

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DOUGLAS PATTON, on behalf of the State)	Case No.: 21CV387956
of California, as a private attorney general, and)	
as an individual, on behalf of himself and on)	ORDER GRANTING PLAINTIFFS’
behalf of all persons similarly situated, and)	MOTION FOR PRELIMINARY APPROVAL
SALVADOR REYNOSA, JR., an individual,)	OF CLASS ACTION AND PAGA
on behalf of himself and on behalf of all)	SETTLEMENT
persons similarly situated,)	
Plaintiffs,)	Dept. 7
v.)	
HOME DEPOT U.S.A., INC., et al.,)	
Defendants.)	

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiffs Douglas Patton and Salvador Reynosa, Jr. (collectively, “Plaintiffs”) allege that defendant Home Depot U.S.A., Inc. (“Home Depot” or “Defendant”) failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiffs’ motion for preliminary approval of settlement, which is unopposed. As discussed below, subject to the changes in the notice, the Court GRANTS the motion.

1 **I. BACKGROUND**

2 According to the allegations of the operative Second Amended Class and Representative
3 Complaint (“SAC”), Mr. Patton has been employed by Defendant since August 2017 as a non-
4 exempt, hourly associate, while Mr. Reynosa was employed in a similar role from January 2018
5 to October 2018. (SAC, ¶¶ 2-3.) Plaintiffs allege that Defendant failed to pay them for all hours
6 worked by requiring them to perform work off the clock. (*Id.*, ¶ 8.) Plaintiffs would clock out of
7 Defendant’s timekeeping system for meal periods but would continue to work at Defendant’s
8 direction. (*Id.*) As a result, Plaintiffs forfeited minimum wages and overtime wage
9 compensation by working without their time being correctly recorded and without compensation
10 at the applicable rates. (*Id.*) Defendant also failed to include Plaintiffs’ non-discretionary
11 incentive compensation as part of their “regular rate of pay,” underpaid Plaintiffs’ sick wages,
12 and failed to provide them with meal and rest periods during which they were fully relieved from
13 work. (*Id.*, ¶¶ 11-14.) Additionally, Plaintiffs were not reimbursed for business expenses
14 incurred as a result of their employment. (*Id.*, ¶¶ 15-16.)

15 Based on the foregoing allegations, the SAC asserts the following causes of action: (1)
16 unfair business practices; (2) failure to pay overtime wages; (3) failure to pay minimum wages;
17 (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6)
18 failure to reimburse required business expenses; (7) failure to provide required rest periods; (8)
19 failure to provide accurate itemized wage statements; and (9) violation of PAGA.

20 Plaintiffs now seek an order: preliminarily approving the proposed settlement;
21 conditionally certifying the proposed class for settlement purposes only; appointing Plaintiffs as
22 class representatives; appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit
23 Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik
24 De Blouw LLP as class counsel; approving the form and method for providing class-wide notice;

1 appointing ILYM Group as the settlement administrator; and setting a final approval hearing
2 date.

3 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

4 **A. Class Action**

5 Generally, “questions whether a [class action] settlement was fair and reasonable,
6 whether notice to the class was adequate, whether certification of the class was proper, and
7 whether the attorney fee award was proper are matters addressed to the trial court’s broad
8 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
9 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
10 260.)

11 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
12 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
13 complexity and likely duration of further litigation, the risk of maintaining class action status
14 through trial, the amount offered in settlement, the extent of discovery completed and the stage
15 of the proceedings, the experience and views of counsel, the presence of a governmental
16 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,
17 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

18 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
19 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
20 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
21 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
22 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
23 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
24 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
25 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation

marks omitted.) The trial court also must independently confirm that “the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be “provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to

benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT PROCESS

On January 26, 2021, Mr. Reynosa filed a putative class action against Defendant in Riverside County Superior Court on behalf of all non-exempt employees of Defendant who worked in a California Distribution Center based on the same claims similar to those asserted in the instant action. This case was then removed to federal court, specifically the Eastern District of California.

On October 13, 2021, Mr. Patton filed a representative PAGA action against Defendant, followed by an amended version of the complaint on August 17, 2022. Mr. Reynosa filed a first amended complaint on October 25, 2021, that added Mr. Patton as the first named plaintiff, as well as additional factual allegations pertaining to the various Labor Code violations Plaintiffs experienced.

During the course of the litigation, Plaintiffs’ counsel engaged in investigation of the various claims, with the parties participating in both formal and informal discovery. Plaintiffs and corporate representatives of Defendant were deposed, and Defendant produced documents and information pertaining to: the composition of the class; payroll data; its wage and hour policies and job descriptions; Plaintiffs’ personnel files; and samples of wage statements

provided to employees. Based on this information, Plaintiffs' counsel, in concert with their expert, was able to prepare, monetary valuations of all of the claims asserted in these actions.

On November 14, 2022, the parties participated in mediation with Jeff Ross, Esq., an experienced mediator of wage and hour class actions. While the parties were not able to resolve their dispute that day, they were able to reach a global settlement in the following months after engaging in further negotiations involving Mr. Ross. The parties executed memorandum of understanding regarding the material settlement terms on April 14, 2023.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is \$1,112,500. Attorney fees of up to one-third of the gross settlement (\$370,333), litigation costs of up to \$50,500, and administration expenses not to exceed \$60,000 will be paid from the gross settlement. \$20,000 will be allocated to PAGA penalties, 75% of which (\$15,000) will be paid to the LWDA, with the remaining 25% (\$5,000) paid to "PAGA Group Members," who are defined as "any non-exempt, hourly associate employed by Home Depot in the State of California at a supply chain facility at any point during [January 26, 2020 through April 16, 2023], excluding those associates who worked at the Tracy RDC prior to June 17, 2021." Plaintiffs will each seek a service award of \$10,000.

The net settlement amount will be allocated to class members- defined as "any non-exempt, hourly associate employed by [Home Depot] (and its past and present Affiliates) in the State of California at a California supply chain facility at any point during [January 26, 2017 through April 16, 2023], excluding those associates who worked at the Tracy RDC prior to June 17, 2021"- on a pro-rata basis based on the number of weeks worked during the class period. For tax purposes, settlement payments will be allocated 25% to wages and 75% to interest and penalties. The employer side payroll taxes will be paid by Defendant separately from the gross settlement amount. 100% of the PAGA payment to PAGA Group Members will be allocated to

1 penalties. Funds associated with checks uncashed after 180 days will be transmitted to the State
2 of California to be held pursuant to Unclaimed Property Law.

3 In exchange for settlement, class members who do not opt out will release:

4 [A]ny claim for restitution, penalties, civil, damages, or any other form of relief asserted
5 or pleaded (or that could have been pleaded based on the factual allegations) in the Operative
6 Complaint and/or notice provided to the LWDA by any Named Plaintiff that accrued during the
7 Class Period, including claims for (1) unpaid wages; (2) unpaid overtime (included alleged
8 violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the
9 California Wage Orders); (3) minimum wage violations (including alleged violations of Labor
10 Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage
11 Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section
12 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay
13 break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage
14 Order); (6) violations of California's sick leave laws (including COVID-related emergency sick
15 leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or
16 emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of
17 Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide
18 accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor
19 Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely
20 pay wages (including wages due upon termination and waiting time penalties) as required by
21 Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage
22 Order).

23 PAGA Group Members will release:

24 [C]laims arising during the PAGA Period made on behalf of the LWDA and/or State of
25 California included in any notice provided to the LWDA by any Named Plaintiffs or as pleaded

1 in any Complaint or that could have been pled based on factual allegations contained in the
2 Operative Complaint or any written notice provided to the LWDA, including PAGA claims for
3 or predicated on (1) unpaid wages; (2) unpaid overtime (included alleged violations of Labor
4 Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage
5 Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210,
6 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to
7 provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the
8 applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums
9 as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6)
10 violations of California's sick leave laws (including COVID-related emergency sick leave); (7)
11 miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick
12 leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section
13 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage
14 statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section
15 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages
16 (including wages due upon termination and waiting time penalties) as required by Labor Code
17 Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order); (11) any
18 alleged failure to comply with California's Wage Orders including provisions regulating
19 conditions of employment including temperature and suitable seating; and (12) civil penalties
20 pursuant to PAGA based on any of the foregoing alleged violations.

21 Consistent with the statute, PAGA Group Members will not be able to opt out of the
22 PAGA portion of the settlement. The foregoing releases are both appropriately tailored to the
23 allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th
24 521, 537.)

1 **V. FAIRNESS OF SETTLEMENT**

2 Utilizing the data and information obtained from Defendant through formal and informal
3 discovery, Plaintiffs' counsel and its retained expert, Berger Consulting, calculated the maximum
4 amount of recovery for each claim as follows: \$0 (regulate rate claim); \$700,134 (unpaid wages
5 due rounding practices); \$0 (underpaid meal periods); \$3,378,955 (missed rest periods);
6 \$834,310 (failure to reimburse expenses); \$0 (waiting time penalties); \$0 (wage statement
7 violations); and \$8,784,900 to \$17,569,800 (PAGA penalties). Counsel reduced the foregoing
8 amounts by: the risk of class certification being denied due to individualized issues; the difficulty
9 of establishing class-wide liability on all claims; the release of certain claims due to settlements
10 reached in other class actions against Home Depot (including the *Barragan* and *Utne* actions);
11 the strength of Defendant's defenses to Plaintiffs' claims (e.g., its practices complied with all
12 applicable labor laws, all work time was properly recorded and compliant rest and meal periods
13 provided, it provided reimbursement for business expenses or such reimbursement was not
14 required because the expenses were voluntarily incurred and any non-compliance was
15 inadvertent and not willful); and with respect to the PAGA penalties, the same risks underlying
16 the class claims and the likelihood any penalties would be drastically reduced to fall within the
17 range of .27% to 2% of the total settlement amount typically approved in similar cases. The
18 settlement amount represents more than 22% of the potential maximum damages.

19 Considering the portion of the case's value attributable to uncertain penalties, claims that
20 could be difficult to certify for class treatment, and the multiple, dependent contingencies that
21 Plaintiffs would have had to overcome to prevail on their claims, the settlement achieves a good
22 result for the class. For purposes of preliminary approval, the Court finds that the settlement is
23 fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable
24 in light of the statute's purposes.

1 Of course, the Court retains an independent right and responsibility to review the
2 requested attorney fees and award only so much as it determines to be reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
4 Counsel shall submit lodestar information prior to the final approval hearing in this matter so the
5 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
6 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
7 reasonableness of a percentage fee through a lodestar calculation].)

8 VI. PROPOSED SETTLEMENT CLASS

9 Plaintiffs requests that the following settlement class be conditionally certified:

10 All non-exempt, hourly associates employed by Home Depot U.S.A., Inc. (and its past
11 and present Affiliates) in the State of California at a California supply chain facility at any point
12 during the Class Period, excluding those associates who worked at the Tracy RDC prior to June
13 17, 2021.

14 A. Legal Standard for Certifying a Class for Settlement Purposes

15 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
16 approving or denying certification of a provisional settlement class after [a] preliminary
17 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
18 class “when the question is one of a common or general interest, of many persons, or when the
19 parties are numerous, and it is impracticable to bring them all before the court”

20 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
21 (1) an ascertainable class and (2) a well-defined community of interest among the class
22 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
23 *Drug Stores*).) “Other relevant considerations include the probability that each class member
24 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
25 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”

1 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
2 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
3 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

4 In the settlement context, “the court’s evaluation of the certification issues is somewhat
5 different from its consideration of certification issues when the class action has not yet settled.”
6 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
7 settlement-only context, the case management issues inherent in the ascertainable class
8 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
9 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
10 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
11 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

12 **B. Ascertainable Class**

13 A class is ascertainable “when it is defined in terms of objective characteristics and
14 common transactional facts that make the ultimate identification of class members possible when
15 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
16 (*Noel*.) A class definition satisfying these requirements “puts members of the class on notice
17 that their rights may be adjudicated in the proceeding, so they must decide whether to intervene,
18 opt out, or do nothing and live with the consequences. This kind of class definition also
19 advances due process by supplying a concrete basis for determining who will and will not be
20 bound by (or benefit from) any judgment.” (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

21 “As a rule, a representative plaintiff in a class action need not introduce evidence
22 establishing how notice of the action will be communicated to individual class members in order
23 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
24 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
25 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on

1 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
2 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
3 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
4 own account records. No more is needed.”].)

5 Here, the estimated 12,000 class members are readily identifiable based on Defendant’s
6 records, and the settlement class is appropriately defined based on objective characteristics. The
7 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

8 **C. Community of Interest**

9 The “community-of-interest” requirement encompasses three factors: (1) predominant
10 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
11 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
12 Cal.4th at pp. 326, 332.)

13 For the first community of interest factor, “[i]n order to determine whether common
14 questions of fact predominate the trial court must examine the issues framed by the pleadings
15 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
16 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict
17 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
18 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
19 jointly tried, when compared with those requiring separate adjudication, are so numerous or
20 substantial that the maintenance of a class action would be good for the judicial process and to
21 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
22 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts
23 common to all members of the class, a class will be certified even if the members must
24 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

1 Here, common legal and factual issues predominate. Plaintiffs' claims all arise from
2 Defendant's wage and hour practices applied to the similarly-situated class members.
3 As for the second factor, "[T]he typicality requirement is meant to ensure that the class
4 representative is able to adequately represent the class and focus on common issues. It is only
5 when a defense unique to the class representative will be a major focus of the litigation, or when
6 the class representative's interests are antagonistic to or in conflict with the objectives of those
7 she purports to represent that denial of class certification is appropriate. But even then, the court
8 should determine if it would be feasible to divide the class into subclasses to eliminate the
9 conflict and allow the class action to be maintained. (*Medraza v. Honda of North Hollywood*
10 (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

11 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt
12 employees and allege that they experienced the violations at issue. The anticipated defenses are
13 not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in
14 conflict with those of the class.

15 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
16 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
17 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
18 representative does not necessarily have to incur all of the damages suffered by each different
19 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
20 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
21 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
22 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
23 omitted.)

1 Plaintiffs have the same interest in maintaining this action as any class member would
2 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
3 adequacy of representation.

4 **D. Substantial Benefits of Class Certification**

5 “[A] class action should not be certified unless substantial benefits accrue both to
6 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
7 internal quotation marks omitted.) The question is whether a class action would be superior to
8 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
9 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
10 class action is proper where it provides small claimants with a method of obtaining redress and
11 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
12 120–121, internal quotation marks omitted.)

13 Here, there are an estimated 12,000 class members. It would be inefficient for the Court
14 to hear and decide the same issues separately and repeatedly for each class member. Further, it
15 would be cost prohibitive for each class member to file suit individually and it is clear that a
16 class action provides substantial benefits to both the litigants and the Court in this case.

17 **VII. NOTICE**

18 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
19 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
20 for class members to follow in filing written objections to it and in arranging to appear at the
21 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
22 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
23 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
24 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
25

1 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
2 3.766(e).)

3 The parties have selected ILYM Group (“ILYM”) as the settlement administrator.
4 Within thirty days of preliminary approval, Defendant will provide a list of all class members
5 along with pertinent identifying information (including last known address) to the administrator.
6 Within an additional 30 days of receiving this data, ILYM will mail the notice packet to class
7 members and PAGA Group Members after updating their addresses through appropriate tracing
8 methods, including skip tracing.

9 Here, the notice describes the lawsuit, explains the settlement, and instructs class
10 members that they may opt out of the settlement (except the PAGA component) or object. The
11 gross settlement amount and estimated deductions are provided. Class members are informed of
12 their qualifying pay periods as reflected in Defendant’s records and are instructed how to dispute
13 this information, and are given 60 days to request exclusion from the class or submit a written
14 objection to the settlement. Returned notices will be re-mailed to any forwarded address
15 provided or an updated address located through a skip trace, and these individuals will have an
16 additional 14 days to opt out or object.

17 The foregoing notice procedures are appropriate and are approved.

18 The form of notice is generally adequate but must be modified to instruct class members
19 that they may opt out of or object to the settlement simply by providing their name, without the
20 need to provide their phone number or other personal information, including the final four digits
21 of their social security number.

22 Regarding appearances at the final fairness hearing, the notice shall be further modified
23 to instruct class members as follows:

24 The judge overseeing this case encourages remote appearances. (As of August 15, 2022,
25 the Court’s remote platform is Microsoft Teams.) Class members who wish to appear remotely

1 should contact class counsel at least three days before the hearing if possible. Instructions for
2 appearing remotely are provided
3 at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml
4 and should be reviewed in advance. Class members may appear remotely using the
5 Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference
6 call number for Department 7. Any class member who wishes to appear in person should check
7 in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait
8 for a sheriff's deputy to escort him or her to the courtroom for the hearing.

9 **VIII. CONCLUSION**

10 Presuming changes to the notice concerning the information a class member requesting to
11 be excluded from the settlement is required to provide are made, the Court GRANTS the motion
12 for preliminary approval.

13 The final approval hearing shall take place on **September 26, 2024** at 1:30 in Dept. 7.
14 The following class is preliminarily certified for settlement purposes:

15 All non-exempt, hourly associates employed by Home Depot U.S.A., Inc. (and its past
16 and present Affiliates) in the State of California at a California supply chain facility at any point
17 during the Class Period, excluding those associates who worked at the Tracy RDC prior to June
18 17, 2021.

19
20 DATED: April 5, 2024


21 CHARLES F. ADAMS
22 Judge of the Superior Court
23
24
25