

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN BARRERA, JR.,	)	Case No.:12-CV-05199-LHK
	)	
Plaintiff,	)	ORDER DENYING MOTION FOR
v.	)	PRELIMINARY APPROVAL OF CLASS
	)	ACTION SETTLEMENT
THE HOME DEPOT U.S.A., INC.,	)	
	)	
Defendant.	)	

The parties have filed a Joint Motion for Preliminary Approval of Class Action Settlement. See ECF No. 58. The Court held a hearing on this Motion on May 1, 2014. Having considered the Motion, the accompanying declarations and exhibits, and the oral arguments presented at the hearing, the Court DENIES the Motion.

The Settlement Class

At the hearing the parties represented the following. During the five year class period, 6,648 Home Depot employees were involuntarily terminated and not paid their final wages on the date of their involuntary termination. 66% of the 6,648 Home Depot employees were paid their final wages within three days of their involuntary termination. 75% of the 6,648 Home Depot employees were paid their final wages within seven days of their involuntary termination. Plaintiffs' counsel estimated that the average hourly wage rate of the 6,648 class members was approximately \$10-\$13 an hour; the average daily wage rate was approximately \$100-\$150. Based on actual data provided by Home Depot as to each class member's estimated daily wage rate,

1 termination date, and final wage payment date, Plaintiffs' counsel estimated that Home Depot's  
2 total damages exposure was \$3,573,519.

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4 The Settlement Agreement

5 The parties' settlement agreement provides as follows. The total settlement fund is \$1.4  
6 million. Joint Motion for Preliminary Approval of Class Action Settlement ("Joint Mot."), ECF  
7 No. 58 at 5. After deducting up to 25% or \$350,000 for attorney's fees; attorney's costs which  
8 totaled \$17,500 as of February 28, 2014; a \$2,500 enhancement award to class representative  
9 Edgar Padilla; and \$25,000 in California Labor Code Private Attorneys General Act of 2004  
10 penalties, the net settlement fund of approximately \$945,000 will be distributed pro-rata to class  
11 members who make timely valid claims based on the estimated value of their waiting time  
12 penalties, which will be calculated using the estimated daily wage rate of each class member, their  
13 final wage payment date, and their termination date. *Id.* at 5-6. "Home Depot is obligated to pay  
14 at least 50 percent of the net settlement fund [approximately \$472,500] to class members who  
15 submit timely and valid claims." *Id.* at 6. "To the extent the claims process results in less than 50  
16 percent of the net settlement fund being distributed to the settlement class members who submit  
17 timely and valid claims, the amount necessary to reach the 50 percent threshold will be allocated  
18 on a proportional basis to settlement class members who submitted proper claims." *Id.*

19 To submit a timely claim, class members "must return the claim form to the settlement  
20 administrator within 60 days after the date of mailing the class notice." *Id.* at 7. "The settlement  
21 administrator will conduct a single re-mailing of the notice to class members whose notice was  
22 returned undeliverable." Settlement Agreement, ECF No. 58-2, at 7. However, "there will be no  
23 exceptions to the 60-day period." *Id.* "[A]ny class member who fails to return a timely and  
24 complete claim form with a postmark showing that the claim form was returned within the 60-day  
25 claims period will be ineligible to receive any payment under this Agreement." *Id.* at 8.

26 Analysis

27 The Court finds that the provision of the settlement that requires Home Depot to pay at least  
28 50% of the net settlement fund or approximately \$472,500 to members of the class who submit  
timely and valid claims is not fair and adequate to the class members. Based on actual data

1 provided by Home Depot as to each class member's estimated daily wage rate, termination date,  
2 and final wage payment date, Plaintiffs' counsel estimated that Home Depot's total damages  
3 exposure was \$3,573,519. Although the Court recognizes that proving willfulness as to Plaintiffs'  
4 California Labor Code Section 203 claim and Plaintiff's derivative California Labor Code Section  
5 2698, et seq. claim may be challenging for class certification and liability, the Court finds that the  
6 settlement does not fairly and adequately compensate class members for their claims.  
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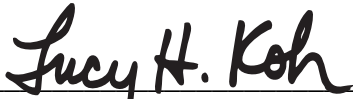
8 Moreover, a settlement structure with a minimum 50% payment obligation may  
9 disincentivize the parties from maximizing class members' participation in the settlement. For  
10 example, Home Depot has no interest in having class claims exceed 50% of the net settlement fund  
11 because claims exceeding 50% of the net settlement fund directly increase Home Depot's total  
12 settlement payments. On the other hand, Plaintiffs' counsel will request up to 25 percent of the  
13 total settlement fund of \$1.4 million regardless of the class's participation in the settlement.  
14 Settlement structures with a minimum payment obligation could create a conflict of interest in  
15 which a plaintiff's counsel bargains for a defendant's lower minimum payment obligation in  
16 exchange for a higher total settlement fund amount, of which the plaintiff's counsel will request the  
17 Ninth Circuit's benchmark of 25% in attorney's fees. Such settlement structures may artificially  
18 inflate the total settlement fund and render the total settlement fund illusory in order to justify a  
19 higher attorney's fees award. Such settlement structures may not be in the best interest of the class.

20 Furthermore, the settlement in the instant case is not conducive to maximizing class  
21 members' participation in the settlement. For example, "any class member who fails to return a  
22 timely and complete claim form with a postmark showing that the claim form was returned" within  
23 60 days of the mailing of the class notice will be ineligible to receive any payment. Settlement  
24 Agreement, ECF No. 58-2, at 8. This 60-day deadline is fixed and cannot be extended even if the  
25 class notice is returned as undeliverable. *Id.* at 7. This may undermine class participation because  
26 class members, who earned approximately \$10 to \$13 per hour and were involuntarily terminated  
27 from Home Depot, may well have changed addresses during the five year class period.  
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2 The Court sets a further Case Management Conference for Wednesday, July 30, 2014 at 2  
3 p.m. If the parties so choose, they may file a request for a settlement conference with a Magistrate  
4 Judge by May 27, 2014.

5 **IT IS SO ORDERED.**

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7 Dated: May 6, 2014



8 LUCY H. KOH  
9 United States District Judge  
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