

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN UTNE,
Plaintiff,
v.
HOME DEPOT U.S.A., INC.,
Defendant.

Case No. [16-cv-01854-RS](#)

**ORDER GRANTING MOTION TO
DIRECT NOTICE TO THE CLASS**

Plaintiff John Utne brings this wage and hour suit against Home Depot in connection with uncompensated off-the-clock work occurring at the start of all employee shifts, and at the end of closing shifts. On April 2, 2018, the Court certified two classes: (1) the “Lock-In Class” encompassing “[a]ll individuals employed by Home Depot in hourly-paid or non-exempt positions in Home Depot stores in California at any time since March 8, 2012, and who worked at least one shift ending after the time that the Home Depot store was scheduled to close to the public for the evening”; and (2) the “Hourly Employee Class” defined as “[a]ll individuals employed by Home Depot in hourly-paid or non-exempt positions in California at any time since March 9, 2012.” Utne now moves for an order directing notice to members of the certified classes.

Federal Rule of Civil Procedure 23 and due process require “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Utne proposes to mail postcard notice to the last known address of every current and former employee employed by Home Depot

1 in California at any time during the class period. The postcard will direct class members to a class
2 website, where they will have access to a long-form notice, as well as a toll-free number they may
3 call to ask class counsel questions about the case. Both the postcard and long-form notices
4 proposed by Utne are modelled on the forms developed by the Federal Judicial Center. To
5 facilitate the notice plan, Utne asks that Home Depot be required to produce or compile a list of
6 class contact information, subject to a protective order to prevent the unauthorized dissemination
7 of class member data.

8 Home Depot raises three objections to Utne’s proposed notice plan. First, Home Depot
9 asserts that Utne’s proposed long-form notice is unduly lengthy and confusing. Utne has submitted
10 a revised long-form notice that fully addresses the few specific criticisms raised by Home Depot.
11 Accordingly, any continued objection by Home Depot is overruled.

12 Second, Home Depot objects to the procedure of mailing postcard notice that directs class
13 members to a website where they may read the full notice text and obtain other information about
14 this case. The proposed postcard notice explains the nature of the action, defines the class and the
15 claims of the case, and informs class members of their rights and options. Home Depot’s assertion
16 that some class members may not have access to the internet is unpersuasive, to say the least. Even
17 according to the authority cited by Home Depot, direct mail postcard notice supplemented with
18 additional information accessible via the internet fully meets the requirements of Rule 23. *See* 3
19 Newberg on Class Actions § 8:28 (5th ed. 2017) (“Notice sent by postcards is particularly useful
20 when used in conjunction with other forms of notice, including publication and email.”); Manual
21 for Complex Litigation (Fourth) § 21.311 (“Posting notices on dedicated Internet sites, likely to be
22 visited by class members and linked to more detailed certification information, is a useful
23 supplement to individual notice.”). Accordingly, Home Depot’s objection to the use of the internet
24 as part of the class notice plan is also overruled.

25 Finally, Home Depot argues that it should not be required to disclose contact information
26 for current and former employees without first providing separate notice and opportunity for class
27 members to object to the release of their information (known as *Belaire West* procedures under

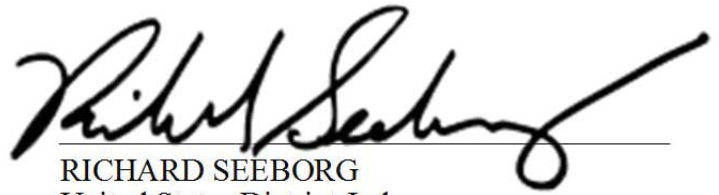
1 California law). Home Depot also insists that employee privacy rights would be best safeguarded
2 by engaging a third party administrator instead of class counsel to disseminate class notice. While
3 potential class members may have some privacy interest in preventing disclosure of their personal
4 addresses and telephone numbers, at this stage, those interests are outweighed by the interests of
5 the certified class in being able to prove their claims on a classwide basis. Home Depot offers no
6 cases where a federal district court required *Belaire West* notice procedures prior to dissemination
7 of notice to a *certified* class. As Utne points out, even in the *pre-certification* discovery context,
8 numerous courts in this district have allowed discovery of putative class members' confidential
9 information subject to a protective order without requiring prior notice to the putative class
10 members. *See, e.g., Benedict v. Hewlett-Packard Co.*, No. 13-cv-0119-LHK, 2013 WL 3215186,
11 at *2 (N.D. Cal. June 25, 2013); *Salazar v. McDonald's Corp.*, No. 14-cv-02096-RS (MEJ), 2016
12 WL 736213, at *5 (N.D. Cal. Feb. 25, 2016). Where courts have required *Belaire West* notices,
13 they have generally done so "only when there are special privacy concerns, such as the disclosure
14 of medical or financial information, and/or when the parties have agreed to such notice." *Austin v.*
15 *Foodler, Inc.*, No. 16-cv-07185-HSG (DMR), 2018 WL 1168694, at *2 (N.D. Cal. Mar. 6, 2018).
16 Home Depot fails to demonstrate any special privacy concerns attached to class members' contact
17 information, or even their general payroll data, nor does it explain why those privacy concerns are
18 not safeguarded adequately through the use of a protective order. For those reasons, Utne will not
19 be required to incur the additional delay and cost of issuing a separate privacy notice or utilizing a
20 third party administrator to disseminate notice to the class.

21 Accordingly, Utne's motion to direct notice to members of this certified class action is
22 granted. Home Depot is ordered to provide the name, address, and telephone number of all current
23 and former employees who are members of either certified class. The contact information shall be
24 provided in an editable electronic format to Utne within 14 days of the date of this Order. The
25 Court approves (a) the procedure of mailing a postcard notice to all class members, which directs
26 class members to a long-form notice posted on a website, (b) the language of the postcard notice
27 (attached as Exhibit 1 to Utne's Proposed Order) subject to any amendments needed to make the

1 information complete, and (c) the language of the revised long-form notice to be posted on a
2 website (attached as Exhibit E to the Supplemental Declaration of H. Scott Leviant) subject to any
3 amendments needed to make the information complete. The approved postcard notice shall be
4 mailed at the earliest practicable opportunity and no later than 45 days after Home Depot produces
5 the required class contact information. Members of the classes shall have 60 days from the mailing
6 of the postcard notice to opt out of the classes in the manner identified in the long-form notice.

7 **IT IS SO ORDERED.**

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9 Dated: August 21, 2018

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11 RICHARD SEEBORG
12 United States District Judge

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