

Utne v. Home Depot Settlement Administrator  
P.O. Box 301172  
Los Angeles, CA 90030-1172

**HEU**

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**NOTICE OF SETTLEMENT OF PAGA AND CLASS ACTION SUIT**

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

*THE ESTATE OF JOHN UTNE THROUGH HIS SUCCESSOR IN INTEREST KAREN UTNE and ALFRED PINTO,  
on behalf of themselves, all others similarly situated, and the general public,  
vs. HOME DEPOT U.S.A., INC.; and DOES 1-50, inclusive.*

Case No. 3:16-cv-1854-RS

**PLEASE READ THIS NOTICE CAREFULLY**

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH  
THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

**A. WHY DID I GET THIS NOTICE?**

You are receiving this notice because the records of Home Depot U.S.A., Inc. indicate that you worked for Home Depot and/or one of its related companies within the State of California between March 8, 2012 through July 28, 2023. As a result, you are eligible to receive a portion of the Settlement Fund in this matter. The purpose of this notice is to inform you of your rights and options with respect to the Settlement.

**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 in any way whatsoever.**

**B. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?**

The Action resolves previously filed lawsuits that involve class and Private Attorneys General Act (“PAGA”) claims, filed on March 8, 2016. The plaintiffs are John H. Utne and Alfred R. Pinto. Plaintiffs have alleged violations of California law on behalf of a class of California hourly workers, including alleged failure to pay hourly employees wages and overtime under California Labor Code §§ 223, 510, 1194, 1197, 1198; failure to provide accurate written “wage statements” under § 226; failure to timely pay wages upon separation from employment under § 201-203; liability for civil penalties under PAGA, Cal. Lab. Code § 2698 et seq.; and violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq. Plaintiffs allege Home Depot hourly employees were required to wait off-the-clock following their closing shifts while the store was locked; that employees were paid less than their actual clock-in and clock out time as a result of the practice of rounding time to the nearest quarter hour; and that employees were not compensated for time spent walking in the store while off the clock, obtaining and donning employee aprons and waiting to clock in. The Court granted judgment in Home Depot’s favor with respect to several of

these claims, including the rounding claim, the claim for “waiting time” penalties, the wage statement claim premised on purportedly uncompensated pre-shift time, and the UCL claim. The Court has not granted judgment in favor of Plaintiffs on any of their claims; however, it granted a request to certify the Action as a class action and appointed Mr. Utne and Mr. Pinto as class representatives.

Since 2016, the matter has been heavily litigated, and after lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Home Depot agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The Court preliminarily approved the Settlement on July 28, 2023 (the “**Date of Preliminary Approval**”).

**Nothing in the Settlement is intended to be or will be considered an admission by Home Depot that Plaintiffs’ claims in the Action have merit or that Home Depot owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Home Depot denies any and all such liability.**

### **C. WHO IS INCLUDED IN THIS CLASS ACTION?**

The Settlement covers Home Depot employees who worked in retail stores in hourly-paid or non-exempt positions in California, and defines four classes or groups of employees who are eligible to receive a settlement payment:

1. The **Hourly Employees Class** are those employees who worked at least one shift between March 8, 2012 through July 28, 2023 (the “**Class Period**”).
2. The **Post-Shift Class** are those employees who worked at least one “closing shift” during the Class Period—i.e., a shift scheduled to end after the employee’s store was scheduled to close to the public for the evening.
3. The **Rounding Class** are those employees who were paid less than their actual clock-in and clock-out time for their total hours worked during the Class Period as a result of rounding time to the nearest quarter hour.
4. The **PAGA Group** members are those who worked at least one shift between March 8, 2015 through July 28, 2023 (the “**PAGA Period**”).

You may be entitled to payment as a member of one or more of these classes or groups.

### **D. WHAT DOES THE PROPOSED SETTLEMENT OFFER?**

The Parties have reached a settlement whereby Home Depot will pay a **Gross Settlement Amount** of **\$72,500,000.00** as an all-inclusive sum to pay all amounts contemplated in the Settlement.

The following amounts will be deducted from the Gross Settlement Amount, subject to Court approval: (a) Service Enhancements—up to \$25,000.00 to the Estate of John Utne through his Successor in Interest Karen Utne and up to \$7,500.00 to Alfred R. Pinto; (b) Class Counsels’ attorneys’ fees and litigation costs—up to one-third of the Gross Settlement Amount (\$24,166,666.66) in attorneys’ fees, plus costs not to exceed \$3,500,000.00; (c) reasonable administrator’s costs incurred by the party administering the Settlement Agreement (the “**Settlement Administrator**”), not to exceed \$750,000.00; and (d) a \$1,000.00 reserve fund for disputed, untimely, and self-identified claims. The balance of the Gross Settlement Amount eligible for distribution, as approved by the Court, is the **Net Settlement Fund**.

From the Net Settlement Fund, the Parties have agreed that 5% will be allocated to a **PAGA Settlement Fund**, of which 75% will be paid to the California Labor & Workforce Development Agency (“LWDA”). The remaining 95% of the Net Settlement is allocated to the **Class Settlement Fund** that, along with the balance of the PAGA Settlement Fund, will be allocated as follows:

1. The **Hourly Employees Class** members receive 41% of the Class Settlement Fund, divided amongst Class Members based on their total shifts worked as a proportion of all shifts worked by the Hourly Employee Class.
2. The **Post-Shift Class** members receive 50% of the Class Settlement Fund, divided amongst Class Members based on their total closing shifts worked as a proportion of all closing shifts worked by the Post-Shift Class.
3. The **Rounding Class** receive 9% of the Class Settlement Fund, divided equally amongst Rounding Class members.
4. The **PAGA Group** receive 25% of the PAGA Settlement Fund, allocated to the group based on their pay periods worked as a proportion of all pay periods worked by the PAGA Group.

The Settlement Agreement provides that employer and employee side taxes are paid from the Gross Settlement Amount and that any unclaimed funds will be sent to California’s unclaimed property fund.

### **E. HOW MUCH WILL I RECEIVE?**

Your Home Depot employment records indicate that you worked a total of **<<#EMPLOYEE’S SHIFTS>>** shifts in a non-exempt position at retail store/s in California during the Class Period, and are eligible for payment as a member of the Hourly Employee Class.

**<<CLOSING>>** Home Depot’s records also indicate that you worked a total of **<<#OFEMPLOYEE’S CLOSING SHIFTS>>** closing shifts in a non-exempt position at a Home Depot retail store in California during the Class Period and are also eligible to receive payment as a Post-Shift Class member.

**<<RoundingClass>>** Additionally, Home Depot’s records also indicate that you were paid less than the actual clock-in and clock-out time for your total hours worked as a result of rounding time to the nearest quarter hour during the Class Period and are therefore eligible to receive payment as a Rounding Class member.

<<PAGA>> Also, Home Depot’s records indicate that you worked <<#OFEMPLOYEE’S PAGA SHIFTS>> shifts during <<#OFEMPLOYEE’S PAGA PAY PERIODS>> pay periods as a non-exempt employee at a Home Depot retail store in California during the PAGA Period and are eligible to receive payment as a PAGA Group Member.

Based on this information, assuming the Court approves the Settlement, and if you do not opt out of the Settlement, your individual share of the Class Settlement Fund will be approximately \$<<EstSet>>.

<<PAGA>> Additionally, it is estimated that you will receive approximately \$<<EstSetPAGA>> as your individual share of the PAGA Settlement Fund.

**F. WHAT CLAIMS ARE RELEASED?**

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 the “Released Class Claims”—which means any claims, rights, liabilities, demands for restitution, penalties, civil penalties, fees, costs, damages, or any other form of relief, of every nature and description, of any and all kinds, whether arising in law, equity, contract or otherwise, whether known or unknown, that accrued or will accrue prior to the date of Preliminary Approval, that were or could have been asserted based on the facts alleged in any Complaint filed in the Action or any notice provided to the LWDA by any Named Plaintiff, and including but not limited to claims based on employee “Walking Time” and/or “Waiting Time” and rounding, but excluding the claims specifically set forth in the “Excluded Lawsuits.” The Released Class Claims include, but are not limited to, claims for or predicated on: (1) violations of the California Labor Code; (2) violations of the Fair Labor Standards Act (29 U.S.C. Section 201, et seq.); (3) unpaid wages; (4) California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200, et seq.; (5) claims under Labor Code Section 2698 et seq.; and/or (6) claims under the applicable Wage Order.

<<PAGA>> **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.** Class Members who are also PAGA Group Members who opt out of this Settlement will release the “PAGA Released Claims” even if they submit a valid Request for Exclusion and will receive a check for their PAGA Group Member Amount if they are a PAGA Group Member. The “PAGA Released Claims” refer to any civil penalty claims under PAGA, whether known or unknown, that have accrued or will accrue prior to the date of Preliminary Approval, and that were or could have been asserted based on the facts alleged in any Complaint or any notice provided to the LWDA by any Named Plaintiff, including but not limited to claims based on employee “Walking Time” and/or “Waiting Time,” and excluding the PAGA claims referenced in the “Excluded Lawsuits.”

“Walking Time” means any time spent by Class Members and/or PAGA Group Members during the Class Period or PAGA Period, respectively, for which they were not paid, and during which time they were walking to or from the entrance of the Home Depot store to or from the time clock or break room; donning, removing or putting away required work equipment, including their apron; and/or waiting in line to clock in or out at the time clock.

“Waiting Time” means any time spent by Class Members and/or PAGA Group Members during the Class Period or PAGA Period, respectively, for which they were not paid, and during which time they were waiting as a result of locked doors at a Home Depot store after it was closed to the public for the night.

The “Excluded Lawsuits” are *Henry v. Home Depot USA, Inc.*, Alameda Superior Court Case No. RG14741264 and *Bell v. Home Depot USA, Inc.*, Sacramento Superior Court Case No. 34-2012-0012821. Notwithstanding, to the extent permitted by law, the Settlement is intended to have preclusive effect on PAGA claims in these excluded cases to the extent the PAGA penalty claims in those cases are predicated on the same Labor Code violations and cover the same pay period as those included in the PAGA Released Claims above.

**G. WHAT ARE MY OPTIONS?**

1. **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. You shall have one hundred and twenty (120) calendar days after mailing to cash your check. The Settlement Administrator will send out a reminder postcard thirty (30) days before this deadline. Replacement checks will be issued upon request until thirty (30) days after mailing of the reminder postcards, and you will have sixty (60) days to cash such replacement checks at which point they will be null and void.
2. **You may exclude yourself from the class action settlement, in which case you will not receive your share of the class action fund 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”), you must send a written request for exclusion by mail, to the Settlement Administrator at *Utne v. Home Depot Settlement Administrator*, P.O. Box 301172, Los Angeles, CA 90030-1172, postmarked by November 27, 2023. In order to be considered valid, your request for exclusion must be timely sent and contain: (a) your full legal name; (b) a statement that you desire to exclude yourself from the case; (c) the last four digits of your Social Security number and/or complete Home Depot employee ID; and (d) your signature or the signature of someone authorized to sign documents on your behalf. 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 Fairness Hearing listed in Section H, below, or as otherwise ordered by the Court.
3. **You may object to the class action settlement.** You can ask the Court to deny approval of the Settlement by filing an objection by sending your written objection to the Court. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you should object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection with the Court, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number *John Utne, et al. v. Home Depot U.S.A., Inc.*, Case No. 3:16-cv-01854-RS, (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA, 94102, and (c) be filed or postmarked on or before November 27, 2023. Your objection should also contain your name, address, last four digits of your telephone number, explanation of the reason(s) for objecting, and be signed and dated by you and/or your counsel.

## **H. FINAL APPROVAL HEARING**

The Court will hold a “Final Approval Hearing” on February 15, 2024, at 1:30 p.m., in Courtroom 3 on the 17th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, CA 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Final Approval Hearing may be postponed without further notice to Class Members. You may check the settlement website at [www.utnesettlement.com](http://www.utnesettlement.com) or the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed. 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. If you have submitted an objection, and indicated you intend to appear in the manner set forth above, you may appear at the hearing and be heard.

## **I. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?**

### **ATTORNEYS REPRESENTING THE CLASS**

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

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## **J. GETTING MORE INFORMATION**

This notice summarizes the proposed Settlement. For the precise terms and conditions of the settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at [www.utnesettlement.com](http://www.utnesettlement.com), by contacting Class Counsel (see contact information above), by accessing the Court docket in this case, for a fee, through the Court’s PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO  
INQUIRE ABOUT THIS SETTLEMENT.**

Dated: September 27, 2023

By Order of the Court