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

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

13 DONNIE SANCHEZ BARRAGAN and
14 ARACELI BARRAGAN, individually and
on behalf of others similarly situated,

15 Plaintiffs,

16 v.

17 HOME DEPOT U.S.A., INC., a Delaware
18 corporation; and DOES 1-100, inclusive,

19 Defendants.

Case No. '19CV1766 BEN AGS

CLASS ACTION

**HOME DEPOT'S NOTICE OF
REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332(D),
1441, 1446, AND 1453**

[Certification of Interested Entities or
Persons, Declarations of G. Edward
Anderson, Donna M. Mezas, and Christina
Josiah and Civil Cover Sheet filed
concurrently]

Date Action Filed: August 12, 2019

*(San Diego County Superior Court, No. 37-
2019-00042161-CU-OE-CTL)*

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
2 DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Home Depot U.S.A., Inc. (“Home Depot”) hereby
4 removes to this Court the state court action described below, pursuant to 28 U.S.C. §§ 1332(d), 1441,
5 1446, and 1453. In support, Home Depot states as follows:

6 BACKGROUND

7 1. On August 12, 2019, an action was commenced and is currently pending against Home
8 Depot in the Superior Court of California, County of San Diego, as Case No. 37-2019-00042161-CU-
9 OE-CTL. Declaration of Donna M. Mezas (“Mezas Decl.”) ¶ 2 & Ex. A. According to the Proof of
10 Service of Summons filed on August 20, 2019, the complaint, summons, ADR package, Civil Cover
11 Sheet, and Notice of Case Assignment and CMC were served on Home Depot on August 15, 2019. *Id.*,
12 at ¶ 3 & Ex. B. On September 12, 2019, Home Depot filed its Answer to the Complaint. *Id.*, at ¶ 4 &
13 Ex. C. No other process, pleadings, or orders have been filed by or served upon defendant as part of
14 Case No. 37-2019-00042161-CU-OE-CTL. *Id.*, at ¶ 5. As required by 28 U.S.C. § 1446(a), a true and
15 correct copy of all process, pleadings, and orders served upon defendant as part of the above action are
16 attached to the Mezas Declaration, filed concurrently in support of this Notice of Removal.

17 2. Plaintiffs Donnie Sanchez Barragan and Araceli Barragan (collectively, “plaintiffs”) are
18 former hourly, non-exempt retail sales employees for Home Depot in the County of San Diego. *See*
19 Complaint ¶¶ 7-8. Plaintiff Donnie Sanchez Barragan worked in Home Depot’s Otay Mesa retail store
20 and plaintiff Araceli Barragan worked in Home Depot’s Imperial Beach retail store. *Id.* They assert a
21 claim under the California Labor Code for failure to provide accurate itemized wage statements. *Id.*
22 ¶¶ 34-41.

23 3. Plaintiffs purport to bring these claims on behalf of a putative class that includes “all
24 individuals who worked for or at Defendant’s California retail stores as non-exempt employees
25 receiving wage statements containing the line item, ‘FLSA OTADJ,’” within one year prior to the
26 filing of the Complaint. *Id.* ¶¶ 15-16, 29.¹

27 _____
28 ¹ Home Depot denies plaintiffs’ claims and class allegations. However, for purposes of estimating the
amount in controversy, the allegations of plaintiffs’ complaint are assumed to be true. *Korn v. Polo*

1 4. Timeliness. The Complaint and Summons were served on August 15, 2019. *See*
 2 Mezas Decl. ¶ 3 & Ex. B. Home Depot’s Notice of Removal is timely because it is being filed within
 3 thirty (30) days of service. *See* 28 U.S.C. § 1446(b).

4 5. Jurisdiction. This is a civil action over which this Court has original jurisdiction and
 5 thus may be removed pursuant to 28 U.S.C. § 1441. Under 28 U.S.C. § 1441(a), a defendant may
 6 remove to federal district court “any civil action brought in a State court of which the district courts of
 7 the United States have original jurisdiction[.]” Pursuant to the Class Action Fairness Act (“CAFA”),
 8 28 U.S.C. § 1332(d)(2), federal district courts have original jurisdiction over a class action if (1) it
 9 involves 100 or more putative class members, (2) any class member is a citizen of a state different
 10 from any defendant, and (3) the aggregated controversy exceeds \$5,000,000 (exclusive of costs and
 11 interest). *See* 28 U.S.C. § 1332(d)(2), (d)(5), (d)(6), and (d)(11)(B)(i). These criteria are satisfied
 12 here.²

13 6. Class Size. During the relevant period, over 30,000 retail store associates employed by
 14 Home Depot in California received at least one wage statement with the line item “FLSA OTADJ.”
 15 Declaration of G. Edward Anderson (“Anderson Decl.”) ¶¶ 6, 7. The putative class therefore exceeds
 16 100 members. *See* Complaint ¶ 16 (putative class includes “[a]ll current and former retail sales
 17 representatives who worked for Defendants in California during the Class period and received
 18 overtime adjustments on their wage statements labeled “FLSA OTADJ”).

19 7. Diversity of Citizenship. At all relevant times, there has been diversity of citizenship
 20 between the parties to the action. “[U]nder CAFA, complete diversity is not required; ‘minimal
 21 diversity’ suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (internal
 22

24 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“In measuring the amount in
 25 controversy, a court must assume that the allegations of the complaint are true and that a jury will
 26 return a verdict for the plaintiff on all claims made in the complaint. The ultimate inquiry is what
 amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.”
 (citations omitted)).

27 ² CAFA also applies here because plaintiffs bring this class action pursuant to Cal. Code of Civ. Proc.
 28 § 382. Complaint ¶ 14; *see Bodner v. Oreck Direct, LLC*, No. C 06-04756, 2006 WL 2925691, at *3
 (N.D. Cal. Oct. 12, 2006) (CAFA applies where complaint alleges a class action and recites the class
 action prerequisites under California Code of Civil Procedure section 382).

1 citations omitted). Minimal diversity exists if any class member is a citizen of a state different from
2 any defendant. 28 U.S.C. § 1332(d)(2).

3 8. The putative class includes citizens of California, including plaintiffs. Both plaintiffs
4 maintained a California residential address on file with Home Depot and worked at retail stores in
5 California. Declaration of Christina Josiah (“Josiah Decl.”) Decl. ¶¶ 4, 5. Both facts establish their
6 California residency. *See Lam Research Corp. v. Deshmukh*, 157 F. App’x 26, 27 (9th Cir. Nov. 29,
7 2005) (defendant who had lived and worked for plaintiff in Washington was presumptively a
8 Washington citizen, despite his claim that he had changed his domicile from Washington to California);
9 *Bey v. SolarWorld Indus. Am., Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012) (residential address
10 provided by employee to employer is prima facie evidence of state citizenship).

11 9. Further, plaintiffs seek to represent a class comprised of “individuals who worked for or
12 at [Home Depot] California retail stores” (Complaint ¶ 29), which logically includes other California
13 citizens as well.

14 10. Home Depot is not a citizen of California. “[A] corporation shall be deemed to be a
15 citizen of every State ... by which it has been incorporated and of the State ... where it has its principal
16 place of business....” 28 U.S.C. § 1332(c)(1). Home Depot is not incorporated in California, but is
17 rather organized and incorporated under the laws of Delaware. *See Ottaviano v. Home Depot, Inc.*
18 *U.S.A.*, 701 F. Supp. 2d 1005, 1007 (N.D. Ill. 2010) (Home Depot “is a Delaware corporation with its
19 principal executive offices located in Atlanta, Georgia”); *Novak v. Home Depot U.S.A., Inc.*, 259
20 F.R.D. 106, 108 (D.N.J. 2009) (Home Depot “is a Delaware corporation with its principal offices
21 located in Georgia”); Josiah Decl. ¶ 2. Nor is California the state in which Home Depot has its
22 principal place of business, which is “the place where a corporation’s officers direct, control, and
23 coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Rather,
24 Home Depot’s principal place of business is Atlanta, Georgia. *Ottaviano*, 701 F. Supp. 2d at 1007;
25 *Novak*, 259 F.R.D. at 108; Josiah Decl. ¶ 2.

26 11. Defendants DOES 1-100 are unidentified. Because there is “no information as to who
27 they are or where they live or their relationship to the action[, it is] proper for the district court to
28

1 disregard them” for the purposes of removal. *McCabe v. Gen. FoodsCorp.*, 811 F.2d 1336, 1339 (9th
2 Cir. 1987) (internal citations omitted).

3 12. Accordingly, this action involves citizens of different states: plaintiffs are citizens of
4 California (and seek to represent a class including California citizens) and Home Depot is a citizen of
5 Delaware and Georgia. Thus, the CAFA minimal diversity requirement is satisfied. *See* 28 U.S.C.
6 § 1332(d)(2).

7 13. Amount in Controversy. Home Depot avers, for purposes of this Notice only and
8 without conceding liability for the claims alleged by plaintiffs or that plaintiffs can properly represent
9 the putative class, that plaintiffs’ claim places more than \$5 million in controversy. “The amount in
10 controversy is simply an estimate of the total amount in dispute, not a prospective assessment of [the]
11 defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (on
12 removal, defendant does not “concede liability for the entire amount” alleged in complaint); *Ibarra v.*
13 *Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (“Even when defendants have persuaded
14 a court upon a CAFA removal that the amount in controversy exceeds \$5 million, they are still free to
15 challenge the actual amount of damages in subsequent proceedings and at trial ... because they are not
16 stipulating to damages suffered”). As the United States Supreme Court has held, a defendant’s notice
17 of removal need only include a plausible allegation that the amount in controversy exceeds the
18 jurisdictional threshold. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 549, 554
19 (2014). Moreover, the Ninth Circuit has instructed that removal is proper if, based on the allegations
20 of the complaint and the Notice of Removal, it is more likely than not that the amount in controversy
21 exceeds \$5 million. *Rodriguez v. AT&T Mobility Servs., Inc.*, 728 F.3d 975, 981 (9th Cir. 2013)
22 (overturning Ninth Circuit precedent requiring proof of amount in controversy to a “legal certainty” in
23 some circumstances). In determining whether the amount in controversy is met, the Court considers
24 all requested relief, “including ... punitive damages, statutory penalties, and attorney’s fees.” *Lake v.*
25 *Delta Air Lines, Inc.*, No. SACV 10-1775 DOC(Ex), 2011 WL 3102486, at *4 (C.D. Cal. July 22,
26 2011). Under this standard, the amount in controversy is satisfied.

27 14. Plaintiffs allege that Home Depot violated California Labor Code section 226(a) by
28 failing to provide accurate wage statements showing the adjusted hourly rate for overtime hours

1 worked for the “FLSA OTADJ” line item, and seek civil penalties under California Labor Code section
 2 226(e). Complaint, ¶¶ 36-41 & Prayer for Relief, ¶ 4. Pursuant to section 226(e), a plaintiff may seek
 3 penalties of \$50 for the initial pay period in which a violation of section 226(a) allegedly occurred, and
 4 \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of
 5 \$4,000 per employee.

6 15. From August 12, 2018 through September 2, 2019, approximately 67,066 wage
 7 statements were issued to hourly, nonexempt employees in California with the “FLSA OTADJ” line
 8 item.³ Anderson Decl. ¶ 7. Based on plaintiffs’ allegations that the alleged wage statement violation is
 9 the result of Home Depot’s uniformly applied policies applicable to all non-exempt employees, and
 10 that Home Depot “failed to issue *any* wage statements showing the correct, adjusted hourly rate for
 11 overtime hours worked and the number of hours worked at each rate,” plaintiffs’ claim for section
 12 226(e) penalties is applicable to all such wage statements and totals approximately \$5,037,000.
 13 Anderson Decl. ¶¶ 8, 9 (penalties for the 67,066 wage statements, calculated on a per employee basis,
 14 applying a \$50 penalty to the initial pay period and a \$100 penalty to subsequent pay periods, not to
 15 exceed an aggregate penalty of \$4,000, total \$5,037,000); Complaint ¶¶ 11-13, 36-41 (emphasis
 16 added); *Mejia v. DHL Express (USA), Inc.*, 2015 WL 2452755, at *5 (C.D. Cal. May 21, 2015)
 17 (upholding defendant’s use of 100 percent violation rate for complaint alleging wage statement
 18 violations); *Oda*, 2015 WL 93335, at *4 (assuming maximum wage statement penalties for each
 19 putative class member); *Molina v. Pacer Cartage, Inc.*, 47 F.Supp.3d 1061, 1069 (S.D. Cal. Sept. 17,
 20 2014) (same); *Byrd v. Mosonite Corp.*, No. EDCV-16-36 JGB(KKx), 2016 U.S. Dist. LEXIS 60078, at
 21 *23-24 (C.D. Cal. May 5, 2016) (assumed 100 percent violation rate); *Franke v. Anderson*
 22 *Merchandisers LLC*, No. CV-17-3241 DSF(AFMx), 2017 U.S. Dist. LEXIS 119087, *12 (C.D. Cal.,
 23 July 28, 2017) (same).

24 16. Thus, plaintiffs’ claim for inaccurate wage statements places over \$5 million in
 25 controversy.⁴ *See, e.g., Deehan v. Amerigas Partners, L.P.*, No. 08cv1009 BJM(JMA), 2008 WL

26 _____
 27 ³ A one-year statute of limitations applies to claims for section 226(e) penalties. *See Hernandez v.*
Towne Park, Ltd., 2012 WL 2373372, at *14 (C.D. Cal. June 22, 2012).

28 ⁴ Although this analysis is limited only to the wage statements containing the line item “FLSA
 OTADJ,” plaintiffs do not allege that this line item is the only error on Home Depot’s wage statements.

1 4104475, at *1 (S.D. Cal. Sept. 2, 2018) (amount in controversy satisfied under preponderance of
 2 evidence standard where estimated class size multiplied by statutory penalty for alleged violations
 3 exceeded \$5 million).

4 17. Plaintiffs also seek attorneys' fees, which must be considered in determining the amount
 5 in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). The Ninth
 6 Circuit has established 25 percent of total potential damages as a benchmark award for attorney's fees.
 7 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also Deaver v. BBVA Compass*
 8 *Consulting & Benefits, Inc.*, No. 13-cv-00222-JSC, 2014 WL 2199645, at *6 (N.D. Cal. May 27, 2014)
 9 (accounting for attorney's fees by adding 25 percent of potential damages and penalties to amount in
 10 controversy); *Ford v. CEC Entm't, Inc.*, No. CV 14-01420 RS, 2014 WL 3377990, at *6 (N.D. Cal.
 11 July 10, 2014) (same); *Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL 3818304,
 12 at *4-5 (S.D. Cal. Aug. 4, 2014) (denying motion to remand where potential damages were \$4.2
 13 million because 25% attorneys' fees increased amount in controversy to \$5.3 million). Attorneys' fees
 14 of 25 percent place an additional \$1.25 million in controversy.

15 18. In sum, for purposes of this Notice only and without conceding liability for the claim
 16 alleged by plaintiffs, the total monetary relief placed in controversy by the complaint is approximately
 17 \$6.29 million. The amount in controversy requirement is therefore satisfied. *See Guglielmino v.*
 18 *McKee Foods Corp.*, 506 F.3d 696, 700-01 (9th Cir. 2007) (remand denied under preponderance of the
 19 evidence standard where defendant's estimates exceeded the requisite amount); *Lewis v. Verizon*
 20 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (on removal, defendant does not concede liability
 21 for amounts alleged in complaint); *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir.
 22 2015) ("Even when defendants have persuaded a court upon a CAFA removal that the amount in
 23

24
 25 *See* Complaint ¶¶ 39-41. Rather, they broadly allege that Home Depot "failed and continue [sic] to fail
 26 to provide these required wage statements" and "failed to accurately state the hourly rates and the
 27 number of hours worked at each rate." Complaint ¶¶ 39-40. Thus, if plaintiffs are alleging that Home
 28 Depot failed to accurately report hourly rates and corresponding hours worked even outside of the
 FLSA OTADJ, the amount in controversy would exceed the amount in controversy calculated here, and
 include additional wage statements without the FLSA OTADJ line item. *Mejia v. DHL Express (USA),*
Inc., 2015 WL 2452755, at *5 (C.D. Cal. May 21, 2015) (upholding defendant's use of 100 percent
 violation rate where complaint alleged various deficiencies in wage statements).

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DONNIE SANCHEZ BARRAGAN and ARACELI BARRAGAN, individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Craig M. Nicholas/Shawn Markley
NICHOLAS & TOMASEVIC, LLP, 225 Broadway, 19th Floor
San Diego, California 92101 Tel: 619-325-0492

DEFENDANTS

HOME DEPOT U.S.A., INC., a Delaware Corporation; and DOES 1-100, Inclusive,

County of Residence of First Listed Defendant Fulton, Georgia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Donna Mezas/Dorothy F. Kaslow
Akin Gump Strauss Hauer & Feld, LLP, 580 California St. Suite 1500
San Francisco, CA 94104 Tel: 415-765-9500

'19CV1766 BEN AGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. Removal under CAFA.
 Brief description of cause:
Underlying cause of action is California Labor Code § 226- Failure to provide accurate itemized wage statements.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/13/2019
 SIGNATURE OF ATTORNEY OF RECORD: Donna M. Mezas

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

1 **NICHOLAS & TOMASEVIC, LLP**
Craig M. Nicholas (SBN 178444)
2 Shaun Markley (SBN 291785)
225 Broadway, 19th Floor
3 San Diego, California 92101
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/12/2019 at 01:41:45 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

6 Attorneys for Defendants
DONNIE SANCHEZ BARRAGAN and ARACELI BARRAGAN
7 Individually and on behalf of others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 DONNIE SANCHEZ BARRAGAN and
ARACELI BARRAGAN, individually and on
12 behalf of others similarly situated,
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14 Plaintiffs,
15
16 vs.
17 HOME DEPOT U.S.A., INC., a Delaware
Corporation; and DOES 1 – 100, inclusive;
18
19 Defendants.

Case No.: 37-2019-00042161-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

**1. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**

DEMAND FOR JURY TRIAL

18 Plaintiffs DONNIE SANCHEZ BARRAGAN and ARACELI BARRAGAN (“Plaintiffs”)
19 bring this action against Defendant HOME DEPOT U.S.A., INC., a Delaware Corporation
20 (“Home Depot”), and DOES 1 through 100, inclusive, on behalf of themselves and all others
21 similarly situated, and allege on information and belief as follows:

22 **I. INTRODUCTION**

23 1. Plaintiffs and the Class Members are current and former non-exempt employees
24 who worked at Home Depot’s retail stores throughout California. On behalf of themselves and
25 the putative class, Plaintiffs bring this action for violation of California’s Labor Code section 226.

26 2. Home Depot is one of the largest home improvement companies in the United
27 States. Home Depot owns and/or operates hundreds of retail stores throughout California, selling
28

1 tools, construction products and services to California customers. Plaintiff and others similarly
2 situated were employed by Defendant as sales representatives at various Home Depot retail store
3 locations throughout California.

4 3. Defendant failed to provide Plaintiffs and the Class Members with accurate
5 itemized wage statements at the end of each pay period. Specifically, Defendant did not provide
6 wage statements showing “all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate,” as required by California Labor Code
8 section 226.

9 4. Plaintiffs and the Class Members bring this complaint for recovery of penalties
10 available under California Labor Code section 226.

11 **II. JURISDICTION AND VENUE**

12 5. This Court has jurisdiction over violations of California’s Labor Code.

13 6. Based upon information and belief and records maintained pursuant to the
14 California Secretary of State, venue is proper in this judicial district pursuant to Code of Civil
15 Procedure sections 395 and 395.5. This Complaint is based upon material acts which occurred in
16 San Diego County.

17 **III. PARTIES**

18 7. Plaintiff Donnie Sanchez Barragan is, and at all times mentioned was, an
19 individual residing in the County of San Diego, California. Mr. Sanchez was employed by and
20 worked for Home Depot as a non-exempt (hourly) sales representative in Home Depot’s Otay
21 Mesa retail store in the State of California, County of San Diego. As a retail sales employee, Mr.
22 Sanchez sold various home improvement products and services to Home Depot’s customers.
23 Home Depot employed Mr. Sanchez from approximately July 2016 through October 2018.

24 8. Plaintiff Araceli Barragan is, and at all times mentioned was, an individual residing
25 in the County of San Diego, California. Ms. Barragan was employed by and worked for Home
26 Depot as a non-exempt (hourly) sales representative in Home Depot’s Imperial Beach retail store
27 in the State of California, County of San Diego. As a retail sales employee, Ms. Barragan sold
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1 various home improvement products and services to Home Depot's customers. Home Depot
2 employed Ms. Barragan from approximately October 2015 through April 2018.

3 9. Plaintiffs are informed and believe Home Depot is, and at all times mentioned was,
4 an active corporation organized and existing under and by virtue of the laws of the State of
5 Delaware. Home Depot does business in the County of San Diego. Home Depot employed
6 Plaintiffs and the Class Members during the Class Period, defined *infra*, at its retail stores
7 throughout California.

8 10. Plaintiffs do not know the true names and/or capacities, whether individual,
9 partners, or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for
10 that reason sues said Defendants under fictitious names. Plaintiffs will seek leave to amend this
11 Complaint when the true names and capacities of these Defendants have been ascertained.
12 Plaintiffs are informed and believe and thereon allege that these Defendants are responsible in
13 whole or in part for Plaintiffs' and the Class Members' alleged damages.

14 11. At all relevant times, Home Depot, and DOES 1 through 100, employed all of the
15 Class Members, including Plaintiffs, throughout the State of California. Home Depot, doing
16 business in California, as well as DOES 1 through 100, managed, directed, and controlled the
17 operations at their locations and dictated the common employment policies applicable to Home
18 Depot's employees.

19 12. Upon information and belief, at all times relevant, defendant was the agent,
20 employee, alter ego, and/or joint venture of, or working in concert with each of the other co-
21 defendants and was acting within the course and scope of such agency, employment, joint venture,
22 or concerted activity. To the extent said acts, conduct, and omissions, were perpetrated by certain
23 defendants, each of the remaining defendants confirmed and ratified those acts, conduct, and
24 omissions of the acting defendant.

25 13. Upon information and belief, Defendant and DOES 1 through 100 conspired
26 amongst themselves, as well as third parties, to adopt and implement employment policies which
27 violate the California Labor Code. Until the true names and identities of DOES 1 through 100 are
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1 ascertained, Plaintiffs refer to each of them jointly with Defendant Home Depot U.S.A., Inc. as
2 “Home Depot.”

3 **IV. CLASS ACTION ALLEGATIONS**

4 14. Pursuant to Code of Civil Procedure section 382, Plaintiffs bring this lawsuit as a
5 class action on behalf of themselves and all other similarly situated Class Members. This action
6 satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance, and
7 superiority requirements of class actions.

8 15. **Class Period:** The Class Period shall be one year prior to the initiation of this
9 action through the date of final resolution.

10 16. **Class Definition:** The Class is defined as follows: All current and former retail
11 sales representatives who worked for Defendants in California during the Class Period and
12 received overtime adjustments on their wage statements labeled “FLSA OTADJ” (“Class
13 Members” or “Class”).

14 17. Excluded from the Class are: (1) Defendants, entities in which Defendants have a
15 controlling interest, and their legal representatives, officers, directors, assigns, and successors; and
16 (2) the judge to whom this case is assigned and any member of the judge’s immediate family.

17 18. Plaintiffs reserve the right under California Rules of Court Rule 3.765(b) to amend
18 or modify the Class Definition. This includes, but is not limited to, providing greater specificity
19 or dividing the Class into subclasses.

20 19. **Numerosity:** The potential members of the Class are so numerous that joinder of
21 all Class Members would be impractical, if not impossible. The precise number of Class
22 Members are unknown to Plaintiffs. However, the identities of the members of the Class are
23 readily ascertainable through Defendant’s records. The true number of Class Members is known
24 by Defendant and thus, may be notified of the pendency of this action by first class mail,
25 electronic mail, and by published notice.

26 20. **Ascertainability:** The Class is comprised of an easily ascertainable set of persons
27 who work or worked for Defendants as non-exempt retail sales employees.

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1 21. **Community of Interest:** There is a well-defined community of interest among
2 Class Members, and the disposition of the claims of the Class Members in a single action will
3 provide substantial benefits to all parties and to the Court.

4 22. **Typicality:** Plaintiffs' claims are typical of the claims of the Class. Like all Class
5 Members, Plaintiffs suffered the alleged violations of California law and resulting damages.

6 23. **Existence and Predominance of Common Questions of Law and Fact:** There
7 exists a well-defined community of interest in the questions of law and fact presented by this
8 controversy. Common questions of law and fact exist as to all members of the Class and
9 predominate over any questions affecting only individual Class Members. These common legal
10 and factual questions include, but are not limited to, whether Class Members were provided with
11 accurate itemized wage statements.

12 24. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the
13 interests of the Class. Plaintiffs have retained counsel highly experienced in wage and hour class
14 action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no
15 adverse or antagonistic interests to those of the Class.

16 25. **Superiority.** A class action is superior to all other available means for the fair and
17 efficient adjudication of this controversy. The damages or other financial detriment suffered by
18 individual Class Members are relatively small compared to the burden and expense that would be
19 entailed by individual litigation of their claims against Defendant. It would thus be virtually
20 impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to
21 it. Furthermore, even if Class Members could afford such individualized litigation, the court
22 system could not. Individualized litigation would create the danger of inconsistent or
23 contradictory judgments arising from the same set of facts. Individualized litigation would also
24 increase the delay and expense to all parties and the court system from the issues raised by this
25 action. By contrast, the class action device provides the benefits of adjudication of these issues in
26 a single proceeding, economies of scale, and comprehensive supervision by a single court, and
27 presents no unusual management difficulties under the circumstances here.

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1 26. In the alternative, the Class may also be certified because: the prosecution of
2 separate actions by individual Class Members would create a risk of inconsistent or varying
3 adjudication with respect to individual Class Members that would establish incompatible
4 standards of conduct for Defendant;

5 27. The prosecution of separate actions by individual Class Members would create a
6 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
7 interests of other Class Members not parties to the adjudications, or substantially impair or
8 impede their ability to protect their interests; and/or

9 28. Defendant acted or refused to act on grounds generally applicable to the Class,
10 thereby making appropriate final declaratory and/or injunctive relief with respect to the members
11 of the Class as a whole.

12 29. Unless stated otherwise, the claims asserted here are applicable to all individuals
13 who worked for or at Defendant's California retail stores as non-exempt employees receiving
14 wage statements containing the line item, "FLSA OTADJ," during the relevant period.

15 30. Damages may be calculated, in part, from the employee information maintained in
16 Defendants' records, so that the cost of administering a recovery for the Class can be minimized.
17 However, the precise amount of damages available to Plaintiffs and the other members of the
18 Class is not a barrier to class certification.

19 31. Plaintiffs seek a preliminary and permanent injunction and equitable relief on
20 behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent Defendant
21 from engaging in the acts described.

22 32. Unless a class is certified, Defendant will retain monies received as a result of its
23 wrongful conduct that was taken or withheld from Plaintiffs and proposed Class Members.
24 Unless a class-wide injunction is issued, Defendant will continue to commit the violations
25 alleged and the members of the Class and the general public will continue to be misled.

26 33. Defendant has acted and refused to act on grounds generally applicable to the
27 Class, making appropriate final injunctive relief with respect to the Class as a whole.
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V. FACTUAL ALLEGATIONS

34. As discussed *supra*, Home Depot is one of the largest home improvement companies in the United States. Home Depot owns and/or operates hundreds of retail stores throughout California, selling tools, construction products and services to California customers. Home Depot is one of the largest communication technology companies in the world. Plaintiffs and others similarly situated were employed by Defendant as retail sales employees in California.

35. Plaintiffs and the Class Members received compensation in the form of an hourly wage and quarterly bonuses based on performance.

36. After Defendant paid the foregoing bonuses, they issued wage statements showing a single line item for “FLSA OTADJ.” This line item reflected an adjustment to the regular rate of pay for overtime hours earned during the bonus period. However, Defendant failed to issue any wage statements showing the correct, adjusted hourly rate for overtime hours worked and the number of hours worked at each rate. As a result, Plaintiffs and the Class are unable to determine whether they were paid all owed wages.

**VI. FIRST CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
(Against All Defendants)**

37. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

38. Plaintiffs bring this claim individually and on behalf of the Class.

39. Labor Code section 226(a) requires Defendant to furnish each employee, at the time wages are paid, a statement containing an accurate, dated, itemized account, in legible writing showing, among other things, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.”

40. Defendant has failed and continue to fail to provide these required wage statements to Class Members. Defendant provided Plaintiffs and members of the Class with pay stubs. However, the provided pay stubs failed to accurately state the hourly rates and the number of hours worked at each rate.

SUM-100

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/12/2019 at 01:41:45 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

HOME DEPOT U.S.A., INC., a Delaware Corporation; and DOES 1 – 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DONNIE SANCHEZ BARRAGAN and ARACELI BARRAGAN,
individually and on behalf of others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **San Diego Superior Court**
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): **37-2019-00042161-CU-05-CTL**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
NICHOLAS & TOMASEVIC, 225 Broadway, 19th Floor, San Diego, CA 92101 (619) 325-0492

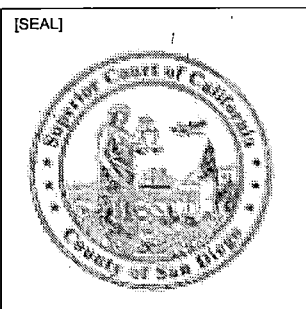
DATE: **08/13/2019**
(Fecha)

Clerk, by *T Crandall*, Deputy
(Secretario) **T. Crandall** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Home Depot U.S.A., Inc.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date): **8/15/19**



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig M. Nicholas, Esq. (SBN 178444) Shaun Markley, Esq. (SBN 291785) NICHOLAS & TOMASEVIC, LLP 225 Broadway, 19th Floor San Diego, CA 92101 TELEPHONE NO.: (619) 325-0492 FAX NO.: (619) 325-0496 ATTORNEY FOR (Name): Plaintiffs, Donnie Sanchez Barragan and Araceli Barragan		ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/12/2019 at 01:41:46 PM Clerk of the Superior Court By Taylor Grandall, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Sanchez v. Home Depot		CASE NUMBER: 37-2019-00042161-CU-05-CTL
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	JUDGE: Judge Richard S. Whitney DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): One (1): Failure to Provide Accurate Itemized Wage Statements

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 12, 2019
 Craig Nicholas, Esq. (SBN 178444)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 450-7068
PLAINTIFF(S) / PETITIONER(S):	Donnie Sanchez Barragan et.al.
DEFENDANT(S) / RESPONDENT(S):	Home Depot USA Inc
BARRAGAN VS HOME DEPOT USA INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00042161-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Richard S. Whitney

Department: C-68

COMPLAINT/PETITION FILED: 08/12/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/17/2020	09:30 am	C-68	Richard S. Whitney

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00042161-CU-OE-CTL CASE TITLE: Barragan VS Home Depot USA INC [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Donnie Sanchez Barragan et.al.	
DEFENDANT(S): Home Depot USA Inc	
SHORT TITLE: BARRAGAN VS HOME DEPOT USA INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2019-00042161-CU-OE-CTL

Judge: Richard S. Whitney

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (<i>specify e.g., private mini-trial, private judge, etc.</i>): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 08/13/2019

JUDGE OF THE SUPERIOR COURT

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>) Nicholas & Tomasevic Craig M. Nicholas (SBN 178444) 225 Broadway 19th Floor San Diego, CA 92101 TELEPHONE NO: 619-325-0492 FAX NO (<i>Optional</i>): E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/20/2019 at 01:58:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Hall of Justice	
PLAINTIFF / PETITIONER: Donnie Sanchez Barragan; et al. DEFENDANT / RESPONDENT: Home Depot U.S.A., Inc.; et al.	CASE NUMBER: 37-2019-00042161-CU-OE-CTL
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 3668356

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (*served in complex cases only*)
 - e. cross-complaint
 - f. other (*specify documents*): Notice of Case Assignment and CMC
3.
 - a. Party served (*specify name of party as shown on documents served*):
Home Depot U.S.A., Inc., a Delaware Corporation
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (*specify name and relationship to the party named in item 3a*):
Becky DeGeorge Authorized to Accept Service
4. Address where the party was served:
CSC Lawyers Incorporating Service, 2710 Gateway Oaks Drive Suite 150N, Sacramento, CA 95833
5. I served the party (*check proper box*)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (*date*): Thu, Aug 15 2019 (2) at (*time*): 02:33 PM
 - b. **by substituted service.** On (*date*): _____ at (*time*): _____ I left the documents listed in item 2 with or in the presence of (*name and title or relationship to person indicated in item 3*):
 - (1) (**business**) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (**home**) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (**physical address unknown**) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (*date*): _____ from (*city*): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF / PETITIONER: Donnie Sanchez Barragan; et al. DEFENDANT / RESPONDENT: Home Depot U.S.A, Inc.; et al.	CASE NUMBER: 37-2019-00042161-CU-OE-CTL
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5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
 (1) on (date): _____ (2) from (city): _____
 (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
 (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
 d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
 b. as the person sued under the fictitious name of (specify): _____
 c. as occupant.
 d. On behalf of (specify): Home Depot U.S.A, Inc.

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| <input type="checkbox"/> other: | |

7. Person who served papers

- a. Name: Demian Ross
 b. Address: 5435 Palm Avenue, Sacramento, CA 95841
 c. Telephone number: 916-373-9065
 d. The fee for service was: \$35.75

e. I am:

- (1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) a registered California process server:
 (i) owner employee independent contractor
 (ii) Registration No: Sacramento County #2011-66
 (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 08/20/2019

Demian Ross

(NAME OF PERSON WHO SERVED PAPERS / SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT C

1 DONNA M. MEZIAS (SBN 111902)
DOROTHY F. KASLOW (SBN 287112)
2 AKIN GUMP STRAUSS HAUER & FELD LLP
580 California Street, Suite 1500
3 San Francisco, CA 94104
Telephone: 415.765.9500
4 Facsimile: 415.765.9501
dmezias@akingump.com
5 dkaslow@akingump.com

6 Attorneys for defendant
Home Depot U.S.A., Inc.
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO
11

12 DONNIE SANCHEZ BARRAGAN and
13 ARACELI BARRAGAN, individually and
on behalf of all persons similarly situated,

14 Plaintiffs,

15 v.
16

17 HOME DEPOT U.S.A., INC., a Delaware
corporation; and DOES 1 – 100, inclusive,

18 Defendants.
19

Case No. 37-2019-00042161-CU-OE-CTL

DEFENDANT HOME DEPOT U.S.A.,
INC.'S ANSWER TO COMPLAINT

Date Action Filed: August 12, 2019

1 Defendant Home Depot U.S.A., Inc. hereby answers the complaint of plaintiffs Donnie
2 Sanchez Barragan and Araceli Barragan by generally denying each and every material allegation of the
3 unverified complaint pursuant to section 431.30(d) of the California Code of Civil Procedure.

4 Defendant sets forth below its defenses and affirmative defenses. In doing so, defendant does
5 not in any way change or alter the allocation and burden of proof for each such defense listed as
6 established by applicable law.

7 DEFENSES

8 As separate defenses to the complaint, and each purported cause of action contained therein,
9 defendant alleges the following defenses and affirmative defenses:

10 FIRST DEFENSE

11 (Failure to State a Cause Of Action)

12 The complaint, and each purported cause of action contained therein, fails to state facts
13 sufficient to constitute a cause of action against defendant.

14 SECOND DEFENSE

15 (Statute of Limitations)

16 The complaint, and each purported cause of action contained therein, is barred, in whole or in
17 part, by the applicable statutes of limitations.

18 THIRD DEFENSE

19 (Estoppel)

20 The complaint, and each purported cause of action contained therein, is barred because
21 plaintiffs and/or any individuals plaintiffs purport to represent are estopped from asserting one or more
22 causes of action alleged herein against defendant.

23 FOURTH DEFENSE

24 (Standing)

25 Plaintiffs lack standing to bring certain claims asserted, to assert the legal rights or interests of
26 others, and/or to seek certain relief alleged, including injunctive relief.

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FIFTH DEFENSE

(No Injury)

The complaint, and each purported cause of action contained therein, is barred to the extent it seeks damages or penalties for allegedly inaccurate wage statements, because plaintiffs and the individuals plaintiffs purport to represent suffered no injury from the alleged failure to provide proper itemized wage statements.

SIXTH DEFENSE

(Good Faith)

At all relevant times, defendant acted in good faith and had reasonable grounds for believing its actions did not violate the California Labor Code and/or the California Wage Orders.

SEVENTH DEFENSE

(Compliance with Statute)

The complaint, and each purported cause of action contained therein, is barred because at all times defendant complied and/or substantially complied with all applicable statutes, regulations, and laws.

EIGHTH DEFENSE

(Waiver and Release)

The complaint, and each purported cause of action contained therein, is barred to the extent plaintiffs and any individuals plaintiffs purport to represent have waived their right to recovery and/or released their claims against defendant, whether in whole or in part, and whether individually or in a class action settlement and/or release agreement.

NINTH DEFENSE

(Acquiescence)

The complaint, and each purported cause of action contained therein, is barred to the extent plaintiffs and/or any individuals plaintiffs purport to represent acquiesced in defendant's conduct and actions or omissions alleged herein.

//
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1 TENTH DEFENSE

2 (Accord and Satisfaction)

3 The complaint, and each purported cause of action contained therein, is barred to the extent
4 plaintiffs and/or any individuals plaintiffs purport to represent entered into an accord with defendant
5 extinguishing the obligations that are the basis of the complaint or cause of action. Defendant has
6 satisfied all obligations required of it under the accord.

7 ELEVENTH DEFENSE

8 (Laches)

9 The complaint, and each purported cause of action contained therein, is barred because
10 plaintiffs and/or any individuals plaintiffs purport to represent have inexcusably and unreasonably
11 delayed the filing of their action, causing prejudice to defendant.

12 TWELFTH DEFENSE

13 (Ratification and Consent)

14 The complaint, and each purported cause of action contained therein, is barred to the extent the
15 alleged conduct of defendant was approved, consented to, authorized, and/or ratified by plaintiffs
16 and/or any individuals plaintiffs purport to represent, through their actions, omissions, or course of
17 conduct.

18 THIRTEENTH DEFENSE

19 (Class Action)

20 Plaintiffs cannot satisfy the requirements for a class action.

21 FOURTEENTH DEFENSE

22 (Res Judicata and Collateral Estoppel)

23 The complaint, and each purported cause of action contained therein, is barred to the extent the
24 doctrines of collateral estoppel and/or res judicata apply.

25 FIFTEENTH DEFENSE

26 (No Knowing or Intentional Conduct)

27 The Complaint, and each claim contained therein, is barred to the extent the alleged wage
28 statement violations of defendant were not knowing or intentional.

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SIXTEENTH DEFENSE

(Unjust Enrichment)

The complaint, and each cause of action contained therein, is barred to the extent that any recovery would be a windfall resulting in unjust enrichment to the plaintiffs and individuals plaintiffs purport to represent.

SEVENTEENTH DEFENSE

(Unclean Hands)

The complaint, and each purported cause of action contained therein, is barred in whole or in part by the doctrine of unclean hands.

RESERVATION OF RIGHTS


Defendant hereby gives notice that it intends to rely upon such other and further affirmative defenses or defenses as may become available during the course of discovery in this action and reserves the right to amend its answer to assert any such defenses.

WHEREFORE, defendant prays for judgment as follows:

1. That plaintiff take nothing by reason of the complaint;
2. That the complaint be dismissed with prejudice;
3. That judgment be entered in favor of defendant;
4. That defendant recover its costs of suit herein;
5. That defendant recover its attorneys' fees pursuant to Labor Code § 218.5 and California Code of Civil Procedure § 128.7 and any other appropriate basis; and
6. That defendant be granted such further relief as the Court deems just and proper.

Dated: September 12, 2019

AKIN GUMP STRAUSS HAUER & FELD LLP

By 
 Dorothy F. Kaslow
 Attorneys for defendant
 Home Depot U.S.A., Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco California 94104. On September 12, 2019, I served the foregoing document(s) described as **DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER TO COMPLAINT** on the interested party(ies) below, using the following means:

Craig M. Nicholas
Shaun Markley
NICHOLAS & TOMASEVIC, LLP
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
smarkley@nicholaslaw.org


Attorneys for Plaintiffs

BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 12, 2019 at San Francisco, California.

Jeremias V. Cordero
Print Name


Signature

1 DONNA M. MEZIAS (SBN 111902)
2 DOROTHY F. KASLOW (SBN 287112)
3 dmezias@akingump.com
4 dkaslow@akingump.com
5 AKIN GUMP STRAUSS HAUER & FELD LLP
6 580 California Street, Suite 1500
7 San Francisco, CA 94104
8 Telephone: 415-765-9500
9 Facsimile: 415-765-9501

6 Attorneys for defendant
7 HOME DEPOT U.S.A., INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 DONNIE SANCHEZ BARRAGAN and
13 ARACELI BARRAGAN, individually and
14 on behalf of others similarly situated,

15 Plaintiffs,

16 v.

17 HOME DEPOT U.S.A., INC., a Delaware
18 corporation; and DOES 1 through 100,
19 Inclusive,

20 Defendants.

Case No. '19CV1766 BEN AGS

CLASS ACTION

**DECLARATION OF DONNA M. MEZIAS
IN SUPPORT OF DEFENDANT HOME
DEPOT U.S.A., INC.'S NOTICE OF
REMOVAL**

[Notice of Removal, Certification of
Interested Entities or Persons, Declarations of
Christina Josiah and G. Edward Anderson, and
Civil Cover Sheet filed concurrently]

Date Action Filed: August 12, 2019

(San Diego County Superior Court, No. 37-
2019-00042161-CU-OE-CTL)

1 DONNA M. MEZIAS (SBN 111902)
 2 DOROTHY F. KASLOW (SBN 287112)
 3 dmezias@akingump.com
 4 dkaslow@akingump.com
 5 AKIN GUMP STRAUSS HAUER & FELD LLP
 6 580 California Street, Suite 1500
 7 San Francisco, CA 94104
 8 Telephone: 415-765-9500
 9 Facsimile: 415-765-9501
 10 Attorneys for defendant
 11 HOME DEPOT U.S.A., INC.

12
 13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 DONNIE SANCHEZ BARRAGAN and
 16 ARACELI BARRAGAN, individually and
 17 on behalf of others similarly situated,

18 Plaintiffs,

19 v.

20 HOME DEPOT U.S.A., INC., a Delaware
 21 corporation; and DOES 1 through 100,
 22 Inclusive,

23 Defendants.

Case No. '19CV1766 BEN AGS

CLASS ACTION

**DECLARATION OF CHRISTINA
 JOSIAH IN SUPPORT OF DEFENDANT
 HOME DEPOT U.S.A., INC.'S NOTICE
 OF REMOVAL**

[Certification of Interested Entities or
 Persons, Declarations of G. Edward
 Anderson and Donna M. Mezas, Notice of
 Removal, and Civil Cover Sheet filed
 concurrently]

Date Action Filed: August 12, 2019

*(San Diego County Superior Court, No. 37-
 20019-00042161-CU-OE-CTL)*

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DECLARATION OF CHRISTINA JOSIAH

I, Christina Josiah, certify and declare as follows:

1. I am a District Human Resources Manager with Home Depot U.S.A., Inc. ("Home Depot"). I have personal knowledge of the facts stated herein, and if called and sworn as a witness, I would and could testify competently under oath thereto. I submit this declaration in support of defendant Home Depot U.S.A. Inc.'s Notice of Removal.

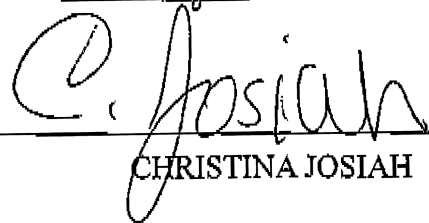
2. Home Depot is a corporation organized and incorporated under the laws of the state of Delaware. Home Depot has not been incorporated in California. Home Depot maintains its corporate headquarters at 2455 Paces Ferry Road SE, Atlanta, Georgia 30339. Its executive and administrative operations are centrally managed from this location.

3. In the ordinary course of business, Home Depot maintains electronic human resources records containing information regarding the employment status, job positions, termination dates, and contact information of its current and former employees. I am familiar with these databases and I rely on the data they maintain in connection with my job responsibilities.

4. Donnie Sanchez Barragan's employment records reflect that he worked at the Home Depot retail store located in Otay Mesa, California from July 2016 through October 2018, and that his residential address on file during his employment was in San Ysidro, California.

5. Araceli Barragan's employment records reflect that she worked at the Home Depot retail store located in Imperial Beach, California from October 2015 through April 2019, and that her residential address on file during her employment was in San Ysidro, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 11, 2019 in San Diego, California.

By 
CHRISTINA JOSIAH

1 DONNA M. MEZIAS (SBN 111902)
2 DOROTHY F. KASLOW (SBN 287112)
3 dmezias@akingump.com
4 dkaslow@akingump.com
5 AKIN GUMP STRAUSS HAUER & FELD LLP
6 580 California Street, Suite 1500
7 San Francisco, CA 94104
8 Telephone: 415-765-9500
9 Facsimile: 415-765-9501

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

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

13 DONNIE SANCHEZ BARRAGAN
14 and ARACELI BARRAGAN,
15 individually and on behalf of others
16 similarly situated,

16 Plaintiffs,

17 v.

18 HOME DEPOT U.S.A., INC., a
19 Delaware corporation; and DOES 1-
20 100, inclusive,

20 Defendants.

Case No. '19CV1766 BEN AGS

CLASS ACTION

**DECLARATION OF G. EDWARD
ANDERSON, PH.D.**

Notice of Removal, Certification of
Interested Entities or Persons,
Declarations of Christina Josiah and
Donna M. Mezas, and Civil Cover
Sheet filed concurrently]

Date Action Filed: August 12, 2019

*(San Diego County Superior Court,
No. 37-2019-00042161-CU-OE-CTL)*

1 I, G. EDWARD ANDERSON, CERTIFY AND DECLARE AS FOLLOWS:

2 1. I have personal knowledge of the facts set forth herein, which are known
3 by me to be true and correct, and if called as a witness, I could and would competently
4 testify thereto.

5 2. I am a Principal, Vice President and Senior Economist of Welch
6 Consulting, a firm specializing in economic and statistical research. I have held the
7 position of Principal since 2016, Vice President since 2001 and Senior Economist since
8 1998. Prior to that time, I was employed as an Economist at Welch Consulting from
9 1988 until 1998.

10 3. I hold a Bachelor of Arts (Hon.) in Economics and Business from Simon
11 Fraser University in British Columbia, Canada and a Master of Arts in Economics from
12 Simon Fraser University. I received a Ph.D. from the University of California, Los
13 Angeles in Economics. My areas of specialization in graduate school were Labor
14 Economics and Econometrics. Labor Economics is the study of labor market
15 phenomena from an economic perspective. Econometrics is the application of statistical
16 methods to economic data.

17 4. Since 1988, I have done many studies of human resource, payroll, earnings,
18 and time system records and have provided declarations and given testimony in matters
19 where statistics played a central role. Within the past five years, I have provided
20 testimony and worked in a consulting capacity on more than 200 wage/hour matters,
21 including litigation involving claims that California wage statements were improper.
22 Almost all of these wage/hour cases involved class allegations and many required the
23 analysis of large data files, sometimes involving hundreds of thousands of observations.
24 I am familiar with the statistical software used, and the data issues that can arise, in such
25 analyses. I have also frequently been asked to compute damages associated with the
26 claimed violations in these and other wage and hour matters. Within the past five years
27
28

1 I have reviewed and analyzed human resource and payroll data bases from many of the
2 nation's largest employers.

3 5. I reviewed transactional HR data and payroll records for Home Depot's
4 non-exempt employees who worked in California retail stores since August 12, 2018.

5 6. Between August 12, 2018 and September 2, 2019, Home Depot employed
6 33,392 employees in California retail stores whose paychecks showed an entry for
7 "FLSA OTADJ" at least once. In the payroll data I reviewed, the earnings code for
8 "FLSA OTADJ" is code "209".
9


10 7. Over the same time period, these 33,392 employees received paychecks
11 with "FLSA OTADJ" entries in 67,066 total pay periods.

12 8. For each employee receiving a paycheck with an "FLSA OTADJ" entry
13 after August 12, 2018 and through September 2, 2019, I calculated penalties of \$50 for
14 the first instance, and \$100 for each subsequent instance, of this entry, up to a maximum
15 penalty of \$4,000 per employee.

16 9. The calculated penalties for this time frame for these 33,392 employees totals
17 \$5,037,000.
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20 I declare under penalty of perjury under the laws of the United States that the
21 foregoing is true and correct.

22 Executed on September 13, 2019, in Los Angeles, California.
23

24
25 By  _____
26 G. Edward (Ted) Anderson, Ph.D.
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Home Depot Failed to Provide Workers with Accurate, Itemized Wage Statements](#)
