deemed to be a Settlement Class Member and therefore bound by the
5 Final Order and Judgment and entitled to the benefits of the settlement as described
6 herein.

7 19. The Court authorizes the Parties, without further approval from the
8 Court, to agree to and adopt such amendments, modifications and expansions of this
9 Agreement and all Exhibits hereto that (i) shall be consistent in all material respects
10 with the Final Order and Judgment and that (ii) do not limit the rights of the Parties
11 or Settlement Class Members.

12 20. The Court bars and permanently enjoins all Settlement Class Members
13 who have not been properly excluded from the Settlement Class (i) from filing,
14 commencing, prosecuting, intervening in or participating as plaintiff, claimant or
15 class member in any other lawsuit or administrative, regulatory, arbitration or other
16 proceeding against Defendant in any jurisdiction based on, relating to or arising out
17 of the claims and causes of action or the facts and circumstances giving rise to the
18 Lawsuit and/or the Released Claims; (ii) from filing, commencing or prosecuting a
19 lawsuit or administrative, regulatory, arbitration or other proceeding against
20 Defendant as a class action on behalf of any Settlement Class Members who have
21 not timely excluded themselves (including by seeking to amend a pending complaint
22 to include class allegations or seeking class certification in a pending action), based
23 on, relating to, or arising out of the claims and causes of action or the facts and
24 circumstances giving rise to the Lawsuit and/or the Released Claims; and (iii) from
25 organizing Settlement Class Members who have not been excluded from the
26 Settlement Class into a separate class for purposes of pursuing as a purported class
27 action any lawsuit or arbitration or other proceeding (including by seeking to amend
28 a pending complaint to include class allegations or seeking class certification in a

1 pending action) against Defendant based on, relating to, or arising out of the claims
2 and causes of action or the facts and circumstances giving rise to the Lawsuit and/or
3 the Released Claims.

4 21. The Court hereby dismisses all of the “Doe” defendants with prejudice.

5 22. The Lawsuit (including all individual and class claims presented
6 thereby) shall be and is hereby dismissed with prejudice on the merits and in full and
7 final discharge of any and all such claims, without fees or costs except as specifically
8 provided herein.

9 23. This Order is intended to be a final judgment disposing of the above
10 captioned action in its entirety.

11 24. Without affecting the finality of this Final Judgment and Order of
12 Dismissal with Prejudice, the Court hereby retains continuing and exclusive
13 jurisdiction over the Parties and all matters relating to the Action and/or Agreement,
14 including the administration, interpretation, construction, effectuation, enforcement,
15 and consummation of the settlement and this order.

16 **IT IS SO ORDERED.**

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18 Dated: _____, 2017

19 _____
20 Honorable Fernando M. Olguin
21 United States District Court Judge
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