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

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8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 RICHARD W. HANKEY, individually  
and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC., a  
Delaware corporation; and DOES 1  
17 through 50, inclusive,

18 Defendants.

Case No.

DEFENDANT HOME DEPOT U.S.A.,  
INC.'S NOTICE OF REMOVAL OF  
ACTION PURSUANT TO 28 U.S.C.  
§§ 1332(d)(2), 1441, 1446, AND 1453

[Declarations of Donna M. Mezas,  
Kathleen Burris, and G. Edward  
Anderson, Ph.D., Certification and  
Notice of Interested Parties, and Civil  
Cover Sheet filed concurrently]

(Orange County Superior Court, Case  
No. 30-2018-01027364-CU-OE-CXC)

Date Action Filed: October 19, 2018

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

3 PLEASE TAKE NOTICE that defendant Home Depot U.S.A., Inc. (“Home  
4 Depot”) hereby removes to this Court the state court action described below, pursuant to  
5 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. In support, Home Depot states as  
6 follows:

7 1. On October 19, 2018, the above referenced action was filed and is currently  
8 pending against Home Depot in the Superior Court of California, County of Orange,  
9 Case No. 30-2018-01027364-CU-OE-CXC. Declaration of Donna M. Mezas (“Mezas  
10 Decl.”) ¶ 2 & Ex. A. According to the Proof of Service of Summons filed December 18,  
11 2018, the complaint was served on Home Depot on December 18, 2018. *Id.* at ¶ 3 &  
12 Ex. B. On January 16, 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  
14 defendant as part of Case No. 30-2018-01027364-CU-OE-CXC. Mezas Decl. ¶ 5. As  
15 required by 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and  
16 orders served upon defendant as part of the above action are attached to the Mezas  
17 Declaration, filed concurrently in support of this Notice of Removal.

18 2. Plaintiff Richard W. Hankey is a former hourly employee of Home Depot.  
19 He alleges that Home Depot failed to pay hourly and overtime wages, failed to provide  
20 accurate wage statements, and failed to pay all wages due at termination. Complaint  
21 ¶¶ 26-31; 33-55. He also asserts a derivative claim for unfair competition. Complaint  
22 ¶¶ 56-61.

23 3. Hankey seeks to bring this action on behalf of a class consisting of all  
24 persons employed by Home Depot as non-exempt employees in California between  
25 October 19, 2014 and the present. Complaint ¶ 10. Hankey also seeks to represent  
26 three subclasses: (1) class members employed by Home Depot between October 2017  
27 and the present who received wage statements (“Wage Statement Subclass”); (2) class  
28

1 members employed by Home Depot and subject to Home Depot's unfair business  
2 practices ("Unfair Business Practice Subclass"); and (3) class members employed by  
3 Home Depot between October 2015 and the present who have separated from their  
4 employment ("Waiting Time Penalty Subclass"). Complaint ¶ 11.<sup>1</sup>

5 4. Timeliness. Hankey filed his complaint in Orange County Superior Court  
6 on October 19, 2018. According to the Proof of Service of Summons filed December  
7 18, 2018, the complaint was served on Home Depot on December 18, 2018. *See* Mezas  
8 Decl. ¶ 3 & Ex. B. Home Depot's Notice of Removal is therefore timely because it is  
9 being filed within 30 days of the date the Proof of Service of Summons indicates the  
10 complaint was served. *See* 28 U.S.C. § 1446(b).

11 5. Jurisdiction. This is a civil action over which this Court has original  
12 jurisdiction and thus may be removed pursuant to 28 U.S.C. § 1441. Under 28 U.S.C.  
13 § 1441(a), a defendant may remove to federal district court "any civil action brought in  
14 a State court of which the district courts of the United States have original  
15 jurisdiction[.]" Pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C.  
16 § 1332(d)(2), federal district courts have original jurisdiction over a class action if (1) it  
17 involves 100 or more putative class members, (2) any class member is a citizen of a  
18 state different from any defendant, and (3) the aggregated controversy exceeds  
19 \$5,000,000 (exclusive of costs and interest). *See* 28 U.S.C. § 1332(d)(2), (d)(6), and  
20 (d)(11)(B)(i). These criteria are satisfied here.

21 6. Class Size. Hankey seeks to bring this action on behalf of all persons  
22 employed by Home Depot as non-exempt employees in California between October 19,  
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24 <sup>1</sup> Home Depot denies Hankey's allegations and disputes that this action is appropriate  
25 for class treatment. However, for purposes of estimating the amount in controversy, the  
26 allegations of Hankey's complaint are assumed to be true. *Korn v. Polo Ralph Lauren*  
27 *Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) ("In measuring the amount in  
28 controversy, a court must assume that the allegations of the complaint are true and that a  
jury will 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)).

1 2014 and the present. Complaint ¶ 10. Since October 19, 2014, Home Depot has  
2 employed at least 100,000 persons in non-exempt roles in California. Declaration of G.  
3 Edward Anderson (“Anderson Decl.”), filed and served concurrently, ¶ 6.<sup>2</sup> Thus, the  
4 putative class includes more than 100 individuals. *See also* Complaint ¶ 15 (alleging  
5 there are more than 100 putative class members).

6 7. Diversity of Citizenship. At all relevant times, there has been diversity of  
7 citizenship between the parties to the action. “[U]nder CAFA, complete diversity is not  
8 required; ‘minimal diversity’ suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,  
9 1021 (9th Cir. 2007) (internal citations omitted). Minimal diversity exists if any class  
10 member is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2).

11 8. The putative class includes citizens of California, including plaintiff  
12 Hankey. Throughout his employment with Home Depot, Hankey maintained a  
13 California residential address on file with Home Depot and worked at a retail store in  
14 Rancho Cordova, California. *See* Declaration of Kathleen Burris (“Burris Decl.”), filed  
15 concurrently, ¶ 4; Complaint ¶ 6 (plaintiff was a California resident “at all times  
16 relevant”). His employment and residence in California conclusively establish  
17 California citizenship. *See Bey v. SolarWorld Indus. Am., Inc.*, No. 3:11-cv-1555-SI,  
18 2012 WL 6692203, at \*2 (D. Or. Dec. 26, 2012) (residential address provided by  
19 employee to employer is prima facie evidence of citizenship); *Abbott v. United Venture*  
20 *Capital, Inc.*, 718 F. Supp. 823, 826-27 (D. Nev. 1988) (plaintiff was a California citizen  
21 primarily because of continuous California residence over multiple years).

22 9. Further, Hankey seeks to represent a class consisting of thousands of  
23 current and former California employees. Complaint ¶¶ 10-11; *see also* Anderson Decl.  
24 ¶ 6. This putative class logically includes other California citizens as well.

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27 <sup>2</sup> A defendant may make the requisite showing by setting forth facts in the notice of  
28 removal or by affidavit. *See Lamke v. Sunstate Equip. Co.*, 319 F. Supp. 2d 1029, 1032  
(N.D. Cal. 2004).

1           10. Home Depot is not a citizen of California. “[A] corporation shall be  
2 deemed to be a citizen of every State ... by which it has been incorporated and of the  
3 State ... where it has its principal place of business....” 28 U.S.C. § 1332(c)(1). Home  
4 Depot is not incorporated in California. As Hankey concedes, Home Depot is organized  
5 and incorporated under the laws of Delaware. *See Ottaviano v. Home Depot, Inc.*  
6 *U.S.A.*, 701 F. Supp. 2d 1005, 1007 (N.D. Ill. 2010) (Home Depot “is a Delaware  
7 corporation with its principal executive offices located in Atlanta, Georgia”); *Novak v.*  
8 *Home Depot U.S.A., Inc.*, 259 F.R.D. 106, 108 (D.N.J. 2009) (Home Depot “is a  
9 Delaware corporation with its principal offices located in Georgia”); Complaint at 1:3-4;  
10 Burris Decl. ¶ 2. Nor is California the state in which Home Depot has its principal place  
11 of business, which is “the place where a corporation’s officers direct, control, and  
12 coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93  
13 (2010). Rather, Home Depot’s principal place of business is Atlanta, Georgia.  
14 *Ottaviano*, 701 F. Supp. 2d at 1007; *Novak*, 259 F.R.D. at 108; Burris Decl. ¶ 2.

15           11. Defendants DOES 1-50 are unidentified. Because there is “no information  
16 as to who they are or where they live or their relationship to the action[, it is] proper for  
17 the district court to disregard them” for the purposes of removal. *McCabe v. Gen.*  
18 *FoodsCorp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (internal citations omitted).

19           12. Accordingly, this action involves citizens of different states: Hankey is a  
20 citizen of California (and seeks to represent other California citizens) and Home Depot  
21 is a citizen of Delaware and Georgia. Thus, the CAFA minimal diversity requirement is  
22 satisfied. *See* 28 U.S.C. § 1332(d)(2).

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

19 14. As part of his Second Cause of Action, Hankey alleges that Home Depot  
20 owes penalties pursuant to California Labor Code section 203 for failing to pay all  
21 wages due to employees at termination of employment.<sup>4</sup> See Complaint ¶¶ 43-49 &  
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23 <sup>3</sup> Hankey alleges that the aggregate claim, including attorneys’ fees, is under the \$5  
24 million dollar CAFA threshold. Complaint ¶ 4. However, “a plaintiff seeking to  
25 represent a putative class [cannot] evade federal jurisdiction by stipulating that the  
26 amount in controversy [falls] below the jurisdictional minimum.” See *Rodriguez*, 728  
27 F.3d at 981; see also *Vasquez v. First Student, Inc.*, No. 2:14-CV-06760-ODW(Ex), 2014  
28 U.S. Dist. LEXIS 168295, at \*7 (C.D. Cal. Dec. 3, 2014) (“Plaintiff’s cap on the amount  
in controversy should be disregarded and the Court should apply the preponderance of  
the evidence standard with respect to the amount in controversy.”).

<sup>4</sup> Hankey also alleges in his Second Cause of Action that Home Depot failed to timely  
pay putative class members “for bonuses earned in violation of section 204 as such

1 Prayer for Relief. Under section 203, former employees to whom the employer  
2 willfully denied wages may recover penalties equal to their daily pay for a period of up  
3 to 30 days. *See* Cal. Lab. Code § 203. Hankey alleges that Home Depot “willfully  
4 failed and refused, and continue to willfully fail and refuse” to pay all wages earned and  
5 unpaid at the end of employment. Under Hankey’s theories, all putative class members  
6 whose employment ended since October 19, 2015 (the “Waiting Time Penalty  
7 Subclass”) are entitled to recover waiting time penalties equal to 30 days of wages.<sup>5</sup>  
8 *See, e.g., Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d at 1205-06 (plaintiff placed  
9 maximum penalty in controversy by alleging putative class members are entitled to  
10 penalty “up to” statutory maximum); *Schuyler v. Morton’s of Chicago, Inc.*, No. CV 10-  
11 06762 ODW (JCGx), 2011 WL 280993, at \*5 (C.D. Cal. Jan. 25, 2011) (appropriate to  
12 assume 100 percent violation rate for full 30 days of waiting time penalties where  
13 complaint alleges multiple wage violations that were never paid); *Marentes v. Key*  
14 *Energy Servs. Cal., Inc.*, No. 1:13-cv-02067-LJO-JLT, 2014 WL 814652, at \*9 (E.D.  
15 Cal. Feb. 28, 2014) (amount in controversy included 30-day penalty for each former  
16 employee where plaintiff alleged consistent failure to pay wages); *Oda v. Gucci Am.,*  
17 *Inc.*, No. 2:14-cv-7468-SVW(JPRx), 2015 WL 93335, at \*10 (C.D. Cal. Jan. 7, 2015)  
18 (crediting assumption of maximum penalties).

19 15. The putative “Waiting Time Penalty Subclass” includes more than 10,000  
20 individuals who separated from employment with Home Depot between October 19,  
21 2015 and November 4, 2018. Anderson Decl. ¶ 8. The individuals in this putative  
22 subclass earned an average daily wage of \$78.08. *Id.* Thus, for each sub-class member,

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25 payments were not made during the course of the regular pay schedule and were made  
26 more than seven calendar days following the close of the payroll period.” While this  
27 allegation places an additional amount in controversy under Hankey’s Second Cause of  
28 Action, Home Depot does not address it in these removal papers because the CAFA \$5  
million dollar threshold is easily met without considering it.

<sup>5</sup> A three-year statute of limitations applies to claims for penalties under section 203.  
*See Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395-96 (2010).

1 plaintiff is seeking average penalties of approximately \$2,342 ( $30 \times \$78.08 =$   
2 \$2,342.40). This claim alone therefore places more than \$23.4 million in controversy  
3 ( $10,000 \times \$2,342.40 = \$23,424,000$ ). *See Korn*, 536 F. Supp. 2d at 1205-06. Thus, the  
4 waiting time penalties claim satisfies the amount in controversy requirement all by  
5 itself. *See, e.g., Deehan v. Amerigas Partners, L.P.*, No. 08cv1009 BTM (JMA), 2008  
6 WL 4104475, at \*1 (S.D. Cal. Sept. 2, 2008) (amount in controversy satisfied under  
7 preponderance of evidence standard where estimated class size multiplied by statutory  
8 penalty for alleged violations exceeded \$5 million).

9 16. Hankey also seeks substantial additional relief in his other causes of action.  
10 In his First Cause of Action, Hankey alleges that Home Depot failed to pay regular and  
11 overtime wages for work performed before and after putative class members' scheduled  
12 shifts due to Home Depot's alleged "policy" of unlawfully rounding time "to only  
13 reflect ... scheduled start and end times" and failed to accurately calculate bonuses into  
14 putative class members' regular rates of pay for overtime purposes, "resulting in  
15 inaccurate payment of overtime." Complaint ¶¶ 26-27, 39-40. He seeks unpaid regular  
16 and overtime wages on behalf of each putative class member. *See* Complaint ¶ 42;  
17 Prayer for Relief. Since October 19, 2014, non-exempt employees working at Home  
18 Depot retail stores in California were paid an average of approximately \$12.39 per hour.  
19 Anderson Decl. ¶ 7. Therefore, if the claim seeks only one hour of unpaid time for each  
20 of the more than 100,000 class members, this places over \$1.2 million in controversy  
21 ( $100,000 \times \$12.39 = \$1,239,000$ ), a conservative estimate given Hankey's claim that  
22 these policies and practices occurred "at all relevant times." Complaint ¶¶ 39-40; *see,*  
23 *e.g., Reginald Lockhart v. Columbia Sportswear Co.*, No. 5:15-cv-01534-ODW-PLA,  
24 2015 WL 5568610, at \*3 (C.D. Cal. Sept. 22, 2015) (where plaintiff fails to quantify the  
25 alleged unpaid overtime, "assuming only one hour of overtime per week is reasonable");  
26 *Oda*, 2015 WL 93335, at \*4-5 (reasonable to assume one hour of unpaid overtime per  
27 week where plaintiffs asserted defendant "sometimes" failed to pay overtime); *Jasso v.*  
28



1 *Money Mart Exp., Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at \*5 (N.D. Cal.  
 2 Mar. 1, 2012) (“Given the allegations of a ‘uniform policy and scheme’ ... one [hour of  
 3 unpaid overtime] per week ... is a sensible reading of the alleged amount in  
 4 controversy”) (citing cases); *Wilson v. Best Buy Co.*, No. 2:10-cv-3136-GEB-KJN, 2011  
 5 WL 445848, at \*2 (E.D. Cal. Feb. 8, 2011) (plaintiff’s generic overtime allegations  
 6 placed one hour of overtime per week in controversy for each class member).

7 17. In his Second Cause of Action, Hankey alleges that Home Depot violated  
 8 section 226(a) of the California Labor Code by failing to provide accurate wage  
 9 statements, and seeks civil penalties under California Labor Code section 226(e).  
 10 Complaint, ¶¶ 50-55 & Prayer for Relief. Pursuant to section 226(e), a plaintiff may  
 11 seek penalties of \$50 for the initial pay period in which a violation of section 226(a)  
 12 allegedly occurred, and \$100 per employee for each violation in a subsequent pay  
 13 period, not to exceed an aggregate penalty of \$4,000 per employee.

14 18. More than 50,000 individuals employed by Home Depot in non-exempt  
 15 roles in California between October 19, 2017 (the start of the one-year limitations  
 16 period) and November 4, 2018 worked at least two pay periods. Anderson Decl. ¶ 9.  
 17 Given plaintiff’s allegation that Home Depot engaged in a practice of failing to provide  
 18 proper wage statements because they failed to accurately account for and record all  
 19 hours worked, plaintiff’s claim for section 226(e) penalties places at least \$7,500,000 in  
 20 controversy.<sup>6</sup> Complaint ¶¶ 28, 53; *Oda*, 2015 WL 93335, at \*4 (assuming maximum  
 21 wage statement penalties per putative class member); *Molina v. Pacer Cartage, Inc.*, 47  
 22 F.Supp.3d 1061, 1069 (S.D. Cal. Sept. 17, 2014) (same); *Byrd v. Mosonite Corp.*, No.  
 23 EDCV-16-36 JGB(KKx), 2016 U.S. Dist. LEXIS 60078, at \*23-24 (C.D. Cal. May 5,  
 24 2016) (crediting assumed 100 percent violation rate); *Franke v. Anderson*

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 27 <sup>6</sup> Initial penalties of \$50 for 50,000 putative class members would total \$2,500,000 (\$50  
 28 x 50,000). \$100 penalties for the subsequent pay period would add \$5,000,000 (\$100 x  
 50,000), for total penalties under section 226(e) of at least \$7,500,000.

1 *Merchandisers LLC*, No. CV-17-3241 DSF(AFMx), 2017 U.S. Dist. LEXIS 119087,  
2 \*12 (C.D. Cal., July 28, 2017) (same).

3 19. In sum, even by conservative estimates, the \$5,000,000 CAFA threshold is  
4 easily met. *See, e.g., Deehan v. Amerigas Partners, L.P.*, 2008 WL 4104475, at \*1  
5 (amount in controversy satisfied under preponderance of evidence standard where  
6 estimated class size multiplied by statutory penalty for alleged violations exceeded \$5  
7 million).

8 20. Hankey also seeks attorney's fees for his claims (Complaint ¶¶ 42, 61 &  
9 Prayer for Relief), and these fees are part of the amount in controversy as well. *See Galt*  
10 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). The Ninth Circuit has  
11 established 25 percent of total potential damages as a benchmark award for attorney's  
12 fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also*  
13 *Deaver v. BBVA Compass Consulting & Benefits, Inc.*, No. 13-cv-00222-JSC, 2014 WL  
14 2199645, at \*6 (N.D. Cal. May 27, 2014) (accounting for attorney's fees by adding 25  
15 percent of potential damages and penalties to amount in controversy); *Ford v. CEC*  
16 *Entm't, Inc.*, No. CV 14-01420 RS, 2014 WL 3377990, at \*6 (N.D. Cal. July 10, 2014)  
17 (same); *Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL 3818304,  
18 at \*4-5 (S.D. Cal. Aug. 4, 2014) (denying motion to remand where defendant showed  
19 potential damages of \$4.2 million because attorneys' fees of 25 percent brought the total  
20 amount in controversy to \$5.3 million). Attorneys' fees of 25 percent place an  
21 additional \$7.8 million in controversy.

22 21. In sum, the allegations in Hankey's complaint seek damages, penalties, and  
23 other relief in excess of \$5 million. Thus, the amount in controversy requirement is  
24 satisfied.

25 22. Venue. The United States District Court for the Central District of  
26 California is the judicial district "embracing the place" where this action was filed by  
27 plaintiff and is the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

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23. There are no grounds that would justify this Court in declining to exercise its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or requiring it to decline to exercise jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

WHEREFORE, Home Depot requests that the above action now pending in the Superior Court of California for Orange County be removed to this Court. In the event the Court has any reason to question whether removal is proper, Home Depot requests the opportunity to provide briefing on the issue.

Respectfully submitted,

Dated: January 17, 2019

AKIN GUMP STRAUSS HAUER & FELD LLP

By Donna M. Mezas  
Donna M. Mezas  
Attorneys for defendant Home Depot U.S.A.,  
Inc.

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6 Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

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12 RICHARD W. HANKEY, individually  
and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC., a  
Delaware corporation; and DOES 1  
17 through 50, inclusive,

18 Defendants.  
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Case No.

DECLARATION OF DONNA M.  
MEZIAS IN SUPPORT OF  
DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION PURSUANT  
TO 28 U.S.C. §§ 1332(d)(2), 1441,  
1446, AND 1453

[Notice of Removal of Action,  
Declarations of Kathleen Burris, and G.  
Edward Anderson, Ph.D., Certification  
and Notice of Interested Parties, and  
Civil Cover Sheet filed concurrently]

*(Orange County Superior Court, Case  
No. 30-2018-01027364-CU-OE-CXC)*

Date Action Filed: October 19, 2018  
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DECLARATION OF DONNA M. MEZIAS

I, Donna M. Mezas, certify and declare as follows:

1. I am a partner in the law firm of Akin Gump Strauss Hauer & Feld LLP, attorneys of record for defendant Home Depot U.S.A., Inc. in this action. 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's Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446 and 1453.

2. On October 19, 2018, an action was commenced against defendant in the Superior Court of California, County of Orange, titled *Hankey v. Home Depot U.S.A., Inc.*, Case No. 30-2018-01027364-CU-OE-CXC. True and correct copies of the Complaint, summons, civil cover sheet, clerk's certificate of mailing/electronic service, and minute order are attached hereto as exhibit A.

3. A true and correct copy of the proof of service of summons is attached hereto as exhibit B.

4. A true and correct copy of defendant's Answer to plaintiff's Complaint is attached hereto as exhibit C.

5. No other process, pleadings, or orders have been filed by or served upon defendant as part of Case No. 30-2018-01027364-CU-OE-CXC.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 17th day of January, 2019 in San Francisco, California.

  
\_\_\_\_\_  
Donna M. Mezas



# **EXHIBIT A**

**DECLARATION OF DONNA M. MEZIAS IN SUPPORT OF  
DEFENDANT'S NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1332(d)(2), 1441, 1446, AND 1453**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**10/19/2018** at 01:11:03 PM

Clerk of the Superior Court  
By Georgina Ramirez, Deputy Clerk

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Attorneys for Plaintiffs RICHARD W. HANKEY,  
individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

RICHARD W. HANKEY, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

THE HOME DEPOT USA, INC., a Delaware  
Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

CASE NO.: 30-2018-01027364-CU-OE-CXC

Assigned For All Purposes To:  
Judge: Judge William Claster  
Dept.: CX-104

**CLASS ACTION COMPLAINT  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE §382**

**COMPLAINT FOR:**

1. **Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194**
2. **Failure to Pay Timely Wages Required by Labor Code § 203**
3. **Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226**
4. **Violation of Business & Professions Code § 17200, et seq.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff RICHARD W. HANKEY("Plaintiff"), individually and on behalf of all others  
2 similarly situated (hereinafter collectively referred to as the "Class" or "Class Member"), hereby  
3 files this Complaint against Defendants THE HOME DEPOT USA, INC., a Delaware  
4 Corporation, and DOES 1-50, inclusive (collectively "Defendants") and alleges on information  
5 and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.  
8 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits  
9 of the California Superior Court and will be established according to proof at trial.

10 2. This Court has jurisdiction over this action pursuant to the California Constitution  
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes  
12 except those given by statute to other courts. The statutes under which this action is brought do  
13 not give jurisdiction to any other court.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,  
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally  
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the  
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the  
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar  
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys'  
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of  
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California  
23 statutes and law, including the Labor Code, applicable IWC Wage Orders, CCP, California Civil  
24 Code ("CC") and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of  
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or  
27 omissions alleged herein took place in this County.

28 ///

1 **II. PARTIES**

2 6. Plaintiff, RICHARD W. HANKEY, was at all times relevant to this action, a  
3 resident of California. Plaintiff was employed by Defendants in their Rancho Cordova, California  
4 store, in approximately June 2016 as a Non-Exempt Employee until his separation in  
5 approximately May 2018.

6 7. Defendants THE HOME DEPOT USA, INC., are engaged in the ownership and  
7 operation of an American home improvement supplies retailing company that sells tools,  
8 construction products, and services. Defendants operate various store locations across the United  
9 States and California, including but not limited to Bakersfield, Los Angeles, Orange, Sacramento,  
10 San Diego, and San Francisco. Plaintiff estimates there are in excess of one hundred Non-Exempt  
11 Employees who work or have worked for Defendants over the last four years.

12 8. Other than identified herein, Plaintiff is unaware of the true names, capacities,  
13 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as  
14 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are  
15 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by  
16 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities  
17 are ascertained.

18 9. Plaintiff is informed and believes and thereon alleges that each defendant, directly  
19 or indirectly, or through agents or other persons, employed Plaintiff and other members of the  
20 Class, and exercised control over their wages, hours, and working conditions. Plaintiff is  
21 informed and believes and thereon alleges that each Defendant acted in all respects pertinent to  
22 this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy  
23 in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other  
24 defendants.

25 **III. CLASS ACTION ALLEGATION**

26 10. Plaintiff brings this action individually and on behalf of all others similarly  
27 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class  
28 are defined as follows:

1  
2 All persons who have been employed by Defendants as Non-Exempt Employees or  
3 equivalent positions, however titled, in the state of California within four (4) years from  
4 the filing of the Complaint in this action until its resolution. (collectively referred to as the  
5 “Class” or “Plaintiff’s Class” or “Class Members”).

6  
7 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as  
8 follows:

9  
10 **Sub-Class 1:** All Class Members who are or were employed by Defendants at any time  
11 between October 2017 and the present and who received wage statements from  
12 Defendant (hereinafter collectively referred to as the “Wage Statement Subclass”).

13  
14 **Sub-Class 2:** All Class Members who are or were employed by Defendants and subject to  
15 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair  
16 Business Practice Subclass”).

17  
18 **Sub-Class 3:** All Class Members who have been employed by Defendants at any time  
19 between October 2015 and the present and have separated their employment (hereinafter  
20 collectively referred to as the “Waiting Time Penalty Subclass”)

21  
22 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other  
23 applicable laws to amend or modify the class definition with respect to issues or in any other  
24 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

25  
26 13. The term “Class” includes Plaintiff and all members of the Class and each of the  
27 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in  
28 this complaint.

14. There is a well-defined community of interest in the litigation and the proposed  
Class is easily ascertainable through the records Defendants are required to keep.

15. Numerosity. The members of the Class are so numerous that individual joinder  
of all of them as plaintiffs is impracticable. While the exact number of the Class members is  
unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there  
are at least 100 (one hundred) Class members.

16. Commonality. Common questions of law and fact exist as to all Class members  
and predominate over any questions that affect only individual members of the Class. These



1 common questions include, but are not limited to:

2 i. Whether Defendants failed to pay wages for all time worked including  
3 overtime in violation of Labor Code §§ 510, 1194, 1197;

4 ii. Whether Defendants failed to maintain accurate time record including  
5 pursuant to Labor Code sections 1174.5 and the applicable IWC Wage Orders;

6 iii. Whether Defendants provided accurate itemized wage statements pursuant  
7 to Labor Code section 226;

8 iv. Whether Defendants violated Labor Code §§ 201-204 by failing to pay all  
9 wages owed upon separation from the Defendants' employ;

10 v. Whether Defendants violated Business and Professions Code and Labor  
11 Code sections 201-204, 226, 510, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and applicable  
12 IWC Wage Orders which violation constitutes a violation of fundamental public policy; and

13 vi. Whether Plaintiff and the Members of the Plaintiff Class are entitled to  
14 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

15 17. Typicality. Plaintiff's claims herein alleged are typical of those claims which  
16 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of  
17 the relief which would be sought by each member of the Class and/or Subclass in separate actions.  
18 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out  
19 of and caused by Defendants' common course of conduct in violation of California laws,  
20 regulations, and statutes as alleged herein.

21 18. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the  
22 interests of each member of the Class and/or Subclass with whom he has a well defined  
23 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an  
24 obligation to make known to the Court any relationships, conflicts, or differences with any  
25 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class  
26 and Subclass are versed in the rules governing class action discovery, certification, litigation, and  
27 settlement and experienced in handling such matters. Other former and current employees of  
28 Defendants may also serve as representatives of the Class and Subclass if needed.



1 of the requirements of California's wage and employment laws.

2 25. During the relevant time frame, Defendants compensated Plaintiff and Class  
3 Members based upon an hourly rate.

4 26. Plaintiff is informed and believes that Plaintiff and Class Members were not  
5 compensated for all time worked as Plaintiff and Class Members performed worked prior to the  
6 start of their scheduled shifts and also at the end of their scheduled shifts. Plaintiff and Class  
7 Members were not compensated for such work as Defendants would round their times to only  
8 reflect their scheduled start times and end times. This policy resulted in Plaintiff and the Class  
9 Member being subjected to Defendants' unlawful rounding policy. Defendants' implemented  
10 unlawful rounding policy consistently resulted in a failure to pay employees for the time worked  
11 while under the control of Defendants. Defendants' rounding policy over time resulted on a large  
12 and disproportionate underpayment of wages including overtime wages to Plaintiff and Class  
13 Members.

14 27. Upon information and belief, Defendants failed to accurately calculate bonuses  
15 earned by Plaintiff and Class Members into their regular rates of pay for overtime purposes.

16 28. Upon information and belief, Defendants failed to provide accurate itemized wage  
17 statements to Plaintiff and Class Members as the wage statements provided failed to accurately  
18 account for all hours worked.

19 29. Upon information and belief, Defendants failed to keep accurate records pursuant  
20 to Labor Code § 1174.5.

21 30. Upon information and belief, Defendants knew and or should have known that it is  
22 improper to implement policies and commit unlawful acts such as:

- 23 (a) failing to compensate Plaintiff and Class Members of regular and overtime wages  
24 for all hours worked;
- 25 (b) failing to provide accurate itemized wage statements;
- 26 (c) failing to timely pay wages; and
- 27 (d) conducting and engaging in unfair business practices.

28 31. In addition to the violations above, and on information and belief, Defendants knew

1 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein and  
2 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,  
3 recklessly, and/or intentionally failed to do so.

4 32. Plaintiff and Class Members they seek to represent are covered by, and Defendants  
5 are required to comply with, applicable California Labor Codes, Industrial Welfare Commission  
6 Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable  
7 provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

10 **(Against All Defendants)**

11 33. Plaintiff incorporates and re-alleges each and every allegation contained above as  
12 though fully set forth herein.

13 34. At all times relevant, the IWC wage orders applicable to Plaintiff’s and the Class  
14 require employers to pay its employees for each hour worked at least minimum wage. “Hours  
15 worked” means the time during which an employee is subject to the control of an employer, and  
16 includes all the time the employee is suffered or permitted to work, whether or not required to do  
17 so, and in the case of an employee who is required to reside on the employment premises, that  
18 time spent carrying out assigned duties shall be counted as hours worked.

19 35. At all relevant times, Labor Code §1197 provides that the minimum wage for  
20 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a  
21 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order  
22 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour  
23 worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff  
24 and Class Members’ employment by Defendants provided that employees working for more than  
25 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation  
26 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight  
27 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve  
28 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

1 36. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons  
2 acting individually as an officer, agent, or employee of another person, who pays or causes to be  
3 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or  
4 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated  
5 damages payable to the employee, and any applicable penalties pursuant to Section 203.

6 37. Labor Code §510 codifies the right to overtime compensation at the rate of one and  
7 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or  
8 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for  
9 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the  
10 seventh day of work in a particular work week.

11 38. At all times relevant, Plaintiff and Class Members regularly performed non-exempt  
12 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,  
13 et. seq. and the Labor Code.

14 39. At all times relevant, Plaintiff and Class Members consistently worked in excess of  
15 eight (8) hours in a day and/or forty (40) hours in a week. At all times relevant, Defendants failed  
16 to pay all wages and overtime owed to Plaintiff and Class Members for the work commenced prior  
17 to and after their scheduled shifts due to the Defendants’ unlawful rounding policies.

18 40. At all relevant times, Defendants failed to accurately calculate bonuses earned by  
19 Plaintiff and Class Members into their regular rates of pay for overtime purposes, resulting in an  
20 inaccurate payment of overtime to Plaintiff and Class Members.

21 41. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and  
22 have failed to pay Plaintiff and Class Members the overtime wages owed.

23 42. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are  
24 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and  
25 attorneys’ fees.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY TIMELY PAY WAGES**

28 **(Against All Defendants)**



1           43. Plaintiff incorporates and re-alleges each and every allegation contained above as  
2 though fully set forth herein.

3           44. Labor Code § 204 requires an employer to make payable all wages mentioned in  
4 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment twice during  
5 each calendar month, on days designated in advance by the employer as the regular paydays. The  
6 requirements of this section shall be deemed satisfied by the payment of wages for weekly,  
7 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days  
8 following the close of the payroll period

9           45. During the relevant time period, Defendants failed to timely pay Plaintiff and Class  
10 Members for bonuses earned in violation of §204 as such payments were not made during the  
11 course of the regular pay schedule and were made more than seven calendar days following the  
12 close of the payroll period..

13           46. Labor Code §§201-202 requires an employer who discharges an employee to pay  
14 compensation due and owing to said employee immediately upon discharge and that if an  
15 employee voluntarily leaves his or her employment, his or her wages shall become due and  
16 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-  
17 two (72) hours previous notice of his or her intention to quit, in which case the employee is  
18 entitled to his or her wages on their last day of work.

19           47. Labor Code §203 provides that if an employer willfully fails to pay compensation  
20 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting  
21 time penalties in the form of continued compensation for up to thirty (30) work days.

22           48. During the relevant time period, Defendants willfully failed and refused, and  
23 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and  
24 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily  
25 leaving Defendants' employ. These wages include regular and overtime.

26           49. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt  
27 Production Employee class for waiting time penalties pursuant to Labor Code §§203 and 204, in  
28 an amount according to proof at the time of trial.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Against All Defendants)**

4 50. Plaintiff incorporates and re-alleges each and every allegation contained above as  
5 though fully set forth herein.

6 51. Section 226(a) of the California Labor Code requires Defendants to itemize in wage  
7 statements all deductions from payment of wages and to accurately report total hours worked by  
8 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other  
9 things. Defendants have knowingly and intentionally failed to comply with Labor Code section  
10 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

11 52. IWC Wage Orders require Defendants to maintain time records showing, among  
12 others, when the employee begins and ends each work period, meal periods, split shift intervals  
13 and total daily hours worked in an itemized wage statement, and must show all deductions and  
14 reimbursements from payment of wages, and accurately report total hours worked by  
15 Plaintiff and the Class. On information and belief, Defendants have failed to record all or some of  
16 the items delineated in Industrial Wage Orders and Labor Code §226.

17 53. Defendants have failed to accurately record all hours worked for Plaintiff and Class  
18 Members.

19 54. Plaintiff and the Class have been injured as they were unable to determine whether  
20 they had been paid correctly for all hours worked per pay period among other things.

21 55. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a  
22 maximum of \$4,000 each for record keeping violations.

23 **FOURTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

25 **(Against All Defendants)**

26 56. Plaintiff incorporates and re-alleges each and every allegation contained above as  
27 though fully set forth herein.

28 57. Defendants' conduct, as alleged in this complaint, has been, and continues to be,

1 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the  
2 general public. Plaintiff seeks to enforce important rights affecting the public interest within the  
3 meaning of the California Code of Civil Procedure §1021.5.

4 58. Defendants' policies, activities, and actions as alleged herein, are violations of  
5 California law and constitute unlawful business acts and practices in violation of California  
6 Business and Professions Code §§17200, et seq.

7 59. A violation of California Business and Professions Code §§17200, et seq., may be  
8 predicated on the violation of any state or federal law. Defendants' policy of failing to provide  
9 accurate itemized wage statements and failing to compensate Plaintiff and Class Members of  
10 regular wages and overtime wages violates Labor Code §§ 226, 510, 558, 1194,1197 and  
11 applicable IWC Wage Orders and California Code of Regulations.

12 60. Plaintiff and Class Members have been personally aggrieved by Defendants'  
13 unlawful and unfair business acts and practices alleged herein by the loss of money and/or  
14 property.

15 61. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff  
16 and Class Members are entitled to restitution of the wages withheld and retained by Defendants  
17 during a period that commences four (4) years prior to the filing of this complaint; an award of  
18 attorneys' fees, interest; and an award of costs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;  
23 2. That Plaintiff be appointed as the representative of the Class;  
24 3. That Plaintiff be appointed as the representative of the Subclass; and  
25 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

26 **On the First Cause of Action**

- 27 1. For compensatory damages equal to the unpaid balance of minimum wage  
28 compensation owed to Plaintiff and Class members as well as interest and costs;

1 2. For reasonable attorneys’ fees and costs pursuant to Labor Code § 1194;

2 3. For compensatory damages in an amount equal to the amount of unpaid overtime  
3 owed to Plaintiff and Class Members;

4 4. For pre-judgment interest on any unpaid overtime compensation due from the day  
5 that such amounts were due;

6 5. For liquidated damages in an amount equal to the wages unlawfully unpaid and  
7 interest thereon pursuant to Labor Code § 1194.2; and

8 For such other and further relief as the Court deems proper.

9 On the Second Cause of Action

10 1. For statutory penalties pursuant to Labor Code §§203 and 204;

11 2. For interest for wages untimely paid; and

12 3. For such other and further relief as the Court deems proper.

13 On the Third Cause of Action

14 1. For statutory penalties pursuant to Labor Code §226;

15 2. For interest for wages untimely paid; and

16 3. For such other and further relief as the Court deems proper.

17  
18 On the Fourth Cause of Action

19 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and  
20 Class Members for their past failure to provide accurate itemized wage statements, and pay wages  
21 due and owing as described herein to Plaintiff and Class Members over the last four (4) years in an  
22 amount according to proof;

23 2. For pre-judgment interest on any unpaid wages due from the day that such amounts  
24 were due;

25 3. For reasonable attorneys’ fees that Plaintiff and Class Members are entitled to  
26 recover;

27 4. For costs of suit incurred herein; and

28 5. For such other and further relief as the Court deems proper.

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**DEMAND FOR JURY TRIAL**

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: October 19, 2018

JAMES HAWKINS APLC

By: 

\_\_\_\_\_  
JAMES R. HAWKINS, ESQ.  
GREGORY MAURO, ESQ.  
MICHAEL CALVO, ESQ.  
Attorneys for Plaintiff RICHARD W.  
HANKEY, individually and on behalf of all  
others similarly situated.



**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**10/24/2018 at 03:35:00 PM**  
Clerk of the Superior Court  
By Georgina Ramirez, Deputy Clerk

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

THE HOME DEPOT USA, INC., a Delaware Corporation, and DOES  
1 through 50, inclusive

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

RICHARD W. HANKEY, individually and on behalf of all 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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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: **Orange County Superior Court**  
(El nombre y dirección de la corte es):

751 W Santa Ana Blvd  
Santa Ana, CA 92701

CASE NUMBER:

**30-2018-01027364-CU-OE-CXC**

**Judge William Cluster**

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):

James Hawkins, APLC, 9880 Research Dr., Suite 200, Irvine, CA 92618; Tel: 949-387-7200

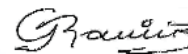
DATE:

**10/24/2018**

DAVID H. YAMASAKI, Clerk of the Court

Clerk, by

(Secretario)



Georgina Ramirez

, Deputy

(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

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory Mauro, SBN 222239 James Hawkins APLC 9880 Research Drive., Suite 200 Irvine, CA 92618 TELEPHONE NO.: 949-387-7200 FAX NO.: ATTORNEY FOR (Name): <b>Richard Hankey</b>	FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of Orange  <b>10/19/2018 at 01:11:03 PM</b> Clerk of the Superior Court By: Georgina Ramirez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Orange</b> STREET ADDRESS: 751 W Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Civil Complex Center	CASE NUMBER: <b>30-2018-01027364-CU-OE-CXC</b>  JUDGE: <b>Judge William Claster</b> DEPT: <b>CX-104</b>
CASE NAME: <b>Hankey v. The Home Depot USA, Inc.</b>	<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)  <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> 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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)  <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <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)  <b>Non-PI/PD/WD (Other) Tort</b> <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)  <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <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)  <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)  <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)  <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <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)  <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)  <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)  <b>Miscellaneous Civil Petition</b> <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 checked="" 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 checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

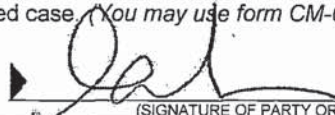
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): <sup>4</sup>

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: October 19, 2018  
Gregory Mauro  
(TYPE OR PRINT NAME)

  
(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.



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Civil Complex Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE:** Hankey vs. The Home Depot USA, Inc.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC  
SERVICE**

**CASE NUMBER:**  
**30-2018-01027364-CU-OE-CXC**

I certify that I am not a party to this cause. I certify that the following document(s), dated , have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on November 8, 2018, at 10:14:29 AM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

JAMES R. HAWKINS  
GREG@JAMESHAWKINSAPLC.COM

JAMES R. HAWKINS  
JAMES@JAMESHAWKINSAPLC.COM

JAMES R. HAWKINS  
MICHAEL@JAMESHAWKINSAPLC.COM

Clerk of the Court, by:  , Deputy

---

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**



SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 11/08/2018 TIME: 08:32:00 AM DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-01027364-CU-OE-CXC** CASE INIT.DATE: 10/19/2018

CASE TITLE: **Hankey vs. The Home Depot USA, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

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EVENT ID/DOCUMENT ID: 72926195

EVENT TYPE: Chambers Work

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**APPEARANCES**

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*Minutes prepared under the direction of the Honorable William D. Claster.*

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factor of California Rules of Court 3.715 & 3.400: case is complex.

Each party who has not paid the Complex fee of \$ 1,000 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Case Management Conference is scheduled for 01/29/2019 at 08:30 AM in Department CX104.

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

**The Court issues the attached Case Management Conference Order.**

Court orders clerk to give notice.

## CASE MANAGEMENT CONFERENCE ORDER

Prior to the Initial Case Management Conference, counsel for all parties are ordered to meet and confer in person (no later than 10 days before the conference) and discuss the following topics. Additionally, counsel shall be prepared to discuss these issues with this Court at the Initial Case Management Conference:

1. Parties and the addition of parties;
2. Claims and defenses;
3. Issues of law that, if considered by the Court, may simplify or foster resolution of the case.
4. Appropriate alternative dispute resolution (ADR) mechanisms (e.g., mediation, mandatory settlement conference, arbitration, mini-trial, etc.);
5. A plan for preservation of evidence;
6. A plan for disclosure and discovery;
7. Whether it is possible to plan "staged discovery" so that information needed to conduct meaningful ADR is obtained early in the case, allowing the option to complete discovery if the ADR effort is unsuccessful;
8. Whether a structure of representation such as liaison/lead counsel is appropriate for the case in light of multiple plaintiffs and/or multiple defendants;
9. Procedures for the drafting of a Case Management Order, if appropriate;
10. Any issues involving the protection of evidence and confidentiality.

**Counsel for plaintiff is to take the lead in preparing a Joint Initial Case Management Conference report to be filed on or before 01-22-2019**

The Joint Initial Case Management Conference Report is to include the following:

1. A list of all parties and counsel;
2. A statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
3. An outline of the claims and cross-claims and the parties against whom each claim is asserted;
4. Service lists and procedures for efficient service filing;
5. Whether any issues of jurisdiction or venue exist that might affect this Court's ability to proceed with this case;
6. Applicability and enforceability of arbitration clauses;
7. A list of all related litigation pending in other courts, a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated;
8. A description of core factual and legal issues;
9. A description of legal issues that, if decided by the Court, may simplify or further resolution of the case;



10. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations on discovery;
11. Whether particular documents and witness information can be exchanged by agreement of the parties;
12. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
13. The usefulness of a written case management order; and
14. A target date and a time estimate for trial.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Initial Case Management Conference Report, the positions of each party or of various parties shall be set forth separately. The parties are NOT to use the case management conference form for non-complex cases (Judicial Council Form CM-110).

Plaintiff shall give notice of the Case Management Conference and serve a copy of this order upon any defendants presently or subsequently served.

**ATTORNEYS APPEARING AT THE CASE MANAGEMENT CONFERENCE MUST BE FULLY FAMILIAR WITH THE PLEADINGS AND THE AVAILABLE FACTUAL INFORMATION, AND MUST ALSO HAVE THE AUTHORITY TO ENTER INTO STIPULATIONS. THESE REQUIREMENTS SHALL ALSO APPLY TO ANY FUTURE STATUS CONFERENCES HELD IN THIS CASE.**

The Court orders a stay on discovery until after the initial Case Management Conference is held. Notwithstanding the stay, the Court encourages the parties to engage in an informal exchange of information and documents.

# **EXHIBIT B**

**DECLARATION OF DONNA M. MEZIAS IN SUPPORT OF  
DEFENDANT'S NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1332(d)(2), 1441, 1446, AND 1453**

Attorney or Party without Attorney: JAMES HAWKINS, APLC James R. Hawkins, Esq. (SBN 192925) 9880 Research Drive, Suite 800 Irvine, CA 92618 Telephone No: (949) 387-7200  Attorney For: Plaintiffs				For Court Use Only  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of Orange <b>12/18/2018</b> at 02:05:00 PM Clerk of the Superior Court By e Clerk, Deputy Clerk	
Ref. No. or File No.: THE HOME DEPOT USA					
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE					
Plaintiff: RICHARD W. HANKEY, etc. Defendant: THE HOME DEPOT USA, INC., a Delaware Corporation, et al.					
<b>PROOF OF SERVICE SUMMONS</b>		Hearing Date:	Time:	Dept/Div:	Case Number: 30-2018-01027364-CU-OE-CXC

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 the Summons, Class Action Complaint Pursuant to California Code of Civil Procedure §382, Civil Case Cover Sheet, Minute Order
3.
  - a. Party served: THE HOME DEPOT USA, INC., a Delaware Corporation
  - b. Person served: BECKY DEGEORGE, CSC LAWYERS INCORPORATING SERVICE, REGISTERED AGENT
4. Address where the party was served: 2710 Gateway Oaks Dr., Suite 150N, Sacramento, CA 95833
5. I served the party:
  - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Dec 18 2018 at: 12:27 PM
    - (1)  (business)
    - (2)  (home)
    - (3)  (other):
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): THE HOME DEPOT USA, INC., a Delaware Corporation 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:	



Attorney or Party without Attorney: JAMES HAWKINS, APLC James R. Hawkins, Esq. (SBN 192925) 9880 Research Drive, Suite 800 Irvine, CA 92618 Telephone No: (949) 387-7200 Attorney For: Plaintiffs				<b>For Court Use Only</b>	
Ref. No. or File No.: THE HOME DEPOT USA					
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE					
Plaintiff: RICHARD W. HANKEY, etc. Defendant: THE HOME DEPOT USA, INC., a Delaware Corporation, et al.					
<b>PROOF OF SERVICE SUMMONS</b>	Hearing Date:	Time:	Dept/Div:	Case Number: 30-2018-01027364-CU-OE-CXC	

Recoverable cost Per CCP 1033.5(a)(4)(B)

7. Person who served papers

- a. Name: Jacobbi Williams
- b. Address: **FIRST LEGAL**  
600 W. Santa Ana Blvd., Ste. 101  
SANTA ANA, CA 92701
- c. Telephone number: (714) 541-1110
- d. The fee for service was: \$197.73
- 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: 1314
    - (iii) County: Alameda

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

12/18/2018

(Date)



(Signature)



# **EXHIBIT C**

**DECLARATION OF DONNA M. MEZIAS IN SUPPORT OF  
DEFENDANT'S NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1332(d)(2), 1441, 1446, AND 1453**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**01/16/2019** at 03:20:00 PM  
Clerk of the Superior Court  
By Georgina Ramirez, Deputy Clerk

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

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

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE  
11

12  
13 RICHARD W. HANKEY, individually  
14 and on behalf of all others similarly  
15 situated,

15 Plaintiff,

16 vs.

17 HOME DEPOT U.S.A., INC., a  
18 Delaware corporation; and DOES 1  
19 through 50, inclusive,

19 Defendants.

Case No. 30-2018-01027364-CU-OE-  
CXC

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

Date Action Filed: October 19, 2018

CX-104



1 Defendant Home Depot U.S.A., Inc. hereby answers the complaint of plaintiff  
2 Richard W. Hankey 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  
4 Procedure.

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

8 DEFENSES

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

11 FIRST DEFENSE

12 (Failure to State a Cause Of Action)

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

15 SECOND DEFENSE

16 (Statute of Limitations)

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

19 THIRD DEFENSE

20 (Estoppel)

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

24 FOURTH DEFENSE

25 (No Willfulness)

26 Defendant did not willfully deprive any person of any wages to which plaintiff  
27 and/or any individuals plaintiff purports to represent may have been entitled.

28 ///

1 FIFTH DEFENSE

2 (Standing)

3 Plaintiff lacks standing to bring certain claims asserted, to assert the legal rights  
4 or interests of others, and/or to seek certain relief alleged.

5 SIXTH DEFENSE

6 (Good Faith)

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

10 SEVENTH DEFENSE

11 (Compliance with Statute)

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

15 EIGHTH DEFENSE

16 (Waiver and Release)

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

21 NINTH DEFENSE

22 (Acquiescence)

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

26 ///

27 ///

28 ///

1    TENTH DEFENSE

2    (Accord and Satisfaction)

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

8    ELEVENTH DEFENSE

9    (Laches)

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

13    TWELFTH DEFENSE

14    (Ratification and Consent)

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

19    THIRTEENTH DEFENSE

20    (Paid All Sums)

21           The complaint, and each purported cause of action contained therein, is barred  
22 because defendant has paid plaintiff and/or any individuals plaintiff purports to  
23 represent all sums due to them.

24    FOURTEENTH DEFENSE

25    (Res Judicata and Collateral Estoppel)

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

1 FIFTEENTH DEFENSE

2 (Class Action)

3 Plaintiff cannot satisfy the requirements for a class action.

4 SIXTEENTH DEFENSE

5 (Unjust Enrichment)

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

9 SEVENTEENTH DEFENSE

10 (No Unlawful Conduct)

11 The complaint, and each cause of action contained therein, is barred because the  
12 conduct of defendant as alleged in the complaint is not “unlawful” as defined under the  
13 California Business and Professions Code.

14 EIGHTEENTH DEFENSE

15 (No Unfair Conduct)

16 The complaint, and each cause of action contained therein, is barred because the  
17 conduct of defendant as alleged in the complaint is not “unfair” as defined under the  
18 California Business and Professions Code.

19 NINETEENTH DEFENSE

20 (No Fraudulent Conduct)

21 The complaint, and each cause of action contained therein, is barred because the  
22 conduct of defendant as alleged in the complaint is not “fraudulent” as defined under the  
23 California Business and Professions Code.

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1 TWENTIETH DEFENSE

2 (Impermissible Representative Action)

3 Plaintiff is barred from obtaining relief against defendant because section 17200  
4 of the California Business and Professions Code does not permit representative actions  
5 where liability can be determined only through fact-intensive individualized  
6 assessments of alleged wage-and-hour violations.

7 TWENTY-FIRST DEFENSE

8 (Unclean Hands)

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

11 TWENTY-SECOND DEFENSE

12 (No Injury)

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

17 TWENTY-THIRD DEFENSE

18 (Adequate Remedy)

19 Plaintiff's claims for equitable and/or injunctive relief, including but not limited  
20 to claims under section 17200 of the California Business and Professions Code, are  
21 barred because plaintiff and the individuals plaintiff purports to represent have an  
22 adequate remedy at law.

23 TWENTY-FOURTH DEFENSE

24 (*De Minimis* Doctrine)

25 The complaint, and each purported cause of action contained therein, is barred to  
26 the extent the *de minimis* doctrine applies to plaintiff's claims.

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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: January 16, 2019

AKIN GUMP STRAUSS HAUER & FELD LLP

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



**PROOF OF SERVICE**

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, CA 94104. On January 16, 2019, I served the foregoing document(s) described as: DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER TO COMPLAINT, on the interested parties below, using the following means:

James R. Hawkins, Esq.  
Gregory Mauro, Esq.  
Michael Calvo, Esq.  
JAMES HAWKINS APLC  
9880 Research Drive, Suite 800  
Irvine, CA 92618  
Tel.: (949) 387-7200  
Fax: (949) 387-6676  
Email: James@jameshawkinsaplc.com  
Email: Greg@jameshawkinsaplc.com  
Email: Michael@jameshawkinsaplc.com

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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 16, 2019, at San Francisco, California.



Jeremias V. Cordero

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

6 Attorneys for defendant  
HOME DEPOT U.S.A., INC.  
7  
8  
9

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13 RICHARD W. HANKEY, individually  
and on behalf of all others similarly  
14 situated,

15 Plaintiff,

16 vs.

17 HOME DEPOT U.S.A., INC., a  
Delaware corporation; and DOES 1  
18 through 50, inclusive,

19 Defendants.  
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Case No.

DECLARATION OF KATHLEEN  
BURRIS IN SUPPORT OF  
DEFENDANT HOME DEPOT U.S.A.,  
INC.'S NOTICE OF REMOVAL

[Notice of Removal, Declarations of  
Dorothy F. Kaslow and G. Edward  
Anderson, Ph.D., Certification of  
Interested Entities or Persons, and Civil  
Cover Sheet filed concurrently]

*(Orange County Superior Court, Case  
No. 30-2018-01027364-CU-OE-CXC)*

Date Action Filed: October 19, 2018

DECLARATION OF KATHLEEN BURRIS IN SUPPORT OF  
DEFENDANT HOME DEPOT U.S.A., INC.'S NOTICE OF REMOVAL

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DECLARATION OF KATHLEEN BURRIS

I, Kathleen Burris, 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. Richard Hankey’s employment records reflect that he worked at a Home Depot retail store in Rancho Cordova, California from June 4, 2016 through May 8, 2018, and that his residential address on file throughout his employment was in Sacramento, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on January 6, 2019, in Rosville CA.  
95747.

By   
KATHLEEN BURRIS

1 DONNA M. MEZIAS (SBN 111902)  
2 DOROTHY F. KASLOW (SBN 287112)  
3 dmezias@akingump.com  
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5 AKIN GUMP STRAUSS HAUER & FELD LLP  
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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.

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 RICHARD W. HANKEY, individually  
12 and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC., a  
17 Delaware corporation; and DOES 1  
through 50, inclusive,

18 Defendants.

Case No.

DECLARATION OF G. EDWARD  
ANDERSON, PH.D.

[Notice of Removal of Action,  
Declarations of Donna M. Mezas,  
Kathleen Burris, Certification and Civil  
Cover Sheet filed concurrently]

*(Orange County Superior Court, Case  
No. 30-2018-01027364-CU-OE-CXC)*

Date Action Filed: October 19, 2018



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

1 and analyzed time clock and paycheck data bases from many of the nation's largest  
2 employers.

3 5. I reviewed human resource, payroll, and time keeping records for Home  
4 Depot's non-exempt employees working at retail stores in California since October 19,  
5 2014.

6 6. During that time period, Home Depot employed more than 100,000  
7 nonexempt employees in California.

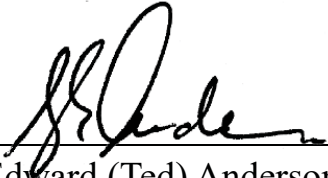
8 7. The individuals identified in paragraph 6 were paid an average of  
9 approximately \$12.39 per hour during the relevant time period.  
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11 8. More than 10,000 of the individuals identified in paragraph 6 were  
12 terminated from Home Depot (either voluntarily or involuntarily) since October 19,  
13 2015. During their last three months of employment, these individuals were paid an  
14 average of \$78.08 per workday.

15 9. Between October 19, 2017 and the present, more than 50,000 of Home  
16 Depot's nonexempt employees in California worked at least two pay periods.

17 I declare under penalty of perjury under the laws of the United States that the  
18 foregoing is true and correct.

19 Executed on January 16, 2019, in Los Angeles, California.  
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21  
22  
23 By  \_\_\_\_\_  
24 G. Edward (Ted) Anderson, Ph.D.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Home Depot Worker Sues Over Allegedly Unpaid Wages](#)

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