

1  
2  
3  
4  
5  
6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN DIEGO  
9

10 DONNIE SANCHEZ BARRAGAN,  
11 ARACELI BARRAGAN, JEREMEY  
12 BURCHAM, LISA DAVEY, VIRGIE  
13 FLORES and JANELLY SANDOVAL  
individually and on behalf of all others  
similarly situated,

14 Plaintiffs,

15 v.

16 HOME DEPOT USA, INC., a Delaware  
17 Corporation, and DOES 1 through 50,  
18 inclusive,

19 Defendant.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: 37-2019-00056110-CU-MC-CTL

*Assigned for all purposes to the  
Honorable Eddie C. Sturgeon, Dept. C-67*

**[PROPOSED] ORDER AND  
JUDGMENT GRANTING MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: December 8, 2023

Time: 9:00 a.m.

Place: Department C-67

Action Filed: October 22, 2019

Trial Date: None

1           THIS MATTER is before the Court on Plaintiff's Motion for Final Approval of Class  
2 Action Settlement and his Motion for an Order Awarding Attorneys' Fees and Costs to  
3 Plaintiff's Counsel and Enhancement Fee to the Class Representative. In accordance with the  
4 Final Approval Order, Class Members have been given notice of the terms of the Settlement,  
5 including had an opportunity to object to it, comment on it, participate in it, and/or exclude  
6 themselves from it. Having considered the proposed Settlement, the award of attorneys' fees and  
7 costs and the service award to the class representative, and the argument at the final approval  
8 hearing held on December 8, 2023, the Court pursuant to Code of Civil Procedure § 382, hereby  
9 grants Plaintiff's motion.

10           **I.       FACTUAL BACKGROUND**

11           **A.       Complaints and Plaintiffs' Claims**

12           This settlement is the consolidation of six previously filed cases that involve overlapping  
13 questions of fact and law.

14           **1.       The Barragan Class Action.**

15           On August 12, 2019, Plaintiffs Donnie Sanchez Barragan and Araceli Barragan filed a  
16 putative class action against Home Depot in San Diego Superior Court alleging failure to provide  
17 accurate wage statements pursuant to Labor Code § 226. Home Depot removed the case to  
18 federal court on September 13, 2019. On December 20, 2019, the Barragan Plaintiffs filed a  
19 First Amended Complaint alleging: (1) failure to provide accurate itemized wage statements  
20 reflecting all wages, hours worked, and pay rates; (2) failure to pay overtime; (3) failure to pay  
21 all wages upon termination; and (4) violation of California's unfair competition law. On July 21,  
22 2020, the Barragan Plaintiffs filed a Second Amended Complaint adding a new named plaintiff,  
23 Jeremy Burcham, and alleging claims for: (1) alleged failure to provide accurate itemized wage  
24 statements in violation of Labor Code § 226; (2) alleged failure to pay overtime in violation of  
25 Labor Code §§ 510, 1198, and 1199; (3) alleged failure to timely pay wages during employment  
26 in violation of Labor Code § 204; (4) alleged failure to timely pay wages upon termination in  
27 violation of Labor Code §§ 201, 202 and 203; and (5) alleged violations of Business and  
28

1 Professions Code §§ 17200 et seq. The *Barragan* Plaintiffs filed a Third Amended Complaint on  
2 September 16, 2021, alleging claims on behalf of: (1) non-exempt Home Depot employees in  
3 California who received a minimum “Success Sharing” bonus and worked overtime in alleged  
4 violation of California Labor Code §§ 510 and 1194, and (2) all non-exempt Home Depot  
5 employees in California who received a meal and/or rest period premium or reporting time pay  
6 but were allegedly not paid all wages due in alleged violation of California Labor Code §§ 226.7,  
7 510 and 512. On January 17, 2022, the District Court granted Burcham’s motion for class  
8 certification of a class of employees who both received a minimum Success Sharing bonus and  
9 worked overtime during the same period. The Court dismissed Plaintiffs’ claims for unfair  
10 competition and Labor Code Section 203 claims for waiting time penalties. The Court granted  
11 Plaintiffs’ motion for partial summary judgment relating to improper overtime pay for employees  
12 who received a minimum Success Sharing bonus and worked overtime during the same period  
13 because Home Depot did not include the minimum Success Sharing bonus when calculating the  
14 regular rate.

15 **2. The *Barragan* PAGA Action.**

16 On August 14, 2019, Plaintiffs Donnie Sanchez Barragan and Araceli Barragan gave  
17 notice to the LWDA of their pending Labor Code claims and, on October 22, 2019, filed a  
18 separate PAGA Action against Home Depot in San Diego Superior Court. Plaintiffs submitted  
19 supplemental PAGA notices to the LWDA on November 12, 2019 and January 6, 2020.

20 **3. The *Sandoval* Class Action.**

21 On January 31, 2020, Plaintiff Janelly Sandoval filed a putative class action alleging  
22 claims for: (1) alleged failure to pay all wages in connection with its issuance of pay cards for  
23 final wages (Lab. Code §§ 201-203), and (2) alleged failure to provide accurate itemized wage  
24 statements (Lab. Code § 226). Home Depot removed the case to federal court. Sandoval filed  
25 her operative FAC on April 30, 2020.

26 **4. The *Sandoval* PAGA Action.**

27 On June 1, 2020, Sandoval filed a separate PAGA action in the Riverside County  
28

Superior Court, alleging the same claims alleged in the Sandoval Class Action, but under PAGA.

**5. The Davey Class and PAGA Action.**

On May 26, 2020, Lisa Davey filed a PAGA Notice with the LWDA, which attached a draft complaint asserting claims under PAGA for: (1) alleged failure to provide meal periods in violation of Labor Code §§ 226.7 and 512; (2) alleged failure to provide rest breaks in violation of Labor Code §§ 226.7 and 512; (3) alleged failure to timely pay wages upon termination in violation of Labor Code § 203; and (4) alleged failure to provide accurate itemized wage statements in violation of Labor Code § 226. On June 9, 2020, Davey filed the Davey Class and PAGA Action in state court alleging class action claims for: (1) alleged failure to provide meal periods and rest breaks and/or fully pay break premium in violation of Labor Code §§ 226.7 and 512; (2) alleged failure to timely pay wages upon termination in violation of Labor Code § 203; (3) alleged failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (4) alleged violations of Business and Professions Code §§ 17200 et seq. On August 4, 2020, Davey filed her operative FAC, which added allegations of the same Labor Code violations under PAGA. Home Depot removed the case to federal court on October 16, 2020.

**6. The Flores Class and PAGA Action.**

On May 5, 2020, Plaintiff Virgie Flores filed a PAGA Notice with the LWDA alleging violations of Labor Code sections 201, 202, 203, 204, 208, 212, 213, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 1174 1182.12, 1194, 1197, 1197.1, 1198, and 2802, and sections 3, 5, 7, and 14 of the applicable IWC Wage Orders. On June 23, 2020, Flores filed the Flores Class and PAGA Action in state court, alleging claims for: (1) alleged failure to pay overtime in violation of Labor Code §§ 510, 1198, and 1199; (2) alleged failure to pay minimum wages in violation of Labor Code § 1194; (3) alleged failure to timely pay wages upon termination in violation of Labor Code § 203; (4) alleged failure to provide accurate itemized wage statements in violation of Labor Code § 226; (5) alleged failure to provide meal periods or fully pay break premiums in violation of Labor Code §§ 226.7 and 512; (6) alleged failure to provide rest breaks in violation of Labor Code § 226.7; (7) alleged unlawful discounts and deductions in violation of Labor Code

1 §§ 212-213, 221, 223, and 224; and (8) alleged violations of Business and Professions Code §§  
2 17200 et seq. Home Depot removed the case to federal court. On June 23, 2020, Flores filed her  
3 operative FAC, which alleges the same Labor Code violations under PAGA.

#### 4 **7. Case Consolidation.**

5 On November 3, 2021, Judge Anthony Battaglia of the U.S. District Court for the  
6 Southern District of California ordered the Barragan Class Action, Sandoval Class Action,  
7 Davey Class and PAGA Action, and Flores Class and PAGA Action consolidated for purposes  
8 of discovery and motion practice.

9 Plaintiffs have moved this Court for final approval of the Settlement and has submitted  
10 documents in support thereof. No opposition was filed to Plaintiffs' motion, and two class  
11 members objections to the Settlement. Plaintiffs' motion came on for hearing before this Court  
12 on December 8, 2023 at 9:00 a.m.

13 The Court, having fully considered Plaintiffs' notice of motion and motion, the  
14 memorandum of points and authorities in support thereof, the declarations in support thereof, the  
15 Settlement Agreement and Amendment to Settlement Agreement itself, and the oral argument  
16 presented to the Court, HEREBY ORDERS AND MAKES DETERMINATIONS AS  
17 FOLLOWS:

#### 18 **II. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION** 19 **SETTLEMENT**

20 The Court finds that certification of the following Class, for settlement purposes only, is  
21 appropriate under the California Code of Civil Procedure:

22  
23 Any non-exempt, hourly employee employed by Home Depot in the State of  
24 California at any point between June 9, 2016, through March 10, 2023.

25 The Court finds that the Class defined above meets ascertain ability, numerosity,  
26 commonality, and predominance requirements that justify certification, and that resolution of this  
27 matter through a class action settlement is superior to other available methods.  
28

1 The Court finds further that:

2 (1) Plaintiffs are adequate and typical Class Representatives and appoints them as Class  
3 Representatives; and

4 (2) Plaintiffs' Counsels has adequately represented the Class and its appointment as Class  
5 Counsels is confirmed.

6 Accordingly, the Court certifies the Class described above for settlement purposes only.

7 The Court has reviewed the terms of the Settlement and finds that the Settlement is fair,  
8 adequate, and reasonable when balanced against the possible outcome of further litigation  
9 relating to class certification, liability, and damages. The Court finds further that settlement at  
10 this time will avoid substantial additional costs and will avoid the delay and risks presented by  
11 continued prosecution of the litigation. The Court also finds that the settlement has been reached  
12 after arm's length negotiations between the parties. The terms of the operative settlement  
13 agreement and amendment to settlement agreement shall be incorporated herein and consistent  
14 with this Order and Judgment.  
15

16 Following notice that was sent to the Class Member by first class mail, two class  
17 members objected to the terms of the Settlement and seventy Class Members opted out. Such  
18 non-opposition to the settlement is evidence of the settlement's fairness, adequacy, and  
19 reasonableness. Taking into account (1) the value of the \$8.5 million cash settlement, (2) the  
20 risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the  
21 litigation in the absence of settlement, (4) the experience and views of Class Counsels, and (5)  
22 the positive reaction of Class Members, the Court finds that the settlement is fair, adequate,  
23 reasonable, and deserves this Court's final approval.

24 **III. PAGA RELEASE**

25 Means claims made on behalf of the LWDA and/or State of California included in any  
26 notice provided to the LWDA by any Named Plaintiff or as pleaded in any Complaint including  
27 but not limited to claims for or predicated on (1) alleged underpayment or miscalculation of  
28

overtime and/or reporting time pay (including alleged violations of Labor Code Sections 201, 202, 510, 1194, 1198, and 1199 and similar provisions of the California Wage Orders), (2) failure to properly pay reporting pay (alleged violations of the reporting and call-back pay provisions of the California Wage Orders), (3) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order), (4) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order), (5) the form of final payment of wages (including alleged violations of Labor Code Sections 212 and 213 and/or the similar provisions of the California Wage Orders), (6) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226, 1174 and similar provisions of the California Wage Orders); and (7) failure to pay all wages owed upon employment termination. PAGA Released Claims, however, do not include the Excluded Claims.

#### **IV. OPT OUTS**

Following notice that was sent to the Class Member by first class mail, two class members objected and seventy Class Members submitted requests for exclusion.

#### **V. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND COSTS**

Plaintiffs' Counsels have moved for awards of (1) attorneys' fees and costs to Plaintiffs' Counsels; and (2) a service award to the Class Representatives, notice of which were given to all Class Members pursuant to the Court's Preliminary Approval Order. The Court read argument regarding Plaintiffs' request for fees and service payments.

Based upon all papers filed with the Court, oral argument at the hearing, the Court's observation and assessment of the performance of Plaintiffs' Counsels throughout this litigation, the resulting settlement recovery, and good cause appearing therefor, the Court finds that payment of attorneys' fees in the amount of 33.33% of the GSA or \$2,805,000.00 and costs in the amount of \$31,859.03 for all past and remaining work and costs until the completion of this

1 matter, in accordance with the terms of the Settlement, is fair and reasonable under the  
2 circumstances.

3 This amount shall be paid by Defendant according to the terms of the operative Joint  
4 Stipulation of Settlement and Release of Class Action Settlement and operative addendums  
5 thereto.

6 **VI. SERVICE AWARD TO THE CLASS REPRESENTATIVE**

7 Plaintiff seeks service awards to each of the 6 class representatives Donnie Sanchez  
8 Barragan, Araceli Barragan, Jeremy Burcham, Lisa Davey, Virgie Flores and Janelly Sandoval,  
9 in the amount of \$10,000.00 each (\$60,000.00 total) and seeks this payment as compensation for  
10 the time, effort, and risks they spent to enable the Class Members to receive this recovery.

11 The Court notes that California and federal courts regularly approve service awards to  
12 compensate the class representative for the services they provide to the class, the time and effort  
13 they invest on behalf of others, and the risks that they incur during the course of class action  
14 litigation.

15 Class Representatives Donnie Sanchez Barragan, Araceli Barragan, Jeremy Burcham,  
16 Lisa Davey, Virgie Flores and Janelly Sandoval performed a service to Class members, including  
17 bringing this action, producing relevant documents, and making themselves available to and  
18 working with Plaintiffs' Counsels throughout the action. In light of these services, the service  
19 award to each of the class representatives is appropriate. Although the proposed service award  
20 was disclosed to the Class in the Notice, two class members objected to it.

21 For the foregoing reasons, the Court finds that the service award of \$10,000.00 each to  
22 Plaintiffs Donnie Sanchez Barragan, Araceli Barragan, Jeremy Burcham, Lisa Davey, Virgie  
23 Flores and Janelly Sandoval is fair and reasonable considering their service to Class Members.

24 **VII. CLAIMS ADMINISTRATION COSTS**

25 Plaintiffs seek costs for the claims administrator in the amount of \$584,000.00 for all  
26  
27  
28



1 work regarding distribution to the class members, LWDA and counsel for Plaintiff. This amount  
2 shall be paid by Defendants according to the terms of the operative Joint Stipulation of  
3 Settlement and Release of Class Action Settlement and operative addendums thereto. For the  
4 foregoing reasons, the Court finds that the administration costs of \$584,000.00 is fair and  
5 reasonable considering its service to Class Members.

6 **VIII. PAYMENT TO LABOR AND WORKFORCE DEVELOPMENT AGENCY**

7 The Claims Administrator shall pay the LWDA \$75,000.00 (representing 75% of the  
8 \$100,000.00 PAGA component of the Settlement Agreement).

9 **IX. JUDGMENT FINALITY**

10 Without affecting the finality of this Judgment in any way, the Court shall retain  
11 jurisdiction with respect to the implementation and enforcement of the terms of the Settlement  
12 Agreement and Amendment to Settlement Agreement, and the Court shall retain jurisdiction  
13 over the Parties and the members of the Class to enforce the terms, conditions and obligations of  
14 the Settlement Agreement and Amendment to Settlement Agreement.

15 This judgment is intended to be a final disposition of the above-captioned action in its  
16 entirety with prejudice, and is intended to be immediately appealable. The court shall have and  
17 retain continuing jurisdiction over this action and the parties and Class members, including after  
18 entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms  
19 and intent of the Settlement Agreement, Amendment to Settlement Agreement and this Order.

20 The Court orders class counsel to file a final report summarizing all distributions made  
21 pursuant to the approved settlement, supported by declaration. The Court sets a hearing for a  
22 final report for June 14, 2024.

23 Dated:

24 **JUDGE OF THE SUPERIOR COURT**

25 By: \_\_\_\_\_  
26 The Honorable Judge Eddie C. Sturgeon  
27  
28