

MARRON LAWYERS, APC

Paul Marron (SBN 128245)
pmarron@marronlaw.com
Steven C. Rice (SBN 109659)
srice@marronlaw.com
Yinghan Ma (SBN 343781)
yma@marronlaw.com
5000 E. Spring St., Suite 580
Long Beach, CA 90815
(562) 432-7422 Telephone
(562) 683-2721 Facsimile

*Attorneys for Plaintiff Joseph Chang, individually
and on behalf of all others similarly situated*

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/03/2023 10:33 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DIVISION**

JOSEPH CHANG, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: **23STCV07149**

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF, FOR:**

- 1. Breach of Contract**
- 2. Conversion of Personal Property**
- 3. Unfair Business Practices**
*[Calif. Business & Professions
Code § 17200 et seq.]*

DEMAND FOR JURY TRIAL

TO ALL PARTIES AND THE COURT:

COMES NOW, Plaintiff JOSEPH CHANG and alleges the following. All allegations made in this complaint are based upon information and belief, except those allegations which pertain to plaintiff JOSEPH CHANG and his counsel.

NATURE OF THE ACTION

1. This is a class action brought by JOSEPH CHANG (hereinafter "Plaintiff") on behalf of himself and all other similarly situated purchasers of goods from Defendants HOME DEPOT U.S.A., INC. and/or THE HOME DEPOT, INC. (collectively, "Defendants") for damages resulting from Defendants' failure to honor their own express terms for handling of merchandise

1 purchased by Plaintiff and other similarly situated customers who did not take possession at the
2 time of purchase, but intended to take possession at a later time at a The Home Depot store in
3 California (including “will call” merchandise purchases). Defendants also acted in violation of
4 the abandoned property laws of the state of California in their handling of merchandise purchased
5 in this manner by Plaintiff and others similarly situated.

6 **JURISDICTION AND VENUE**

7 2. This Court has jurisdiction over this action pursuant to *Code of Civil Procedure*
8 §410.10.

9 3. Each Defendant has sufficient minimum contacts with the State of California and/or
10 otherwise intentionally avails itself of the laws and markets of the State of California so as to
11 sustain this Court’s jurisdiction over the defendants.

12 4. Venue is proper in Los Angeles County because Plaintiff resides in that county and
13 Defendant conducts substantial business here. In addition, most of Defendant’s obligations and
14 liabilities to Plaintiff, as described herein, arose at The Home Depot stores within Los Angeles
15 County. In addition, relevant transactions and events, described herein, occurred here.
16 Furthermore, the State of California has a substantial interest in deterring wrongful conduct by
17 businesses within its borders.

18 **PLAINTIFF**

19 5. Plaintiff JOSEPH CHANG is, and at all times mentioned herein was, an individual
20 and a resident of the County of Los Angeles, California.

21 **DEFENDANTS**

22 6. Defendant HOME DEPOT U.S.A., INC. is a Delaware Corporation, which has
23 designated Atlanta, Georgia as the location of its main office. Said Defendant owns, controls,
24 operates and/or directs operations, including sales and terms and conditions of pick-up and
25 delivery of merchandise through its branded store locations throughout the state of California and
26 elsewhere, through a coordinated and computerized system in use for all locations.

27 7. Defendant THE HOME DEPOT, INC. is a Delaware Corporation, which has
28 designated Atlanta, Georgia as the location of its main office. Said Defendant owns, controls,

1 operates and/or directs operations, including sales and terms and conditions of pick-up and
2 delivery of merchandise through its branded store locations throughout the state of California and
3 elsewhere, through a coordinated and computerized system in use for all locations.

4 8. The true names and capacities of Defendants DOES 1-50, inclusive, are unknown
5 to Plaintiffs who therefore sues the DOES by such fictitious names. Plaintiffs will file amendments
6 to this complaint when the true names and capacities have been ascertained. Plaintiffs may also
7 seek to amend this Complaint to show the true names and capacities of such Defendants when
8 they are ascertained. Each fictitiously named business entity Defendant is alleged to have
9 participated in the same acts and conduct as those specifically named herein.

10 9. At all times mentioned herein, each of the fictitiously named Defendants was and
11 now is the agent, servant, employee, representative and/or alter ego of each of the other fictitiously
12 named Defendants, and, in doing the things hereinafter alleged, was acting individually and/or
13 within the scope of his/her/its authority as such an agent, servant, employee, representative and/or
14 alter ego, with the knowledge, permission, consent and ratification of the other Defendants, as
15 more particularly described herein.

16 10. There exists, and at all times herein mentioned there existed, a unity of interest and
17 ownership between Defendants and the fictitiously named Defendants (DOES 1-50), such that any
18 individuality and separateness between Defendants and DOES 1-50 have ceased. Defendants and
19 DOES 1-50 are, therefore, the alter ego(s) of each other. Adherence to the fiction of the separate
20 existence of Defendants as distinct from each other, and/or distinct from DOES 1-50 would permit
21 an abuse of the corporate privilege and would promote injustice in that Defendants and DOES 1-
22 50 have caused their funds and/or assets to be transferred and distributed to other corporate
23 entities. As used hereafter, the term "Defendants" shall include the fictitiously named defendants.

24 **GENERAL ALLEGATIONS**

25 11. At all times relevant to this action, Plaintiff was the owner of multiple residential
26 rental properties in Los Angeles County. During four years prior to the filing of this action, and
27 for a period prior to that time, as well, Plaintiff made numerous purchases of building materials,
28 construction tools and equipment from Defendants. Pursuant to well-established "Special

1 Services” policies created by Defendants, Plaintiff (and others similarly situated) often did not
2 take immediate personal possession of the merchandise he purchased. Instead, such purchasers
3 would pay for such merchandise in full, and Defendants would “hold” this merchandise (“Goods
4 Purchased for Later Pickup”) at the store. At the time of such purchases, Plaintiff intended to
5 return at a future date to pick up the merchandise which he had purchased.

6 12. In common commercial transactions and usage, the term “Will Call” typically
7 refers to merchandise such as Goods Purchased for Later Pickup, where items previously paid for
8 are “called for” by the customer at a later time, usually at the seller’s place of business, or at the
9 location where the purchased will be used (such as a concert ticket).

10 13. Per Defendants’ written policies, provided to Plaintiff (and similarly situated
11 purchasers) prior to or at the time of purchase, all “will call” items (including Goods Purchased
12 for Later Pickup) that were not picked up by the purchaser within 30 days would be “subject to
13 the abandoned property laws in your state.” A printed exemplar of a document stating Defendants’
14 policies, upon which Plaintiff and others similarly situated were intended to, and actually did, rely,
15 is attached hereto as Exhibit “A.”

16 14. California law establishes a high bar for treating property in the possession of
17 another as “abandoned.” As summarized in *Templar Mining Co. v. Williams* (1937) 23 Cal.App.2d
18 45, 50 (see also cases cited therein, including *Thornton v. Phelan* (1924) 65 Cal.App. 480):

19 “The decisions are uniform in holding that abandonment is a question of intention,
20 and that abandonment may be proved by the acts and conduct of the party alleged
21 to have abandoned the property in controversy. The burden also rests upon the party
22 alleging abandonment to prove the same by satisfactory and competent evidence....
23 All the cases hold that nonuser alone *without any intention of abandonment*, does
not constitute abandonment.” (Emphasis added.)

24 See also *Weideman v. Staheli* (1948) 88 Cal.App.2d 613, 616-17; *Ananda Church of Self-*
25 *Realization v. Massachusetts Bay Ins. Co.* (2002) 195 Cal.App.4th 1273, 1282 [“A thing is
26 abandoned when the owner throws it away, or leaves it without custody, because he no longer
27 wishes to account it as his property”].

1 15. At no time did Plaintiff express an intention to abandon the Goods Purchased for
2 Later Pickup that he had purchased from Defendants, nor, on information and belief, did the others
3 similarly situated. To the contrary, the fact that the Goods Purchased for Later Pickup consisted
4 of brand new, valuable merchandise, in most cases only recently purchased and still subject to
5 return to Defendants for full (or 85%, as discussed below) refund, would reasonably indicate the
6 opposite.

7 16. California's abandoned property laws expressly provide that any person (including
8 corporate entity) in possession of property which that person is asserting to be "abandoned," may
9 not simply take possession of the property for their own use, disposal or sale. Instead, the
10 provisions of the state's Unclaimed Property Law ("the UPL," Cal. Code of Civil Procedure
11 ("C.C.P.") §1500 *et seq.*) will apply. The UPL states, as one of its legislative purposes, that "[i]t
12 is the intent of the Legislature that property owners be reunited with their property." C.C.P.
13 §1501.5(c); *State v. Pacific Far East Line, Inc.* (1968) 261 Cal.App.2d 609 ["The objectives of
14 the California Act are to protect unknown owners by locating them and restoring their property to
15 them and to give the state rather than the holders of unclaimed property the benefit of its retention,"
16 citing *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 463].

17 17. Accordingly, C.C.P. §1520(a) provides that "[a]ll tangible personal property in this
18 state ... including any income or increment thereon, that is held or owing in the ordinary course
19 of the holder's business and has remained unclaimed by the owner for more than three years after
20 it became payable or distributable escheats to this state." C.C.P. §1520(b) provides that

21 ... if the holder has in its records an address for the apparent owner of property
22 valued at fifty dollars (\$50) or more, which the holder's records do not disclose to
23 be inaccurate, the holder shall make reasonable efforts to notify the owner ... that
24 the owner's property will escheat to the state pursuant to this chapter. ... The face
25 of the notice shall contain a heading at the top that reads as follows: "THE STATE
26 OF CALIFORNIA REQUIRES US TO NOTIFY YOU THAT YOUR
UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU
DO NOT CONTACT US," or substantially similar language.

27 The same statute also establishes very specific requirements for the form of notice to be given by
28 the holder of another's personal property to the owner, including font size, account information

1 and deadlines.

2 18. Defendants failed to comply with their obligations under California's abandoned
3 property laws in regard to the Goods Purchased for Later Pickup to Plaintiff and others similarly
4 situated. Instead, without notice to the owner of the Goods Sold for Later Pickup, Defendants
5 simply restocked and resold the merchandise, keeping of the proceeds from the subsequent sale,
6 notwithstanding that Plaintiff (or others similarly situated) had already paid for this merchandise.
7 Furthermore, no refunds were paid to the original purchasers of Goods Purchased for Later Pickup
8 (including Plaintiff) at the time of resale or thereafter, despite Defendants' knowledge of the
9 addresses, credit card accounts, telephone numbers, and or other contact information for the
10 purchasers. For example, Plaintiff had routinely made purchases of Goods Purchased for Later
11 Pickup from Defendants' stores using credit cards. Defendants' computer kept a record of the
12 credit card that was used by Plaintiff to make purchases. Therefore, Defendants at all times had
13 the ability to refund the money to Plaintiff's credit card in all cases where Defendants effectively
14 "canceled" a "will call" purchase of merchandise made by Plaintiff which he had not yet picked
15 up. Plaintiff is informed and believes that others similarly situated were treated in the same
16 manner.

17 19. Instead, Defendants routinely and willfully failed to comply with state legal
18 requirements to make reasonable efforts to communicate with Plaintiff (or others similarly
19 situated) to find out if they *intended* to abandon any of the Goods Purchased for Later Pickup and
20 to follow state law applicable to abandoned or unclaimed property.

21 20. In effect, Defendants "repossessed" merchandise that had already been fully paid
22 for by Plaintiffs and others similarly situated. Defendants did so without notice to the owners of
23 the Goods Purchased for Later Pickup that they were planning to do so, and also without notice
24 afterward that they had, in fact, done so. Defendants actions in taking possession of the property
25 of Plaintiff and others similarly situated, and in then selling this merchandise that they had already
26 sold to Plaintiff and others similarly situated, were in deliberate disregard for the property rights
27 of the owners of the Goods Purchased for Later Pickup (including Plaintiff and others similarly
28

1 situated), and with the wrongful intention to delay, or avoid altogether, having Plaintiff and others
2 similarly situated pick up their merchandise and/or claim refunds in regard to the merchandise.

3 21. With respect to any Goods Purchased for Later Pickup which were "Special Order
4 Merchandise," Defendants provided their customers with written terms which permitted
5 Defendants to charge a 15% restocking fee in regard to any merchandise returned to its "stock"
6 for re-sale. No right to a "restocking fee" was asserted or claimed by Defendants in regard to
7 standard "in stock" merchandise. However, instead of proceeding according to their own written
8 terms, refunding to the purchasers 85% of the money paid for Special Order Merchandise and
9 100% of the money paid for other Goods Sold for Later Pickup, Defendants on multiple occasions
10 chose to refund 0%, keeping 100% of the moneys paid by Plaintiff and other purchasers similarly
11 situated.

12 22. Defendants wrongful actions also included keeping the proceeds from the re-sale
13 of the Goods Sold for Later Pickup, despite their familiarity with, and ability to follow, proper
14 procedures for directly and immediately refunding the money spent by Plaintiff and others
15 similarly situated, thereby unjustly enriching themselves by using and retaining the money they
16 received from the resale of the Goods Purchased for Later Pickup unless/until Defendants' actions
17 were discovered and refunds were demanded by Plaintiff and others similarly situated.

18 23. In some cases, Defendants' wrongful actions even included identifying Goods
19 Purchased for Later Pickup as having been picked up by the purchaser, despite having no
20 documentation showing that the merchandise had, in fact, been picked up. This was done via
21 Defendant's tracking system, by recording the goods as "Assumed Pickup" or fictitiously
22 recording a "Customer Pickup," despite no pickup having been made, and despite Defendants'
23 own records showing no such pickup having been made at the time of the entry of the record.
24 Plaintiff personally experienced this tactic in several of Defendants' "The Home Depot" stores,
25 including in Paramount, Downey, Upland, and Pomona. Plaintiff reasonably believes that
26 Defendants use this tactic system-wide, including at least all "The Home Depot" stores in the State
27 of California.

28

1 24. As a result of Defendant's breach, Plaintiffs were deprived of their property,
2 deprived of the use of the funds obtained by Defendants from the resale of their property without
3 their consent or knowledge. commenced proceedings to foreclose on its security interest on the
4 Property. Plaintiff alone has suffered the loss, without refund, of over \$40,000 in merchandise that
5 he purchased from multiple The Home Depot locations in Los Angeles County and San
6 Bernardino County.

7 25. Plaintiff and others similarly situated reasonably expected that Defendants would
8 honor their stated commitment, in writing, that any Goods Purchased for Later Pickup that were
9 not claimed within 30 days would be handled in accordance with the abandoned property laws of
10 California, thereby serving as a reminder that their goods were still awaiting pickup, giving them
11 notice that the goods would be claimed by Defendants if not picked up by a date certain, and
12 thereafter providing them notice of the resale of the goods and their right to a refund of some or
13 all of the money that they had paid for the goods.

14 **CLASS ACTION ALLEGATIONS**

15 26. Plaintiff alleges various causes of action on behalf of himself and on behalf of
16 others similarly situated. The class that Plaintiff represents is composed of the following:

17 All California purchasers of Goods Sold for Later Pickup (excluding "custom made goods"
18 which were not "returnable" under Defendants' agreements with the purchasers) which
19 included items which were *not* later actually picked up by, or on behalf of the purchaser
20 (or delivered to the purchaser) within 30 days of purchase (hereinafter "Purchased Goods
Not Claimed"), *unless*, as to each such purchase by the purchaser, a Defendant has:

- 21 a. Refunded to the purchaser, within 60 days of purchase, 100% of the price paid for
22 the Purchased Goods Not Claimed which were not "Special Order Merchandise"
23 and 85% of the price paid by that purchaser for the Purchased Goods Not Claimed
which were "Special Order Merchandise"; or,
24 b. Confirmed in writing with the purchaser that the Purchased Goods Not Claimed
25 were abandoned, and thereafter within three years of purchaser's purchase, said
26 Defendant properly provided purchaser with a notice in compliance with California
27 Code of Civil Procedure §1520(b), and thereafter complied with California's
28 Unclaimed Property laws.

1 27. This action is properly maintainable as a class action. Plaintiff is informed and
2 believes and thereon alleges that **all California purchasers of Goods Sold for Later Pickup**
3 **whose purchases included Purchased Goods Not Claimed** are readily identifiable through the
4 Defendants' computerized tracking system (including a search for any references to a "presumed"
5 or "assumed" pick up of merchandise by the purchaser), and that the determination of whether
6 those purchasers fall within the class definition would also be determined by an examination of
7 the information entered into the Defendants' computerized tracking system in regard to each
8 purchase. Specifically, plaintiff is informed and believes that the number of such purchasers
9 excluded from the class under the terms of Paragraph 26(b), above, will be near zero, and that the
10 number of such purchasers excluded from the class under the terms of Paragraph 26(a) may be
11 readily determined by a comparison of the prices paid and the amount of any refunds.

12 28. Plaintiff will fairly and adequately represent and protect the interests of the
13 members of the Class in that Plaintiff has no interests that are antagonistic to those of the other
14 members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has
15 retained counsel who is competent and experienced in class action litigation.

16 29. A class action is superior to other methods for the fair and efficient adjudication of
17 the claims herein asserted, and not unusual difficulties are likely to be encountered in the
18 management of this class action. The expense and burden of individual litigation makes it
19 economically impracticable for members of the Class to individually seek redress for the wrongful
20 conduct alleged.

21 30. Because Plaintiff's claims and the claims of members of the Class all derive from
22 a common nucleus of operative facts, Plaintiff's claims are typical of the claims of the members
23 of the entire Class. Plaintiff, like other members of the Class, was subject to the Unclaimed
24 Property Law of California, the Defendants' contractual terms and conditions in regard to Goods
25 Sold for Later Pickup and Purchased Goods not Claimed.

26 31. There is a well-defined community of interest in the questions of law and fact
27 involved affecting the parties to be represented in that each member of the class is or has been in
28 the same factual circumstances, hereinafter alleged, as Plaintiff. Proof of a common or single state

1 of facts will establish the right of each member of the Class to recover. The common questions of
2 law and fact which exist as to all members of the Class and which predominate over the questions,
3 if any, affecting only individual members of the Class include, but are not limited to, the following:

- 4 a. whether Defendants' policies provided for proper and prompt refunds to the Class
5 for all Goods Sold for Later Pickup which Defendants treated as "returned" by the
6 purchasing Class members;
- 7 b. whether Defendants breached their own terms and conditions in handling
8 Purchased Goods Not Claimed, by reselling such items to other purchasers without
9 providing an immediate refund to the original purchaser, and without compliance
10 with California's Unclaimed Property Law;
- 11 c. whether Plaintiff and the Class are entitled to damages, restitution, and other relief;
- 12 d. whether Defendant's conduct constitutes an unlawful business act or practice
13 within the meaning of *Business and Professions Code* section 17200;
- 14 e. whether Defendant's conduct constitutes an unfair business act or practice within
15 the meaning of *Business and Professions Code* section 17200;
- 16 f. whether Defendant's conduct constitutes a fraudulent business act or practice
17 within the meaning of *Business and Professions Code* section 17200; and,
- 18 g. whether Defendant otherwise breached its contracts and/or terms and conditions in
19 regard to Plaintiff and the Class members.

20 32. There is no plain, speedy, or adequate remedy other than by maintenance of this
21 class action because Plaintiff is informed and believes that many of the members of the putative
22 Class are entitled to restitution or other damages in amounts small enough that make the litigation
23 of their individual claims impractical or economically unfeasible to pursue remedies in a manner
24 other than a class action. Consequently, there would be a failure of justice if this case does not
25 proceed as a class action. Moreover, plaintiff is informed and believes that Defendants' business
26 practices in regard to the conduct forming the basis of this action have not changed, and that
27 injunctive relief is necessary and appropriate to compel Defendants to end these practices.

28 33. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
against Defendant under California *Code of Civil Procedure* §1021.5 and other applicable law in
part because:

- 1 a. a successful outcome in this action will result in the enforcement of important rights
2 affecting the public interest by requiring Defendants to provide refunds as agreed
3 in their terms and conditions;
- 4 b. this action will result in a significant benefit to members of the Class by bringing
5 to a halt unlawful, unfair, deceptive, and misleading activity and by causing the
6 return of ill-gotten gains obtained by Defendant;
- 7 c. unless this action is prosecuted, members of the Class will not recover those
8 monies, and many borrowers would not be aware that they were victimized by
9 Defendant's wrongful acts and practices;
- 10 d. unless this action is prosecuted, Defendant will continue to breach its own stated
11 policies, terms and conditions, and mislead purchasers about the true nature of the
12 Defendants practices, including Defendants willful failure to comply with
13 California's abandoned property laws by contacting the purchasers whenever
14 possible to confirm whether the property was, in fact, intended to be abandoned,
15 and to comply with the state's Unclaimed Property Law in regard to any abandoned
16 property; and,
- 17 e. an award of attorneys' fees and costs is necessary for the prosecution of this action
18 and will result in a benefit to each member of the Class, and potentially benefit
19 future purchasers of merchandise intended for later pickup by the purchaser.

20 **FIRST CAUSE OF ACTION**
21 **(Breach of Contract Against All Defendants)**

22 34. Plaintiff realleges and incorporates paragraphs 1 through 33 of this Complaint as if
23 fully set forth herein.

24 35. As an express condition of each purchase of Goods Purchased for Later Pickup, by
25 Plaintiff or others similarly situated, Defendants represented that they would abide by the terms
26 and conditions set forth in Exhibit "A," attached hereto. Defendants, by and through their
27 representatives at locations of The Home Depot in California, distributed these terms and
28 conditions routinely to purchasers of Goods Purchased for Later Pickup, such as Plaintiff and the
Class.

36. As intended by Defendants, Plaintiff, and others similarly situated, reasonably
relied on the Defendants' terms and conditions, and expected that their purchases of Goods
Purchased for Later Pickup would be treated by Defendants in a manner consistent with the terms

1 and conditions. This included Defendants' commitment that Purchased Goods not Claimed (as
2 well as other Goods Purchased for Later Pickup which were not picked up by the purchaser within
3 30 days) "*shall be* subject to the abandoned property laws in [California]." (See, Exh. "A,"
4 emphasis added.) Such handling by Defendants would assure Plaintiff, and others similarly
5 situated, that their ownership rights over their Goods Purchased for Later Pickup would never
6 transfer to Defendants, that they would be given the opportunity to obtain an appropriate and
7 timely refund from Defendants if Defendants accepted the return of the items (either as part of
8 their terms and conditions, or otherwise), and that they would receive the legally required notices
9 from the Defendants and/or the State of California relating to their rights over the property and the
10 process for obtaining the return of their property.

11 37. As set forth above, Defendants willfully and routinely failed to comply with the
12 requirements of law in regard to their handling of Goods Purchased for Later Pickup purchased
13 by Plaintiff and others similarly situated in the State of California. As a result, the Defendants
14 have been unjustly enriched as described above.

15 38. Plaintiff and others similarly situated in the State of California, in many cases,
16 thereby suffered the loss of the money that should have been refunded to them, when Defendants
17 resold Goods Purchased for Later Pickup without notice to the purchasers that they were doing so,
18 and without refunding the appropriate amount to the purchaser (85% of the purchase price for
19 Special Order Merchandise, 100% for other merchandise not "custom made"). In other cases, the
20 Plaintiff and others similarly situated lost the use of the money that should have been timely
21 refunded, when sums were either never refunded, or belatedly refunded, by Defendants.

22 **SECOND CAUSE OF ACTION**
23 **(Conversion of Personal Property)**

24 39. Plaintiff realleges and incorporates paragraphs 1 through 38 of this Complaint as if
25 fully set forth herein.

26 40. Plaintiff, and each member of the putative class, had purchased from one or more
27 Defendants, through their operations at "The Home Depot" stores in California, various items of
28 merchandise described above as Goods Purchased for Later Pickup. These items were fully paid

1 for and the personal property of the purchasers. In each case, these purchasers had been approved
2 by Defendants to allow their personal property to remain on the premises of the store from which
3 they had purchased these items of personal property.

4 41. Plaintiff, and each member of the putative class, therefore, had the legal right to
5 possess, to use and to continue ownership of said personal property, as well as the right to receive
6 any revenues derived from the sale or use of said personal property.

7 42. Defendants, without providing reasonable notice to the owner of such property
8 (whether Plaintiff, or another member of the putative class) and through the willful actions of their
9 employees and/or agents, regularly converted said personal property for their own use and/or sale.
10 Defendants (or their employees and/or agents) unilaterally determined when to resell the
11 merchandise, or to deem the merchandise to have been subject to an “Assumed Pickup” or to
12 falsely designate certain Goods Purchased for Later Pickup as having been picked by the
13 purchasers.

14 43. Defendants’ conversion of the personal property owned by Plaintiff and the
15 members of the putative class was not authorized by the owners of the property, and Defendants
16 neither sought, nor obtained the consent of the owners of the property to interfere with their
17 possession of their personal property, to sell their personal property, to retain the proceeds from
18 such sale, and/or to treat their personal property in any manner inconsistent with the abandoned
19 property laws of California or the terms and conditions provided by Defendants, as exemplified
20 by Exhibit “A,” hereto.

21 44. Defendants’ actions damaged Plaintiff, and each member of the putative class, by
22 depriving each of them of knowledge that The Home Depot remained in possession of their
23 property, that The Home Depot did not intend to maintain secure possession of their property, that
24 The Home Depot intended to treat their property as stock to be sold to other purchasers without
25 the knowledge of the property owners, and that The Home Depot would not, as represented in
26 writing, handle their property as “subject to the abandoned property laws in your state
27 [California].”

1 45. Defendants’ actions damaged Plaintiff, and each member of the putative class, by
2 not remitting to the Plaintiff all funds from the sale of their property. Defendants’ actions damaged
3 Plaintiff, and each member of the putative class, by not refunding their purchase price(s) where
4 items of their personal property had been offered for sale to other customers, and by failing to
5 notify the property owners whose names, credit card information, and/or contact information were
6 known and/or readily available to Defendants that Defendants intended to, and did, treat the
7 personal property of Plaintiff and others similarly situated as having been “returned” to
8 Defendants, contrary to the representations made by Defendants in writing as to how Defendants
9 would treat the property owned by Plaintiff, and others similarly situated.

10 46. The actions of Defendants as described above were willful and were undertaken
11 with the intent of unjustly enriching themselves at the expense of property owners whose names,
12 credit card information, and/or contact information were known and/or readily available to
13 Defendants. The actions of Defendants employees and agents as described above were ratified and
14 approved by Defendants and were consistent with unfair, illegal and improper policies and
15 procedures established by the Defendants, which policies and procedures were accepted as
16 standard practices by the Defendants’ managers and managing agents. Plaintiff is informed and
17 believes that the actions and practices continue to this day, unabated by Defendants in conscious
18 disregard of the rights of Plaintiff, and each member of the putative class, and their ownership of
19 the Goods Purchased for Later Pickup. These actions and practices were fraudulent, malicious and
20 oppressive, warranting the imposition of punitive and/or exemplary damages against Defendants.

21 **THIRD CAUSE OF ACTION**

22 **(Unfair Competition and Unlawful Business Practices)**
23 **(California Business and Professions Code §17200 *et seq.*)**

24 47. Plaintiff realleges and incorporates paragraphs 1 through 46 of this Complaint as if
25 fully set forth herein.

26 48. California Business and Professions Code §17200 defines unfair competition to
27 include, “unlawful, unfair or fraudulent business practices.”

1 49. Plaintiff and all proposed Class members are “persons” within the meaning of
2 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
3 property as a result of Defendants’ unfair competition.

4 50. Defendants, and their agents and employees, have been committing, and continue
5 to commit, acts of unfair competition by engaging in the unlawful, unfair and fraudulent business
6 practices and acts described above, including, but not limited to:

- 7 a. Representing to Plaintiff and all proposed class members, that Defendants would
8 handle the Goods Purchased for Later Pickup, which were the personal property
9 of the Plaintiff and all proposed class members, pursuant to California’s
10 abandoned property laws after being “held at the store for over thirty (30) days;
11 notwithstanding that Defendants’ policy and procedure with regard to such
12 personal property was *not* to comply with California’s abandoned property laws;
- 13 b. Taking ownership of Goods Purchased for Later Pickup without notice to the
14 property owners, whose names, credit card information, and/or contact
15 information were known to Defendants, for the purpose of reselling the Goods
16 Purchased for Later Pickup as merchandise at The Home Depot locations, without
17 refunding the purchase prices paid by Plaintiff and all proposed Class members,
18 whether in whole or according to the terms and conditions the Defendants,
19 provided to Plaintiff and all proposed Class members in writing at or near the time
20 of their purchases by Defendants’ agents and employees.
- 21 c. Selling some or all of the Goods Purchased for Later Pickup of which Defendants
22 reclaimed ownership from Plaintiff and all proposed class members, without
23 notice to the property owners, and then keeping all or part of the proceeds of such
24 sales to themselves, without remitting any of these proceeds to the owners of the
25 property.
- 26 d. Willfully violating the provisions of California’s UPL [Unclaimed Property Law,
27 C.C.P. §1500 *et seq.*], thus thwarting its stated objective to protect unknown
28 owners by locating them and restoring their property to them and to give the state

1 rather than the holders of unclaimed property the benefit of its retention. C.C.P.
2 §1501.5(c); *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 463, and
3 thereby depriving the Plaintiff and all proposed class members of the benefits of
4 the notice provisions of the UPL which would have advised Plaintiff and all
5 proposed class members that their property had been retained for their benefit and
6 could be reclaimed.

7 51. Plaintiff reserves the right to identify additional unfair and unlawful practices by
8 Defendants as further investigation and discovery warrants.

9 52. By this conduct, Defendants have reaped, and continue to reap, unfair, improper
10 and illegally obtained profits and other value from personal property that Defendants did not own,
11 at the expense of Plaintiff and proposed Class members. Defendants' unlawful and/or unfair
12 conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding
13 employers and competitors. Defendants must be enjoined from this activity and made to restore
14 to Plaintiff and proposed Class members the full price that they paid for all Purchased Goods Not
15 Claimed, as well as interest thereon, and related statutory penalties established by the UPL.

16 53. In addition, by this conduct, Defendants were able to unfairly, improperly and
17 illegally retain proceeds from property that should have been turn over to the State of California
18 for eventual escheatment if not reclaimed by the owner, thus unjustly enriching Defendants and
19 providing them with a competitive advantage in the marketplace.

20 54. Business and Professions Code § 17203 provides that the Court may restore to an
21 aggrieved party any money or property acquired by means of unlawful and unfair business
22 practices.

23 55. Plaintiff, on behalf of himself and the proposed class, asks this Court for restitution
24 of all revenues obtained from the sale by, or use of their personal property by, Defendants
25 (including Defendants agents and employees), plus interest. Plaintiff seeks a court order requiring
26 an audit and accounting of the Defendants' account records of purchases and pickups of Goods
27 Purchased for Later Pickup to determine the amount of restitution owed to himself and members
28 of the proposed class.

PRAAYER FOR RELIEF

WHEREFORE, in this proceeding, Plaintiff Joseph Chang respectfully requests that the Court enter orders, as well as a judgment and/or award in their favor and against all Defendants, jointly and severally, to include:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
2. An order appointing Plaintiff Joseph Chang as representative of the Class;
3. An order appointing the Plaintiff's attorneys as Class Counsel;
4. An order requiring the disgorgement of all revenues, earnings, profits, compensation, and benefits obtained by any Defendant(s) by way of the conduct described above;
5. An order requiring Defendants to fully refund all money paid by Plaintiff, and all others similarly situated who are within in the class described above, for Purchased Goods Not Claimed;
6. That the Court award to Plaintiff and the proposed Class members statutory and/or civil penalties as provided herein, including but not limited to those provided by California Business and Professions Code § 17202;
7. An order permanently enjoining Defendants from engaging in the unfair, improper conduct described herein, requiring Defendants to retain custody of all Goods Purchased for Later Pickup by their customers for at least 30 days, and to thereafter confirm in writing whether the purchasers of Goods Purchased for Later Pickup wish to have their purchases refunded according to the terms of their purchase agreement, or wish to pick the items up, and to thereafter fully comply with California's Unclaimed Property Law and any other applicable abandoned property laws.
8. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure §1021.5, and/or other applicable law;

- 1 9. An award of exemplary or punitive damages in a sum sufficient to discourage
- 2 Defendants from future, similarly wrongful conduct;
- 3 10. Any and all other applicable statutory penalties, as provided by law; and
- 4 11. For such other and further relief as this Court deems just and proper.

5 Dated: March 31, 2023

MARRON LAWYERS, APC

7 By:  _____

8 Paul Marron
9 Steven C. Rice
10 Yinghan Ma
11 Attorneys for Plaintiff JOSEPH CHANG,
12 individually and on behalf of others similarly
13 situated
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Home Depot Reclaims Purchased Pickup Orders Without Notice, Class Action Alleges](#)
