

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.:

GEORGE MUNOZ, individually, and  
on behalf of all others similarly situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,  
a Delaware corporation,

Defendant.

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**CLASS ACTION COMPLAINT**

Plaintiff, GEORGE MUNOZ (hereinafter “Plaintiff”), individually, and on behalf of all similarly situated persons, by and through the undersigned counsel, hereby files this Class Action Complaint against Defendants, HOME DEPOT U.S.A., INC. (hereinafter “HOME DEPOT”), a Delaware corporation, and in support thereof, respectfully alleges the following:

**Nature of Action**

1. HOME DEPOT is a massive, Fortune 50 corporation, with over 2,200 big-box, home improvement stores scattered throughout the United States, Canada, and Mexico. The stores sell a full slate of home improvement items, including but not limited to tools, hardware, lumbar, flooring, appliances, fixtures, paints, outdoor items, equipment, supplies, cleaning products, etc.
2. As part of its suite of products, HOME DEPOT sells various paint stripper products, many of which manufactured by W.M. Barr & Company (hereinafter “W.M. Barr”) under the brand name ‘Klean Strip’ (hereinafter “Klean Strip”) – with one such Klean Strip product being the ‘Klean Strip Premium Stripper’ (hereinafter “Premium Stripper”).

3. Premium Stripper and such other W.M. Barr/Klean Strip products sold at HOME DEPOT stores contain the chemical, methylene chloride. The Obama administration, in its final days, concluded that this chemical represented unreasonable risks and moved to ban its use in paint strippers. The Environmental Protection Agency's failure to timely enact the ban has resulted in the recent filing of a lawsuit by public health advocates. Methylene chloride has been implicated in dozens of deaths around the country. In one such death, the decedent followed various safety precautions and yet his death certificate identified his cause of death stemming from becoming overcome by chemicals in a paint stripper, chiefly highly toxic methylene chloride. Products containing methylene chloride are already banned in Europe. In sum, methylene chloride's toxicity is deathly and has no place in a consumer product.

4. Lowes's, HOME DEPOT's biggest competitor, announced in May of 2018 that it would no longer sell paint strippers containing methylene chloride. Around the same time, Walmart, Sherwin-Williams, and other large retailers agreed to pull methylene chloride containing products as well. On June 18, 2018, HOME DEPOT issued the following statement regarding methylene chloride: "Over the past few years, The Home Depot has led the industry in creating chemical standards for multiple categories including carpet, paint, insulation, flooring, live goods and cleaning products. To build upon our strategy to maintain continual improvement in health and environmental safety for products, we have added many alternative chemical paint removers, and will phase out of paint removal products that contain methylene chloride and N-Methylpyrrolidone (NMP) by the end of 2018."

5. With the proposed EPA ban on products containing methylene chloride dating back several years and deaths related to the chemical first chronicled in 1980, the home improvement industry, and industry leader HOME DEPOT, were clearly incredibly late to remove these products from stores. Worse, though, was that the phase out approach by HOME DEPOT was an obvious measure to ensure that revenue would not be lost from existing merchandise. An unfortunate pawn in the slow moving phase out process by HOME DEPOT, on October 22, 2018, months after the industry decision to remove these products, Plaintiff purchased Premium Stripper from a HOME

DEPOT store located at 8815 N. Florida Avenue, Tampa, Florida 33604. Despite religiously following label directions, including utilizing the product outdoors and with an appropriate face mask, Plaintiff developed a significant lung infection from the product which caused him to be hospitalized.

### **Parties**

6. At all times material hereto, Plaintiff was and is a resident of Tampa, Florida, over the age of eighteen and otherwise *sui juris*. While living in Florida, Plaintiff purchased the Premium Stripper and in the class period, he relied upon a tacit representation from HOME DEPOT that products being sold on its shelves would be reasonably safe for their intended uses and would not be unreasonably dangerous and have the very real potential to cause death.

7. At all times material hereto, HOME DEPOT was and is a for profit corporation, organized and existing under the laws of the State of Delaware, with approximately 153 stores in Florida, including the aforementioned Tampa, FL location.

### **Jurisdiction and Venue**

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and most members are citizens of states different from Defendant. This Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

9. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District as key decision making, importation, and shipping occurred in Florida.

10. Plaintiff has retained the undersigned law firm to represent him (as well as all those similarly situated) in this action and is required to pay said firm a reasonable fee and costs for its

services.

### **Class Representation Allegations**

11. While discovery is ongoing (and, thus, future amendments may be necessary), Plaintiff seeks to represent a proposed class that may be generally defined as all persons in the United States who purchased Premium Stripper and such other paint stripping products containing methylene chloride (collectively hereinafter the “Offending Products”), at a HOME DEPOT store (or from HOME DEPOT’s website) from January of 2014 to the present.

12. While discovery is ongoing (and, thus, future amendments may be necessary), the approximate size of the proposed class could be in excess of one million persons.

13. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: whether HOME DEPOT should have ceased selling the Offending Products during the class period; whether HOME DEPOT tacitly represented that the Offending Products were safe by keeping the said products on shelves (and on its website); and, whether HOME DEPOT engaged in various failures described below.

14. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff purchased the product in reliance on the representations and warranties described above and below and suffered a loss as a result of that purchase.

15. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action strenuously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

**COUNT I**  
**Breach of the Implied Warranty of Merchantability**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

16. Plaintiff brings this claim individually and on behalf of the proposed Class against HOME DEPOT.

17. HOME DEPOT, as marketer, distributor, and/or seller of the Offending Products, impliedly warranted that the Offending Products were reasonably safe for their intended purpose.

18. HOME DEPOT breached the warranty implied in the contract for the sale of the Offending Products because it could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because they were toxic and known to cause serious injuries and death. As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by HOME DEPOT to be merchantable.

19. Plaintiff and Class members purchased the Offending Products in reliance upon HOME DEPOT's skill and judgment and the implied warranties of fitness for the purpose.

20. The Offending Products were not altered by Plaintiff or Class members.

21. The Offending Products were defective when they left the exclusive control of HOME DEPOT.

22. HOME DEPOT knew that the Offending Products would be purchased and used without additional testing by Plaintiff and Class members.

23. The Offending Products were defectively designed and unfit for their intended purpose, and Plaintiff and Class members did not receive the goods as warranted.

24. As a direct and proximate cause of HOME DEPOT's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Offending Products on the same terms if they had known the true facts that the Offending Products could cause serious injuries and death; (b) they paid a price premium for the

Offending Products due to HOME DEPOT's tacit promises that the products were safe; and (c) HOME DEPOT's Offending Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant HOME DEPOT.

**COUNT II**  
**Breach of the Implied Warranty of Fitness for a Particular Purpose**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

25. Plaintiff brings this claim individually and on behalf of the proposed Class against HOME DEPOT.

26. HOME DEPOT marketed, distributed, and/or sold the Offending Products with implied warranties that they were fit for their intended purposes in that they were safe and were not known to cause serious injuries or death. At the time that the Offending Products were sold, HOME DEPOT knew or had reason to know that Plaintiff and Class members were relying on its skill and judgment to select or furnish a product that was suitable for sale.

27. Plaintiff and Class members purchased the Offending Products in reliance upon HOME DEPOT's implied warranties.

28. The Offending Products were not altered by Plaintiff or Class members.

29. As a direct and proximate cause of HOME DEPOT's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Offending Products on the same terms if they had known the true facts that the Offending Products could cause serious injuries and death; (b) they paid a price premium for the Offending Products due to HOME DEPOT's tacit promises that the products were safe; and

(c) HOME DEPOT's Offending Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant HOME DEPOT.

**COUNT III**  
**Unjust Enrichment**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

30. Plaintiff brings this claim individually and on behalf of the proposed Class against HOME DEPOT.

31. Plaintiff and Class members conferred benefits on HOME DEPOT by purchasing the Offending Products.

32. HOME DEPOT has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the Offending Products. Retention of those moneys under these circumstances is unjust and inequitable because HOME DEPOT misrepresented that the Offending Products were safe and not likely to cause serious injuries or death. These misrepresentations caused injuries to Plaintiff and Class members because they would not have purchased the Offending Products if the true facts were known.

33. Because HOME DEPOT's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, HOME DEPOT must pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and

further relief as this Court deems just and proper under the circumstances as to Defendant HOME DEPOT.

**COUNT IV**  
**Negligent Misrepresentation**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

34. Plaintiff brings this claim individually and on behalf of the proposed Class against HOME DEPOT.

35. As discussed above, HOME DEPOT misrepresented that the Offending Products were reasonably safe for their intended purpose. HOME DEPOT had a duty to disclose that this was false and that the Offending Products had the propensity for causing serious injuries or death.

36. At the time HOME DEPOT made these representations, HOME DEPOT knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

37. At an absolute minimum, HOME DEPOT negligently misrepresented and/or negligently omitted material facts about the Offending Products.

38. The negligent misrepresentations and omissions made by HOME DEPOT, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Offending Products.

39. Plaintiff and Class members would not have purchased the Offending Products if the true facts had been known.

40. The negligent actions of HOME DEPOT caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant HOME



DEPOT.

**COUNT V**  
**Fraud**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

41. Plaintiff brings this claim individually and on behalf of the proposed Class against HOME DEPOT.

42. As discussed above, HOME DEPOT provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about the Offending Products, including but not limited to the fact that the Offending Products were incredibly toxic and likely to cause serious injuries or death. These misrepresentations and omissions were made with knowledge of their falsehood.

43. The misrepresentations and omissions made by HOME DEPOT, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Offending Products.

44. HOME DEPOT's fraudulent actions caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

45. WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant HOME DEPOT.

**COUNT VI**  
**Violation of Florida's Unfair and Deceptive Trade Practices Act**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

46. This is an action based on HOME DEPOT's intentional and unfair deception of

consumers in Florida and throughout the United States.

47. By its unfair and deceptive conduct (as more fully alleged hereinabove), HOME DEPOT has unreasonably grossed profited by deceiving the public and pawning of ultra toxic and dangerous products as being safe.

48. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

49. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting "unfair methods of competition" and "unconscionable, unfair or deceptive acts," FDUTPA specifically gives "great weight" to the interpretations of the Federal Trade Commission Act by Federal Courts and the Federal Trade Commission.

50. HOME DEPOT marketed, and sold to the general public the Offending Products, as being safe and reasonable to use as consumer products.

51. This is an unfair trade practice, in violation of Federal consumer protection laws, and FDUTPA.

52. HOME DEPOT's unfair and deceptive trade practices are the direct cause of damage to the Plaintiff, and to all persons similarly situated.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and

further relief as this Court deems just and proper under the circumstances as to Defendant HOME DEPOT.

**Demand for Jury Trial**

Plaintiff, individually, and on behalf of all those similarly situated, hereby demands a jury trial on all issues triable by jury.

Dated this 30th day of January, 2019.

Respectfully submitted,

SALPETER GITKIN, LLP  
*Attorneys for Plaintiff*  
One East Broward Boulevard  
Suite 1500  
Fort Lauderdale, FL 33301  
Telephone: (954) 467-8622  
Facsimile: (954) 467-8623

By: /s/ James P. Gitkin  
James P. Gitkin, Esq.  
Fla. Bar No. 570001

## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

GEORGE MUNOZ, individually, and  
on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Hillsborough  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James P. Gitkin, Esq., Salpeter Gitkin, LLP, One E. Broward Blvd.,  
Ste. 1500, Fort Lauderdale, FL 33301, (954) 467-8622

**DEFENDANTS**

HOME DEPOT U.S.A., INC.,  
a Delaware corporation

County of Residence of First Listed Defendant Out of District  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

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

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

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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)(2)(A)

Brief description of cause:

Class action complaint for selling a dangerous product

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION DEMAND \$  
UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/30/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ James P. Gitkin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## Middle District of Florida

GEORGE MUNOZ, individually and on behalf of all others similarly situated

Plaintiff(s)

V.

HOME DEPOT U.S.A., INC.,  
a Delaware corporation

Defendant(s)

Civil Action No.

# SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*) HOME DEPOT U.S.A., INC.  
c/o Corporation Service Company, Registered Agent  
1201 Hays St.  
Tallahassee, FL 32301-2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James P. Gitkin, Esq.  
Salpeter Gitkin, LLP  
One E. Broward Blvd. - Ste. 1500  
Fort Lauderdale, FL 33301  
(954) 467-8622

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Home Depot Hit With Class Action Over Alleged Presence of Highly Toxic Methylene Chloride in Paint Stripper Products](#)

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