

FILED
San Diego Superior Court

DEC - 8 2023

Clerk of the Superior Court
By: H. Chavarin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

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

Defendant.

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

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

3 On May 26, 2020, Lisa Davey filed a PAGA Notice with the LWDA, which attached a
4 draft complaint asserting claims under PAGA for: (1) alleged failure to provide meal periods in
5 violation of Labor Code §§ 226.7 and 512; (2) alleged failure to provide rest breaks in violation
6 of Labor Code §§ 226.7 and 512; (3) alleged failure to timely pay wages upon termination in
7 violation of Labor Code § 203; and (4) alleged failure to provide accurate itemized wage
8 statements in violation of Labor Code § 226. On June 9, 2020, Davey filed the Davey Class and
9 PAGA Action in state court alleging class action claims for: (1) alleged failure to provide meal
10 periods and rest breaks and/or fully pay break premium in violation of Labor Code §§ 226.7 and
11 512; (2) alleged failure to timely pay wages upon termination in violation of Labor Code § 203;
12 (3) alleged failure to provide accurate itemized wage statements in violation of Labor Code §
13 226; and (4) alleged violations of Business and Professions Code §§ 17200 et seq. On August 4,
14 2020, Davey filed her operative FAC, which added allegations of the same Labor Code
15 violations under PAGA. Home Depot removed the case to federal court on October 16, 2020.

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

17 On May 5, 2020, Plaintiff Virgie Flores filed a PAGA Notice with the LWDA alleging
18 violations of Labor Code sections 201, 202, 203, 204, 208, 212, 213, 221, 223, 224, 226, 226.3,
19 226.7, 510, 512, 558, 1174 1182.12, 1194, 1197, 1197.1, 1198, and 2802, and sections 3, 5, 7,
20 and 14 of the applicable IWC Wage Orders. On June 23, 2020, Flores filed the Flores Class and
21 PAGA Action in state court, alleging claims for: (1) alleged failure to pay overtime in violation
22 of Labor Code §§ 510, 1198, and 1199; (2) alleged failure to pay minimum wages in violation of
23 Labor Code § 1194; (3) alleged failure to timely pay wages upon termination in violation of
24 Labor Code § 203; (4) alleged failure to provide accurate itemized wage statements in violation
25 of Labor Code § 226; (5) alleged failure to provide meal periods or fully pay break premiums in
26 violation of Labor Code §§ 226.7 and 512; (6) alleged failure to provide rest breaks in violation
27 of Labor Code § 226.7; (7) alleged unlawful discounts and deductions in violation of Labor Code
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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:
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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.
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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.
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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
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1 overtime and/or reporting time pay (including alleged violations of Labor Code Sections 201,
2 202, 510, 1194, 1198, and 1199 and similar provisions of the California Wage Orders), (2)
3 failure to properly pay reporting pay (alleged violations of the reporting and call-back pay
4 provisions of the California Wage Orders), (3) failure to provide meal and/or rest breaks in
5 accordance with Labor Code Section 512 (and/or the applicable California Wage Order), (4)
6 failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7
7 (and/or the applicable California Wage Order), (5) the form of final payment of wages (including
8 alleged violations of Labor Code Sections 212 and 213 and/or the similar provisions of the
9 California Wage Orders), (6) failure to provide accurate wage statements or otherwise keep
10 accurate payroll records (alleged violations of Labor Code Section 226, 1174 and similar
11 provisions of the California Wage Orders); and (7) failure to pay all wages owed upon
12 employment termination. PAGA Released Claims, however, do not include the Excluded
13 Claims.
14

15 **IV. OPT OUTS**

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

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

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

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

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

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

24
25 Dated: *Dec. 8, 2023*

JUDGE OF THE SUPERIOR COURT

26
27 By: *Eddie C. Sturgeon*
28 The Honorable Judge Eddie C. Sturgeon