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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

DOUGLAS PATTON, on behalf of the
State of California, as a private attorney
general, and as an individual, on behalf of
himself and on behalf of all persons
similarly situated, and SALVADOR
REYNOSA, JR., an individual, on behalf of
himself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC., a
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. 21CV387956

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: April 4, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Charles F. Adams
Dept: 7

Date Filed: October 13, 2021
Trial Date: Not set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Salvador Reynosa, Jr. and Douglas Patton (“Plaintiffs”) in this
4 matter. As such, I am fully familiar with the facts, pleadings and history of this matter. The
5 following facts are within my own personal knowledge, and if called as a witness, I could testify
6 competently to the matters stated herein.

7 2. This declaration is being submitted in support of Plaintiffs’ unopposed motion for
8 preliminary approval of the proposed class action settlement with Defendant Home Depot U.S.A.,
9 Inc. (“Defendant”), which motion seeks entry of an order: (1) preliminarily approving the proposed
10 settlement of this class and representative action with Defendant; (2) for settlement purposes only,
11 conditionally certifying the Class, which is comprised of all non-exempt, hourly associates
12 employed by Home Depot U.S.A., Inc. (and its past and present Affiliates) in the State of California
13 at a California supply chain facility at any point during the Class Period, excluding those associates
14 who worked at the Tracy RDC prior to June 17, 2021; (3) provisionally appointing Plaintiffs as the
15 representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
16 Nordrehaug, Aparajit Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal
17 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and
18 method for providing class-wide notice; (6) directing that notice of the proposed settlement be
19 given to the Class; (7) appointing ILYM Group as the Settlement Administrator; and (8) scheduling
20 a final approval hearing date proposed for September 5, 2024 to consider Plaintiffs’ motion for final
21 approval of the settlement and for approval of attorneys' fees and expenses. Attached hereto as
22 Exhibit #1 is a copy of the fully executed Class Action and PAGA Settlement Agreement
23 (“Agreement”) along with exhibits thereto. The form of the Agreement is based upon the Los
24 Angeles County Superior Court model form for a class and PAGA settlement. This Declaration
25 incorporates by reference the definitions in the Agreement, and all terms defined therein shall have
26 the same meaning as set forth in the Agreement.

1 Fairness of Settlement

2 3. As consideration for this Settlement, the Maximum Settlement Payment is One
3 Million One Hundred Twelve Thousand and Five Hundred U.S. Dollars (\$1,112,500) to be paid by
4 Defendant, as set forth in the Agreement. The Maximum Settlement Payment will settle all issues
5 pending in the Action between the Parties and will be made in settlement of the Released Class
6 Claims. The Maximum Settlement Payment includes all attorneys' fees and litigation costs, the
7 Service Enhancement payment to the Class Representatives, all settlement administration and
8 distribution fees and costs, the Reserve Fund, the PAGA Penalty Allocation, and all required
9 payments to the Settlement Class. The Maximum Settlement Payment does not include the
10 employer's share of payroll taxes which will be separately paid by Defendant. The Settlement is
11 all-in with no reversion to Defendant and no need to submit a claim form.

12 4. The relief provided in the Settlement will benefit all members of the Class. The
13 Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way.
14 Payments to the Class Members are all determined under a neutral methodology. Each Settlement
15 Class Member will receive the same opportunity to participate in and receive payment through a
16 neutral formula that is based upon the Workweeks worked by that individual.

17 5. On November 14, 2022, the Parties participated in an all-day mediation session
18 presided over by Jeff Ross, Esq., a respected and experienced mediator of wage and hour class
19 actions. In preparation for the mediation, Defendant provided Class Counsel with necessary
20 information for the members of the Class, including payroll data and information concerning the
21 composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger
22 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
23 After months of negotiations involving Mr. Ross, the Parties reached a global settlement and fully
24 executed a memorandum of understanding regarding material settlement terms on April 14, 2023.
25 The final settlement terms were negotiated and set forth in the Agreement now presented for this
26 Court's approval. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair,
27 reasonable and adequate.

1 6. Based upon 12,000 Class Members who collectively worked no more than 827,200
2 Workweeks (Agreement at ¶ 81), the Maximum Settlement Payment provides a value of \$92.70 per
3 Class Member and no less than \$1.34 per Workweek and after deductions, the Net Settlement
4 Amount provides an average recovery of \$48.43 per Class Member and a recovery of no less than
5 \$0.70 per Workweek. The calculations to compensate for the amount due to the Class Members at
6 the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in
7 advance of mediation. Class Counsel analyzed the data for putative class members and determined
8 the potential maximum damages for the class claims. For the Class, the value of the regular rate
9 claim was calculated to be \$0 because it was released by the *Barragan* settlement which was finally
10 approved in December 2023, the maximum value of the claim for unpaid wages due to the alleged
11 rounding practices rate was \$700,134, the maximum potential damages for underpaid meal period
12 premiums were estimated to be \$0 because Defendant paid more meal period premiums than
13 potential violations in the records, the maximum potential rest period damages were estimated to be
14 \$3,378,955 based upon one missed rest period per month, and the maximum potential damages for
15 failure to provide expense reimbursement were calculated to be \$834,310. In total, the damages for
16 the Class were calculated to have a maximum potential total value of \$4,913,399. In addition,
17 Plaintiff calculated that the maximum value of the potential waiting time penalties could have been
18 \$1,368,000 for the period prior to March 31, 2021 not covered by *Barragan*, however by the time
19 of this hearing, waiting time penalties will be valued at \$0 because this claim is being released by
20 the *Utne* Settlement, which is a \$72 million settlement for which final approval is being heard in
21 February 2024. The maximum value of the potential wage statement penalties were \$0 because this
22 claim was released by the *Barragan* settlement.¹ Defendant vigorously disputed Plaintiffs'

23 _____
24 ¹ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203
25 and 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate
26 defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium
27 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs
28 and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due.").

1 calculations and exposure theories. Consequently, the Maximum Settlement Payment represents
2 more than 22% of the potential maximum damages at issue for the Class in this case, assuming
3 these amounts could all be proven in full at trial.² The above maximum calculations should then be
4 adjusted in consideration for both the risk of class certification and the risk of establishing class-
5 wide liability on all claims. Given the amount of the Settlement as compared to the potential value
6 of the claims, the Settlement is most certainly fair and reasonable.

7
8 Procedural History of the Litigation

9 7. On January 26, 2021, Plaintiff Salvador Reynosa, Jr. filed a putative class action
10 against Home Depot U.S.A., Inc. in Riverside County Superior Court on behalf of all non-exempt
11 employees of Home Depot who worked in a California Distribution Center. This complaint was
12 removed to federal court, Eastern District of California, Case No. 2:21-CV-01096-WBS-KJN. The
13 complaint alleged claims for: 1) unfair competition in violation of the California Business &
14 Professions Code section 17200, et seq.; 2) failure to pay overtime wages in violation of Labor
15 Code section 510, et seq.; 3) failure to pay minimum wages in violation of Labor Code sections
16 1194, 1197, and 1197.1; 4) failure to provide compliant meal periods in violation of Labor Code
17 sections 226.7 and 512, and the applicable IWC wage order; 5) failure to provide compliant rest
18 periods in violation of Labor Code sections 226.7 and 512, and the applicable IWC wage order; 6)
19 failure to reimburse employee for required business expenses in violation of Labor Code section
20 2802; and 7) failure to provide wages when due in violation of Labor Code sections 201, 202, and
21 203. Home Depot removed the complaint to Central District of California under the Class Action
22 Fairness Act, and the case was then transferred to the Eastern District of California.

23 8. On July 29, 2021, Plaintiff Patton filed with the LWDA and served on Defendant a
24
25

26 ² Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
27 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed below at
28 ¶ 33.

1 notice under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover
2 civil penalties on behalf of Aggrieved Employees for various Labor Code violations ("PAGA
3 Notice"). A true and correct copy of the PAGA Notice is attached hereto as Exhibit #3. Plaintiff
4 Patton filed a PAGA representative action based on this notice letter in Santa Clara County Superior
5 Court on October 13, 2021, Case No. 21CV387956. On May 10, 2022, Plaintiff Patton gave an
6 amended notice to the State of an additional Labor Code violation based on the purported failure to
7 properly regulate temperature at the worksite in violation of applicable regulations. On August 17,
8 2022, Plaintiff Patton filed a First Amended Representative Action Complaint adding claims related
9 Defendant's failure to maintain temperature in each work area that provides reasonable comfort
10 consistent with industry-wide standards in compliance with California Code of Regulations, Title 8
11 Section 1 1070(15) to this Action.

12 9. On October 25, 2021, Reynosa filed a First Amended Complaint that added Plaintiff
13 Douglas Patton as the first named plaintiff. The First Amended Complaint also added additional
14 factual allegations that employees were not paid for all of their wages, were not paid meal and rest
15 period premiums at the regular rate of pay, new off-the-clock allegations regarding unpaid time
16 spent during mandatory COVID-19 health screenings, and a claim that Home Depot failed to
17 provide accurate itemized wage statements in violation of Labor Code section 226.

18 10. Over the course of litigation, the Parties engaged in the investigation of the claims,
19 including production of documents, class data, and other information, allowing for the full and
20 complete analysis of liabilities and defenses to the claims in the Action. The Parties performed
21 extensive discovery and depositions of Plaintiffs as well as corporate representatives of Defendant
22 were taken, along with informal discovery, which included the production and analysis of hundreds
23 of pages of documents. The information for mediation obtained by Plaintiff included: (1) data
24 concerning the class composition; (2) payroll data; (3) Defendant's wage and hour policies and job
25 descriptions; (4) the employment file for the Plaintiffs; and, (5) samples of wage statements
26 provided by Defendant. As such, Class Counsel received the data and information for the Class,
27 which was sufficient for Plaintiffs' expert to prepare the valuations of the claims for the Class.
28

1 11. Class Counsel has extensive experience in litigating wage and hour class actions in
2 California. The Parties have vigorously litigated the Action since inception. During the course of
3 litigation, the Parties each performed analysis of the merits and value of the claims. Plaintiffs and
4 Defendant have engaged in substantial research and investigation in connection with the Action.
5 Class Counsel has thoroughly analyzed the value of the claims during the prosecution of this Action
6 and utilized an expert to perform an analysis of the data and valuation of the claims.

7 12. Plaintiffs and Defendant agreed to discuss resolution of the Action through a
8 mediation. Prior to mediation, the Parties engaged in the above investigation and the exchange of
9 documents and information in connection with the Action. On November 14, 2022, the Parties
10 participated in an all-day mediation presided over by Jeff Ross, a respected and experienced
11 mediator of wage and hour class actions. After months of negotiations involving Mr. Ross, the
12 Parties reached a global settlement and fully executed a memorandum of understanding regarding
13 material settlement terms on April 14, 2023. The Parties then negotiated the final terms of the
14 settlement as set forth in the Agreement. At all times, the negotiations were arm's length and
15 contentious.

16 13. Although a settlement has been reached, Defendant denies any liability or
17 wrongdoing of any kind associated with the claims alleged in the Actions and further deny that, for
18 any purpose other than settlement, the Action is appropriate for class and/or representative
19 treatment. Defendant contends, among other things, that it has properly compensated the Class
20 Members and complied at all times with the California Labor Code, applicable Wage Order, and all
21 other laws and regulations. Further, Defendant contends that class certification is inappropriate for
22 any reason other than for settlement. Plaintiffs contend that Defendant violated California wage
23 and hour laws. Plaintiffs further contend that the Action is appropriate for class certification on the
24 basis that the claims meet the requisites for class certification. Without admitting that class
25 certification is proper, Defendant has stipulated that the above Class may be certified for settlement
26 purposes only. (Agreement at ¶¶ 74, 76.) The Parties agree that certification for settlement
27 purposes is not an admission that class certification is proper. Further, the Agreement is not
28

1 admissible in this or any other proceeding as evidence that the Class could be certified absent a
2 settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the
3 requisites for establishing class certification with respect to the Class are satisfied.

4 14. Class Counsel has conducted a thorough investigation into the facts of the class
5 action. Over the course of three years, Class Counsel diligently evaluated the Class Members'
6 claims against Defendant. Prior to the settlement negotiations, counsel for Defendant provided
7 Class Counsel with all necessary information for the Class and the claims alleged. In addition,
8 Class Counsel previously negotiated settlements with other employers in actions involving nearly
9 identical issues and analogous defenses. Based on the foregoing data and their own independent
10 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant
11 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of
12 the Class in light of all known facts and circumstances, including the risk of significant delay,
13 defenses asserted by Defendant, and potential appellate issues.

14
15 Settlement Terms and Plan of Allocation

16 15. The Maximum Settlement Payment is One Million One Hundred Twelve Thousand
17 and Five Hundred U.S. Dollars (\$1,112,500). (Agreement at ¶ 1.22.) Under the Settlement, the
18 Maximum Settlement Payment consists of the following elements: (1) payment of the Settlement
19 Payments to the Settlement Class Members; (2) Court-approved attorneys' fees and litigation costs;
20 (3) Settlement Administration Expenses; (4) the Service Enhancements to Plaintiffs; and (5) the
21 PAGA Penalty Allocation payment. (Agreement at ¶ 37.) The Maximum Settlement Payment does
22 not include Defendant's share of payroll taxes. (Agreement at ¶ 37.) The Maximum Settlement
23 Payment shall be all-in with no reversion to Defendant. (Agreement at ¶ 79.)

24 16. Within twenty-one (21) days after the Settlement Effective Date, Defendant shall
25 deposit the Maximum Settlement Payment with the Depository Bank. (Agreement at ¶ 95.) The
26 distribution of Settlement Payments to Settlement Class Members along with the other Court-

1 approved distributions shall be made by the Settlement Administrator within thirty (30) days after
2 the Settlement Effective Date. (Agreement at ¶ 104.)

3 17. The amount remaining in the Maximum Settlement Payment after the deduction of
4 Court-approved amounts for Class Counsel's attorneys' fees and litigation costs as approved by the
5 Court, Settlement Administration Expenses, the Reserve Fund, the LWDA Penalty Amount as
6 approved by the Court, the PAGA Group Payment, Service Enhancement to the Class
7 Representatives as approved by the Court (called the "Net Settlement Amount") shall be allocated
8 to Class Members as their Settlement Payments. (Agreement at ¶¶ 38, 67 and 103.) From the Net
9 Settlement Amount, the Settlement Payment for each Settlement Class Member means the
10 Settlement Class Member Share multiplied by the Net Settlement Amount less applicable taxes.
11 (Agreement at ¶ 67.) "Settlement Class Member Share" means the Workweeks worked by the
12 Settlement Class Member during the Class Period divided by the aggregate number of Workweeks
13 worked by the Settlement Class during the Class Period. (Agreement at ¶ 46.) Workweeks will
14 initially be based on Defendant's records; however, Class Members will have the right to challenge
15 the number of Workweeks.

16 18. Class Members may choose to opt-out of the Settlement by following the directions
17 in the Class Notice. (Agreement at ¶ 82, Ex. A.) All Class Members who do not "opt out" will be
18 deemed Settlement Class Members who will be bound by the Settlement and will be entitled to
19 receive a Settlement Payment. (Agreement at ¶ 63.) All PAGA Group Members, including those
20 who submit an opt-out request, will still be paid their allocation of the PAGA Penalty Allocation
21 and will remain subject to the release of the Released PAGA Claims regardless of their request for
22 exclusion. (Agreement at ¶ 82.) Finally, the Class Notice will advise the Class Members of their
23 right to object to the Settlement. (Agreement at ¶ 83, Ex. A.)

24 19. A Settlement Class Member must cash his or her Settlement Payment check within
25 180 days after it is mailed. (Agreement at ¶ 106.) Any settlement checks not cashed within 180
26 days will be voided and any funds represented by such checks to the California Controller's
27 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
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1 subject to the requirements of California Code of Civil Procedure Section 384 (b). (Agreement at ¶
2 106.)

3 20. Subject to Court approval, the Parties have agreed on ILYM Group to administer the
4 settlement in this action ("Settlement Administrator"). The Settlement Administrator will be paid
5 for settlement administration in an amount not to exceed \$60,000. (Agreement at ¶ 60.)

6 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
7 a sum not to exceed one-third of the Maximum Settlement Payment, as the Class Counsel attorneys'
8 fees. (Agreement at ¶ 79.) Class Counsel will also be allowed to apply separately for an award of
9 litigation costs. (Agreement at ¶ 79.) Class Counsel's litigation costs are estimated to not exceed
10 \$50,500. Subject to Court approval, the Agreement provides for a payment of no more than
11 \$10,000 each to the Plaintiffs as the Service Enhancements. (Agreement at ¶¶ 59, 79.)

12 22. Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the
13 Maximum Settlement Payment for PAGA Penalty Allocation under the California Private Attorneys
14 General Act, Cal. Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express
15 requirements of Labor Code § 2699(i), the PAGA Penalty Allocation shall be allocated as follows:
16 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the
17 civil penalties and 25% allocated to the PAGA Group Member Amounts to the PAGA Group
18 Members based on the number of their respective PAGA Pay Periods. (Agreement at ¶¶ 36, 43, 46.)
19 As set forth in the accompanying proof of service, the LWDA has been served with this motion and
20 the Agreement.

21
22 Risks of Continued Litigation and Standards for Approval

23 23. Plaintiffs and Class Counsel recognize the expense and length of continuing to
24 litigate and trying this Action against Defendant and then litigating possible appeals which could
25 take several years. Class Counsel has also taken into account the uncertain outcome and risk of
26 litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of
27 and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in
28

1 the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the
2 Settlement set forth in the Agreement is in the best interest of the Class Members.

3 24. Here, a number of defenses asserted by Defendant present serious threats to the
4 claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices
5 complied with all applicable Labor laws. Defendant argued that all work time was properly
6 recorded and paid for and that there was no miscalculation of the regular rate. Defendant contends
7 that its meal and rest period policies fully complied with California law, and Defendant did not fail
8 to provide the opportunity for legally required rest breaks. As to meal periods, Defendant
9 established that it paid meal period premiums for more missed meal periods than violations.
10 Further, as to meal and rest periods, the Defendant could argue that the *Barragan* settlement, which
11 received final approval in December 2023, released all such claims. As to expense reimbursement,
12 Defendant contended that it did not fail to provide reimbursement for necessary business expenses
13 and that claimed expenses were incurred voluntarily and/or for the convenience of employees and is
14 therefore not required reimbursement. Defendant argued that the decisions in *Brinker v. Superior*
15 *Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108
16 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs'
17 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant
18 also argues that based on its facially lawful practices, it acted in good faith and without willfulness,
19 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
20 statements. If successful, Defendant's defenses could eliminate or substantially reduce any
21 recovery to the Class. While Plaintiffs believes that these defenses could be overcome, Defendant
22 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

23 25. There was also a significant risk that, if the Action was not settled, Plaintiffs would
24 be unable to obtain class certification and thereby not recover on behalf of any employees other
25 than himself. Defendant argued that the individual experience of each putative class member varied
26 with respect to the claims. Defendant could also contest class certification by arguing injury and
27 good faith were case-by-case determinations that precluded class certification. Plaintiffs are aware
28

1 of other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar,*
2 *Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class
3 certification was successful, as demonstrated by the California Supreme Court decision in *Duran v.*
4 *U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class
5 wide recovery even where the class has been certified. While other cases have approved class
6 certification in wage and hour claims, class certification in this action would have been hotly
7 disputed and was by no means a foregone conclusion.

8 26. This settlement is therefore certainly entitled to preliminary approval. Were this
9 case to go to trial, the Plaintiffs and the other class members would need to prove, among other
10 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

11 27. Plaintiffs will apply to the Court for Service Enhancements in consideration for their
12 service and for the risks undertaken on behalf of the class. (Agreement at ¶ 79.) Plaintiffs
13 performed their duties admirably by working with Class Counsel. Declarations of the Plaintiffs are
14 presented in support. For purposes of this preliminary approval stage, the requested service award
15 of \$10,000 is well within the accepted range of awards for purposes of preliminary approval. *See*
16 *e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding
17 \$12,500 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*,
18 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class
19 member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740,
20 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class member recoveries were
21 as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal.
22 Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action);
23 *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. Jan. 27 2007) (awarding \$25,000
24 service award in overtime class action and a pool of \$100,000 in enhancements). As explained in
25 *Glass*, service awards are routinely awarded to class representatives to compensate the employees
26 for the time and effort expended on the case, for the risk of litigation, for the fear of suing an
27 employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
28

1 all employees. 2007 WL 221862 at *16-17. Below, I provided a long list of similar Court-approved
2 service awards.

3 28. The stage of the proceedings at which this Settlement was reached also militates in
4 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
5 conducted a thorough investigation into the facts of the class action. Class Counsel began
6 investigating the Class Members' claims before the Action was filed. Class Counsel engaged in an
7 investigation of the claims and conducted a review and analysis of the relevant documents and data.
8 Prior to mediation, the Parties engaged in extensive discovery and depositions of Plaintiffs as well
9 as corporate representatives of Defendant were taken. Class Counsel was also experienced with the
10 claims at issue here, as Class Counsel previously litigated and settled similar claims in other
11 actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
12 information to make an informed judgment regarding the likelihood of success on the merits and the
13 results that could be obtained through further litigation.

14 29. Based on the foregoing data and their own independent investigation and evaluation,
15 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the
16 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
17 Class in light of all known facts and circumstances, including the risk of significant delay, defenses
18 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
19 Counsel for both parties possessed sufficient information to make an informed judgment regarding
20 the likelihood of success on the merits and the results that could be obtained through further
21 litigation.

22
23 Class Certification Issues

24 30. Plaintiffs contend that the proposed settlement meets all of the requirements for class
25 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
26 the Court may appropriately approve the Class as defined in the Agreement. This Court should
27 conditionally certify the Class for settlement purposes only, defined as follows:

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

5 (Agreement at ¶ 13.)

6 The “Class Period” is from January 26, 2017, through April 16, 2023, except that the Class Period
7 for Class Members who worked at the Tracy RDC shall be June 17, 2021, through April 16, 2023.

8 (Agreement at ¶ 17.)

9 a. **Numerosity** - Here, Plaintiffs assert that the approximately 12,000
10 individuals who comprise the Class can be identified based on Defendant’s records and are
11 sufficiently numerous for class certification.

12 b. **Common Issues Predominate** - Here, Plaintiff contends that common
13 questions of law and fact are present, and specifically the common questions of whether
14 Defendant’s practices were lawful, whether Defendant properly paid wages due to alleged rounding,
15 whether the Defendant failed to provide all legally required meal and rest periods to class members,
16 whether Defendant failed to provide required expense reimbursement, and whether Class Members
17 are entitled to damages and penalties as a result of these practices. Plaintiffs contend that
18 certification of this Class is appropriate because Defendant allegedly engaged in uniform practices
19 with respect to the Class Members. As a result, these common questions of liability could be
20 answered on a class wide basis.

21 c. **Typicality** - In the instant case, Plaintiffs contend that there can be little
22 doubt that the typicality requirement is satisfied. The Plaintiffs worked for Defendant in a hourly,
23 non-exempt position at a California supply chain facility during the Class Period. Plaintiffs contend
24 that, like every other member of the Class, they were subject to the same practices and policies of
25 Defendant and were subject to the same defenses. Thus, Plaintiffs assert that the claims of the
26 Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve
27 the same employment policies and practices of Defendant, and are based on the same legal theories.

28 d. **Adequacy** - Plaintiffs contend that the Class Members are adequately

1 represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest
2 with other class members, and (b) will prosecute the case vigorously on behalf of the class. First,
3 Plaintiffs are well aware of their duties as the representatives of the Class and have actively
4 participated in the prosecution of this case to date. Plaintiffs effectively communicated with Class
5 Counsel, provided documents and information to Class Counsel, and participated in the
6 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential
7 to the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
8 competent counsel who are experienced in employment class actions and who have no conflicts.
9 Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the
10 Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.
11

12 31. Class Counsel's Adequacy of Representation and Absence of Conflict: Blumenthal
13 Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting class action lawsuits and can
14 competently represent the Class. Other lawyers at my firm and I have extensive class litigation
15 experience. We have handled a number of class actions and complex cases and have acted both as
16 counsel and as lead and co-lead counsel in a variety of these matters. We have successfully
17 prosecuted and obtained significant recoveries in numerous class action lawsuits and other lawsuits
18 involving complex issues of law and fact. My firm is particularly experienced in wage and hour
19 employment law class actions, including claims for misclassification, overtime, expense
20 reimbursement, unlawful deduction of wages, and missed rest and meal periods. Blumenthal
21 Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over hundreds of wage
22 and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has been found to be
23 adequate counsel by the courts throughout California. We have been approved as experienced class
24 counsel by both state and federal courts in California in contested class certification proceedings. A
25 true and correct copy of the resume of my firm is attached hereto as Exhibit #2. The Class in this
26 settlement is defined as "all non-exempt, hourly associate employed by Home Depot U.S.A., Inc.
27 (and its past and present Affiliates) in the State of California at a California supply chain facility at
28 any point during the Class Period, excluding those associates who worked at the Tracy RDC prior

1 to June 17, 2021.” I have reviewed my firm’s cases and representation of other plaintiffs and there
2 is no conflict or representation which would prevent my firm from representing the interests of the
3 Class this case. My firm only represents employees, and not employers. My firm has never
4 represented Defendant nor any affiliate of the Defendant. My firm’s only interest in the subject
5 matter of this litigation is to ensure a recovery to the Class and to maximize that recovery. Finally,
6 our allegiance to the Class and the claims of the Class is not inconsistent with our allegiance to
7 pursue the claims on behalf of other employees and classes as the claims are all against different
8 and distinct employers. I can think of no conflict that would arise in our representation of the Class
9 and our adequate representation of the Class is evidenced by the successful prosecution of the class
10 claims to reach an excellent recovery for the Class. Moreover, neither the Plaintiffs nor Class
11 Counsel have any affiliation with the Administrator for this settlement. Thus, the adequacy
12 requirement for my firm is satisfied.

13 32. The Class Notice, drafted jointly and agreed upon by the Parties through their
14 respective counsel and to be approved by the Court, includes all relevant information. (*See Exhibit*
15 *“A” to the Agreement.*) The Class Notice will include, among other information: (i) information
16 regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out,
17 including a description of the applicable release; (iii) information to the Class Members regarding
18 how to opt out and how to object to the Settlement; (iv) the estimated Settlement Payment for each
19 of the Class Members; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount
20 of the Plaintiffs’ service award request; and (vi) the anticipated expenses of the Settlement
21 Administrator. The Class Notice will state that the Class Members shall have sixty (60) days from
22 the date that the Notice is mailed to them (the “Notice Period”) to request exclusion (opt-out) or to
23 submit an objection, which Response Deadline shall be extended by 14 days in the event of a re-
24 mailing. (Agreement at ¶¶ 39, 82, 83, 90.) Class Members shall be given the opportunity to object
25 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final
26 Approval Hearing. (Agreement at ¶ 83.) Class Members who do not submit a timely and proper
27 request to opt-out will automatically receive a payment of their Settlement Payment. This notice
28

1 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
2 information concerning the Settlement.

3
4 33. The PAGA Claim -

5 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
6 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
7 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
8 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the
9 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
10 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on
11 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
12 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
13 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
14 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
15 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
16 class members." (LWDA Response at p.4).

17 b. **Valuation of the PAGA Claim.** For mediation, Plaintiff calculated the
18 value of the alleged PAGA claim as to Aggrieved Employees for civil penalties to be between
19 \$8,784,900 and \$17,569,800 for a single violation in every one of the estimated 175,698 pay
20 periods at issue in the PAGA Period, depending on whether the violation was \$50 per pay period as
21 in the case of Labor Code § 558(a)(1) or the standard amount of \$100 per pay period for violation
22 of Labor Code § 1198. This valuation assumed that PAGA civil penalties would be awarded at the
23 maximum rate per pay period but without stacking.³ The PAGA allocation in the Settlement is
24 \$20,000. This allocation is justified by several important considerations. First, the PAGA claim

25
26 ³ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of between \$8,784,900 and \$17,569,800 is the civil penalty amount without stacking.
28 If stacking is permitted, then the valuation increases with each additional penalty added to each pay
period. Plaintiffs, however, are not aware of any PAGA award which permitted stacking and in the
cases cited herein, only one penalty per pay period was assessed.

1 was subject to the same risks as the underlying class claims. Second, Defendant asserted additional
2 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
3 Defendant could also argue that no penalties prior to the PAGA notification should be awarded, and
4 I am aware of one Court which has so ruled. These additional defenses present a risk to the PAGA
5 claim and the potential that some or all of the PAGA penalties sought may not be awarded. Second,
6 in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court affirmed a judgment which
7 only provided for a PAGA penalty of \$5 per violation. Therefore, at trial, any PAGA penalties
8 awarded could be significantly less than Plaintiffs' calculation even where Plaintiff prevailed on the
9 PAGA claim. Even if we assume that violations for all 175,698 pay periods were established, using
10 the valuation from *Carrington* results in a potential recovery of only \$878,490 under PAGA. This
11 means that the PAGA allocation in the Agreement is a reasonable percentage of this potential
12 PAGA recovery. Fourth, the interests of PAGA are also served by the Class recovery under the
13 reasoning of the LWDA in *O'Connor v. Uber*.

14 c. **Comparable PAGA Settlements.** In reaching the settlement of the PAGA
15 claim, Class Counsel was also aware of what allocations other Courts have approved for similar
16 PAGA settlements as compared to the total settlement amount. A class settlement that allocates
17 approximately 1.8% of the total settlement value to resolve the PAGA claims applicable to the class
18 is also supported by what has been approved in other wage-and-hour class settlements. Indeed,
19 Courts typically approve PAGA settlement amounts in the range of between 0.27 to 2 percent of the
20 total settlement. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015)
21 (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated*
22 *Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for
23 PAGA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637
24 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs,*
25 *Inc.*, 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA
26 for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
27 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9
28 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13

(E.D. Cal. 2012) (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009) (approving PAGA allocation that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement of \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*, CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount of \$8.25 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay*, 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000 allocated to PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive Educational Services Inc.*, Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell Banker Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.40% of \$3,775,000 settlement amount); *Scott-George v. PVH Corporation*, No., 2:13CV00441 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount); *Nehrlich v. RPM Mortgage Inc.*, Orange County Superior Court Case No. 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San Bernardino Superior Court Case No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino Superior Court Case No. CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000 settlement amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino Superior Court Case No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of \$900,000 settlement amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No. BC471369 (2013) (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount); *Mejia v. DHL*

1 *Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or
2 0.34% of \$1,450,000 settlement amount).

3
4 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
5 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
6 reasonable, and at the time of final approval, my firm will present lodestar to further support the
7 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
8 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
9 of the class action awards obtained by Class Counsel in similar employment actions throughout the
10 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total
11 settlement value: On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles
12 Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a one-third fee
13 award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage and Hour*
14 *Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded Class
15 Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in *Erickson v.*
16 *John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge Edward Weil
17 awarded Class Counsel a one-third fee award in a wage and hour class settlement. On December
18 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case No.
19 BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage and
20 hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
21 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-
22 third award in a wage and hour class settlement. On October 23, 2020, in *Ontiveros v. Baker*
23 *Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian Walsh awarded Class
24 Counsel a one-third fee award in a wage and hour class settlement. On December 3, 2020, in
25 *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court Case No. 34-2018-
26 00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a wage and hour
27 class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles Superior Court Case
28 No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee award in a wage and

1 hour class settlement. On September 24, 2021, in *Prologistics Wage and Hour Cases* (Los Angeles
2 Superior Court Case No. JCCP 4881), Judge William Claster awarded Class Counsel a one-third fee
3 award in a wage and hour class settlement. On November 8, 2021, in *Securitas Wage and Hour*
4 *Cases* (Los Angeles Superior Court Case No. JCCP4837) Judge David Cunningham awarded a
5 one-third fee award in a wage and hour class settlement. On March 17, 2022, in *See's Candies*
6 *Wage and Hour Cases* (Los Angeles Superior Court Case No. JCCP5004) Judge Maren Nelson
7 awarded a one-third fee award in a wage and hour class action settlement. On April 12, 2022, in
8 *O'Donnell v. Okta, Inc.*, (San Francisco Superior Court Case No. CGC-20-587665) Judge Richard
9 Ulmer awarded a one-third fee award in a wage and hour class action settlement. On May 23, 2022,
10 in *Ettegui v. WB Studio Enterprises Inc.*, (United States District Court, Central District of
11 California Case No. 2:20-cv-08053-MCS-JDE) Judge Mark C. Scarsi awarded a one-third fee
12 award in a wage and hour class action settlement. On June 30, 2022, in *Armstrong, et al. v.*
13 *Prometric LLC* (Los Angeles Superior Court Case No. 20STCV29967), Judge Maren E. Nelson
14 awarded a one-third fee award in a wage and hour class action. On July 13, 2022, in *Crum v. S&D*
15 *Carwash Management LLC*, (Sacramento Superior Court Case No. 2019-00251338), Judge
16 Christopher E. Krueger awarded a one-third fee award in a wage and hour class action settlement.
17 On August 10, 2022, in *Spears, et al. v. Health Net of California, Inc.*, (Sacramento Superior Court
18 Case No. 34-2017-00210560-CU-OE-GDS), Judge Christopher E. Krueger awarded a one-third fee
19 award in a wage and hour class action settlement. On September 7, 2022, in *Lucchese, et al. v.*
20 *Kone, Inc.*, (San Francisco Superior Court Case No. CGC-20-588225), Judge Richard B. Ulmer, Jr.
21 awarded a one-third fee award in a wage and hour class action settlement. On November 4, 2022, in
22 *Infinity Energy Wage and Hour Cases* (San Diego Superior Court, Case No. JCCP5139), Judge
23 Keri Katz awarded a one-third fee award in a wage and hour class action settlement. On February
24 1, 2023, in *Hogan v. AECOM Technical Services, Inc.* (Los Angeles Superior Court Case No.
25 19STCV40072), Judge Stuart Rice awarded a one-third fee award in a wage and hour class
26 settlement. On February 28, 2023, in *Farthing v. Milestone Technologies* (San Francisco Superior
27 Court Case No. CGC-21-591251), Judge Richard B. Ulmer, Jr. awarded a one-third fee award in a
28 wage and hour class action settlement. On March 2, 2023, in *Leon v. Calaveras Materials* (Kings

1 County Superior Court Case No. 21C-0105), Judge Melissa D'Morias awarded a one-third fee
2 award in a wage and hour class settlement. On June 20, 2023, in *Gonzalez v. Pacific Western Bank*
3 (San Bernardino County Superior Court Case No. CIVSB2127657) Judge David Cohn awarded a
4 one-third fee award in a wage and hour class settlement, On June 30, 2023, in *Aguirre v. Headlands*
5 *Ventures* (Sacramento County Superior Court Case No. 34-2021-00297290), Judge Jill Talley
6 approved a one-third fee award in a wage and hour class settlement. On October 16, 2023, in *Flores*
7 *v. Walmart*, (San Bernardino County Superior Court Case No. CIVDS2023061) Judge Joseph T.
8 Ortiz awarded a one-third fee award in a wage and hour class settlement. On November 17, 2023,
9 in *Silva v. Woodward HRT* (Los Angeles County Superior Court Case No. 21STCV42692), Judge
10 Maren Nelson awarded a one-third fee award in a wage and hour class settlement. On November
11 29, 2023, in *Ochoa-Andrade v. See's Candies* (San Mateo County Superior Court Case no. 22-CIV-
12 02481), Judge Marie Weiner approved a one-third fee award in a wage and hour class settlement. A
13 fee award equal to one-third of the common fund is therefore reasonable in light of the fees that
14 have been awarded in other similar cases.

15
16 35. Class Representative Service Payment - The reasonableness of the requested service
17 award is also established by reference to the amounts that other California courts have found to be
18 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,
19 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service
20 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,
21 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.
22 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);
23 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
24 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,
25 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service
26 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.
27 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);
28 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,

1 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.
2 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);
3 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior
4 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*
5 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,
6 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los
7 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*
8 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,
9 2011)(awarding \$10,000 service award together with additional compensation for their general
10 release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court
11 (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
12 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award);
13 *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior
14 Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*,
15 Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000
16 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los
17 Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser*
18 *Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28,
19 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa
20 Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v.*
21 *Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22,
22 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS
23 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award);
24 *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding
25 \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside
26 County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security*
27 *Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000
28 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange

1 County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security*
2 *Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23,
3 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior
4 Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The*
5 *Inductrial Complany*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug.
6 1, 2018) (awarding \$10,000 service award).

7
8 Service on the LWDA:

9 36. At the same time as the filing and service of this declaration, I am also serving the
10 LWDA with the entire motion for preliminary approval which includes the Class Action and PAGA
11 Settlement Agreement. This service is verified by the accompanying proof of service.

12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed this 20th day of March, 2024, at La Jolla, California.

15
16 /s/ Kyle Nordrehaug
Kyle Nordrehaug

EXHIBIT #1

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6 Attorneys for Defendant
HOME DEPOT U.S.A., INC.

7 [Additional counsel listed on subsequent pages]
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11
12 DOUGLAS PATTON, on behalf of the
State of California, as a private attorney
13 general,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC., a
Corporation; and Does 1 through 50,
17 Inclusive,

18 Defendant.

CASE NO. 21CV387956

Hon. Sunil R. Kulkarni

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE**

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17 Attorneys for Plaintiffs

1 **I. INTRODUCTION**

2 1. This joint stipulation is made and entered into by and between the following
3 parties: Plaintiffs Salvador Reynosa, Jr. and Douglas Patton – individually, as class
4 representatives, and in the capacity of a private attorney general representing the state of
5 California – and Defendant Home Depot U.S.A., Inc. The Parties agree to fully and completely
6 settle all litigation by or among them along with claims brought on behalf of the state of
7 California subject to the terms and conditions set forth below and to the approval of the Court.
8 This joint stipulation supersedes any and all prior memoranda of understanding and accurately
9 sets forth the Parties’ class action and PAGA settlement to resolve all claims as detailed below.

10 **II. RECITALS**

11 2. **The *Patton* Class Action.** On January 26, 2021, Plaintiff Salvador Reynosa, Jr.
12 filed a putative class action against Home Depot U.S.A., Inc. in Riverside County Superior
13 Court on behalf of all non-exempt employees of Home Depot who worked in a California
14 Distribution Center. This complaint was removed to federal court, Eastern District of
15 California, Case No. 2:21-CV-01096-WBS-KJN. The complaint alleged claims for: 1) unfair
16 competition in violation of the California Business & Professions Code section 17200, *et seq.*;
17 2) failure to pay overtime wages in violation of Labor Code section 510, *et seq.*; 3) failure to
18 pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; 4) failure to
19 provide compliant meal periods in violation of Labor Code sections 226.7 and 512, and the
20 applicable IWC wage order; 5) failure to provide compliant rest periods in violation of Labor
21 Code sections 226.7 and 512, and the applicable IWC wage order; 6) failure to reimburse
22 employee for required business expenses in violation of Labor Code section 2802; and 7) failure
23 to provide wages when due in violation of Labor Code sections 201, 202, and 203.¹ Home
24 Depot removed the complaint to Central District of California under the Class Action Fairness
25 Act, and the case was then transferred to the Eastern District of California. On October 25,
26 2021, Reynosa filed a First Amended Complaint that added Plaintiff Douglas Patton as the first

27 ¹ Reynosa filed this action along with two other named plaintiffs, Natalie Heredia and Alberto
28 Muniz, both of whom subsequently withdrew from the action and voluntarily dismissed their
claims.

1 named plaintiff. The First Amended Complaint also added additional factual allegations that
2 employees were not paid for all of their wages, were not paid meal and rest period premiums at
3 the regular rate of pay, new off-the-clock allegations regarding unpaid time spent during
4 mandatory COVID-19 health screenings, and a claim that Home Depot failed to provide
5 accurate itemized wage statements in violation of Labor Code section 226.

6 3. **The *Patton* PAGA Action.** Prior to joining the *Patton* Class Action, Plaintiff
7 Patton gave notice to the California Labor and Workforce Development Agency on July 29,
8 2021 of alleged Labor Code violations experienced by non-exempt employees who worked in a
9 California Distribution Center and were classified as non-exempt employees. Plaintiff Patton
10 was represented by the same counsel as Plaintiff Reynosa and the notice letter alleged the same
11 violations as the *Patton* class action as well as an allegation regarding the failure to provide
12 suitable seating. Plaintiff Patton filed a PAGA representative action based on this notice letter
13 in Santa Clara County Superior Court on October 13, 2021, Case No. 21CV387956.² On May
14 10, 2022, Plaintiff Patton gave an amended notice to the State of an additional Labor Code
15 violation based on the purported failure to properly regulate temperature at the worksite in
16 violation of applicable regulations. On August 17, 2022, Plaintiff Patton filed a First Amended
17 Representative Action Complaint adding claims related Defendant's failure to maintain
18 temperature in each work area that provides reasonable comfort consistent with industry-wide
19 standards in compliance with California Code of Regulations, Title 8 Section 1 1070(15) to this
20 Action.

21 4. **Defendant Denies Liability and Asserts Strong Defenses.** Defendant denies
22 the claims alleged in both Actions, and, and asserts that, during all relevant times, employees
23 were properly paid for all hours worked, received all overtime wages to which they were
24 entitled, were provided with compliant meal and rest breaks in accordance with then-existing
25 California law, and were properly reimbursed for all necessary business expenditures.
26 Defendant also asserts that, at all times, employees received wage statements that were

27 ² Plaintiff Patton's PAGA complaint excluded the suitable seating claim asserted in the notice
28 letter.

1 compliant with the Labor Code, were timely paid all wages as required under the Labor Code,
2 and that Class Members who ended their employment with Defendant during the Class Period
3 were properly compensated for all wages due as required by California law. Defendant further
4 asserts that the alleged Wage Order violations relating to suitable seating and temperature
5 regulation have no merit.

6 5. **Claims Aggressively and Completely Litigated.** After engaging in extensive
7 discovery and motion practice, the parties participated in a mediation with Jeff Ross on
8 November 14, 2022. After months of negotiations involving Mr. Ross, the Parties reached a
9 global settlement and fully executed a memorandum of understanding regarding material
10 settlement terms on April 14, 2023.

11 6. **The Parties Desire Resolution.** It is the desire of the Parties to fully, finally,
12 and forever settle, compromise, and discharge all disputes and claims arising from or related to
13 the Actions.

14 **III. SETTLEMENT DEFINITIONS**

15 7. **“Actions”** means and refers to the lawsuits titled *Patton, et al. v. Home Depot*
16 *U.S.A., Inc.*, United States District Court for the Eastern District of California, Case No. 21-cv-
17 01096-WBS-KJN and *Patton v. Home Depot U.S.A., Inc.*, Santa Clara County Superior Court,
18 Case No. 21CV387956.

19 8. **“Affiliates”** of Defendant means and refers to each individual or entity that:
20 (1) during any portion of the Released Period, was Defendant’s subsidiary, related company or
21 entity, division, parent company, sister company, affiliate, predecessor or successor; and/or
22 (2) during any portion of the Released Period, directly or indirectly controlled or owned
23 Defendant, was directly or indirectly controlled or owned by Defendant, or was directly or
24 indirectly under common control or ownership with Defendant.

25 9. **“Agreement”** or **“Settlement Agreement”** means and refers to this Settlement
26 Agreement.

27 10. **“Barragan Carved-Out Claims”** means and refers to the following claims: (1)
28 claims for unpaid overtime based on alleged off-the-clock pre-shift and post-shift work; (2)

claims at issue as of November 1, 2022 in the cases *Utne v. Home Depot U.S.A., Inc.*, Northern District of California case number 16-CV-01854-RS and *Utne v. Home Depot U.S.A., Inc.*, Alameda County Superior Court case number 22CV011360; (3) claims based on the factual predicate for time spent on COVID-19 health screens; and (4) claims for waiting time penalties pursuant to California Labor Code Section 203 for Class Members whose employment with Home Depot ended before March 31, 2018.

11. **“Class”** means all Class Members.

12. **“Class Counsel”** means, for settlement purposes only, Blumenthal Nordrehaug Bhowmik De Blouw LLP.

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

14. **“Class Member Allocation”** means the estimated amount a Class Member may receive from this Settlement calculated by multiplying the Class Member Share by an estimated Net Settlement Amount.

15. **“Class Member Share”** means the number of Workweeks worked by the Class Member during the Class Period divided by the aggregate Workweeks worked by the Class during the Class Period.

16. **“Class Notice”** shall mean the document attached hereto as Exhibit A.

17. **“Class Period”** means the period from January 26, 2017 through April 16, 2023, except that the Class Period for Class Members who worked at the Tracy RDC shall be June 17, 2021 through April 16, 2023. The Class Period may be modified in accordance with Paragraph 82.

18. **“Class Representatives”** and/or **“Named Plaintiffs”** means, for settlement purposes only, Salvador Reynosa, Jr. and Douglas Patton.

19. **“Class Representative Released Claims”** means all claims, liabilities, and causes of action of every nature, kind, and description, in law, equity, or otherwise, which have

1 arisen, occurred, or existed at any time during the Class Period. The Class Representative
2 Released Claims include, but are not limited to, all claims, liabilities, and causes of action
3 arising out of or relating to Named Plaintiffs' employment with Defendant or the cessation of
4 that employment, claims for wrongful discharge, breach of contract, breach of the covenant of
5 good faith and fair dealing, fraud, violation of public policy, defamation, discrimination,
6 physical injury, emotional distress, claims under Title VII of the Civil Rights Act of 1964, as
7 amended, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the
8 Federal Rehabilitation Act, the Family and Medical Leave Act, the California Fair Employment
9 and Housing Act, the Equal Pay Act of 1963, the California Family Rights Act, the provisions
10 of the California Labor Code (including all claims for wages, hours, conditions of work, pay,
11 and benefits), the Fair Labor Standards Act, and any other federal, state, or local laws and
12 regulations relating to employment, conditions of employment (including wage and hour laws),
13 and/or employment discrimination. The Class Representative Released Claims do not extend to
14 any claims or actions to enforce this Agreement, or to any claims for vested benefits,
15 unemployment benefits, disability benefits, social security benefits, or workers' compensation
16 benefits, or claims outside the Class Period. For purposes of Class Representative Released
17 Claims Class, Named Plaintiffs expressly waive and relinquish the provisions, rights, and
18 benefits, if any, of section 1542 of the California Civil Code, which reads

19 **A general release does not extend to claims that the creditor or releasing**
20 **party does not know or suspect to exist in his or her favor at the time of**
21 **executing the release and that, if known by him or her, would have**
22 **materially affected his or her settlement with the debtor or released party.**

23 20. **"Class Settlement"** means the settlement and final resolution of Released
24 Claims as set forth in this Agreement.

25 21. **"Complaint(s)"** means any complaint filed in any of the Actions defined as
26 follows:

27 a. **"Patton Class Action"** means *Patton, et al. v. Home Depot U.S.A., Inc.*,
28

b. “Patton PAGA Action” means *Patton v. Home Depot U.S.A., Inc.*, Santa Clara County Superior Court Case No. 21CV387956.

22. “**Court**” means the Santa Clara County Superior Court presiding over the *Patton* PAGA Action.

23. “**Date of Preliminary Approval**” means the date the Court approves this Settlement Agreement, and its exhibits, and enters an Order providing for notice to the Class Members, an opportunity to opt-out of the Settlement Class, an opportunity to submit timely objections to the settlement, a procedure for submitting claims, and setting a hearing for Final Approval of the settlement, including approval of attorneys’ fees and costs. The amount of fees and costs awarded by the Court will not affect approval of the Settlement Agreement.

24. “**Defendant**” means Home Depot U.S.A., Inc.

25. “**Defendant’s Counsel**” means Morgan, Lewis & Bockius LLP.

26. “**Deficient Opt-Out**” means an untimely Request for Exclusion or a Deficient Request for Exclusion that has not been cured of its deficiencies by the submitting Class Member within the time required by this Settlement Agreement.

27. “**Deficient Request for Exclusion**” means a Request for Exclusion that fails to include one or more of the following: (a) a signature; (b) the Class Member’s name; (c) a statement that the Class Member desires to exclude himself or herself from the case; or (d) the last four digits of the Class Member’s social security number or Home Depot employee ID.

28. “**Depository Bank**” means the financial institution where Defendant will deposit the Maximum Settlement Payment.

29. “**Excluded Claims**” mean (1) claims released by the Settlement Agreement filed in *Barragan v. Home Depot U.S.A., Inc.*, San Diego County Superior Court, Case No. 37-2019-00056110-CU-MC-CTL; (2) claims for vested benefits under an ERISA plan; (3) claims for wrongful termination; (4) claims for unemployment insurance, disability benefits, social security benefits, or workers’ compensation benefits; (6) claims based on acts that took place outside of the Class Period; and (7) PAGA claims based on acts that took place outside of the

1 PAGA Period.

2 30. “**Fairness Hearing**” or “**Final Approval Hearing**” means the hearing to be
3 scheduled by the Court after granting preliminary approval of the Settlement Agreement.

4 31. “**Final Approval**” means the date on which the Court enters the Final Approval
5 Order.

6 32. “**Final Approval Order**” means the Court’s order approving the Settlement
7 Agreement after the Fairness Hearing.

8 33. “**Home Depot**” means Defendant and all of its Affiliates.

9 34. “**Judgment**” means the judgment to be executed and entered by the Court
10 pursuant to this Agreement.

11 35. “**LWDA**” means the California Labor and Workforce Development Agency.

12 36. “**LWDA Penalty Amount**” is 75% of the PAGA Penalty Allocation.

13 37. “**Maximum Settlement Payment**” is the sum of One Million One Hundred and
14 Twelve Thousand and Five Hundred U.S. Dollars (\$1,112,500), which represents the maximum
15 amount of money payable under this Agreement, including but not limited to attorneys’ fees
16 and litigation costs, the Service Enhancement payment to the Class Representatives, all
17 settlement administration and distribution fees and costs, the Reserve Fund, the PAGA Penalty
18 Allocation, and all required payments to the Settlement Class but excluding any employer
19 payroll taxes, if any, due on the portion of the Settlement Class Member Share allocated to
20 wages which shall not be paid from the Maximum Settlement Payment and shall be the separate
21 additional obligation of Defendant.

22 38. “**Net Settlement Amount**” is the portion of the Maximum Settlement Payment
23 eligible for distribution to Settlement Class Members. It equals the Maximum Settlement
24 Payment less Class Counsel’s attorneys’ fees and litigation costs as approved by the Court,
25 Settlement Administration Expenses, the Reserve Fund, the LWDA Penalty Amount as
26 approved by the Court, the PAGA Group Payment, Service Enhancement to the Class
27 Representatives as approved by the Court, and all taxes except Defendant’s share of payroll
28

1 taxes.

2 39. **“Notice Period”** shall mean the period of sixty (60) days following the mailing
3 of the Settlement Documents by the Settlement Administrator. If the 60th day falls on a Sunday
4 or holiday, the Notice Period shall end on the next business day that is not a Sunday or holiday.
5 The Notice Period shall be extended by fourteen (14) days in the event of a remailing of a Class
6 Notice.

7 40. **“PAGA”** means the California Labor Code Private Attorneys General Act,
8 California Labor Code §§ 2698 *et seq.*

9 41. **“PAGA Group”** means all PAGA Group Members.

10 42. **“PAGA Group Member”** means any non-exempt, hourly associate employed
11 by Home Depot in the State of California at a supply chain facility at any point during the
12 PAGA Period, excluding those associates who worked at the Tracy RDC prior to June 17, 2021.

13 43. **“PAGA Group Member Amount”** means the PAGA Group Member Share
14 multiplied by the PAGA Group Payment.

15 44. **“PAGA Group Member Share”** means the Pay Periods worked by the PAGA
16 Group Member during the PAGA Period divided by the aggregate number of Pay Periods
17 worked by the PAGA Group during the PAGA Period.

18 45. **“PAGA Group Notice”** means the document attached hereto as Exhibit B.

19 46. **“PAGA Group Payment”** is 25% of the PAGA Penalty Allocation.

20 47. **“PAGA Penalty Allocation”** means the gross amount of Twenty Thousand U.S.
21 Dollars (\$20,000) which the Parties have allocated to settle claims for civil penalties under
22 PAGA or such other amount as ordered and approved by the Court.

23 48. **“PAGA Period”** means January 26, 2020 through April 16, 2023, except that the
24 PAGA Period for PAGA Group Members who worked at the Tracy RDC shall be June 17, 2021
25 through April 16, 2023.

26 49. **“PAGA Released Claims”** means PAGA claims arising during the PAGA
27 Period made on behalf of the LWDA and/or State of California included in any notice provided
28 to the LWDA by any Named Plaintiffs or as pleaded in any Complaint or that could have been

1 pled based on factual allegations contained in the Operative Complaint or any written notice
2 provided to the LWDA, including PAGA claims for or predicated on (1) unpaid wages; (2)
3 unpaid overtime (included alleged violations of Labor Code Sections 210, 221, 510, 558, 1194,
4 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations
5 (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar
6 provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in
7 accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5)
8 failure to properly calculate and/or pay break premiums as required by Labor Code Section
9 226.7 (and/or the applicable California Wage Order); (6) violations of California's sick leave
10 laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate
11 and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for
12 work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable
13 California Wage Order); (9) failure to provide accurate wage statements or otherwise keep
14 accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions
15 of the California Wage Orders); (10) failure to timely pay wages (including wages due upon
16 termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204,
17 and 227.3 (and/or the applicable California Wage Order); (11) any alleged failure to comply
18 with California's Wage Orders including provisions regulating conditions of employment
19 including temperature and suitable seating; and (12) civil penalties pursuant to PAGA based on
20 any of the foregoing alleged violations. PAGA Released Claims include the *Barragan* Carved-
21 Out Claims. PAGA Released Claims, however, do not include the Excluded Claims, as defined
22 herein.

23 50. **"PAGA Settlement"** means the settlement and final resolution of PAGA
24 Released Claims as set forth in this Agreement.

25 51. **"Parties"** means collectively Named Plaintiffs and Defendant.

26 52. **"Pay Period"** means the nearest whole number calculated by determining the
27 number of days worked in the relevant time period based on Defendant's records, dividing by
28

14, and rounding to the nearest whole number.

53. **“Preliminary Approval”** means the Court’s preliminary approval of the terms of this Agreement.

54. **“Qualified Settlement Fund”** means the Qualified Settlement Fund (“QSF”) created under Internal Revenue Code Section 468B, to be overseen by the Settlement Administrator.

55. **“Released Class Claims”** means any claim for restitution, penalties, civil penalties, damages, or any other form of relief asserted or pleaded (or that could have been pleaded based on the factual allegations) in the Operative Complaint and/or notice provided to the LWDA by any Named Plaintiff that accrued during the Class Period, including claims for (1) unpaid wages; (2) unpaid overtime (including alleged violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6) violations of California’s sick leave laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages (including wages due upon termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order). Released Class Claims include the *Barragan* Carved-Out Claims. Released Class Claims, however, do not include the Excluded Claims, as defined herein.

56. **“Releasees”** means Home Depot, its past and present Affiliates, and their

1 respective past and present predecessors, successors, assigns, representatives, directors, officers,
2 employees, and agents.

3 57. **“Request for Exclusion”** means a signed request from a Class Member to be
4 excluded from the Class Settlement. A valid Request for Exclusion must contain: (a) the Class
5 Member’s name; (b) a statement that the Class Member desires to exclude himself or herself
6 from the case; and (c) the last four digits of the Class Member’s social security number or
7 Home Depot employee ID.

8 58. **“Reserve Fund”** means the portion of the Maximum Settlement Amount
9 reserved for payment of disputed, untimely, and self-identified claims, after the end of the
10 Notice Period, in the amount of Ten Thousand U.S. Dollars (\$10,000).

11 59. **“Service Enhancement(s)”** means the incentive payments to each Class
12 Representative in an amount not to exceed \$10,000 as approved by the Court.

13 60. **“Settlement Administration Expenses”** are those reasonable expenses incurred
14 by the Settlement Administrator in effectuating the Settlement, not to exceed \$60,000, as
15 approved by the Court.

16 61. **“Settlement Administrator”** means and refers to the entity that will provide the
17 Class Notice to the Settlement Class Members, distribute Settlement Class Awards as described in
18 this Agreement, and administer the Settlement. The parties will mutually agree to a Settlement
19 Administrator. The Settlement Administrator will certify and agree to the data security protocols
20 required by Home Depot and keep all data regarding Class Members confidential. Administration
21 expenses shall not exceed the estimate of the Settlement Administrator to administer the settlement.

22 62. **“Settlement Class”** means all Settlement Class Members

23 63. **“Settlement Class Member”** means any Class Member who does not submit a
24 valid Request for Exclusion or who rescinds their Request for Exclusion in a timely manner.

25 64. **“Settlement Class Member Share”** means the Workweeks worked by the
26 Settlement Class Member during the Class Period divided by the aggregate number of
27 Workweeks worked by the Settlement Class during the Class Period.

28 65. **“Settlement Documents”** means the Class Notice (Exhibit A) and the PAGA

1 Group Notice (Exhibit B).

2 66. **“Settlement Effective Date”** means the date of the Court’s Final Approval
3 Order. If an appeal or motion to intervene is filed, then “Settlement Effective Date” means the
4 date that the Judgment is final and no longer subject to appeal where the resolution of the
5 appeal affirms the Final Approval Order. If an objection is made but no appeal is filed, then
6 “Settlement Effective Date” means the date that the time for filing an appeal has run. The
7 Settlement Effective Date cannot occur until there is no possibility of an appeal or further
8 appeal that could prevent this Settlement Agreement from becoming final and binding. The
9 Parties intend that the Final Approval Order will effectuate the releases and extinguish all
10 released claims, including but not limited to PAGA claims, as set forth in the Settlement
11 Agreement for the periods covered by this Settlement Agreement on the Settlement Effective
12 Date. The Court will retain jurisdiction to enforce the Settlement Agreement after the
13 Settlement Effective Date.

14 67. **“Settlement Payment”** means the Settlement Class Member Share multiplied by
15 the Net Settlement Amount less applicable taxes.

16 68. **“Workweek”** means the nearest whole number calculated by determining the
17 number of calendar days between the start date and end date in a relevant time period based on
18 Defendant’s records, dividing by 7, and rounding to the nearest whole number

19 **IV. REQUIRED AMENDED COMPLAINT**

20 69. **Preparation and Filing of Second Amended Class and Representative**
21 **Action Complaint.** Within five (5) days of the execution on this Stipulation, the Parties will
22 stipulate fore leave for the Class Representatives to file a Second Amended Class and
23 Representative Complaint (referred to herein as the “Operative Complaint”)in the *Patton* PAGA
24 Action that embraces all claims pleaded in the *Patton* PAGA Action, the *Patton* Class Action,
25 any notices Class Representatives provided to the state pursuant to PAGA, and all enumerated
26 claims in the Released Class Claims or the PAGA Released Claims. This Agreement is
27 contingent on the filing and acceptance by the Court of such an amended complaint in a form
28

1 approved by Defendant.

2 70. **Stay of Patton Class Action.** The Parties will stipulate to stay the *Patton* Class
3 Action pending approval of the settlement submitted in the *Patton* PAGA Action.

4 71. **Dismissal of Patton Class Action.** Within fourteen (14) court days after Date of
5 Preliminary Approval of this Settlement by the Court, the Parties will stipulate to dismiss the
6 *Patton* Class Action without prejudice. If the *Patton* Class Action is not dismissed, this
7 Agreement is null and void.

8 72. **Jurisdiction Over Settlement.** This Court has jurisdiction over the Parties and
9 the subject matter of this Action. This Court will have continuing jurisdiction under California
10 Code of Civil Procedure (“CCP”) Section 664.6 to ensure the continuing implementation of the
11 provisions of this Agreement and that the time within which to bring this Action to trial under
12 CCP 583.310 shall be extended for a period of not less than one (1) year starting from the date
13 of the signing of this Agreement by all Parties until the entry of the Final Approval Order and
14 Judgment or, if not entered, the date this agreement shall no longer be of any force or effect.

15 **V. SETTLEMENT TERMS**

16 73. **Barragan Settlement Approval.** This Settlement is expressly conditioned upon
17 approval of the settlement in the case entitled *Barragan v. Home Depot U.S.A., Inc.* (the
18 “*Barragan* Settlement”) pending in San Diego County Superior Court, Case No. 37-2019-
19 00056110-CU-MC-CTL. The failure to obtain approval of the *Barragan* Settlement will nullify
20 the settlement in this Action.

21 74. **No Admission of Liability.** Nothing in this Settlement shall be construed to be
22 or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing
23 toward the Class Representatives, the Class Members, the PAGA Group Members, or any other
24 person, and Defendant specifically disclaims any liability, culpability, negligence, or
25 wrongdoing toward the Class Representatives, the Class Members, or any other person, or that
26 class or collective certification is appropriate. In addition, nothing in this Settlement shall be
27 construed to be or deemed an admission by Named Plaintiffs that their claims lacked merit.
28 Each of the Parties have entered into this Settlement Agreement with the intention to avoid

1 further disputes and litigation with the attendant inconvenience, expenses, and contingencies.
2 This Settlement Agreement and any related court documents or orders between the Parties may
3 not be cited or otherwise admitted as evidence of liability or that class certification is
4 appropriate or that a representative action could ever be manageably tried before a court. This
5 provision will survive regardless of whether the other terms of this Settlement Agreement are
6 otherwise voided.

7 75. **Full and Complete Settlement.** This Settlement shall resolve the entirety of the
8 *Patton* Class Action and the *Patton* PAGA Action.

9 76. **Class Certification.** For settlement purposes only, the Parties will stipulate to
10 the certification of the Class as to all Released Class Claims. If for any reason the Court does
11 not approve this Settlement Agreement, fails to enter the Final Approval Order, or fails to enter
12 the Judgment, or if this Settlement Agreement is lawfully terminated for any other reason, the
13 Parties shall return to their pre-Agreement positions relating to certification of the various
14 claims in dispute. Defendant shall retain the absolute right to dispute the propriety of class
15 certification and/or the ability of this action to proceed as a representative action on all
16 applicable grounds that exist in law or fact.

17 77. **Class Counsel and Representatives.** For settlement purposes only, the Parties
18 agree to appointment of Class Counsel as class counsel and to appointment of the Class
19 Representatives as representatives of the Class. Defendant's stipulation to the Class, Class
20 Counsel, and Class Representatives shall not be construed as an admission or acknowledgment
21 of any kind that (1) Class Representatives are adequate or typical; (2) Class Counsel is
22 adequate; (3) any class should be certified; or (4) any Released Class Claim is amenable to class
23 resolution.

24 78. **Court's Failure to Approve.** In the event that this Settlement Agreement is not
25 fully approved by the Court, fails to become effective, or is reversed, withdrawn, or modified
26 by the Court:

- 27 a. The Settlement Agreement shall have no force or effect, other than the
28 confidentiality and no publicity provisions of Paragraphs 86, 123, and 124

and the non-admission provisions in Paragraph 74;

- b. The Settlement Agreement shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.
- c. The conditional certification of the Class shall become null and void, and the fact of certification shall not be cited to or admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- d. The Parties to this Settlement Agreement will not be deemed to have waived any claim, objection, defense, or argument with respect to the issue of class certification or the merits of Named Plaintiffs' claims.

79. **Settlement Allocations.** Defendant agrees to pay the Maximum Settlement Payment plus Defendant's share of employment taxes and no more to the Depository Bank. Under no circumstance will this Settlement Agreement be construed or interpreted to require payment of more than the Maximum Settlement Payment other than any increase attributed to the triggering of the Escalator Clause in Paragraph 81 based on the final count of covered Workweeks. Payment of the Maximum Settlement Payment to the Depository Bank fully and completely satisfies Defendant's obligations under this Agreement. Failure of the Settlement Administrator to perform its obligations will not impact the enforceability of this Agreement or its releases. The Settlement Administrator shall distribute the Maximum Settlement Payment pursuant to the Final Approval Order. The Parties agree, subject to Court approval, to the following allocations to be paid from the Maximum Settlement Payment:

- a. Class Counsel shall be allocated Class Counsel attorney fees and costs as approved by the Court. Defendant will not oppose a request for a maximum of one-third (1/3) of the Maximum Settlement Payment, or \$370,833 in attorneys' fees and an amount in litigation costs as documented in Class Counsel's billing statement.
- b. The Settlement Administrator shall be allocated Settlement Administration

Expenses as approved by the Court.

- c. Named Plaintiffs shall be allocated Service Enhancements as approved by the Court.
- d. The LWDA shall be allocated the LWDA Penalty Amount. In connection with settlement approval, the LWDA shall be notified of the existence of the settlement by Class Counsel. Should the LWDA object to the amount of this payment, the Parties agree to work in good faith to negotiate another agreeable amount.
- e. The PAGA Group shall be allocated the PAGA Group Payment. Each PAGA Group Member shall be entitled to receive their PAGA Group Member Amount.
- f. The Reserve Fund will be established to reserve for disputed, untimely, and self-identified claims.
- g. The Settlement Class Members shall be allocated the Net Settlement Amount (the portion of the Maximum Settlement Payment remaining after allocations (a) through (f) above) by payment of the Settlement Payments.
- h. If the Court approves a lesser amount of attorneys' fees, litigation costs, Settlement Administration Expense, or Service Enhancements than those sought by Named Plaintiffs or Class Counsel, any amounts not approved will be reallocated to Settlement Class Members, and the amounts awarded will not affect approval of the Settlement.

80. **Workweeks and Pay Period Calculation.** The Settlement Administrator shall determine the number of Workweeks worked by each Class Member during the Class Period and the number of Pay Periods worked by each PAGA Group Member during the PAGA Period based on Class data to be provided by Defendant.

81. **Escalator Clause.** Defendant estimates covered Workweeks to total approximately 752,000 through March 9, 2023. Should the final number of covered Workweeks add more than 10% of this estimate to the number of covered Workweeks,

1 Defendant will have the option of either a) increasing the Maximum Settlement Payment
2 proportionally, or b) shortening the Class Period so that covered Workweeks do not exceed
3 827,200.

4 82. **Exclusions (Opt-Outs)**. PAGA Group Members cannot opt-out of (exclude
5 themselves from) this Settlement. All PAGA Group Members shall be bound by the PAGA
6 Settlement and will release the PAGA Released Claims. Class Members who wish to “opt-out”
7 of and be excluded from the Class Settlement must submit a written Request for Exclusion from
8 the settlement bearing a post-mark during the Notice Period. No Party shall encourage any
9 Class Member to opt-out. Requests for Exclusion that are not post-marked within the Notice
10 Period are Deficient Opt-Outs unless Defendant agrees in writing to accept the untimely
11 Request for Exclusion. Class Members who opt-out of the Class Settlement still release the
12 PAGA Released Claims if they are a PAGA Group Member even if they submit a valid Request
13 for Exclusion, and will still receive a check for their PAGA Group Member Amount. If a Class
14 Member submits a Deficient Request for Exclusion, the Settlement Administrator shall notify
15 the Class Member of the deficiency within five (5) business days of receipt. The Class Member
16 shall have until the end of the Notice Period or five (5) business days after the close of the
17 Notice Period if the notice of deficiency is sent by the Settlement Administrator within five (5)
18 business days of the end of the Notice Period to cure the deficiency or deficiencies. Uncured
19 deficiencies result in a Deficient Opt-Out. Class Members submitting Deficient Opt-Outs shall
20 be bound by the Settlement and its releases and will be considered Settlement Class Members
21 for settlement distribution purposes. Class Members shall be permitted to rescind their Request
22 for Exclusion in writing by submitting a rescission statement to the Settlement Administrator
23 not later than one (1) business day prior to the Fairness Hearing, or as otherwise ordered by the
24 Court. The Settlement Administrator shall not accept untimely Requests for Exclusion without
25 the written authorization of Defendant.

26 83. **Objections**. Only Settlement Class Members (*i.e.*, Class Members who do not
27 submit a valid Request for Exclusion) may object to the settlement. Class Members who submit
28 valid Requests for Exclusion are not eligible to object. All written objections must be sent no

1 later than the end of the Notice Period, and such deadline applies notwithstanding any argument
2 regarding non-receipt of the Class Notice. Settlement Class Members may also appear at the
3 Final Approval Hearing to object, even if they do not send a written objection. Settlement Class
4 Members who either fail to send timely written objections or appear at the Final Approval
5 Hearing to object waive any objections to this Settlement are foreclosed from filing any appeal
6 from any Final Approval Order issued by the Court. The Parties may file a response to any
7 objections submitted by objecting Settlement Class Members at or prior to the Final Approval
8 Hearing. Settlement Class Members shall be permitted to withdraw their objections in writing
9 by submitting a withdrawal statement to the Settlement Administrator not later than one (1)
10 business day prior to the Final Approval Hearing, or as otherwise ordered by the Court.

11 84. **Entry of Judgment.** At the Fairness Hearing, the Parties will request that the
12 Court, among other things: (a) enter a Final Approval Order in accordance with the terms of
13 this Settlement Agreement; (b) approve the settlement as fair, adequate, reasonable, and binding
14 on all Settlement Class Members; and (c) enter Judgment as required pursuant to the terms of
15 this Agreement.

16 **VI. DATA AND NOTICES TO CLASS MEMBERS AND PAGA GROUP MEMBERS**

17 85. **Defendant's Delivery of Data.** Within thirty (30) days after the
18 Date of Preliminary Approval by the Court, Defendant shall provide to the Settlement
19 Administrator information in electronic format regarding all Class Members, including name(s),
20 last known residence addresses, Social Security numbers, and dates worked as Class Members
21 during the Class Period. Defendant shall submit this information in electronic format as
22 specified by the Settlement Administrator and shall thereafter, during the notice, approval, opt-
23 out, and payment processes, assist the Settlement Administrator as necessary or as requested to
24 use, correct, or update this information in order to enable the Settlement Administrator to locate
25 and contact Class Members, and to provide information needed or requested by the Settlement
26 Administrator in order to make determinations on Class Members' challenges.

27 86. **Class Data Confidentiality.** Class data shall only be used by the Settlement
28 Administrator for the purpose of calculating settlement shares and finding and notifying Class

1 Members of the settlement. Class data for Class Members shall not be disclosed to the Named
2 Plaintiffs, Class Counsel, or any other Class Members without the written consent of Defendant
3 and will be subject to the Settlement Administrator's confidentiality agreement.

4 87. **Contact Information Confirmation.** Prior to mailing the Settlement
5 Documents, the Settlement Administrator will update the addresses for the Class Members
6 using the National Change of Address database and other available resources deemed suitable
7 by the Settlement Administrator. Any returned envelopes from the initial mailing with
8 forwarding addresses will be used by the Settlement Administrator to locate Class Members and
9 re-mail the Settlement Documents to the correct or updated address. The Settlement
10 Administrator will use all appropriate tracing methods, including skip tracing, to ensure that the
11 Settlement Documents are received by Class Members. The Settlement Administrator shall
12 also take reasonable steps including skip tracing to locate any Class Member whose Class
13 Notice is returned as undeliverable.

14 88. **Mailing of Notices.** Within thirty (30) days of receiving the class data from
15 Defendant and after it has completed all of the address updates for Class Members, the
16 Settlement Administrator shall mail the Class Notice to Class Members and the PAGA Group
17 Notice to PAGA Group Members. At least five (5) business days prior to this mailing, the
18 Settlement Administrator shall provide Defendant with a report listing the estimated Settlement
19 Payment amounts to each Class Member and PAGA Group Member Amounts for each PAGA
20 Group Member, and provide the same list to Class Counsel using unique identifiers for each
21 Class Member and PAGA Group Member and withholding any names or addresses.

22 89. **Content of Notices.** Each Class Notice mailed to a Class Member will identify
23 the dates of employment and/or number of compensable Workweeks that Defendant's records
24 indicate the individual worked as a Class Member and each Class Member's estimated Class
25 Member Allocation. Each PAGA Group Notice shall state the PAGA Group Member's
26 estimated PAGA Group Member Amount.

27 90. **Timing of Requests for Exclusions or Objections.** Class Members shall have
28 until the end of the Notice Period to submit a Request for Exclusion or object to the Settlement.

1 If the end of the Notice Period falls on a Sunday or holiday, the deadline will be the next
2 business day that is not a Sunday or holiday. Requests for Exclusion not mailed in compliance
3 with the timing requirements of this Paragraph are Deficient Opt-Outs unless Defendant agrees
4 in writing to accept the Request for Exclusion.

5 91. **Workweek Calculation Challenges.** Class Members shall have the right to
6 challenge the dates of employment and/or number of Workweeks worked as shown on the Class
7 Notice, but will bear the burden to prove that Defendant's data is incorrect. Challenges to the
8 dates of employment and/or number of Workweeks worked listed on the Class Notice must be
9 sent directly to the Settlement Administrator at the address indicated on the Class Notice. Any
10 challenge must be made during the Notice Period. The Settlement Administrator will inform
11 Class Counsel and Defendant's Counsel in writing of any challenges. The dates of employment
12 and/or Workweeks listed on the Class Notice are presumed to be accurate unless the Settlement
13 Class Member submits documentation demonstrating otherwise (*i.e.*, a Settlement Class
14 Member who fails to provide written proof will have his or her challenge denied). In the event
15 of any dispute over a Class Member's date(s) of employment, Defendant's Counsel will
16 investigate the challenge and determine whether any additional amount is owed to the
17 Settlement Class Member making the challenge. Defendant will decide whether the Settlement
18 Class Member's challenge shall be accepted. Defendant's decision is final and binding without
19 a right of appeal.

20 92. **Requests for Exclusion.** The Settlement Administrator shall (a) date stamp all
21 original Requests for Exclusion that it receives; (b) serve copies on Class Counsel and
22 Defendant's Counsel no later than five (5) business days after receipt, or immediately if
23 received within five (5) business days of the Fairness Hearing; and (c) attach copies of the date-
24 stamped Requests for Exclusion to the Settlement Administrator declaration in support of Final
25 Approval, which Class Counsel shall file with any personal identifying information other than
26 the names redacted.

27 93. **Rescission of Requests for Exclusion.** The Settlement Administrator shall (a)
28 date stamp all original rescissions of Requests for Exclusion it receives; (b) serve copies on

1 Class Counsel and Defendant's Counsel no later than five (5) business days after receipt, or
2 immediately if received within five (5) business days of the Court's Fairness Hearing; and (c)
3 attach copies of the date-stamped rescissions of Requests for Exclusion to the Settlement
4 Administrator declaration in support of Final Approval, which Class Counsel shall file with any
5 personal identifying information other than the names redacted.

6 94. **Information Tracking and Updates.** The Settlement Administrator shall (a)
7 provide to Class Counsel and Defendant's Counsel a weekly report of activity; and (b) establish
8 a toll-free telephone line and respond to inquiries and requests for information or assistance
9 from Class Members.

10 **VII. SETTLEMENT ADMINISTRATION**

11 95. **Payment of Maximum Settlement Payment.** No later than twenty-one (21)
12 days after the Settlement Effective Date, Defendant shall pay by wire transfer or otherwise
13 transmit to the Depository Bank the Maximum Settlement Payment in an account titled in the
14 name of "Home Depot Wage and Hour Settlement Fund." The account will be organized and
15 exist under the laws of the State of California, intended by the Parties to be a "Qualified
16 Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986, as
17 amended, and Treas. Reg. Section 1.468B-1, *et seq.* The monies so transferred, together with
18 any interest subsequently earned thereon, shall constitute the Qualified Settlement Fund. The
19 Qualified Settlement Fund by Defendant shall constitute the total Settlement cash outlay by
20 Defendant in connection with the resolution of this matter and this Settlement Agreement.
21 Defendant shall, upon notice from the Settlement Administrator, remit any additional required
22 employer payroll tax payments not covered by the QSF to the Settlement Administrator.

23 96. **Trustee.** The Settlement Administrator shall serve as Trustee of the Qualified
24 Settlement Fund and shall act as a fiduciary with respect to the handling, management, and
25 distribution of the Qualified Settlement Fund, including with regard to payment of valid claims
26 and reporting and paying taxes on such awards. The Settlement Administrator shall act in a
27 manner necessary to qualify the Qualified Settlement Fund as a "Qualified Settlement Fund"
28 under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section

1.468B-1, *et seq.*, and to maintain that qualification.

97. **Calculation of Settlement Payments.** The Settlement Administrator shall be responsible for (a) determining each Settlement Class Member's Settlement Payment; (b) calculating each PAGA Group Member's PAGA Group Member Amount; (c) reporting to Class Counsel, Defendant's Counsel, and the Court regarding the completion of the tasks identified in this paragraph; and (d) carrying out other related tasks including the proper maintenance of the QSF and reporting required for that account, in accordance with the terms of this Settlement Agreement.

98. **Dispute Resolution.** All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

99. **Tax Allocation.** Except for the Service Enhancement described above to be paid to the Class Representatives, all Settlement Payments to Settlement Class Members shall be allocated as follows: Twenty-five percent (25%) of each Settlement Payment as wages and seventy-five (75%) of each Settlement Payment as interest and penalties under the California Labor Code. All PAGA Group payments are penalties. The Service Enhancement to the Class Representatives shall be treated as compensation for non-wage related claims, injuries, and reimbursement.

100. **Employment Taxes and Indemnity.** Defendant is responsible for paying the employer portion of payroll tax contributions as required by law. The Class Representatives and Settlement Class Members must pay their own portion of payroll and all applicable income taxes. The Settlement Administrator shall be responsible for the timely calculation of the amount of employer payroll tax and inform Defendant of such amount. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law. To the extent any Settlement Payment results in any overpayment of unemployment

benefits to the Named Plaintiffs and/or any Settlement Class Members, the amount of any such overpayment shall be the responsibility of the individual Named Plaintiff and/or Settlement Class Member.

101. **Dissolution of QSF.** After all payments have been disbursed from the QSF, the Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS.

VIII. CALCULATION OF SETTLEMENT PAYMENTS AND DISTRIBUTION OF NET SETTLEMENT FUND

102. **Eligibility for Settlement Payments and PAGA Group Member Amounts.** Only Settlement Class Members will be eligible to receive a Settlement Payment. Only PAGA Group Members will be Eligible for PAGA Group Member Amounts.

103. **Final Calculations of Settlement Payments.** Within ten (10) business days after the Settlement Effective Date, the Settlement Administrator shall make the final calculation of the Net Settlement Amount and the individual Settlement Payments and PAGA Group Member Amounts and provide a report of these calculations to Defendant's Counsel. Any unused amounts in the Reserve Fund will be included as part of the Net Settlement Amount. Upon completion of its final calculation of Settlement Payments and PAGA Group Member Amounts, and at least five (5) days prior to the distribution of payments to Settlement Class Members and PAGA Group Members, the Settlement Administrator shall provide the Parties with a redacted report listing the amount of all Settlement Payments to be made to each Settlement Class Member (with personal identifying information redacted) and all PAGA Group Member Amounts to be paid to PAGA Group Members (with personal identifying information redacted). The Settlement Administrator shall also provide Defendant's Counsel with an unredacted copy of the report.

104. **Settlement Payments.** Within thirty (30) days after the Settlement Effective Date, the Settlement Administrator shall issue and mail Settlement Payments to each Settlement Class Member, issue and mail the PAGA Group Member Amounts to each PAGA Group Member, issue and mail a check to the LWDA for the LWDA Penalty Amount, pay Class Counsel's attorney's fees and costs as approved by the Court, and issue checks to the Class

Representatives for the approved Service Enhancement(s) and mail the checks to Class Counsel.

105. **Tax Payments and Documents.** The Settlement Administrator shall be responsible for issuing and mailing any necessary tax reporting forms to Settlement Class Members, the Class Representatives, Class Counsel, and Defendant. The Settlement Administrator shall provide a declaration of payment, which will be filed with the Court and served on Class Counsel and Defendant's Counsel within thirty (30) days after mailing the payments to Settlement Class Members, the PAGA Group Members, the Class Representatives, the LWDA, and Class Counsel.

106. **Uncashed Settlement Checks.** Settlement Class Members who are sent Settlement Payments and PAGA Group Members who are sent PAGA Group Payments shall have one hundred and eighty (180) calendar days after mailing by the Settlement Administrator to cash their checks and will be so advised of such deadline. If such Settlement Class Members and/or PAGA Group Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks. Within thirty (30) days after the expiration date of the settlement checks, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a verification/declaration signed under penalty of perjury that it had mailed the Settlement Payment and PAGA Group Payment checks to the Settlement Class Members and/or PAGA Group members, but that the checks were uncashed within the required timeframe. Replacement checks will be issued upon request until thirty (30) days after mailing of applicable tax documents to Settlement Class Members and PAGA Group Members. Settlement Class Members and PAGA Group Members shall have sixty (60) days to cash such replacement checks at which point they will be null and void. Any unclaimed funds will be sent to the State as unclaimed property.

IX. RELEASE BY SETTLEMENT CLASS MEMBERS, PAGA GROUP MEMBERS, AND CLASS REPRESENTATIVES

107. **Released Class Claims.** As of the Settlement Effective Date, Settlement Class Members for themselves, their respective former and present spouses, representatives, agents,

1 attorneys, heirs, administrators, successors, and assigns, release and discharge Releasees from
2 all Released Class Claims and all claims that may be brought under the Fair Labor Standards
3 Act (“FLSA”) that accrued during the Class Period.

4 108. **PAGA Released Claims.** As of the Settlement Effective Date, Named Plaintiffs
5 in their capacity as a private attorneys general acting on behalf of themselves and as proxy or
6 agent of the LWDA and State of California, release and discharge Releasees from all PAGA
7 Released Claims. As of the Settlement Effective Date, Named Plaintiffs, the LWDA, the State
8 of California, and any other individual or entity acting on behalf of or purporting to act on
9 behalf of the LWDA and/or the State shall be barred from asserting any of the PAGA Released
10 Claims in any future litigation, arbitration, or other legal forum. Any party to this Agreement
11 may use the Agreement to assert that this Agreement and the Judgment to be entered by the
12 Court following approval of this Agreement bars or limits any pending or later-filed action
13 asserting any of the PAGA Released Claims against any of the Releasees. The provisions of
14 this paragraph apply regardless of whether Named Plaintiffs and/or the PAGA Group Members
15 cash their checks for the PAGA Group Member Amounts.

16 109. **Class Representative Released Claims.** As of the Settlement Effective Date, in
17 consideration of the mutual covenants, Named Plaintiffs, for themselves, their respective former
18 and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and
19 assigns, generally release and discharge Releasees from Class Representative Released Claims.
20 Named Plaintiffs each acknowledge that they have not made any claims or allegations related to
21 discrimination, retaliation, or harassment, including sexual harassment, or sexual abuse, and
22 none of the payments set forth as consideration in this Agreement are related to such
23 discrimination, retaliation, or harassment, including sexual harassment or sexual abuse. Named
24 Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the
25 facts or law that they now know or believe to be true, but agree, nonetheless, that their Release
26 shall be and remain effective in all respects, notwithstanding such different or additional facts
27
28

or Named Plaintiffs' discovery of them.

X. DUTIES OF THE PARTIES

110. **Stay of Litigation.** The Parties agree that upon signing this Agreement, all litigation in the Actions will be stayed for all purposes.

111. **Filing of Amended Complaint.** Class Counsel shall draft a stipulation to amend their complaint in the *Patton* PAGA Action and file an amended complaint that embraces all of the Released Class Claims and provide the drafts to Defendant's Counsel. Upon approval from Defendant's Counsel, Class Counsel shall promptly file the stipulation and proposed amended complaint with the Court. The Court's acceptance of the amended complaint is a condition precedent to effectiveness of this Agreement. Should the Court fail to accept an amended complaint in a form acceptable to Defendant's Counsel, this Agreement shall be null and void.

112. **State Notices:** Class Counsel shall submit this Agreement to the LWDA in accordance with the applicable provisions of the PAGA. Defendant's Counsel shall make any required notices pursuant to the federal Class Action Fairness Act.

113. **Preliminary Approval.** Class Counsel shall prepare a draft motion for Preliminary Approval of the Class Settlement and final approval of the PAGA Settlement, and provide such draft to Defendant's Counsel for review and comment seven (7) days prior to filing the motion. The motion shall seek an order that includes the following:

- a. Preliminarily approving the Class Settlement;
- b. Approving the PAGA Settlement;
- c. Approving as to form and content the proposed Class Notice and PAGA Group Notice;
- d. Directing the mailing of the Class Notice by first class mail to Settlement Class Members and the mailing of the PAGA Group Notice to PAGA Group Members;
- e. Preliminarily certifying the class of the Settlement Class Members for purposes of settlement and preliminarily appointing Named Plaintiffs and

- 1 Class Counsel as representatives of the Settlement Class Members;
- 2 f. Preliminarily approving settlement administration services to be provided
- 3 by the Settlement Administrator;
- 4 g. Preliminarily approving the proposed Service Enhancement payments to
- 5 Named Plaintiffs as Class Representatives;
- 6 h. Preliminarily approving the application for payment of reasonable
- 7 attorneys' fees and costs to Class Counsel;
- 8 i. Scheduling a final Fairness Hearing.

9 114. **Dismissal of Other Lawsuits.** Upon Preliminary Approval of the Settlement,

10 Class Counsel will dismiss the *Patton* Class Action without prejudice.

11 115. **Cooperation.** The Parties shall cooperate with each other and the Settlement

12 Administrator during the process of giving Class Members notice and opportunity to opt out of

13 or object to the Settlement in every way necessary and appropriate to assure effective

14 communication to individual Class Members of information concerning their rights and

15 obligations under this Settlement Agreement. However, the Parties agree not to encourage any

16 Class Members to opt out of the Class Settlement. The Parties also agree not to object to any

17 Court filings consistent with this Agreement, and Plaintiffs will not object to the *Barragan*

18 Settlement. Further, no Party shall be compelled or required to waive the timing and notice

19 requirements contained in this Agreement.

20 116. **Final Approval.** Class Counsel shall provide the Court at least five (5) days

21 prior to the Fairness Hearing a declaration by the Settlement Administrator of due diligence and

22 proof of mailing of the Class Notice required to be mailed to Class Members by this Settlement

23 Agreement, and of the delivery results of the Settlement Administrator's mailings including

24 tracing and re-mailing efforts.

25 **XI. DUTIES OF THE PARTIES AFTER FINAL APPROVAL**

26 117. Class Counsel shall prepare and file a Motion for Final Approval of the

27 Settlement, and provide Home Depot the opportunity to review before filing. The Parties will

28 submit a proposed Final Approval Order, attached as Exhibit C, which shall include the findings

1 and orders:

- 2 a. Approving the Class Settlement, adjudging the terms thereof to be fair,
3 reasonable, and adequate, and directing that its terms and provisions be
4 carried out;
- 5 b. Approving the payment of Service Enhancement to Class Representatives;
- 6 c. Approving Class Counsel's application for an award of attorneys' fees and
7 reimbursement of out-of-pocket litigation costs;
- 8 d. Releasing and extinguishing all claims as provided by this Agreement
9 including Released Class Claims, PAGA Released Claims, and Class
10 Representative Released Claims;
- 11 e. Providing that the Court will retain jurisdiction to oversee administration
12 and enforcement of the terms of the Settlement Agreement and the Court's
13 orders; and
- 14 f. Providing the names of any Class Members who are not Settlement Class
15 Members.

16 118. Following entry of the Court's Final Approval Order, the Parties will each act to
17 assure its timely execution and the fulfillment of all its provisions, including but not limited to
18 the following:

- 19 a. Should an appeal be taken from the Final Approval Order, all Parties will
20 support the Final Approval Order on appeal;
- 21 b. Class Counsel and Defendant's Counsel will assist the Settlement
22 Administrator as needed or requested in the process of identifying and
23 locating Settlement Class Members and PAGA Group Members entitled to
24 payments and assuring delivery of such payments;
- 25 c. Class Counsel and Defendant's Counsel will assist the Settlement
26 Administrator as needed or requested in responding to late requests for
27 payments and the fair administration of that payment;
- 28 d. Class Counsel and Defendant's Counsel will cooperate with each other and

1 assist the Settlement Administrator as needed;

- 2 e. The Parties and Class Counsel will certify to the Court completion of all
3 payments required to be made by this Settlement Agreement.

4 **XII. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT**

5 119. The preliminary schedule for notice, approval, and payment procedures carrying
6 out this Settlement is set forth below. The schedule may be modified depending on whether
7 and when the Court grants necessary approvals and orders notice to the class and sets further
8 hearings. In the event of such modification, the Parties shall cooperate in order to complete the
9 settlement procedures as expeditiously as reasonably practicable.

11 30 days after the Date of 12 Preliminary Approval	Defendant to provide to the Settlement Administrator information in electronic format regarding all Class Members, including name(s), last known residence addresses, Social Security numbers, and dates worked as Class Members during the Class Period
15 30 days after receipt of class data 16 from Defendant and after all 17 address updates for Class 18 Members are complete.	Settlement Administrator to mail the Class Notice and PAGA Group Notice to Class Members and PAGA Group Members. At least five (5) business days prior to this mailing, the Settlement Administrator shall provide Defendant's Counsel with a report listing the estimated Settlement Payments and PAGA Group Member Amounts, and shall provide the same report to Class Counsel without including names or addresses.
21 60 days after mailing Settlement 22 Documents.	Last day for Class Members to submit Requests for Exclusion or Object to the Class Settlement. PAGA Group Members cannot object. If the 60th day falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday

5 business days prior to the Fairness Hearing.	Class Counsel to provide to the Court a declaration by the Settlement Administrator of due diligence and proof of mailings of the Class Notice, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.
1 business day prior to the Fairness Hearing.	Last day to rescind Requests for Exclusion
21 days after the Settlement Effective Date	Defendant to fund the Qualified Settlement Fund.
10 business days after Settlement Effective Date.	Settlement Administrator to make the final calculation of Settlement Payments from the Net Settlement Amount to be distributed to the Settlement Class Members and provide Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member and/or PAGA Group Member.
At least 5 business days prior to the distribution of payments to Settlement Class Members from the Net Settlement Amount.	Settlement Administrator shall provide the Parties with a redacted report listing the amount of all Settlement Payments to be made to each Settlement Class Member and PAGA Group Member. The Settlement Administrator shall also provide Defendant's Counsel with an unredacted copy of the report.
30 days after the Settlement Effective Date	Settlement Administrator to distribute and pay Settlement Payments, PAGA Group Member Amounts, Service Enhancements, Class Counsel attorney's fees and costs approved by the Court, and the LWDA Penalty Amount.

30 days after distribution.	Settlement Administrator to provide a declaration of payment, which will be filed with the Court and served on Class Counsel and Defendant's Counsel.
180 days after distribution.	Uncashed settlement checks become void and a stop payment will be placed on the uncashed checks.
1 year after uncashed checks become void	Unclaimed settlement payments transferred to the State.
7 days after unclaimed funds transfer to the State	Settlement Administrator to provide Class Counsel and Defendant's Counsel with a verification/declaration signed under penalty of perjury that it had mailed the Settlement Payment and PAGA Group Payment checks to the Settlement Class Members and/or PAGA Group members, but that the checks were uncashed within the time specified herein, and that such amounts have been sent to the State.
1 year after Final Approval	Final Payment to the Settlement Administrator of Settlement Administration Fees.

XIII. MISCELLANEOUS

120. **Right to Withdraw.** Defendant has the right to withdraw from the Settlement if: (a) more than 5% of Class Members exclude themselves from the Class Settlement; (b) the Settlement is construed in such a fashion that Defendant is required to pay more than the Maximum Settlement Payment (excluding any increase attributed to the triggering of the Escalator Clause due to the number of covered work weeks set forth in paragraph 80 above); (c) the court fails to certify the Settlement Class or does not certify a class releasing the claims as provided by this Agreement, or otherwise issues an order inconsistent with any of the terms of this Agreement; (d) the *Barragan* settlement is not approved; (e) Named Plaintiffs or Class Counsel breach this Settlement Agreement or the MOU; or (f) the LWDA or any other state or government agency seeks to intervene in the action and/or commence an enforcement action.

1 Defendant will work with Named Plaintiffs in good faith to appropriately revise the Settlement
2 Agreement if the Court requires non-material changes. Defendant must provide Class Counsel
3 with notice of its intent to withdraw within fifteen (15) business days after receiving notice that
4 the triggering event has occurred. In the event of Defendant's withdrawal, Defendant will pay
5 the costs already incurred by the Settlement Administrator.

6 121. **Consequence of Withdrawal.** If Defendant withdraws from the Settlement, this
7 Settlement Agreement and any related settlement documents will be null and void, other than
8 the confidentiality and non-disclosure provisions of Paragraphs 86, 123, and 124, and the non-
9 admission provisions in Paragraph 74. Any class certified for settlement purposes will be
10 vacated and/or decertified. In such an event, neither this Settlement Agreement, nor any prior
11 settlement MOU, nor the settlement documents, nor the negotiations leading to the Settlement
12 Agreement may be used as evidence for any purpose, and Defendant shall retain the right to
13 challenge all claims and allegations in the action, to assert all applicable defenses, and to
14 dispute the propriety of class certification on all applicable grounds. The Parties and the
15 Actions will return to their status quo as of the date of the MOU.

16 122. **Modification.** Other than as otherwise expressly stated in this Agreement, the
17 Agreement may not be changed, altered, or modified, except in writing and signed by counsel
18 for the Parties hereto, and approved by the Court. This Settlement Agreement may not be
19 discharged except by performance in accordance with its terms or by a writing signed by the
20 Parties.

21 123. **Confidentiality.** Names of Settlement Class Members and their allocation
22 amounts shall be kept strictly confidential by the Settlement Administrator, who will not release
23 such information to Class Counsel and will only file such information under seal if necessary.
24 The Settlement Administrator may share sufficient individual data with Class Counsel to help
25 resolve individual Class Members' questions and issues regarding the distribution of Settlement
26 Payments, should they arise. Class Counsel agrees that any information they receive or have
27 received in connection with this Settlement Agreement, the Class Settlement, or the PAGA
28 Settlement may be used for purposes of the Actions only, and may not be used for any purpose

1 or in any other action or proceeding. This confidentiality provision will survive regardless of
2 whether the other terms of this Settlement Agreement are voided.

3 124. **No Publicity.** Named Plaintiffs and Class Counsel agree not to publicly disclose
4 the terms of this settlement except in court papers to effectuate the terms of the settlement or if
5 required by legal process. Named Plaintiffs and Class Counsel agree that they shall not issue a
6 press release, hold a press conference, publish information about the settlement on any website,
7 over social media, or otherwise publicize the settlement. Named Plaintiffs and Class Counsel
8 agree not to respond to press inquiries except to refer reporters to the papers filed with the
9 Court. Named Plaintiffs and Class Counsel agree not to publicize the Maximum Settlement
10 Payment, except as otherwise required by the Settlement Administrator to post the Judgment
11 and Final Approval Order on its website. This no publicity provision will survive regardless of
12 whether the other terms of this Settlement Agreement are voided.

13 125. **Returns and/or Destruction of Confidential Settlement Materials.** Named
14 Plaintiffs and Class Counsel agree to return, or at Defendant's option destroy, all confidential
15 documents produced to them for settlement purposes in this action after the Settlement
16 Administrator submits the final declaration of distributions.

17 126. **Authority to Enter Into Settlement.** The signatories represent and warrant that
18 they are fully authorized to enter into this Settlement Agreement and bind the Parties to the
19 terms and conditions of this Agreement.

20 127. **Service.** Unless otherwise specifically provided, all notices, demands, or other
21 communications given shall be in writing and shall be sent by both email and United States
22 mail. Notices will be deemed to have been duly given as of the third business day after mailing
23 by United States registered or certified mail addressed as follows:

24 To Plaintiffs' Counsel:

25 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
26 Norman B. Blumenthal (SBN 068687)
27 Kyle R. Nordrehaug (SBN 205975)
28 2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223

1 Facsimile: (858) 551-1232
2 norm@bamlawca.com
3 kyle@bamlawca.com
4

5 To Defendant's Counsel:

6 MORGAN, LEWIS & BOCKIUS LLP
7 Barbara J. Miller (SBN 167223)
8 Alexander L. Grodan (SBN 261374)
9 600 Anton Boulevard, Suite 1800
10 Costa Mesa, CA 92626-7653
11 Tel: (714) 830-0600
12 Fax: (714) 830-0700
13 barbara.miller@morganlewis.com
14 alexander.grodan@morganlewis.com
15

16 If the identity of the persons to be notified for any Party changes, or their address changes, that
17 Party shall notify all other Parties of said change in writing.

18 128. **Captions and Titles.** Paragraph titles or captions contained in this Agreement
19 are inserted as a matter of convenience and for reference. Headings do not define, limit, extend,
20 or describe the scope of this Settlement Agreement or any Agreement provision. Each term of
21 this Settlement Agreement is contractual and not merely a recital

22 129. **Drafting.** The Parties agree that the terms and conditions of this Settlement
23 Agreement are the result of lengthy, intensive arms-length negotiations between the Parties.
24 Neither party shall be considered the "drafter" of the Settlement Agreement for purposes of
25 having terms construed against that party, and this Settlement Agreement shall not be construed
26 in favor of or against any Party by reason of the extent to which any Party or his, her, or its
27 counsel participated in the drafting of this Settlement Agreement.

28 130. **Extensions of Time.** If a Party or the Settlement Administrator cannot
reasonably comply with an obligation under this Settlement Agreement by the deadline
applicable to that obligation, the Parties may stipulate to extension of the time period. Consent
to such a request for an extension will not be unreasonably withheld by the other Party.

131. **Governing Law.** The rights and obligations of the Parties hereunder shall be

1 construed and enforced in accordance with, and shall be governed by, the laws of the State of
2 California, without regard to principles of conflict of laws.

3 132. **No Impact on Benefit Plans.** Neither the settlement nor any amounts paid
4 under the Settlement Agreement will modify any previously credited hours or service under any
5 employee benefit plan, policy, or bonus program sponsored by Releasees. Such amounts will
6 not form the basis for additional contributions to, benefits under, or any other monetary
7 entitlement under Releasees' sponsored benefit plans, policies, or bonus programs. The
8 payments made under the terms of this Settlement shall not be applied retroactively, currently,
9 or prospectively, as salary, earnings, wages, or any other form of compensation for the purposes
10 of any Releasees' benefit plan, policy, or bonus program. Releasees retain the right to modify
11 the language of Releasees' benefit plans, policies and bonus programs to effect this intent, and
12 to make clear that any amounts paid pursuant to this Settlement are not for "hours worked,"
13 "hours paid," "hours of service," or any similar measuring term as defined by applicable plans,
14 policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other
15 purpose, and that additional contributions or benefits are not required by this Settlement
16 Agreement.

17 133. **Integration.** This Settlement Agreement, along with attached exhibits, contains
18 the entire agreement between the Parties relating to the settlement, and all prior or
19 contemporaneous agreements, understandings, representations, and statements, whether oral or
20 written and whether by a Party or such Party's legal counsel. No rights created by this
21 Agreement may be waived except in writing.

22 134. **No Prior Assignments.** This Settlement Agreement shall be binding upon and
23 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
24 and successors. The Parties represent, covenant, and warrant that they have not directly or
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
26 any person or entity any portion of any liability, claim, demand, action, cause of action, or
27 rights released or discharged by this Agreement.

28 135. **Class Member Signatories.** It is agreed that because the members of the Class

are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement Agreement. The Class Notice attached hereto will advise all Class Members of the binding nature of the releases contained in this Agreement and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Class.

136. **Counterparts.** This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. An electronic signature shall have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

DATED: 10/22/2023, 2023


Douglas Patton (Oct 22, 2023 11:26 PDT)
Plaintiff, Douglas Patton

DATED: 10/19/2023, 2023


Salvador Reynosa Jr (Oct 19, 2023 16:53 PDT)
Plaintiff, Salvador Reynosa, Jr.

DATED: 11/14, 2023

HOME DEPOT U.S.A., INC.

By: David Steele
Its: Vice President & Deputy General Counsel

APPROVED AS TO FORM:

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DATED: November 30, 2023

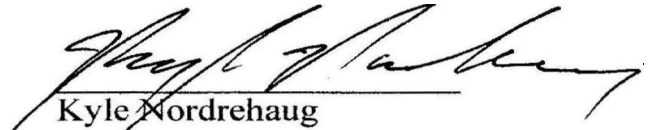
MORGAN, LEWIS & BOCKIUS LLP



Barbara J. Miller
Alexander L. Grodan
Attorneys for Defendant

DATED: Nov. 1, 2023, 2023

BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP



Kyle Nordrehaug
Attorneys for Plaintiffs

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY SANTA CLARA
Patton v. Home Depot U.S.A., Inc., Case No. 21CV387956

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

You are eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Home Depot U.S.A., Inc. (“Defendant”) for alleged wage and hour violations.

Based on Defendant’s records, and the Parties’ current assumptions, **your Class Member Allocation is estimated to be <<\$_____>> (less withholding) and PAGA Group Member Amount is estimated to be <<\$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your share of the PAGA Penalty Allocation, then according to Defendant’s records you are not eligible for share of the PAGA Penalty Allocation under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section of this Notice below.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Settlement Class Member, eligible for a Class Member Allocation and a share of the PAGA Penalty Allocation (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is _____.	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Settlement Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Class Members who request exclusion cannot object to any portion of the proposed Settlement. See Section of this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are a PAGA Group Member and exclude yourself, you will still be paid your share of the PAGA Penalty Allocation and will remain subject to the release of the PAGA Released Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out (“Settlement Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but

Written Objections Must be Submitted by the Response Deadline (_____)	every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section _____ of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, in Department 1 before Judge Sunil R. Kulkarni. This hearing may change as explained below. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section _____ of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Witten Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Class Member Allocation and your PAGA Group Member Allocation (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section _____ of this Notice.

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in a lawsuit, Santa Clara County Superior Court Case No. 21CV387956 (the “Action”). You are receiving this notice because the records of the Defendant indicate that you are a current or former non-exempt, hourly associate employed by Home Depot (and/or its past and present Affiliates) in the State of California at a California supply chain facility during the time period of January 26, 2017 through April 16, 2023 (the “Class”).¹ As a result, you are eligible to receive a portion of the settlement amount.

This is **not** a notice of a lawsuit against you. **You are not being sued**. Your participation in the Settlement will not affect your employment with Home Depot.

The purpose of this notice: (i) describes the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you, and (ii) explains your options with respect to the Settlement.

¹ Current or former non-exempt, hourly associates employed at the Tracy RDC are only included in the Class for the time period from June 17, 2021 through April 16, 2023.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

This settlement resolves two lawsuits:

1. The *Patton* Class Action. On January 26, 2021, Salvador Reynosa, Jr. filed a putative class action against Home Depot U.S.A., Inc. in Riverside County Superior Court which moved to federal court in the Eastern District of California, Case No. 2:21-CV-01096-WBS-KJN. The complaint alleged claims for: 1) unfair competition; 2) failure to pay overtime wages; 3) failure to pay minimum wages; 4) failure to provide meal breaks as required by California law; 5) failure to authorize and permit rest breaks as required by California law; 6) failure to reimburse reasonable and necessary business expenses; and 7) failure to timely pay wages upon termination of employment. On October 25, 2021, Mr. Reynosa filed a First Amended Complaint that added Douglas Patton. The First Amended Complaint (“FAC”) also added additional factual allegations that Home Depot failed to properly calculate wages, overtime, and break premiums. In addition, the FAC made new allegations regarding COVID-19 health screenings and a claim that Home Depot failed to provide accurate itemized wage statements. Home Depot denied and continues to deny all of the allegations.

2. The *Patton* PAGA Action. On July 29, 2021, Mr. Patton filed a notice with the California Labor and Workforce Development Agency which he later amended on May 10, 2022. Mr. Patton’s notices claim that Home Depot violated applicable wage and hour laws as to non-exempt associates who worked in a California Distribution Center. The notices allege the same violations as those claimed by the FAC and also included allegations that Home Depot failed to provide suitable seating and temperature control. On October 13, 2021, Mr. Patton filed a lawsuit in Santa Clara County Superior Court, Case No. 21CV387956, under the California Private Attorneys General Act (“PAGA”) based on the allegations of these notices. He amended his lawsuit on August 17, 2022.

3. The Combined Lawsuit. As part of the settlement, the parties agreed to combine the *Patton* PAGA action and the *Patton* Class Action by filing a second amended complaint in the *Patton* PAGA action that includes all of the claims contained in the *Patton* Class Action. This settlement will be presented to Santa Clara County Superior Court for approval.

Home Depot denies all of the claims alleged in the Combined Lawsuit. Home Depot believes that it properly paid all associates for all hours worked and all overtime wages. Further, Home Depot contends that it provided all legally compliant meal and rest breaks, paid break premiums at the proper rates, and properly reimbursed business expenses. Home Depot also asserts that, at all times, employees received wage statements that were compliant with the Labor Code, were timely paid all wages as required under the Labor Code, and that Class Members who ended their employment with Home Depot during the Class Period were properly compensated for all wages due as required by California law. Home Depot further asserts that the alleged Wage Order violations relating to suitable seating and temperature regulation have no merit.

Consequently, Home Depot does not believe that any liability to Mr. Reynosa, Mr. Patton, or any other associate exists. Mr. Reynosa and Mr. Patton are called “Plaintiffs.”

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

The Court has not ruled on whether Plaintiffs’ allegations have any merit. However, for the purpose of avoiding the time and expense of further litigation, Plaintiffs and Home Depot have negotiated a settlement and Home

Depot has agreed to pay a Maximum Settlement Payment of one million one hundred twelve thousand five hundred dollars (\$1,112,500). This settlement is **not** an admission by Home Depot of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

The settlement class is defined as any non-exempt, hourly associate employed by Home Depot U.S.A., Inc. (and its past and present Affiliates) in the State of California at a California supply chain facility at any point from January 26, 2017 through April 16, 2023, excluding those associates who worked at the Tracy RDC prior to June 17, 2021. Members of the settlement class are called “Class Members.” The “Class Period” is January 26, 2017 to April 16, 2023.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. Home Depot will pay a \$1,112,500 Maximum Settlement Payment to an administrator.

B. The “Net Settlement Amount” is the Maximum Settlement Payment of \$1,112,500 less the combined total of attorney fees and litigation costs approved by the Court, costs of administering the settlement, a reserve fund (of no more than \$10,000), and extra payments to Plaintiffs because they brought the litigation (estimated to be no more than \$10,000 each for a total of \$20,000), civil PAGA penalties of \$20,000, and taxes other than Home Depot’s share of payroll taxes. The Net Settlement Amount will be allocated to Class Members in proportion to the number of weeks worked by Class Members. Any Class Member who does not opt-out of the Settlement will be paid from the Net Settlement Amount (Class Members will have checks mailed to them directly and will not have to submit a claim form to participate in the Settlement). All Class Members who worked after January 26, 2020 will get a small payment for PAGA penalties regardless of whether they opt-out.

C. The Net Settlement Amount will be divided among all Class Members. The amount of money you will receive will be based on the following: (1) whether you worked after January 26, 2020; (2) whether you opt-out of this settlement; and (3) the number of weeks you worked for Home Depot after January 26, 2017.

- a. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of compensable weeks you worked for Home Depot during the Class Period, less applicable withholdings. **According to Defendant’s records, you worked XX compensable weeks. Your estimated Class Member Allocation is: \$INDIVIDUAL’S AMOUNT.**
- b. If you opt-out of the settlement, you will still be eligible for a small payment of your share of PAGA penalties if you worked after January 26, 2020. Your PAGA Group Member Allocation is set forth on page 1 of this Notice.

V. WHAT DO I RELEASE UNDER THIS SETTLEMENT

If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release Home Depot from all claims for: restitution, penalties, civil penalties, damages, or any other form of relief asserted or pleaded (or that could have been pleaded based on the factual allegations) in the Operative

Complaint and/or notice provided to the LWDA by any Named Plaintiff that accrued during the Class Period, including claims for (1) unpaid wages; (2) unpaid overtime (including alleged violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6) violations of California's sick leave laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages (including wages due upon termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order). Released Class Claims, however, do not include the Excluded Claims, as defined herein.

"Excluded Claims" means (1) claims released by the Settlement Agreement filed in *Barragan v. Home Depot U.S.A., Inc.*, San Diego County Superior Court, Case No. 37-2019-00056110-CU-MC-CTL; (2) claims for vested benefits under an ERISA plan; (3) claims for wrongful termination; (4) claims for unemployment insurance, disability benefits, social security benefits, or workers' compensation benefits; (6) claims based on acts that took place outside of the Class Period; and (7) PAGA claims based on acts that took place outside of January 26, 2020 through April 16, 2023.

If you opt-out, you will still release claims under PAGA as explained in the separate notice that you will receive from the administrator.

VI. WHAT ARE MY OPTIONS?

You have only three options for the class portion of the settlement as described in more detail below:

1. Do Nothing and receive a Settlement Payment
2. Opt-Out of the Settlement
3. Object (you cannot both Opt-Out and Object)

You cannot combine options. If you Opt-Out, you cannot object.

A. *Do nothing which accepts your share of the settlement and you will be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Settlement Administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; *or*

B. *You may exclude yourself from the class action settlement, in which case you will not receive your share of the class action settlement and you will not be bound by the class action settlement.* You will, however, remain bound by the PAGA settlement for civil penalties on behalf of the State. If you choose to be excluded ("opt-out"), by no later than [REDACTED] (60 calendar days after mailing of this Notice), you must send a written request for exclusion, by fax to [REDACTED] or by mail, to the Settlement Administrator, [Name], located at [Address]. In order to be considered valid, your request for exclusion *must* be timely sent and *must* include your name, a statement that you wish to exclude yourself from the settlement, the last four digits of your social security number or Home Depot employee ID, and your signature. Should you change your mind, you may rescind your

Request for Exclusion in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing listed in **Section VIII**, below, or as otherwise ordered by the Court.

C. *You may object to the class action settlement.* The procedures for objecting to the class action settlement are described below in **Section VIII** of this form. If you opt-out of the settlement (as described above), you cannot object to it.

D. You have no options as to the PAGA portion of the settlement. *You may not opt-out or object to the PAGA portion of this settlement.*

The Settlement Administrator is:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Website: _____

VII. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. You do not need to do anything further to receive your settlement check. The Settlement Administrator will calculate your share of the settlement and will issue you a check.

B. You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Settlement Administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VIII. HEARING ON PROPOSED SETTLEMENT

A Final Approval Hearing will be held before the Court on _____, 2024, at _____ a.m., before Hon. Sunil R. Kulkarni in Department 1 of the Santa Clara Superior Court, located on the second floor of the Downtown Superior Courthouse at 191 North Street, San Jose, CA 95113 to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you.

You are not required to attend the hearing. Counsel for Plaintiffs and the Class will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll free conference call number for Department 1. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

IX. PROCEDURES FOR OBJECTING TO SETTLEMENT

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it. You may not pursue this option if you opt-out of the settlement. To object, you must either appear at the Final Approval Hearing or send a letter that: (1) you sign; (2) includes your full name; (3) states the basis for your objection; and (4) if you intend to appear at the Final Approval hearing. If you object by written letter, the letter must be postmarked on or before [REDACTED], 2024 (60 calendar days after mailing of this Notice). If you would like to object to the settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. You may withdraw your objection in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing listed in Section VIII, above, or as otherwise ordered by the Court.

X. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to the Settlement Administrator's website: << _____ >>. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 21CV387956. The pleadings and all other records from this litigation may be examined by inspecting the Court file at the Downtown Superior Court, located at 191 North First Street, San Jose, CA 95113. You may also obtain more details by examining the Court's file on the internet via the Case Information Portal page for the California Superior Court for the County of Santa Clara at <https://cmportal.sccourt.org/Portal> and entering Case No. 21CV387956.

If you have any questions, you can call the Settlement Administrator at [REDACTED] or Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING THE CLASS

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

2255 Calle Clara

La Jolla, CA 92037

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Email: kyle@bamlawca.com

ATTORNEYS REPRESENTING HOME DEPOT U.S.A., INC.

MORGAN, LEWIS & BOCKIUS LLP

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Alexander L. Grodan (SBN 261374)
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Costa Mesa, CA 92626-7653
Tel: (714) 830-0600
Fax: (714) 830-0700
barbara.miller@morganlewis.com
alexander.grodan@morganlewis.com

**PLEASE DO NOT CALL THE COURT OR HOME DEPOT REGARDING THIS
SETTLEMENT.**

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY SANTA CLARA
Patton v. Home Depot U.S.A., Inc., Case No. 21CV387956

NOTICE OF SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT LAWSUIT

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the above entitled case name and number, Santa Clara County Superior Court Case No. 21CV387956 (the “Action”). You are receiving this notice because the records of Home Depot U.S.A., Inc. (“Home Depot”) indicate that you are a member of the “PAGA Group” defined as current or former non-exempt, hourly associates employed by Home Depot (and/or its past and present Affiliates) in the State of California at a California supply chain facility other than the Tracy RDC during the time period of January 26, 2020 through April 16, 2023, or at the Tracy RDC during the time period of June 17, 2021 through April 16, 2023 (the “PAGA Period”).

The Action includes a claim under California’s Private Attorneys General Act (“PAGA”) for civil penalties based on alleged violations of California regulations as to a defined group of “Aggrieved Employees.” Under the settlement agreement, all Aggrieved Employees are entitled to receive a small portion of the civil penalties allocated to the State (the allocation of civil penalties totals \$20,000); the State is entitled to most of the \$20,000 penalty allocation. You meet the definition of an Aggrieved Employee and are eligible to receive a portion of the settlement amount allocated to civil penalties in addition to the settlement amount for the related class action settlement. You have separately received a notice for the class action portion of the settlement.

Home Depot will pay \$20,000 in civil penalties to resolve the PAGA claims. Under applicable law, 75% of those civil penalties will be paid directly to the State. The remaining 25%, or \$5,000, is being divided among the members of the PAGA Group based on the number of pay periods that each member worked relative to the total number of covered pay periods for all PAGA Group Members.

You are receiving this notice and the enclosed check because you are entitled to a portion of the penalty component of the settlement. A check for your portion of penalties is enclosed. Your amount was calculated based on the number of pay periods you worked during the PAGA Period.

II. WHAT IS THE PAGA LAWSUIT ABOUT?

Plaintiff Douglas Patton gave notice to the California Labor and Workforce Development Agency of alleged Labor Code violations experienced by non-exempt associates who worked in a California supply chain facility. Plaintiff Patton filed a representative action in Santa Clara County Superior Court on October 13, 2021, Case No. 21CV387956, under the Private Attorneys General Act (“PAGA”) based on this notice letter. On May 10, 2022, Plaintiff Patton gave an amended notice to the State of an additional Labor Code violation based on the purported failure to properly regulate temperature at the worksite in violation of applicable regulations. On August 17, 2022, Plaintiff Patton filed a First Amended Representative Action Complaint adding claims related temperature.

Home Depot denies Plaintiff’s claims, and asserts that, during all relevant times, associates were properly paid for all hours worked and all overtime wages. Further, Home Depot contends that it provided all legally compliant meal and rest breaks, paid break premiums at the proper rates, and properly reimbursed business expenses. Home Depot also asserts that, at all times, employees received wage statements that were compliant with the Labor Code, were timely paid all wages as required under the Labor Code, and that Class Members who ended their employment with Home Depot during the Class Period were properly compensated for all wages due as required

by California law. Home Depot further asserts that the alleged Wage Order violations relating to suitable seating and temperature regulation have no merit.

Consequently, Home Depot does not believe that any liability exists.

The Court has not ruled on whether Plaintiff's allegations have any merit. However, for the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Home Depot has agreed to pay a total of \$20,000 in civil penalties to resolve the PAGA claims.

III. DO I HAVE OPTIONS?

You do not have any options and do not need to take any actions. The enclosed check belongs to you. The Settlement has already been approved by the Judge in this case. The check will remain valid for one hundred eighty (180) days. If you do not cash your check within 180 days, a stop payment will be placed on the check.

IV. WHAT IS THE IMPACT OF THE SETTLEMENT?

As a result of the settlement, you and every member of the PAGA Group releases Home Depot from claims under the PAGA as follows: claims arising from January 26, 2020 through April 16, 2023 and made on behalf of the LWDA and/or State of California contained in the Operative Complaint or any written notice provided to the LWDA, including PAGA claims for or predicated on (1) unpaid wages; (2) unpaid overtime (including alleged violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6) violations of California's sick leave laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages (including wages due upon termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order); (11) any alleged failure to comply with California's Wage Orders including provisions regulating conditions of employment including temperature and suitable seating; and (12) civil penalties pursuant to PAGA based on any of the foregoing alleged violations.

V. WHAT IF I NEED ADDITIONAL INFORMATION?

If you have any questions, you may call the third-party claims administrator about this settlement:

[insert Settlement Administrator contact information]

PLEASE DO NOT CALL THE COURT OR HOME DEPOT REGARDING THIS SETTLEMENT.

EXHIBIT C

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10 DOUGLAS PATTON, on behalf of the State
11 of California, as a private attorney general, and
12 as an individual, on behalf of himself and on
13 behalf of all persons similarly situated, and
14 SALVADOR REYNOSA, JR., an individual,
on behalf of himself and on behalf of all
persons similarly situated,

15 Plaintiffs,

16 vs.

17 HOME DEPOT U.S.A., INC., a Corporation;
18 and Does 1 through 50, Inclusive,

19 Defendants.
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Case No. 21CV387956

Hon. Sunil R. Kulkarni
Dept. 1

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

Date: _____, 2024
Hearing Time: _____
Location: Dept. 1

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

On _____, a hearing was held on the motion of Plaintiffs Douglas Patton and Salvador Reynosa, Jr. (“Plaintiffs”) for final approval of class and representative action settlement and for payments to the Plaintiffs, Class Members, PAGA Group Members, Class Counsel, the California Labor and Workforce Development Agency (“LWDA”), and the Settlement Administrator. Blumenthal Nordrehaug Bhowmik De Blouw LLP appeared for Plaintiffs, and Morgan, Lewis & Bockius LLP appeared for Defendant Home Depot U.S.A., Inc. (“Defendant”). Having considered the Joint Stipulation of Settlement (“Settlement Agreement”), which this Court preliminary approved by its Order dated _____ (the “Preliminary Approval Order”), and all papers filed and all arguments made in connection with the Final Approval Hearing, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Except as otherwise specified herein, the Court for purposes of this Final Approval Order adopts all defined terms set forth in the Settlement Agreement.

2. For the reasons set forth in the Preliminary Approval Order, which are adopted and incorporated herein by reference, this Court finds that the requirements of California Code of Civil Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

3. The Court finds that it has jurisdiction over the subject matter of the action and over all parties to the action, including all Class Members.

4. The Court finds that the Settlement was made and entered into in good faith and hereby approves the Settlement as fair, reasonable, adequate, and in the best interests of the entire Class. The Court hereby directs implementation of all remaining terms, conditions, and provisions of the Settlement Agreement. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. Additionally, after considering the monetary recovery provided by the settlement in light of the challenges posed by continued litigation, the Court concludes that the settlement provides Class Members with fair and adequate relief.

Class Certification

5. In the Court’s Preliminary Approval Order, the Court certified the Class for purposes of

1 settlement. The Court finds, for purposes of settlement only, that the Class meets the requirements for
2 certification on all other theories under California Code of Civil Procedure section 382. For purposes of
3 effectuating the Settlement, the Court finally certifies the following Class:

4 Any non-exempt, hourly associate employed by Home Depot U.S.A., Inc. (and its past
5 and present Affiliates) in the State of California at a California supply chain facility at
6 any point from January 26, 2017 through April 16, 2023, excluding those associates who
7 worked at the Tracy RDC prior to June 17, 2021. The Class Period for Class Members
8 who worked at the Tracy RDC shall be June 17, 2021 through April 16, 2023.

9 6. In the Court's Preliminary Approval Order, Plaintiffs were appointed as Class
10 Representatives as to the conditionally certified Class. The Court confirms their appointment for purposes
11 of this settlement.

12 7. In the Court's Preliminary Approval Order, Blumenthal Nordrehaug Bhowmik De Blouw
13 LLP were appointed as Class Counsel as to the conditionally certified Class. The Court confirms the
14 appointment of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for purposes of this
15 settlement.

16 **Class Notice**

17 8. Notice of Settlement ("Notice") to Class Members, as set forth in the Settlement
18 Agreement, has been completed in conformity with the terms of the Settlement Agreement and
19 Preliminary Approval Order as to all Class Members who could be identified through reasonable effort.
20 The Court finds that said notice was the best notice practicable under the circumstances. The Notice
21 provided due and adequate notice to Class Members of the proceedings and of the matters set forth therein,
22 including the Settlement, the manner by which objections to the Settlement could be made and Class
23 Members could opt out of the non-PAGA portion of the Settlement, and that any Class Member who opts
24 out will still be bound by the PAGA terms of the Settlement and will be ineligible to pursue any PAGA
25 claims resolved by the Settlement Agreement. The Notice fully satisfied the requirements of due process.

26 **California Private Attorneys General Act**

27 9. The Court finds that Plaintiff Patton was authorized to proceed on behalf of the State of
28 California under the California Private Attorneys General Act (Cal. Labor Code §§2698 *et seq.*) ("PAGA")

1 to resolve the PAGA claims asserted in the Second Amended Class and Representative Action Complaint,
2 that the State had an opportunity to review the PAGA claims that Plaintiff Patton is releasing on the State's
3 behalf pursuant to California Labor Code Section 2699(l) and 2699.3, and that the State has expressed no
4 objection to the PAGA portion of this Settlement. Accordingly, Plaintiff Patton, all Class Members
5 (whether or not they have opted out of the Settlement) on whose behalf Plaintiff Patton has settled these
6 PAGA claims, and the State of California shall be deemed to have expressly waived and relinquished, by
7 operation of law and to the fullest extent permitted by law, the provisions, rights and benefits they
8 otherwise may have had related to the Released PAGA Claims as set forth in Paragraph 49 of the
9 Settlement Agreement.

10 **Objections and Requests for Exclusion**

11 10. ____ objections to the Settlement were submitted by any Class Members. [If objections
12 were submitted: The Court has considered any objections filed along with responses to the objections, and
13 the Court finds that, notwithstanding the objections, the settlement is fair, reasonable and non-collusive
14 and is hereby approved.]

15 11. Requests for Exclusion were submitted by ____ Class Members. The Court finds that the
16 following Class Members submitted a valid and timely Request for Exclusion and therefore shall not be
17 bound by the terms of the Settlement Agreement related to the non-PAGA portion of the Settlement:

- 18 1. _____
- 19 2. _____
- 20 3. _____

21
22 12. Plaintiff and all other Settlement Class Members shall have, by operation of this Judgment,
23 fully, finally, and forever released, relinquished, and discharged the Releasees from the Released Class
24 Claims as set forth in Paragraph 55 of the Settlement Agreement. All Class Members who are PAGA
25 Group Members, as defined in the Settlement Agreement, including the Class Member(s) identified in
26 Paragraph 11 above, shall have, by operation of this Judgment, fully, finally, and forever released,
27 relinquished, and discharged the Releasees from any PAGA Released Claims. Additionally, Plaintiffs
28

will be bound by their covenant, as provided in the Settlement Agreement, that they will not participate or receive recovery or monies in connection with any proceeding seeking penalties under the PAGA, or in connection with any other claim which arises during the Class Period for any known or unknown claims.

13. Plaintiffs are hereby enjoined from filing or prosecuting any other cases, claims, suits or administrative proceedings involving the Released Class Claims as set forth in the Settlement Agreement.

Payments Pursuant to the Stipulation

14. Within twenty-one (21) days after the Settlement Effective Date, Defendant is to fund the Qualified Settlement Fund. The Court finds that the Maximum Settlement Payment, the Net Settlement Amount, the PAGA Group Payment, and the methodology used to calculate and pay each Settlement Class Member's portion of the Net Settlement Amount and/or PAGA Group Member Payment is fair and reasonable, and authorizes the Settlement Administrator to pay and distribute the Net Settlement Amount and PAGA Group Payment to the Settlement Class Members and PAGA Group Members in accordance with the terms of the Settlement Agreement.

15. The funds for any check that remains uncashed one-hundred-eighty (180) days after the payment of first round settlement checks by the Settlement Administrator will be sent by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.* in the name of the Settlement Class Member and/or the PAGA Group Member to whom the uncashed check was addressed, for his or her benefit until such time as they claim their property. In such event, the Settlement Class Members whose checks remain uncashed one-hundred-eighty (180) days after the payment of first round settlement checks by the Settlement Administrator shall nevertheless remain subject to the terms of the Judgment.

16. Class Counsel shall be paid \$370,833 as their attorneys' fees and \$___ for reimbursement of actual litigation costs and expenses from the Maximum Settlement Payment in accordance with the terms of the Settlement Agreement. The Court finds that the requested award of attorneys' fees is fair and reasonable for a contingency fee in a class action such as this, *i.e.*, one-third of the common fund created by the settlement. Counsel have also established the reasonableness of the requested award of attorneys' fees via their lodestar crosscheck, and the Court finds that the rates, hours billed, and risk multiplier are

1 fair and reasonable.

2 17. Plaintiffs Douglas Patton and Salvador Reynosa, Jr. shall each be paid a Service
3 Enhancement payment of \$10,000.00 from the Maximum Settlement Payment for their roles as Class
4 Representatives in accordance with the terms of the Agreement. The Court finds this amount to be fair,
5 reasonable, and sufficiently supported.

6 18. The Settlement Administrator shall be paid an amount not to exceed \$60,000 from the
7 Maximum Settlement Payment for the costs and expenses of administering the Settlement.

8 19. A payment in the amount of \$15,000 from the Maximum Settlement Payment shall be
9 allocated to penalties under the PAGA, California Labor Code sections 2698, *et seq.*, and paid by the
10 Settlement Administrator directly to the LWDA.

11 **Other Provisions**

12 20. Nothing relating to this Order, or any communications, papers, or orders related to the
13 Settlement, shall be cited to as, construed to be, admissible as, or deemed an admission by Defendant or
14 the Releasees of any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the Class
15 Members, or any other person, or that class or collective action certification is appropriate in this or any
16 other matter. There has been no determination by any Court as to the merits of the claims asserted by
17 Plaintiffs or as to whether a class should be certified, other than for settlement purposes only. Furthermore,
18 nothing in the Settlement Agreement shall be cited to as, construed to be, admissible as, or considered any
19 form of waiver of any alternative dispute resolution agreements, provisions, or policies by Defendant or
20 Releasees.

21 21. The Parties shall implement the Settlement according to the terms of the Settlement
22 Agreement.

23 22. The Court reserves exclusive and continuing jurisdiction over the Action, Plaintiffs, the
24 Class Members, and Defendant for purposes of supervising the implementation, enforcement, construction,
25 administration and interpretation of the Settlement and this Judgment.

26 23. If the Settlement does not become final and effective in accordance with its terms, this
27 Judgment shall be rendered null and void and shall be vacated and, in such event, all related orders entered
28

and all releases delivered in connection herewith also shall be rendered null and void.

IT IS SO ORDERED.

Date: _____

The Honorable Sunil R. Kulkarni
SUPERIOR COURT JUDGE

EXHIBIT #2

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FIRM RESUME

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ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

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Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

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Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

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Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

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Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

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Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

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Admitted: 2012, California

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

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County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Navajo Express, Inc. – San Bernardino County Superior Court, Case No. CIVDS1613846; Lara v. Commercial Protective Service, Inc. – Los Angeles County Superior Court, Case No. BC648921; Picos v. Culinary of California, Inc. – San Diego County Superior Court, Case No. JCCP 4892; Samaniego v. A&I Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV01894; Bailey v. Romanoff Floor Covering, Inc. – U.S. District Court, Eastern District of California, Case No. 17-CV-00685-TLN-CMK; Aguirre v. Bitech, Inc. – Sacramento County Superior Court, Case No. 34-2016-002022; Phillips v. DI Overnite LLC – San Diego County Superior Court, Case No. 37-2016-00016800-CU-OE-CTL; Jacob v. Pride Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV1337; Bennett v. Heartland Express, Inc. of Iowa – San Diego County Superior Court, Case No. 37-2016-00015056-CU-OE-CTL; Stapf v. Mercer Health & Benefits Administration LLC – Los Angeles County Superior Court, Case No. BC643007; Armstrong v. Ruan Transport Corporation – San Bernardino County Superior Court, Case No. CIVDS1605897; Geiger v. Floyd's 99-California LLC – Orange County Superior Court, Case No. 30-2016-00874943-CU-OE-CXC; Mondrian v. Trius Trucking, Inc. – Fresno County Superior Court, Case No. 16CECG01501; Johnson v. Fedex Office and Print Services, Inc. – Alameda County Superior Court, Case No. RG17856291; Rios v. Pacific Western Bank – San Diego County Superior Court, Case No. 37-2016-00038083; Sanders v. Old Dominion Freight Lines, Inc. – San Diego County Superior Court, Case No. 37-2016-00030725-CU-OE-CTL; Taylor v. Gardner Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1614280; Couture v. Wal-Mart Associates, Inc. – U.S. District Court, Eastern District of California, case No. 16-CV-02202-VC; Bertuol v. AHMC Anaheim Regional Medical Center LP – Orange County Superior Court, Case No. 30-2017-00899024-CO-OE-CXC; Espinoza v. Prime Communications of California, LLC – San Mateo County Superior Court, Case No. 16CIV01563; Archuletta v. Tidy Services, Inc. – Orange County Superior court, Case No. 30-2016-008611892-CU-OE-CXC; Puccini v. Earthbound Farm, LLC – Santa Clara County Superior Court, Case No. 17CV308643; Vikram v. First Student Management, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-04656-KAW; Blair v. Ashley Distribution Services, LTD. – U.S. District Court, Central District of California, Case No. 17-CV-01427-JAK-SP; Richardson v. Service Staffing, LLC – Orange County Superior Court, Case No. 30-2017-00899039-CU-OE-CXC; Coffin v. Certified Freight Logistics, Inc. – San Diego County Superior Court, Case No. 37-2016-00036523-CU-OE-CTL; Encarnacion v. S.A.S. Services Group, Inc. – San Diego County Superior Court, Case No. 37-2017-00026726-CU-OE-CTL; Vasquez v. Golden State Overnight Delivery Service, Inc. – Alameda County Superior Court, Case No. RG17862924; Karr v. Tristar Managed Care, Inc. – Contra Costa Superior Court, case No. MSC17-00650; Gouveia v. Central Cal Transportation – San Joaquin County Superior Court, Case No. STK-CV-UOE-2017-0001765; Miranda v. Genex Services, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-01438-JD; Spears v. Health Net of California, Inc. – Sacramento County Superior Court, Case No. 34-2017-00210560; Martinez v. Geil Enterprises, Inc. – Fresno County Superior Court, Case No. 17CECG01879; McComack v. Marriott Ownership Resorts, Inc. – U.S. District Court, Southern District of California, Case No. 17CV1663 BEN WVG; Velasco v. Lemonade Restaurant Group, LLC – Los Angeles County Superior Court, Case No. BC672235; Smith v. Personnel Services, Inc. – U.S. District Court, Northern District of California, Case NO. 17-CV-03594-SK; Gabriel v. Kuni SDA, LLC – San Diego County Superior Court, Case No. 37-2017-000251191-CU-OE-CTL; Miller v. Mattress Firm, Inc. – Santa Clara County Superior Court, Case No. 17CV313148; Provost v. Yourmechanic, Inc. – San Diego County Superior Court, Case No. 37-2017-00024056-CU-OE-CTL; Zirpolo v. UAG Stevens Creek II, Inc. – Santa Clara County Superior Court, Case No. 17CV313457; Salazar v. Aids Healthcare Foundation – San Diego County Superior Court, Case No. 37-2017-00033482-CU-OE-CTL; Knipe v. Amazon.com, Inc. – San Diego County Superior Court, Case No. 37-2017-00029426-CU-OE-CTL; Erwin v. Caremeridian, LLC – Fresno County Superior Court, Case No. 17CECG03048; Davis v. Cox Communications California, LLC – U.S. District Court, Southern District of California, Case No. 16-CV-00989-BAS-BLM; Lara v. RMI International, Inc. – Los Angeles County Superior Court, Case No. BC597695; Harper v. C.R. England, Inc. – U.S. District Court, Utah Central

Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

EXHIBIT #3

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**WRITERS EXT:
1004**

July 29, 2021

CA2481

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Home Depot U.S.A., Inc.
Certified Mail #70203160000075433098
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Home Depot U.S.A., Inc. in a California Distribution Center and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Our offices represent Plaintiff Douglas Patton (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Home Depot U.S.A., Inc. (“Defendant”). Plaintiff has been employed by Defendant in California as a non-exempt employee since August of 2017 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. However, when calculating the regular rate of pay in order to pay meal and rest break premium pay to Plaintiff and other Aggrieved Employees, Defendant fails to include the incentive compensation as part of the employees’ “regular rate of pay” for purposes of calculating meal and rest break premium pay and only pays these premiums at Plaintiff’s and Aggrieved Employees’ base rates of pay. As a matter of law, the incentive compensation received by Plaintiff and Aggrieved Employees must be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment of meal and rest break premiums to Plaintiff and other Aggrieved Employees. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s

work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant requires Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fail to identify such information. More specifically, the wage statements fail to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours are added up they do not equal the actual amount of hours worked each pay period. Additionally, Plaintiff contends that Defendant fails to comply with Industrial Wage Order 7(A)(3) in that Defendant fails to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the

claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10 DOUGLAS PATTON, on behalf of the
11 State of California, as a private attorney
general,

12 Plaintiff,

13 vs.

14 HOME DEPOT U.S.A., INC., a
15 Corporation; and Does 1 through 50,
Inclusive;

16 Defendants.
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Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Douglas Patton (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 **INTRODUCTION**

8 1. PLAINTIFF brings this action against Defendant Home Depot U.S.A., Inc.
9 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
10 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
12 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
13 violations, PLAINTIFF does not seek underlying general and/or special damages for those
14 violations, but simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 **THE PARTIES**

25 4. Defendant Home Depot U.S.A., Inc. is a Corporation that at all relevant times
26 mentioned herein conducted and continues to conduct substantial and regular business
27 throughout California. DEFENDANT is a home improvement retailer in the United States
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1 supplying tools, construction products and services.

2 5. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods since August of 2017. PLAINTIFF
4 has been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
5 employee paid in whole or in part on an hourly basis and received additional compensation from
6 DEFENDANT in the form of non-discretionary incentive wages.

7 6. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in a
11 California Distribution Center and classified as non-exempt employees ("AGGRIEVED
12 EMPLOYEES") during the time period of July 29, 2020 until a date as determined by the Court
13 (the "PAGA PERIOD").

14 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246,
18 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
19 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
20 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
21 within the meaning of Labor Code § 2699, *et seq.*

22 8. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
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1 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
2 responsible in some manner for one or more of the events and happenings that proximately
3 caused the injuries and damages hereinafter alleged.

4 9. The agents, servants and/or employees of the Defendants and each of them acting
5 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
6 agent, servant and/or employee of the Defendants, and personally participated in the conduct
7 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
8 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
9 all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED
10 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
11 agents, servants and/or employees.

12 13 **THE CONDUCT**

14 10. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
16 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
17 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
18 meaning the time during which an employee was subject to the control of an employer,
19 including all the time the employee was permitted or suffered to permit this work.
20 DEFENDANT requires PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
21 without paying them for all the time they are under DEFENDANT's control. As a result of their
22 rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES are from time
23 to time not fully relieved of duty by DEFENDANT for their meal periods and clock out of
24 DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction during
25 what should be their off-duty meal period. As a result, PLAINTIFF and AGGRIEVED
26 EMPLOYEES Members forfeit minimum wages and overtime wage compensation by working
27 without their time being correctly recorded and without compensation at the applicable rates.

1 Further, during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES from
2 time to time are not paid wages for all time worked, including overtime wages, such that in the
3 aggregate employees are underpaid wages as a result of DEFENDANT's pattern and practice
4 of unevenly rounding time worked by its employees. DEFENDANT's policy and practice not
5 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced
6 by DEFENDANT's business records.

7 11. DEFENDANT also requires PLAINTIFF and AGGRIEVED EMPLOYEES to
8 work off the clock without paying them for all the time they are under DEFENDANT's control.
9 PLAINTIFF and AGGRIEVED EMPLOYEES clock out of DEFENDANT's timekeeping
10 system, in order to perform additional work for DEFENDANT as required to meet
11 DEFENDANT's job requirements. Specifically, during the PAGA PERIOD, DEFENDANT
12 engages in the practice of requiring PLAINTIFF and AGGRIEVED EMPLOYEES to perform
13 work off the clock after clocking out in that DEFENDANT, as a condition of employment,
14 requires these employees to wait for and submit to loss prevention inspections after clocking
15 out for meal breaks and at the end of each scheduled shift for which DEFENDANT does not
16 provide compensation for time spent waiting for and submitting to DEFENDANT's loss
17 prevention inspections off the clock. Additionally, DEFENDANT requires PLAINTIFF and
18 other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory temperature checks
19 for COVID-19 screening prior to passing through DEFENDANT's security checkpoint and
20 prior to clocking into DEFENDANT's timekeeping system for the workday. As a result,
21 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage
22 compensation, and meal break wages, by working without their time being correctly recorded
23 and without compensation at the applicable rates.

24 12. State and federal law provides that employees must be paid overtime and meal and
25 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and
26 other AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that
27 was tied to specific elements of an employee's performance.
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1 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
2 compensation was DEFENDANT's non-discretionary incentive program that pays PLAINTIFF
3 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANT. The non-discretionary incentive program provides all employees paid on an
5 hourly basis with incentive compensation when the employees met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
7 overtime and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
8 EMPLOYEES, DEFENDANT fails to include the incentive compensation as part of the
9 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
10 break premium pay. Management and supervisors described the incentive program to potential
11 and new employees as part of the compensation package. As a matter of law, the incentive
12 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
13 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
14 overtime compensation and meal and rest break premiums to PLAINTIFF and other
15 AGGRIEVED EMPLOYEES by DEFENDANT.

16 14. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
18 intentionally and knowingly fails to compensate PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
20 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
21 compensation as required by California law which allowed DEFENDANT to illegally profit and
22 gain an unfair advantage over competitors who complied with the law. To the extent equitable
23 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
24 PAGA PERIOD should be adjusted accordingly.

25 15. As a result of their rigorous work schedules, PLAINTIFF and other
26 AGGRIEVED EMPLOYEES are from time to time unable to take off duty meal breaks and are
27 not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
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1 EMPLOYEES are from time to time required to perform work as ordered by DEFENDANT for
2 more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANT fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
4 off-duty meal period from time to time in which these employees are required by DEFENDANT
5 to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED EMPLOYEES
6 therefore forfeit meal breaks without additional compensation and in accordance with
7 DEFENDANT's corporate policy and practice.

8 16. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
9 are from time to time also required to work in excess of four (4) hours without being provided
10 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
11 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
12 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
13 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
14 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES are also not provided with one hour wages in lieu thereof. As
16 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
17 are periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
18 managers. Additionally, the applicable California Wage Order requires employers to provide
19 employees with off-duty rest periods, which the California Supreme Court defined as time
20 during which an employee is relieved from all work related duties and free from employer
21 control. In so doing, the Court held that the requirement under California law that employers
22 authorize and permit all employees to take rest period means that employers must relieve
23 employees of all duties and relinquish control over how employees spend their time which
24 includes control over the locations where employees may take their rest period. Employers
25 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
26 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
27 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
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1 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
2 not leave the work premises during their rest period.

3 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
4 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
5 and other non-exempt employees earned non-discretionary remuneration, including but not
6 limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
7 rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and other AGGRIEVED
8 EMPLOYEES their base rates of pay.

9 18. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
10 employment are due and payable twice during each calendar month, on days designated in
11 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(a) expressly
12 requires employers to pay employees all wages owed within eleven (11) days of the close of the
13 payroll period. DEFENDANT from time to time fails to pay PLAINTIFF and other
14 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
15 the payroll period.

16 19. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
17 to collect or receive from an employee any part of wages theretofore paid by said employer to
18 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
19 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
20 PLAINTIFF and AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
21 from compensation payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby fails
22 to pay these employees all wages due at each applicable pay period and upon termination.

23 20. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
24 employees with an accurate itemized wage statement in writing showing, among other things,
25 gross wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
27 fails to provide to PLAINTIFF and the CALIFORNIA AGGRIEVED EMPLOYEES wage
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1 statements that identify the correct gross and net wages earned, the applicable number of hours
2 worked and rates of pay. PLAINTIFF and Aggrieved Employees are paid on an hourly basis.
3 As such, the wage statements should reflect all applicable hourly rates during the pay period and
4 the total hours worked, and the applicable pay period in which the wages are earned pursuant
5 to California Labor Code Section 226(a). The wage statements DEFENDANT provides to
6 PLAINTIFF and other Aggrieved Employees fails to identify such information. More
7 specifically, the wage statements fail to identify the accurate total hours worked each pay
8 period. When the hours shown on the wage statements are added up, they do not equal the
9 actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside,
10 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
11 and other AGGRIEVED EMPLOYEES an itemized wage statement that lists all the
12 requirements under California Labor Code 226 *et seq.*

13 21. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
14 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
15 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
16 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
17 2802, employers are required to indemnify employees for all expenses incurred in the course
18 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
19 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
20 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
21 directions of the employer, even though unlawful, unless the employee, at the time of obeying
22 the directions, believed them to be unlawful."

23 22. In the course of their employment PLAINTIFF and other AGGRIEVED
24 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
27 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
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1 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES incurred unreimbursed business expenses which include, but are not limited to,
3 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
4 DEFENDANT.

5 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
6 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
7 to accurately calculate and record the correct overtime rate for the overtime worked by
8 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
9 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
10 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
11 calculate and/or pay all required overtime compensation for work performed by the
12 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
13 promulgated thereunder as herein alleged.

14 24. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
18 AJDAR 12157 (Certified for Publication 12/19/18).

19
20 **JURISDICTION AND VENUE**

21 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against
27 PLAINTIFF and the AGGRIEVED EMPLOYEES.

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 27. PLAINTIFF realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

7 28. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
9 the state's labor law enforcement agencies. An action to recover civil penalties under
10 PAGA is fundamentally a law enforcement action designed to protect the public and not to
11 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
12 but to create a means of "deputizing" citizens as private attorneys general to enforce the
13 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
14 public interest to allow aggrieved employees, acting as private attorneys general to recover
15 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
16 claims cannot be subject to arbitration.

17 29. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to himself and all individuals who are or previously were employed by
21 DEFENDANT in a California Distribution Center and classified as non-exempt employees
22 ("AGGRIEVED EMPLOYEES") during the time period of July 29, 2020 until a date as
23 determined by the Court (the "PAGA PERIOD").

24 30. On July 29, 2021, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
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1 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
2 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 32. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
8 properly record and provide legally required meal and rest periods, (c) failed to pay
9 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
10 reimburse employees for required expenses, and (f) failed to provide wages when due, all in
11 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
12 *et seq.*, 210, 221, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
13 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
14 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
15 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
16 Labor Code Private Attorney General Act of 2004 as the representative of the State of
17 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

- 23 1. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:
25 A) Recovery of civil penalties as prescribed by the Labor Code Private

26 _____
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 Attorneys General Act of 2004; and,

2 B) An award of attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §2699.

4 Dated: July 29, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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6
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8 By: _____
9 Norman B. Blumenthal
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May 10, 2022

CA2481

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Home Depot U.S.A., Inc.
Certified Mail #70220410000153342556
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Amended Notice for LWDA Case No. LWDA-CM-839699-21

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiff Douglas Patton (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Defendant Home Depot U.S.A., Inc. (“Defendant”).

Plaintiff originally sent a PAGA Notice on July 29, 2021 and gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to amend Plaintiff’s original PAGA Notice to provide an amended PAGA notice that will include additional allegations stemming from Defendant’s failure to maintain a temperature in each work area that provides reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, in compliance with California Code of Regulations, Title 8, Section 1 1070(15)(Temperature).

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Home Depot U.S.A., Inc. in a California Distribution Center and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Plaintiff has been employed by Defendant in California as a non-

exempt employee since August of 2017 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. However, when calculating the regular rate of pay in order to pay meal and rest break premium pay to Plaintiff and other Aggrieved Employees, Defendant fails to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating meal and rest break premium pay and only pays these premiums at Plaintiff's and Aggrieved Employees' base rates of pay. As a matter of law, the incentive compensation received by Plaintiff and Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has resulted in an underpayment of meal and rest break premiums to Plaintiff and other Aggrieved Employees. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but "furnished less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant requires Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fail to identify such information. More specifically, the wage statements fail to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours are added up they do not equal the actual amount of hours worked each pay period. Additionally, Plaintiff contends that Defendant fails to comply with Industrial Wage Order 7(A)(3) in that Defendant fails to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Defendant further fails to regulate the internal temperature of their warehouses, except for the offices of managers. Plaintiff and other Aggrieved Employees, therefore, are required to work in extreme temperatures, both too hot and too cold, depending on the season, without relief. Defendant fails to maintain temperatures within its warehouses that provide reasonable comfort for Plaintiff and Aggrieved Employees that is consistent with industry-wide standards for the nature of the process and the work performed. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,

Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), California Code of Regulations, Title 8, Section 1 1070(15) (Temperature), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

This notice is provided to enable Plaintiff to proceed with an amended complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. If the agency needs any further information, please do not hesitate to ask.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Victoria B. Rivapalacio

Victoria B. Rivapalacio, Esq.