UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Julie Dalton, individually and on behalf of all others similarly situated, Plaintiffs, v. Home Depot U.S.A. d/b/a Home Depot, Defendant.	Civil Case No.: 23-cv-02126(DWF/DLM)

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL AND NOTICE OF PROPOSED SETTLEMENT TO THE CLASS

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I. INTRODUCTION

This case is based on the same factual allegations that this district has already found are sufficient to support preliminary, and final, class-certification and settlement approval in a different case. See *Dalton, et. al. v. Dollar Tree Stores*, 23-CV-00368 (KMM/LIB) (Preliminary Approval Order, ECF 37) (D. Minn. May 30, 2024) and (Final Class Certification and Settlement Approval Order, ECF 50) (D. Minn. Feb. 3, 2025) (the Dollar Tree Case).

Plaintiff and the members of the putative class are blind and visually impaired individuals who rely upon auxiliary aids and services such as screen reading software and speech-enabled accessible information and communications technology that makes visually delivered materials available to individuals who are blind or have low vision.

Plaintiff alleges Defendant Home Depot U.S.A. d/b/a Home Depot (hereinafter "Defendant" or "Home Depot") offers its customers who are checking out the option to use a point-of-sale ("POS") terminal to pay for their purchases and an opportunity to receive cash-back at the time of their purchase. The "cash-back" feature typically presents itself as an option when a customer uses a debit card to complete a transaction at a POS terminal. As the customer inserts their debit card into the POS terminal, a series of prompts will display information and options to the customer. One option is to receive a specified amount of physical currency, the total of which is charged to the debit card in addition to the cost of the sale. An employee will then hand the requested cash to the customer.

Plaintiff alleges that the cash-back feature of Defendant's POS terminals, as presently designed and employed, cannot be operated by individuals with visual disabilities safely, privately, independently, fully and equally because Defendant's POS terminals fail to provide audio output sufficient to indicate that there is a cash-back feature and related options, even though this information appears visually on the screen. The POS terminals also fail to announce the amounts of money that can be selected for cash-back. And the POS terminals also do not announce the amount of money actually dispensed when a customer uses the cash-back feature, even though this information also appears visually on the screen.

Plaintiff alleges that she and other customers with visual disabilities are therefore deprived of the freedom to use the POS terminals safely, privately, independently, fully and equally, as Defendant's sighted customers can. The only option for Plaintiff and other customers with visual disabilities to use the cash-back feature is to ask an employee or other sighted third-party to complete the cash-back transaction. But Plaintiff's position is that relying on third-party assistance to operate the POS terminal for cash-back creates an unnecessary risk of theft and breach of privacy.

Plaintiff asserts that this concern is significant. In order to complete a cash-back transaction, Plaintiff must trust a third-party to enter the correct amount of the cash request into the POS device. But Plaintiff is unable to independently confirm the amount that has actually been entered. As a result, Plaintiff asserts she is faced with the proposition that her request for $40 in cash-back may instead be entered as an $80 cash-back request by the

third-party, who then provides her with the $40 she has requested, stealing the remaining $40 dollars from her.

Technology exists that allows blind customers to engage in financial transactions safely, privately, independently, fully and equally. For example, ATMs allow blind individuals to complete transactions safely, privately, and independently by allowing the user to access all information audibly through headphones and to make their selections using a tactile keypad.

Plaintiff, in her individual capacity and also on behalf all others similarly situated, commenced this action seeking the following declaratory and injunctive relief: (1) a declaration that Defendant's inaccessible POS terminals violate the ADA as described in this Complaint; and (2) a company-wide injunction requiring Defendant to update or replace all such POS terminals so that they are safely, privately, independently, fully and equally accessible to blind or other vision impaired individuals. Plaintiff also sought an award of attorney's fees, including monitoring fees, and costs. Defendant denied and continues to deny liability relating to the claims described in the Complaint, but acknowledges that to avoid the cost, expense, and risk of litigation and for the purpose of effecting a settlement, Plaintiff, individually and on behalf of the Class, and Defendant have reached an agreement on the terms of a proposed class settlement as set forth below.

II. THE PROPOSED SETTLEMENT AGREEMENT

Plaintiff brought this action to ensure that Defendant's POS terminals with a cash-back feature are safely, privately, independently, fully and equally accessible to blind or other vision impaired individuals. The relief afforded by the proposed settlement

agreement (PSA) does just that. As the PSA confirms, Defendant will update or replace the software associated with at least one (1) payment terminal in each Home Depot store located in the United States with a cash-back feature to enable a user to hear an audio readout of on-screen prompts associated with the cash-back feature of Defendant's payment terminals and to provide use of a tactile keypad, other tactile feedback option, or other ADA compliant option for cash-back transactions. See PSA, at p¶. 5, attached to the Declaration of Patrick W. Michenfelder, Esq. submitted concurrently herewith (Michenfelder Declaration)

Accordingly, Plaintiff seeks certification of the following settlement class:

> All blind or visually impaired individuals or other individuals in the United States with disabilities as defined by the Americans with Disabilities Act who use or require audio readouts of on-screen prompts and tactile keypads associated with use of payment terminals (or comparable technologies that allow the individuals to interact with payment terminals), and who have or allege they have been, or in the future will be, denied the full and equal enjoyment of Defendant's payment terminals' cash back feature at stores owned or operated by Defendant in the United States because such persons encounter(ed) a payment terminal without an audio readout and tactile keypad to obtain cash back at Defendant's stores.

Consistent with how Plaintiff's counsel on this case and firms and advocacy organizations litigate similar Title III cases, the PSA also accounts for reasonable attorney's fees and costs, including those that will be incurred to monitor and ensure the Defendant's future compliance with the terms of the settlement.

III. LEGAL STANDARDS GOVERNING APPROVAL OF A RULE 23 CLASS SETTLEMENT

The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. Fed. R. Civ. P. 23(e).

As set forth in the Manual for Complex Litigation, §§'s 21.632, 633 and 634 (4th ed. 2004), Court approval of a class settlement under Rule 23(e) involves a two-step process of preliminary and then final approval:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation … The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b) **…** Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members … At the [later] fairness hearing, the proponents of the settlement must show that the proposed settlement is "'fair, reasonable, and adequate.'" (emphasis added).

See also*, Liles v. Del Campo*, 350 F.3d 742, 745 (8th Cir. 2003).

Here, at this first stage of the settlement process, Plaintiff requests that the Court grant preliminary approval of the Rule 23 settlement; order that notice be sent in the manner set forth below; and set the matter on for a fairness hearing to take place within a reasonable time. Defendant does not oppose Plaintiff's request.

IV. THE COURT SHOULD PREMINARILY APPROVE THE SETTLEMENT

Approval of a proposed class action settlement is a matter of discretion for the trial court. *In re Uponor, Inc. F1807 Plumbing Fittings Products Liab. Litig*., 716 F.3d 1057, 1063 (8th Cir. 2013). However, "[t]he law strongly favors settlements." *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990). And

a class action settlement agreement is "presumptively valid." *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1,* 921 F.2d 1371, 1391 (8th Cir.1990). The Court should seek to avoid "intrud[ing] overly on the parties' hard-fought bargain." *In re Google Inc. Cookie Placement Consumer Privacy Litig*., 934 F.3d 316, 326 (3d Cir. 2019).

A. THE SETTLEMENT CLASS SATISFIES THE CRITERIA SET OUT IN RULE 23(A) AND AT LEAST ONE OF THE SUBSECTIONS OF RULE 23(B).

Fed. R. Civ. P. 23(e)(1)(B) provides that in determining whether to grant preliminary approval to a class action settlement, the Court should consider whether it will "likely be able to . . . certify the class for purposes of judgment." *See also, Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Rule 23 requires that in order to be certified as a class-action, a case must satisfy the four prerequisites of Rule 23(a) and at least one of the subsections of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Here, the Settlement Class satisfies each of the requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy of representation) and of Rule 23(b)(2) (the defendant has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole).

1. Courts Routinely Certify Rule 23(b)(2) Classes Under The Americans With Disabilities Act (ADA) Where Disabled Individuals Allege Discrimination That Arises From Common Architectural Features Or Designs, Common Policies, Or Common Practices.

"Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples of what (b)(2) [classes] [are] meant to capture"); *Wal-Mart Stores, Inc.,*

v. Dukes, 564 U.S. 338, 361 (2011); *See also Amchem Prods, Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (same); *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 (1982) (Civil rights cases alleging discriminatory policies or practices are "by definition" class actions provided they meet the other requirements of Rule 23(a)); *Newberg on Class Actions* § 4:40 (5th ed. 2014) ("The types of civil rights cases that have often been certified as (b)(2) class actions include ... disability discrimination actions under the Americans with Disabilities Act (ADA) ....") (emphasis added). As the Rules Advisory Committee's note Comment to the 1966 amendment to Rule 23(b)(2), provides:

> "Subdivision (b)(2). This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate. . . Action or inaction is directed to a class within the meaning of the subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class. Illustrative are various actions in the civil rights filed where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." (emphasis added)

Accordingly, the federal judiciary has, for years, regularly certified Rule 23(b)(2) classes under the ADA where disabled individuals allege discrimination that arises from common architectural feature or design, common policies, or common practices. *See, e.g.*, *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030 (8th Cir. 2018) (Rehearing and Rehearing En Banc Denied January 11, 2019) (Eighth Circuit affirmed the district court's grant of class certification of action alleging that the defendants violated the Eighth Amendment and Title II of the Americans with Disabilities Act (ADA) by providing inadequate medical screening and care for chronic Hepatitis C (HCV) viral infections); *Kirola v. City and*

County of San Francisco, 860 F.3d 1164 (9th Cir. 2017) (noting class of people with mobility disabilities certified by District Court regarding city pedestrian walkways); *Colorado Cross-Disability Coalition et al. v. Abercrombie & Fitch*, 765 F.3d 1205, 1213-1217 (10th Cir. Aug. 29, 2014) (affirming certification of barrier removal action under Rule 23(b)(2) involving 250 stores in 40 different states); *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001) (affirming certification of class of individuals with varying disabilities challenging barriers and policies at prison facilities in California); *Davis v. Lab'y Corp. of Am. Holdings*, 20-CV-0893 (C.D. Cal. May 23, 2022) (court certified nationwide injunctive relief class for blind individuals claiming patient check-in kiosk that offered lesser features for the blind); *American Council of the Blind v. City of Chicago et al*., 19-CV-06322 (N.D. Ill Mar. 4, 2022) (ECF 150) (court certified class in a case challenging lack of accessible pedestrian signals (APS) in Chicago); *Vargas et al. v. Quest Diagnostics Clinical Laboratories, Inc.*, 19-CV-08108 (C.D. Cal. Dec. 2, 2021) (court certified nationwide class action case under the Americans with Disabilities Act for blind individuals claiming self-service patient check-in kiosk that offered lesser features for the blind); *Nocera et al. v. Dollar General Corporation*, 18-CV-1222 (W.D. Pa. May, 19, 2021) (court certified for purposes of settlement a class of "all individuals who use wheelchairs, scooters, or any other device for mobility and who have been, or in the future during the term of the Settlement Agreement will be, denied the full and equal enjoyment of the [17,000 stores across 46 states] owned and/or operated by Dollar General in the United States because such persons encountered Access Barriers at those stores."; *National Federation of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185, 1199-1203 (N.D. Ca. 2007)

(certifying class of persons with visual impairments challenging accessibility of retailer's website).

As indicated *supra*, this case is based on the same factual allegations that this district has already found are sufficient to support preliminary, and final, class-certification and settlement approval in a different case against a different retailer. *See Dalton, et al. v. Dollar Tree Stores*, 23-CV-00368 (KMM/LIB) (Preliminary Approval Order, ECF 37) (D. Minn. May 30, 2024) and (Final Class Certification and Settlement Approval Order, ECF 50) (D. Minn. Feb. 3, 2025) (the Dollar Tree Case).

2. <u>The Proposed Class Here Satisfies The Criteria Set Out In Rule 23(a)</u>.

A. Numerosity.

The first requirement of Rule 23(a) is for Plaintiff to show that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Rule 23(a)(1) sets a "low threshold for numerosity," *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009). Plaintiff need not show that joinder is impossible, but rather that joining all members of the class would be difficult. *Lockwood Motors, Inc. v. General Motors Corp*., 162 F.R.D. 569, 574 (D. Minn. 1995) (citing Jenson v. Continental Fin. Corp., 404 F.Supp. 806, 809 (D. Minn. 1975)); *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993) ("Impracticable does not mean impossible.") The inquiry is focused on judicial economy. *See Phila. Elec. Co. v. Anaconda Amer. Brass Co*., 43 F.R.D. 452, 463 (E. D. Pa. 1968) ("I see no necessity for encumbering the judicial process with 25 lawsuits, if one will do.").

In the context of Rule 23(b)(2) civil rights cases, "courts have suggested that the numerosity requirement should not be employed in a mechanical manner to preclude the use of the class action device in precisely the kind of situation for which it is most appropriate." *Gurmankin v. Costanzo*, 626 F.2d 1132, 1135 (3d Cir. 1980); *see also Jones v. Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975) (giving liberal construction to numerosity requirement in civil rights suits seeking injunctive relief on behalf of future class members). Courts are "permitted to make common sense assumptions in order to fund support for numerosity." *Phipps v. Sheriff of Cook Cty*., 249 F.R.D. 298, 300 (N.D. Ill. 2008) (citing *Block v. Abbott Labs*., 2002 WL 485364, at *3 (N.D. Ill. Mar. 29, 2002)). "[T]he instances in which numerosity is a valid reason to reject class certification should be rare" because of "the small number of class members necessary to establish numerosity." Robert H. Klonoff, *The Decline of Class Actions*, 90 Wash. U.L. Rev. 729, 773 (2013).

"Generally, a putative class size of forty or more will support a finding of numerosity, although smaller classes have been found acceptable in this circuit." *Hoekman v. Educ. Minnesota*, 335 F.R.D. 219, 242 (D. Minn. 2020); see *Ark. Educ. Ass'n v. Bd. of Educ. of Portland, Ark. Sch. Dist.*, 446 F.2d 763, 765-66 (8th Cir.1971) (approving class of twenty members). But "[e]ven a small class of fewer than 10 actual members may be upheld if an indeterminate number of individuals are likely to become class members in the future or if the identity or location of many class members is unknown for good cause." 1 H. NEWBERG & A. CONTE, *Newberg on Class Actions* § 3:5 (4th ed. 2002). This is because numbers alone are not determinative of the numerosity requirement. "In addition

to the size of the class, the court may also consider the nature of the action, the size of the individual claims, the inconvenience of trying individual suits, and any other factor relevant to the practicability of joining all the putative class members." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559-60 (8th Cir. 1982).

Courts hold that "numerosity is met where, as here, the class includes individuals who will become members in the future. As members in futuro, they are necessarily unidentifiable, and therefore joinder is clearly impracticable." *Skinner v. Uphoff*, 209 F.R.D. 484, 488 (D. Wyo. 2002) (finding numerosity satisfied). The Fifth Circuit has addressed this issue squarely:

> The problem before the district court, and now before us, is not simply to say whether 33 class members are enough or too few to satisfy Rule 23(a)(1). Ample case law can be cited to show that smaller classes have been certified and larger ones denied certification for lack of numerosity [citation omitted]. Such number comparisons miss the point of the Rule. The proper focus is not on numbers alone, but on whether joinder of all members is practicable in view of the numerosity of the class and all other relevant factors. Here, neither party can even count how many black applicants there are, let alone identify all of them. Moreover, the alleged class includes future and deterred applicants, necessarily unidentifiable. In such a case the requirement of Rule 23(a)(1) is clearly met, for "joinder of unknown individuals is certainly impracticable."

Phillips v. Joint Legislative Comm., 637 F.2d 1014, 1022 (5th Cir. 1981) (emphasis added). *See also*, *Miller v. Carson*, 563 F.2d 741, 743 (5th Cir. 1977); *Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir.1974); *Rajender v. Univ. of Minnesota*, 1978 WL 212 (D. Minn. Feb. 13, 1978) at *4 ('It is clear that the joinder of unknown women who in the future may suffer discrimination by the Chemistry Department is impracticable.'); *see also Ahrens v. Thomas*, 570 F.2d 286, 288 (8th Cir. 1978) (affirming district court's numerosity finding for class composed of present and future members)." *Portz v. St. Cloud State Univ.*,

297 F. Supp. 3d 929, 944–45 (D. Minn. 2018); *Lane v. Lombardi*, 2:12-CV-4219-NKL, 2012 WL 5462932, *2 (W.D. Mo. Nov. 8, 2012) ("Joinder of all members may be impracticable where the class includes individuals who may become members in the future, but are currently unidentifiable.").

Courts also routinely accept statistics as permissible support for a numerosity showing in Rule 23(b)(2) cases. *See, e.g.*, *Davis v. Thornburgh*, 903 F.2d 212, 233 n. 19 (3d Cir. 1990) (using census data of the number of residents in a Pennsylvania county and extrapolating that a conservative estimate of the putative class would exceed the presumptive numerosity threshold of forty); *Abercrombie & Fitch*, 765 F.3d at 1214-15 (holding that district court did not abuse discretion in finding numerosity by comparing census data to number of stores the defendant operated); *Anderson v. Pennsylvania Dep't of Pub. Welfare*, 1 F. Supp. 2d 456, 461 (E.D. Pa. 1998) (collecting cases and holding "that statistics tending to show that joinder would be impracticable may be sufficient to satisfy Rule 23(a)(1)"); *Cohen v. Chicago Title Ins. Co.*, 242 F.R.D. 295, 299 (E.D. Pa. 2007) (relying on statistics to determine numerosity); *Vergara v. Hampton*, 581 F.2d 1281, 1284 (7th Cir. 1978) (certifying class of resident aliens desiring jobs in the civil service, finding Rule 23(a)(1) satisfied by statistics)

According to the United States Department of Justice: "The U.S. Census Bureau's 2002 Survey of Income and Program Participation (SIPP) found that there are 51.2 million people with disabilities in the United States . . . Millions of people with disabilities regularly travel, shop, and eat out with family and friends . . . The Administration on Aging projects that by 2030 there will be more than 69 million people age 65 and older, making

up approximately 20% of the total U.S. population. The large and growing market of people with disabilities has $175 billion in discretionary spending, AARP says that four million Americans turn 50 each year and that people age 50 and older spent nearly $400 billion in 2003. At age 50, adults are likely to experience age-related physical changes that may affect hearing, vision, cognition, and mobility." *See* https://archive.ada.gov/busstat.htm

According to the American Foundation for the Blind, an estimated 32.2 million adult Americans (or about 13% of all adult Americans) reported they either "have trouble" seeing, even when wearing glasses or contact lenses, or that they are blind or unable to see at all. *See* https://www.afb.org/research-and-initiatives/statistics

According to The National Federation of the Blind, the number of non-institutionalized individuals reported to have a visual disability in the United States in 2016 is 7,675,600 -- 86,500 of whom reside in Minnesota. *See* https://nfb.org/resources/blindness-statistics

According to the National Institutes of Health (NIH), the number of people with visual impairment or blindness in the United States is expected to double to more than 8 million by 2050, according to projections based on the most recent census data and from studies funded by the National Eye Institute, part of the National Institutes of Health. Another 16.4 million Americans are expected to have difficulty seeing due to correctable refractive errors such as myopia (nearsightedness) or hyperopia (farsightedness) that can be fixed with glasses, contacts or surgery. *See* https://www.nih.gov/news-events/news-releases/visual-impairment-blindness-cases-us-expected-double-2050

According to the United States Center for Disease Control and Prevention (CDC), Vision disability is one of the top 10 disabilities among adults 18 years and older. *See* https://www.cdc.gov/visionhealth/basics/ced/fastfacts.htm#:~:text=Vision%20disability%20is%20one%20of,be%20efficacious%20and%20cost%20effective.

There are in excess of two-thousand Home Depot stores in the United States, thirty-three (33) of which are in Minnesota. *See* https://ir.homedepot.com/~/media/Files/H/HomeDepot-IR/2025/2025-q1-store-map.pdf

Defendant's large network of stores, together with the sheer number of persons with visual disabilities in the United States, easily permits a common-sense inference that the numerosity requirement has been met in this matter. The number of potential class members, both present and future, who stand to benefit from the injunctive relief requested at Defendant's stores within the class are sufficient to find that joinder is impractical, and this Court is well within its discretion to conclude that available statistical evidence permits an inference that the numerosity requirement has been met, thus satisfying Rule 23(a)(1).

B. Commonality.

To satisfy Rule 23(a)(2), plaintiffs must show their claims involve a common question or contention "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Postawko v. Missouri Dep't of Corr.*, 910 F.3d 1030, 1038 (8th Cir. 2018) (quoting *Sandusky Wellness Ctr., LLC*, 821 F.3d at 998 (quoting *Dukes*, 564 U.S. at 350, 131 S.Ct. 2541). *See also Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 478 (8th Cir. 2016) (quoting *Dukes*, 564 U.S. at 359, 131 S.Ct. 2541). The mere

presence of one or more common questions is not enough; rather, the district court must examine "the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Yates v. Collier*, 868 F.3d 354, 361 (5th Cir. 2017) (emphasis omitted in original) (quoting *Dukes*, 564 U.S. at 350, 131 S.Ct. 2541).

Like the requirement of numerosity, commonality is a "low threshold" requirement. *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 259 F.3d 154, 182-83 (3d Cir. 2001). *See also Shipes v. Trinity Indus*., 987 F.2d 311, 316 (5th Cir. 1993) ("The threshold requirements of commonality and typicality are not high."). "This requirement imposes a light burden on the plaintiff seeking class certification and does not require commonality on every single question raised in a class action." *In re Aquila ERISA Litig*., 237 F.R.D. 202, 207 (W.D. Mo. 2006) (citing *DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1174 (8th Cir.1995)). "As a general rule, the commonality requirement imposes a very light burden on a plaintiff seeking to certify a class and is easily satisfied." *Hartley v. Suburban Radiologic Consultants, Ltd*., 295 F.R.D. 357, 376 (D. Minn. 2013) (internal citations and quotations omitted). This prong "is easily met in most cases because it requires only that the course of conduct giving rise to a cause of action affects all class members, and that at least one of the elements of that cause of action is shared by all members[.]" *Egge v. Healthspan Servs. Co*., 208 F.R.D. 265, 268 (D. Minn. 2002) (internal citations and quotations omitted).

The commonality requirement "does not mean that the claims of the representatives must raise identical questions of law and fact with those raised by the claims of the rest of the class. Rule 23(a)([2]) clearly indicates that one common question of law or fact can be

sufficient if the other pre-requisites are satisfied." *U.S. Fidelity & Guar. Co. v. Lord*, 585 F.2d 860, 873 (8th Cir. 1978); accord *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) ("Because the requirement may be satisfied by a single common issue, it is easily met, as at least one treatise has noted.") (citing H. NEWBERG & A. CONTE, 1 Newberg on Class Actions § 3.10, at 3-50 (3d ed. 1992)). "A broad based allegation of civil rights violations typically presents common questions of law and fact." *Pabon v. McIntosh*, 546 F.Supp. 1328, 1333 (E.D. Pa. 1982).

"The presence of differing legal inquiries and factual discrepancies will not preclude class certification under this prong." *Thompson v. Allianz Life Ins. Co. of N. Am.*, 330 F.R.D. 219, 224 (D. Minn. 2019). And "[c]ommonality is not required on every question raised in a class action so long as the legal question 'linking the class members is substantially related to the resolution of the litigation.'" *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d 929, at 945 (D. Minn. 2018) (citing *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995)). "[A] common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). Only a single common question is required. *Dukes*, 564 U.S. at 359 ("We quite agree that for purposes of Rule 23(a)(2) even a single common question will do."). The "claims must depend upon a common contention . . . that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id*. At 350.

The Eighth Circuit consistently finds that commonality under Rule 23(a)(2) is met where the common question presented is whether or not a defendant violated a certain statute. *See Postawko v. Missouri Dep't of Corr.*, 910 F.3d 1030, 1038 (8th Cir. 2018) (holding commonality is met where the answer to the question of "whether the Defendants' policy or custom of withholding treatment with DAA drugs from individuals who have been or will be diagnosed with chronic HCV constitutes deliberate indifference to a serious medical need" and violated the ADA will "resolve an issue central to the validity of each of the class members' claims.") (internal citations and quotations omitted); *Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 998 (8th Cir. 2016) (holding that plaintiff met the commonality requirement where the common contention "is whether class members received an unsolicited fax advertisement violated the TCPA."); *Paxton v. Union Nat. Bank*, 688 F.2d 552, 561 (8th Cir. 1982) (holding that plaintiff met the commonality requirement where the common question was "has Union National Bank discriminated against black employees by denying them promotions and giving them lesser promotions than those given whites similarly situated?"); *Portz*, 297 F. Supp. 3d at 946 ("Plaintiffs' claims present common questions of law, namely whether SCSU has discriminated against female athletes in violation of three of Title IX's provisions.").

Similarly, here, the question of whether or not Defendant's policies and practices violate the ADA is a common question for which the answer will 'drive the resolution of this litigation' for all class members. For the class, this proceeding will generate a common answer as to whether Defendant's policies violate the ADA, the determination of which

"will resolve an issue . . . central to the validity of each one [of the class members'] claims in one stroke." *Dukes*, 564 U.S. at 350. For these reasons, commonality is satisfied.

C. Typicality.

Rule 23(a)(3)'s typicality requirement is also satisfied here. Typicality "is fairly easily met so long as other class members have claims similar to the named plaintiff." *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030 (8th Cir. 2018) (citing *DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1174 (8th Cir. 1995) (citing *Paxton*, 688 F.2d at 562). The typicality requirement is satisfied if the class representatives' claims "arise[] from the same event or course of conduct as the class claims, and give[] rise to the same legal or remedial theory." *Alpern v. UtiliCorp United, Inc*., 84 F.3d 1525, 1540 (8th Cir. 1996); see also *Paxton*, 688 F.2d at 561-62. "Typicality under Rule 23(a)(3) means that there are 'other members of the class who have the same or similar grievances as the plaintiff.'" *Alpern*, 84 F.3d at 1540 (quoting *Donaldson v. Pillsbury Co*., 554 F.2d 825, 830 (8th Cir. 1977)). "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1174 (8th Cir. 1995)."Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Id. (*citing *Alpern and Donaldson).* The typicality prong is "fairly easily met so long as other class members have

claims similar to the named plaintiff." *Alpern v. UtiliCorp United, Inc*., 84 F.3d 1525, 1540 (8th Cir. 1996).

Plaintiff is not able to safely and independently use the cash-back feature of Defendant's point-of-sale device. The same holds true for all members of the class and Plaintiff's claims for injunctive relief to remedy Defendant's violations of the ADA are typical of the claims of the class members as they all have been, or will be, denied access on the basis of this company-wide deficiency. The requirement for typicality under Rule 23(a)(3) is therefore satisfied here.

D. Adequacy.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." In order to meet the requirements of Rule 23(a)(4), a plaintiff need only show that they (1) "have common interests with the members of the class," and (2) "will vigorously prosecute the interests of the class through qualified counsel*." In re Retek Inc. Sec. Litig*., 236 F.R.D. 431, 435 (D. Minn. 2006). A named plaintiff "need not have, and often … will not have, personal knowledge of the facts needed to make out a prima facia case … Indeed, the depth of a named representative's knowledge is irrelevant." *Thompson*, 330 F.R.D. at 225 (internal citations and quotations are omitted).. In the absence of proof to the contrary, courts presume that Class counsel is competent and sufficiently experienced to vigorously prosecute the class action. See *Morgan v. United Parcel Serv. of America, Inc*., 169 F.R.D. 349, 357 (E.D. Mo. 1996)

Here, Plaintiff's interests and incentives align with the rest of the class. There is no evidence of any conflicts of interest between Plaintiff and the proposed class. On the

contrary, Plaintiff and class members share the same injuries and seek the same relief—declaratory and injunctive relief requiring Defendant to alter its point-of-sale devices as described in the PSA. No class member's interests will be negatively impacted if Plaintiff succeeds in proving her claims and no unique circumstances surround Plaintiff that make her experiences at Defendant's stores unique or different than those in the class. Plaintiff has demonstrated her commitment to pursuing this lawsuit on behalf of and adequately representing the proposed classes by working diligently with counsel to advance the interests of the proposed class, by sharing her experiences, initiating this lawsuit, and participating in the settlement process. Plaintiff therefore has common interests with the members of the class. *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988)) ("Because the plaintiff seeks the same injunctive relief as all members of the class, the court 'can find no potential for conflict between the claims of the complainants and those of the class as a whole.'"). In addition, Plaintiffs' attorneys are seasoned litigators, with expertise in class action litigation, and a specialized expertise in ADA litigation including ADA class action litigation. See *Declaration of Patrick W. Michenfelder Esq.* submitted concurrently herewith. Fed. R. Civ. P. 23(a)(4)'s adequacy requirement is therefore satisfied.

3. In Addition To Satisfying The Criteria Set Out In Rule 23(A), The Proposed Class Here Satisfies At Least One Of The Subsections Of Rule 23(B).

"Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples of what (b)(2) [classes] [are] meant to capture"); *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 361 (2011); *See also Amchem Prods, Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (same); *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 (1982) (Civil rights

cases alleging discriminatory policies or practices are "by definition" class actions provided they meet the other requirements of Rule 23(a)); Fed. R. Civ. P. 23(b)(2), Advisory Committee Notes (1996) (Rule 23(b)(2) applies specifically to "actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration."); *Newberg on Class Actions* § 4:40 (5th ed. 2014) ("The types of civil rights cases that have often been certified as (b)(2) class actions include ... disability discrimination actions under the Americans with Disabilities Act (ADA) ...."). (emphasis added). "Because one purpose of Rule 23(b)(2) was to enable plaintiffs to bring lawsuits vindicating civil rights, the rule 'must be read liberally in the context of civil rights suits.'" *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980) (quoting *Ahrens v. Thomas*, 570 F.2d 286, 288 (8th Cir. 1978)). "This principle of construction limits the district court's discretion." *Id*. Thus, "[c]ourts should guard against the temptation to assume that the certification of a [Rule] 23(b)(2) class action is purely discretionary." *Id*. (quoting 3B J. MOORE & J. KENNEDY, Moore's Federal Practice ¶ 23.40(3) (1980)).

Rule 23(b)(2) permits certification of a class when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The Rule 23(b)(2) requirements "are unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (citation omitted). "That inquiry does not require an

examination of the viability or bases of the class members' claims for relief, does not require that the issues common to the class satisfy a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of the class have suffered identical injuries." *Id*. (footnote omitted). "Rather, as the text of the rule makes clear, this inquiry asks only whether 'the party opposing the class has acted or refused to act on grounds that apply generally to the class.'" *Id*. (quoting Fed. R. Civ. P. 23(b)(2)). *See also*, *Postawko v. Mo. Dep't of Corr*., 910 F.3d 1030 (8th Cir. 2018) (citing *Dukes*, 564 U.S. at 360, 131 S.Ct. 2541. (Rule 23(b)(2) applies "when a single injunction or declaratory judgment would provide relief to each member of the class.")

This case at bar involves claims that the Defendant uniformly implements a point-of-sale device that violates the ADA; claims that describe a party acting "on grounds generally applicable to the class."... *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030 (8th Cir. 2018). Because Defendant employs a uniform point-of sale device at its stores, a single injunction—ordered by this Court and monitored by Plaintiff—would provide relief to Plaintiff and each member of the class. See *Portz*, 297 F.Supp.3d, at 951 ("This injunctive relief would remedy the complaint of the entire class. The Court, therefore, concludes that Plaintiff satisfies Rule 23(b)(2)."); *Postawko*, 910 F.3d, at 1040 (the "proposed injunctions identify relief that would respond to the alleged harm on a uniform, generally applicable basis."). Certification under Rule 23(b)(2) is therefore proper.

B. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

Rule 23(e)(2) sets forth the factors the Court considers in preliminarily evaluating the fairness of a proposed class action settlement, which include whether: (a) the class representatives and class counsel have adequately represented the class; (b) the proposal was negotiated at arm's length; (c) the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, the terms of any proposed award of attorneys' fees, including timing of payment; and any agreement required to be identified under Rule 23(e)(3); and (d) the proposal treats class members equitably relative to each other. According to the Advisory Committee notes: "The central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate. … The goal of [amended Rule 23(e)] is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approval the proposal." 2018 Advisory Committee Notes.

1. <u>The Class Representatives And Class Counsel Have Adequately Represented The Class</u>.

Plaintiff and her counsel have adequately represented the class in accordance with Rule 23(e)(2)(A). Plaintiff has, without fail, provided all of the information necessary to properly evaluate the case and negotiate a robust settlement that provides Settlement Class Members with indisputably robust relief.

Class Counsel have likewise diligently pursued the litigation by investigating the factual and legal claims against Defendant, drafting a comprehensive Complaint,

identifying and retaining a certified access specialist to evaluate the litigation and investigate and test the point-of-sale technology in place at numerous of Defendant's physical locations, and working to gather the documents and information necessary to properly evaluate the case and negotiate a settlement that provides each and everyone of the Settlement Class Members with substantial relief.

Notably, Class Counsel's pre-suit factual and legal investigation coupled with discovery conducted in connection with the parties' settlement negotiations, together with the nature of this claim (which involves a common and uniform point of sale device) enabled this matter to be negotiated effectively and efficiently. While burdensome formal discovery would have generated a larger fee claim for Plaintiff's counsel, Defendant's substantial cooperation with efforts to resolve the case and Defendant's robust settlement commitment made that unnecessary. Defendant's forthright cooperation, coupled with Plaintiff counsel's substantial ADA related experience and expertise, ensured that all of the information necessary to properly evaluate the claims at issue was present.

Plaintiff's counsel drew upon their experience resolving similar claims together with extensive research and review of resolutions of other similar matters to achieve a resolution that meets or exceeds the accessibility needs of each member of the putative class. The settlement of this case is consistent with how Plaintiff's counsel, other firms, and advocacy organizations litigate and resolve similar ADA Title III cases; and Plaintiff's counsel were able to successfully negotiate a settlement that unquestionably meets the accessibility needs for each and every member of the putative class.

2. <u>The Proposal Was Negotiated At Arm's Length</u>.

As required under Rule 23(e)(2)(B), the Settlement Agreement is the result of an arms-length negotiation. This factor is satisfied "when the court determines that the settlement was negotiated at arm's length and was not collusive in favoring the class representative." *White v. National Football League*, 822 F.Supp. 1389, 1407 (D. Minn. 1993).

The history of this litigation, as well as the negotiation and ultimate terms of the settlement reached, confirm that the settlement agreement was negotiated at arm's length and there is no indication of collusive behavior here. The parties devoted months to proactively resolving Plaintiff's claims. The settlement does not favor the class representative, and there can be no claim that there was any bargaining away the right to pursue injunctive relief for greater fees or that—as is demonstrated by the comprehensive obligations the Agreement provides.

3. <u>The Relief Provided For The Class Is Adequate</u>.

The relief the settlement provides for the class is patent, and the Rule 23(e)(2)(C)(i-iv) factors also weigh in favor of preliminary approval here because Plaintiff could not reasonably expect to achieve effective injunctive relief had this matter proceeded to trial.

(i) The costs, risks, and delay of trial and appeal.

Defendant, a large corporation represented by unquestionably competent counsel, interposed an answer in this case and advanced eighteen (18) separate affirmative defenses. In addition to the risk Plaintiff and the putative class faced that one or more of Defendant's defenses might have been successful, the delay associated with trial and appeal threatened to delay the ability to obtain meaningful relief for the class by years. Taking depositions,

briefing and arguing summary judgment motions, briefing motions in limine, preparation of witnesses, conducting a trial, and briefing any appeals would threaten to substantially impact the ability of the parties to settle the case; by resolving the case promptly, the parties were able to entirely avoid the risk that increased costs and attorney's fees might hinder the ability to get this matter resolved. And the settlement provides unquestionably meaningful relief for the class. As such, the current Settlement strikes an appropriate balance between Plaintiff's "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981)

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.

Rule 23(2) (Notice) provides that notice to a class where, as here, a case involves declaratory or injunctive relief is permissive, and is not mandatory. As discussed more fully below, the parties here have nevertheless agreed to provide notice that is well calculated to reach class members and is consistent with the notice courts have approved in similar cases.

(iii) the terms of any proposed award of attorneys' fees, including timing of payment.

Consistent with the Settlement and Rule 23(h), Class Counsel will separately move for an award of fees and costs prior to the Objection Deadline, and the Court will have a full opportunity to consider the appropriate fees as part of the final approval process. As will be detailed in Counsel's motion for an award of attorney's fees, an award of $65,000 is fully justified consistent with other awards in similar matters. *See e.g*., *Dalton, et. al. v. Dollar Tree Stores*, 23-CV-00368 (KMM/LIB) (Preliminary Approval Order, ECF 37) (D.

Minn. May 30, 2024) and (Final Class Certification and Settlement Approval Order, ECF 50) (D. Minn. Feb. 3, 2025) (approving estimate of $70,000 fees and costs and for future ADA compliance monitoring work); *Flynn v. Aimbridge Hospitality, LLC*, 17-CV-01649 (JFC) (W.D. Pa. Apr. 23, 2019) (ECF 41) (approving Carlson Lynch estimate of $70,000 for the fees and costs of future ADA compliance monitoring work over a period of two years as "fair, reasonable and adequate"); *The Civil Rights Educ. & Enf't Ctr. v. RLJ Lodging Trust*, 15-CV-00224 (YGR) (N.D. Cal. May 03, 2016) (ECF 75) (approving ADA class settlement which provided for ADA compliant transportation services at 127 hotels nationwide, and compliance and monitoring procedures, and $128,467.70 attorney's fees); *McDermott v. Kum & Go, LC*, Case No. 3:13-CV-00053 (CRW-HCA) (ECF 39) (S.D. Iowa Oct. 30, 2014) (ECF 39) (approving ADA class settlement requiring barrier removal at defendant's 400 facilities in 11 states which provided for compliance and monitoring procedures, and $137,500.00 in attorney's fees).

(iv) any agreement required to be identified under Rule 23(e)(3).

Rule 23(e) contemplates that the parties will identify "any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). Class Counsel confirms that no agreements exist other than those outlined herein and reflected in Settlement Agreement.

4. <u>The Proposal Treats Class Members Equitably Relative To Each Other.</u>

The Settlement treats Settlement Class Members equitably relative to each other because all Class Members benefit equally from the injunctive relief. The only monetary payment to any class member is the modest incentive payment of $1,000 to Ms. Dalton, a payment that is authorized by law. *See e.g.*, *In re U.S. Bancorp Litig.*, 291 F.3d at 1038

(cleaned up). "Courts should consider actions plaintiff took to protect the class's interests, the degree to which the class has benefitted from those actions, and the amount of time and effort plaintiff expended in pursuing litigation." *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002).

5. The Experience And Views Of Counsel.

"The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *In re Employee Benefit Plans Sec. Litig.*, Civ. No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993); *Welsch v. Gardebring*, 667 F.Supp. 1284, 1295 (D. Minn. 1987) (the court "gives great weight" to the opinions of counsel on if the settlement is in the best interest of the class); *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("Class Counsel's views are entitled to deference, especially since the district court found that they have significant experience in class actions and complex litigation."); *White v. National Football League*, 822 F.Supp. 1389, 1420 (D. Minn. 1993) (affording class counsel's opinion "considerable weight" where class counsel had been intimately involved in the lawsuit due to their "understanding of the legal and factual issues involved"). Here, experienced counsel for both the class and the Defendant believe the Settlement is fair, reasonable, adequate, and provides exceptional results for the class while avoiding the uncertainties of continued and protracted litigation.

V. THE COURT SHOULD APPROVE THE PARTIES' PROPOSED NOTICE PLAN

In contrast to the mandatory "best notice…practicable" including individual notice to all members of classes certified under Rule 23(b)(2) who can be individually identified,

courts "may" decide to send "appropriate notice" to members of Rule 23(b)(1) and (b)(2) classes. Fed. R. Civ. P. 23(c)(2)(A). The court's authority to direct notice to class members in Rule 23(b)(1) and (b)(2) actions "should be exercised with care" since there may be less need for notice because there is no right to request exclusion, and particularly when all relief is declaratory or equitable – that is, non-monetary. Fed. R. Civ. P. 23, Advisory Committee Notes on Rules – 2003 Amendment. The rule itself does not provide guidance as to what constitutes "appropriate notice." However, the 2003 Advisory Committee Notes to Rule 23 observed that courts must consider that the "cost of providing notice could easily cripple actions that do not seek damages." With this concern in mind, the Advisory Committee provided the following guidance:

> When the court does direct certification notice in a (b)(1) or (b)(2) class action, the discretion and flexibility established by subdivision (c)(2)(A) extend to the method of giving notice. Notice facilitates the opportunity to participate. Notice calculated to reach a significant number of class members often will protect the interests of all. Informal methods may prove effective. A simple posting in a place visited by many class members, directing attention to a source of more detailed information, may suffice. The court should consider the costs of notice in relation to the probable reach of inexpensive methods. *Id.*

Although no notice is required, here, the Parties have agreed on a plan to disseminate notice specifically targeted to members of the visually-disabled community in this case as follows:

1. As soon as practicable, but no later than fifteen (15) days after the Court's entry of a Preliminary Approval order, Class Counsel shall cause class action settlement notice to be published on a settlement website to be located at https://www.ADAPOShomedepotsettlement.com or such other like domain name as may be available (The Settlement Website). The Settlement Website shall provide access to or provide direction to access copies of Plaintiff's class action complaint, motion for preliminary approval of class action settlement and all documents filed in support of Plaintiff's motion for preliminary approval of

class action settlement, together with instructions to those who wish to object to the settlement; and

2. As soon as practicable, but no later than fifteen (15) days after the Court's entry of a Preliminary Approval order, Class Counsel shall, at its expense, request that at least the following organizations publish notice immediately in their respective electronic newsletters and social media accounts: American Council of the Blind, American Foundation for the Blind, Blinded American Veterans Foundation, Blinded Veterans Association, Foundation Fighting Blindness, Guide Dogs for the Blind, National Association of Blind Merchants, National Council on Disability, and National Federation of the Blind.

This method for providing notice compares favorably with that which was approved by courts in similar circumstances. *See Dalton, et. al. v. Dollar Tree Stores*, 23-CV-00368 (KMM/LIB) (Preliminary Approval Order, ECF 37) (D. Minn. May 30, 2024) and (Final Class Certification and Settlement Approval Order, ECF 50) (D. Minn. Feb. 3, 2025) (the Dollar Tree Case); Northern District of California in *National Federation of the Blind v. Uber Technologies*, Inc., No. 3:14-cv04086-NC, Doc. 112 (N.D. Cal. July 13, 2016); *Douglass v. Optavia LLC*, 2:22-cv-00594-CCW (W.D. Pa. Jan. 23, 2023); and *Murphy v. Charles Tyrwhitt, Inc*., 1:20-cv-00056-SPB-RAL (W.D. Pa. Feb. 16, 2022).

VI. APPOINTMENT OF CLASS COUNSEL

Under Rule 23(g), "a court that certifies a class must appoint class counsel . . . [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts generally consider: (1) the proposed class counsel's work in identifying or investigating potential claims; (2) the proposed class counsel's experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) the proposed class counsel's knowledge of the applicable law; and (4) the proposed class counsel's resources committed to representing the class. Fed. R. Civ.

P. 23(g)(1)(A)(i)-(iv). As discussed above, the Plaintiff and the putative class are represented by seasoned ADA litigators who have spent a significant amount of time identifying the potential claims in this action and negotiating a remarkably favorable settlement for the class. They are also fully committed to conducting the monitoring necessary to ensure that the settlement is effectuated. *See Dalton, et. al. v. Dollar Tree Stores*, 23-CV-00368 (KMM/LIB) (Preliminary Approval Order, ECF 37) (D. Minn. May 30, 2024) and (Final Class Certification and Settlement Approval Order, ECF 50) (D. Minn. Feb. 3, 2025) (the Dollar Tree Case) (approving the undersigned as class counsel for preliminary and final purposes).

VII. ATTORNEY'S FEES AND CLASS REPRESENTATIVE INCENTIVE PAYMENT

Plaintiff's counsel will move for approval of an award of attorney's fees and an incentive award for the named Plaintiff in the event the Court preliminary approves the proposed settlement.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Court enter the accompanying order preliminarily approving the proposed settlement.

Date: August 13, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Julie Dalton, individually and on behalf of all others similarly situated, Plaintiff, v. Home Depot U.S.A. d/b/a Home Depot, Defendant.	Civil Case No.:23-cv-02126(DWF/DLM) **PLAINTIFF'S RULE 7.1(f) CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(f), the undersigned certifies that Plaintiff's Memorandum of Law In Support of Unopposed Motion for Preliminary Approval and Notice of proposed Settlement to the Class ("Memorandum") was completed in Word for Microsoft 365 using Times New Roman 13-point font. The undersigned further certifies that the Memorandum complies with Local Rule 7.1(f), as it contains 9095 words, according the Word Count feature of Word, including text, headings, footnotes and quotations.

Date: August 13, 2025

Respectfully submitted,

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