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6 Attorneys for Defendant
HOME DEPOT U.S.A., INC.
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 CRAIG SMITH, an individual on
behalf of himself, and on behalf of all
14 persons similarly situated,

15 Plaintiff,

16 v.

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

19 Defendants.
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21
22

Case No. '19CV0402 BEN MSB

CLASS ACTION

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

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

Date Action Filed: January 11, 2019

*(San Diego County Superior Court,
No. 37-2019-00001930-CU-OE-CTL)*

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 SOUTHERN 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), 1441, 1446, and 1453. In support, Home Depot states as follows:

6 BACKGROUND

7 1. On January 11, 2019, an action was commenced and is currently pending
8 against Home Depot in the Superior Court of California, County of San Diego, as Case
9 No. 37-2019-00001930-CU-OE-CTL. Declaration of Donna M. Mezas (“Mezas
10 Decl.”) ¶ 2 & Ex. A. According to the Proof of Service of Summons filed on February
11 1, 2019, the complaint was served on Home Depot on January 28, 2019. *Id.*, at ¶ 3 &
12 Ex. B. On February 26, 2019, Home Depot filed its Answer to the Complaint. *Id.*, at
13 ¶ 4 & Ex. C. No other process, pleadings, or orders have been filed by or served upon
14 defendant as part of Case No. 37-2019-00001930-CU-OE-CTL. *Id.*, at ¶ 5. As required
15 by 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders
16 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 Craig Smith is a former Assistant Store Manager for Home Depot.
19 *See* Complaint ¶ 4. Smith asserts claims under the California Labor Code for failure to
20 pay overtime wages, failure to provide meal breaks, failure to provide rest breaks, and
21 failure to timely pay final wages. *Id.* ¶¶ 63-96. He also asserts a claim for unfair
22 competition. *Id.* ¶¶ 48-62.

23 3. Smith purports to bring these claims on behalf of a putative class that
24 includes all persons employed by Home Depot as Assistant Store Managers and
25 classified as exempt from overtime wages in California within the four years prior to the
26 filing of the Complaint. *Id.* ¶¶ 8, 22.¹

27 _____
28 ¹ Home Depot denies Smith’s class allegations. However, for purposes of estimating
the amount in controversy, the allegations of Smith’s complaint are assumed to be true.

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

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

14 6. Class Size. During the relevant period, Home Depot has employed
15 approximately 1,875 Assistant Store Managers in California who were classified as
16 exempt. Declaration of G. Edward Anderson (“Anderson Decl.”) ¶ 6.³ Therefore, the
17 putative class exceeds 100 members. *See* Complaint ¶ 8 (defining the putative class to
18 include “all persons who are or previously were employed by DEFENDANT as
19 Assistant Managers in California and were classified as exempt from overtime

21 *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“In
22 measuring the amount in controversy, a court must assume that the allegations of the
23 complaint are true and that a jury will return a verdict for the plaintiff on all claims
24 made in the complaint. The ultimate inquiry is what amount is put ‘in controversy’ by
25 the plaintiff’s complaint, not what a defendant will actually owe.” (citations omitted)).
26 ² Further, CAFA applies here because Smith expressly brings this class action “pursuant
27 to California Code of Civil Procedure section 382.” Complaint ¶¶ 24, 36; *see Bodner v.*
28 *Oreck Direct, LLC*, No. C 06-04756, 2006 WL 2925691, at *3 (N.D. Cal. Oct. 12, 2006)
(CAFA applies where “Plaintiffs’ complaint alleges that the action is a class action, and
recites the prerequisites to a class action under . . . California Code of Civil Procedure
Section 382”).

³ A defendant may make the requisite showing by setting forth facts in the notice of
removal or by affidavit. *See Lamke v. Sunstate Equip. Co.*, 319 F. Supp. 2d 1029, 1032
(N.D. Cal. 2004).

1 wages . . . at any time during the period beginning on the date four (4) years prior to the
2 filing of this Complaint and ending on the date as determined by the Court . . .”).

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

8 8. The putative class includes citizens of California, including plaintiff Smith.
9 Throughout his employment with Home Depot, Smith maintained a California
10 residential address on file with Home Depot and worked at retail stores in California,
11 both of which establish his California residency. Declaration of Christina Josiah
12 (“Josiah Decl.”) Decl. ¶ 4⁴; *see Lam Research Corp. v. Deshmukh*, 157 F. App’x 26, 27
13 (9th Cir. Nov. 29, 2005) (defendant who had lived and worked for plaintiff in
14 Washington was presumptively a Washington citizen, despite his claim that he had
15 changed his domicile from Washington to California); *Bey v. SolarWorld Indus. Am.,*
16 *Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012) (residential address provided by
17 employee to employer is prima facie evidence of state citizenship).

18 9. Further, Smith seeks to represent classes consisting of Assistant Managers
19 employed in California. Complaint ¶¶ 8, 24-45. These putative classes logically
20 include other California citizens as well.

21 10. Home Depot is not a citizen of California. “[A] corporation shall be
22 deemed to be a citizen of every State . . . by which it has been incorporated and of the
23 State . . . where it has its principal place of business....” 28 U.S.C. § 1332(c)(1). Home
24 Depot is not incorporated in California, but is rather organized and incorporated under
25 the laws of Delaware. *See Ottaviano v. Home Depot, Inc. U.S.A.*, 701 F. Supp. 2d 1005,
26 1007 (N.D. Ill. 2010) (Home Depot “is a Delaware corporation with its principal
27

28 ⁴ Specifically, Smith worked at Home Depot stores throughout California, including in
Genesee, Santee, Chula Vista, and Lemon Grove. Josiah Decl. ¶ 4.

1 executive offices located in Atlanta, Georgia”); *Novak v. Home Depot U.S.A., Inc.*, 259
2 F.R.D. 106, 108 (D.N.J. 2009) (Home Depot “is a Delaware corporation with its
3 principal offices located in Georgia”); Josiah Decl. ¶ 2. Nor is California the state in
4 which Home Depot has its principal place of business, which is “the place where a
5 corporation’s officers direct, control, and coordinate the corporation’s activities.” *Hertz*
6 *Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Rather, Home Depot’s principal place of
7 business is Atlanta, Georgia. *Ottaviano*, 701 F. Supp. 2d at 1007; *Novak*, 259 F.R.D. at
8 108; Josiah Decl. ¶ 2.

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

13 12. Accordingly, this action involves citizens of different states: Smith is a
14 citizen of California (and seeks to represent a class including California citizens) and
15 Home Depot is a citizen of Delaware and Georgia. Thus, the CAFA minimal diversity
16 requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2).

17 13. Amount in Controversy. Home Depot avers, for purposes of this Notice
18 only and without conceding liability for the claims alleged by Smith or that Smith can
19 properly represent the putative class, that Smith’s claims place more than \$5 million in
20 controversy. “The amount in controversy is simply an estimate of the total amount in
21 dispute, not a prospective assessment of [the] defendant’s liability.” *Lewis v. Verizon*
22 *Comm’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (on removal, defendant does not
23 “concede liability for the entire amount” alleged in complaint); *Ibarra v. Manheim Invs.,*
24 *Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (“Even when defendants have persuaded a
25 court upon a CAFA removal that the amount in controversy exceeds \$5 million, they are
26 still free to challenge the actual amount of damages in subsequent proceedings and at
27 trial ... because they are not stipulating to damages suffered”). As the United States
28 Supreme Court has held, a defendant’s notice of removal need only include a plausible

1 allegation that the amount in controversy exceeds the jurisdictional threshold. *Dart*
 2 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 549, 554 (2014).
 3 Moreover, the Ninth Circuit has instructed that removal is proper if, based on the
 4 allegations of the complaint and the Notice of Removal, it is more likely than not that
 5 the amount in controversy exceeds \$5 million. *Rodriguez v. AT&T Mobility Servs., Inc.*,
 6 728 F.3d 975, 981 (9th Cir. 2013) (overturning Ninth Circuit precedent requiring proof
 7 of amount in controversy to a “legal certainty” in some circumstances). In determining
 8 whether the amount in controversy is met, the Court considers all requested relief,
 9 “including ... punitive damages, statutory penalties, and attorney’s fees.” *Lake v. Delta*
 10 *Air Lines, Inc.*, No. SACV 10-1775 DOC(Ex), 2011 WL 3102486, at *4 (C.D. Cal. July
 11 22, 2011). Under this standard, the amount in controversy is easily met.⁵

12 14. For his Fifth Cause of Action, Smith alleges that Home Depot owes
 13 penalties pursuant to California Labor Code section 203 for failing to pay all overtime
 14 wages due to putative class members at the end of their employment. *See* Complaint
 15 ¶¶ 10, 95, 96 & Prayer for Relief, 2(D). Under Section 203, former employees whom
 16 an employer willfully denied wages may recover penalties in the amount of their daily
 17 rate of pay for a period of up to thirty days. *See* Cal. Lab. Code §203. Smith alleges
 18 that Home Depot did “fail[] to tender full payment and/or restitution of wages owed or
 19 in the manner required by California law to the members ... who have terminated their
 20 employment.” Complaint ¶ 42(c) Under Smith’s theories, all putative class members
 21 whose employment ended since January 11, 2016 are entitled to recover waiting time
 22 penalties equal to 30 days of wages.⁶ *See, e.g., Korn v. Polo Ralph Lauren Corp.*, 536

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 24 ⁵ Smith alleges that the aggregate claim, including attorneys’ fees, is under the \$5
 25 million dollar CAFA threshold. Compl. ¶ 8. However, “a plaintiff seeking to represent
 26 a putative class [cannot] evade federal jurisdiction by stipulating that the amount in
 27 controversy [falls] below the jurisdictional minimum.” *See Rodriguez*, 728 F.3d at 981;
 28 *see also Vasquez v. First Student, Inc.*, No. 2:14-CV-06760-ODW(Ex), 2014 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.”).

⁶ 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 F. Supp. 2d at 1205-06 (plaintiff placed maximum penalty in controversy by alleging
2 putative class members are entitled to penalty “up to” statutory maximum); *Schuyler v.*
3 *Morton’s of Chicago, Inc.*, No. CV 10-06762 ODW (JCGx), 2011 WL 280993, at *5
4 (C.D. Cal. Jan. 25, 2011) (appropriate to assume 100 percent violation rate for full 30
5 days of waiting time penalties where complaint alleges multiple wage violations that
6 were never paid); *Marentes v. Key Energy Servs. Cal., Inc.*, No. 1:13-cv-02067-LJO-
7 JLT, 2014 WL 814652, at *9 (E.D. Cal. Feb. 28, 2014) (amount in controversy included
8 30-day penalty for each former employee where plaintiff alleged consistent failure to
9 pay wages); *Oda v. Gucci Am., Inc.*, No. 2:14-cv-7468-SVW(JPRx), 2015 WL 93335, at
10 *10 (C.D. Cal. Jan. 7, 2015) (crediting assumption of maximum penalties).

11 15. Here, at least 350 putative class members stopped working for Home Depot
12 since January 11, 2016 (three years before the filing of the complaint) and, therefore, are
13 eligible to recover Section 203 penalties. Anderson Decl. ¶ 8. These individuals earned,
14 on average, annual salaries of \$62,500.00. Anderson Decl. ¶ 9. They were full time
15 employees who typically earned at least \$240.00 per workday. See Josiah Decl. ¶ 5;
16 Anderson Decl. ¶ 9. Accordingly, an average 30-day penalty would be at least
17 \$7,200.00 (30 × \$240.00). Therefore, the total amount of Section 203 penalties in
18 controversy exceeds \$2.5 million (\$7,200.00 × 350 = \$2,520,000.00). See *Korn*, 536 F.
19 Supp. 2d at 1205-06.

20 16. For his Second Cause of Action, Smith alleges that Home Depot failed to
21 pay him and the putative class members all overtime wages due under the California
22 Labor Code due to Home Depot’s “company-wide policy and procedure” of classifying
23 putative class members as exempt and failing to pay them overtime. Complaint ¶ 22.
24 Smith alleges that putative class members worked more than eight hours in a workday
25 and/or 40 hours in a workweek and he seeks to recover unpaid overtime wages on
26 behalf of each putative class member. Complaint ¶¶ 9, 63-80 & Prayer for Relief ¶
27 2(B). Since January 11, 2015, putative class members earned annual salaries of
28 approximately \$62,500 on average and thus earned roughly \$30.00 per hour for a 40-

1 hour week, so the average overtime rate is approximately \$45.00. Anderson Decl. ¶ 7;
2 Cal. Lab. Code § 515(d)(1) (nonexempt salaried employees' regular rate, for overtime
3 purposes, is 1/40th their weekly salary); Josiah Decl. ¶ 5 (putative class members are full
4 time employees who work at least 40 hours a week). If putative class members worked
5 only 30 minutes per week of alleged overtime, across the 217,000 workweeks at issue
6 (Anderson Decl. ¶ 7), this claim places over \$4.8 million in controversy (217,000 x
7 \$22.50 = \$4,882,500), a conservative estimate given Smith's claim that the policies and
8 practices that lead to unpaid overtime were "uniform and systematic" and that he was
9 "required to work" overtime during the class period. Complaint ¶¶ 23, 27; *see, e.g.*,
10 *Reginald Lockhart v. Columbia Sportswear Co.*, No. 5:15-cv-01534-ODW-PLA, 2015
11 WL 5568610, at *3 (C.D. Cal. Sept. 22, 2015) (where plaintiff fails to quantify the
12 alleged unpaid overtime, "assuming only one hour of overtime per week is reasonable");
13 *Oda*, 2015 WL 93335, at *4-5 (reasonable to assume one hour of unpaid overtime per
14 week where plaintiffs asserted defendant "sometimes" failed to pay overtime); *Jasso v.*
15 *Money Mart Exp., Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at *5 (N.D. Cal.
16 Mar. 1, 2012) ("Given the allegations of a 'uniform policy and scheme' ... one [hour of
17 unpaid overtime] per week ... is a sensible reading of the alleged amount in
18 controversy") (citations omitted); *Wilson v. Best Buy Co.*, No. 2:10-cv-3136-GEB-KJN,
19 2011 WL 445848, at *2 (E.D. Cal. Feb. 8, 2011) (plaintiff's generic overtime allegations
20 placed one hour of overtime per week in controversy for each class member).

21 17. For his Third and Fourth Causes of Action, Smith alleges that Home Depot
22 failed to provide him and the putative class members meal breaks (Complaint ¶¶ 81-84)
23 and rest breaks (Complaint ¶¶ 85-88) in accordance with California Law. Smith seeks
24 to recover meal and rest break premiums equivalent to one hour's pay at the regular rate
25 for each shift in which he and putative class members did not receive compliant meal or
26 rest breaks. Cal. Lab. Code § 226.7(c); Complaint ¶¶ 81-84 (meal breaks); ¶¶ 85-88
27 (rest breaks).

1 If the putative class members, on average, claim only one meal break violation and one
 2 rest break violation every two weeks, these claims will place more than \$6.5 million in
 3 controversy ($(217,000 \text{ workweeks}^7 \times 0.5 \times \$30.00 \times 1 \text{ rest break violation} =$
 4 $\$3,255,000) + (217,000 \text{ workweeks} \times 0.5 \times \$30.00 \times 1 \text{ meal break violation} = \$3,$
 5 $255,000) = \$6,510,000$). *See* Anderson Decl. ¶ 7. This estimate is conservative given
 6 that Assistant Managers typically work break-eligible shifts (Complaint ¶¶ 56, 75) and
 7 in light of Smith’s allegations that Home Depot “often” failed to provide meal breaks,
 8 “periodically” failed to provide rest breaks, and lacks any “policy or practice which
 9 provided meal and rest breaks.” *See* Complaint ¶¶ 23, 82, 86; *see, e.g., Giannini v. Nw.*
 10 *Mut. Life Ins. Co.*, No. C 12-77 CW, 2012 WL 1535196, at *3 (N.D. Cal. Apr. 30, 2012)
 11 (accepting defendant’s estimate of one meal break violation and one rest break violation
 12 *per day* for amount in controversy purposes, where plaintiff alleged that defendant did
 13 not provide breaks because it misclassified him and putative class members as exempt);
 14 *cf. Dawson v. Hitco Carbon Composites, Inc.*, No. CV16-7337 PSG(FFMx), 2016 WL
 15 7235629, at *3-4 (C.D. Cal. Dec. 14, 2016) (approving of “conservative” 50 percent
 16 violation rate for meal and rest break claims, and citing cases approving 100 percent
 17 violation rate); *Oda*, 2015 WL 93335, at *5 (approving of 50 percent violation rate for
 18 meal and rest break claims).

19 18. In sum, Smith’s claims for penalties for failing to pay all wages due to
 20 employees upon the end of their employment (\$2.5 million), overtime damages
 21 (\$4.8 million), and meal and rest break premiums (\$6.5 million) conservatively place
 22 approximately \$13.8 million in controversy. *See, e.g., Deehan v. Amerigas Partners,*
 23 *L.P.*, No. 08cv1009 BJM(JMA), 2008 WL 4104475, at *1 (S.D. Cal. Sept. 2, 2018)
 24 (amount in controversy satisfied under preponderance of evidence standard where
 25

26 ⁷ A three-year statute of limitations applies to wage and hour claims brought under the
 27 California Labor Code. *See* Cal. Civ. Proc. Code § 338(a); *Aubry v. Goldhor*, 201 Cal.
 28 App. 3d 399, 404 (1988). However, because Smith’s first cause of action states a claim
 under California Business and Professions Code section 17200 based on his meal break
 and rest break allegations, he seeks recovery for a four-year period. *See* Complaint
 ¶¶ 48-62 (expressly “incorporat[ing] by reference” the first cause of action).

1 estimated class size multiplied by statutory penalty for alleged violations exceeded \$5
2 million).

3 19. In connection with each of his causes of action, Smith also seeks attorneys'
4 fees, which must be included in the amount of controversy. *See Galt G/S v. JSS*
5 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). The Ninth Circuit has established 25
6 percent of total potential damages as a benchmark award for attorney's fees. *See*
7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also Deaver v. BBVA*
8 *Compass Consulting & Benefits, Inc.*, No. 13-cv-00222-JSC, 2014 WL 2199645, at *6
9 (N.D. Cal. May 27, 2014) (accounting for attorney's fees by adding 25 percent of
10 potential damages and penalties to amount in controversy); *Ford v. CEC Entm't, Inc.*,
11 No. CV 14-01420 RS, 2014 WL 3377990, at *6 (N.D. Cal. July 10, 2014) (same);
12 *Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL 3818304, at *4-5
13 (S.D. Cal. Aug. 4, 2014) (denying motion to remand where defendant showed potential
14 damages of \$4.2 million because attorneys' fees of 25 percent brought the total amount
15 in controversy to \$5.3 million). Attorneys' fees of 25 percent place an additional \$3.4
16 million in controversy.

17 20. In short, even by conservative estimates, the total monetary relief placed in
18 controversy by the complaint far exceeds \$5 million. Therefore, the amount in
19 controversy requirement is satisfied. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d
20 696, 700-01 (9th Cir. 2007) (remand denied under preponderance of the evidence
21 standard where defendant's conservative estimates exceeded the requisite amount).

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

25 VENUE

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

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WHEREFORE, Defendant requests that the above action now pending against it in the Superior Court of California, County of San Diego, be removed to this Court.

Respectfully submitted,

Dated: February 27, 2019

**AKIN GUMP STRAUSS HAUER &
FELD LLP**

By /s/ Donna M. Mezias
Donna M. Mezias
Attorneys for defendant
Home Depot U.S.A., Inc.

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10 Attorneys for defendant
11 HOME DEPOT U.S.A., INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 CRAIG SMITH, an individual, on
15 behalf of himself, and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 HOME DEPOT U.S.A., INC., a
20 Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. '19CV0402 BEN MSB

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

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

(*San Diego County Superior Court,
Case No. 37-2019-00001930-CU-OE-
CTL*)

Date Action Filed: January 11, 2019

DECLARATION OF DONNA M. MEZIAS

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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.

2. On January 11, 2019, an action was commenced against defendant in the Superior Court of California, County of San Diego, titled *Smith v. Home Depot U.S.A., Inc.*, Case No. 37-2019-00001930-CU-OE-CTL. True and correct copies of the Complaint, summons, civil cover sheet, notice of case assignment, and alternative dispute resolution information packet, all of which were served on defendant, 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. 37-2019-00001930-CU-OE-CTL.

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

Executed on this 27th day of February, 2019 in San Francisco, California.

By Donna M. Mezas
Donna M. Mezas

EXHIBIT A

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

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10
11 **CRAIG SMITH**, an individual, on behalf
of himself, and on behalf of all persons
12 similarly situated,

13 Plaintiff,

14 vs.

15 **HOME DEPOT U.S.A., INC.**, a
16 Corporation; and **DOES 1 through 50**,
inclusive,

17
18 Defendants.

Case No. 37-2019-00001930-CU-DE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 510, 1194 AND
1198, *et seq.*;

3. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;

4. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
and,

5. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Craig Smith ("PLAINTIFF"), on behalf of himself and all other similarly
2 situated current and former employees, alleges on information and belief, except for his own
3 acts and knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Home Depot U.S.A., Inc. ("DEFENDANT") is a corporation and at
7 all relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout the State of California.

9 2. DEFENDANT doing business as The Home Depot, owns and operates home
10 improvement retail stores. DEFENDANT offers building materials, home improvement, lawn
11 and garden, and kitchen, lighting, storage, and flooring design products. DEFENDANT was
12 incorporated in 1989 and operates as a subsidiary of The Home Depot, Inc.

13 3. To successfully compete against their competitors, DEFENDANT substantially
14 reduced its labor costs by placing the labor burden on a smaller number of employees. The goal
15 of overtime laws includes expanding employment throughout the workforce by putting financial
16 pressure on the employer and nurturing a stout job market, as well as the important public policy
17 goal of protecting employees in a relatively weak bargaining position against the unfair scheme
18 of uncompensated overtime work. An employer's obligation to pay its employees wages is
19 more than a matter of private concern between the parties. That obligation is founded on a
20 compelling public policy judgment that employees are entitled to work a livable number of
21 hours at a livable wage. In addition, statutes and regulations that compel employers to pay
22 overtime relate to fundamental issues of social welfare worthy of protection. The requirement
23 to pay overtime wages extends beyond the benefits individual workers receive because overtime
24 wages discourage employers from concentrating work in a few overburdened hands and
25 encourage employers to instead hire additional employees. Especially in today's economic
26 climate, the importance of spreading available work to reduce unemployment cannot be
27 overestimated.

28 4. PLAINTIFF was employed by DEFENDANT as Assistant Manager from April

1 of 1999 to October of 2017. At all times during his employment with DEFENDANT as a
2 Assistant Manager, PLAINTIFF was classified as a salaried employee exempt from overtime
3 pay and the legally required meal and rest periods.

4 5. PLAINTIFF, as a Assistant Manager, was engaged in the core, day-to-day
5 business activities of DEFENDANT. The Assistant Managers engaged in the finite set of tasks
6 of greeting customers, handling customer service requests and customer service complaints,
7 answering phone calls, taking inventory, receiving product shipments, assisting in the
8 merchandising operation, printing out reports and providing the reports to upper management,
9 unlocking safes, counting money for the cash register, conducting safety inspections by walking
10 the store aisles, processing merchandise returns, operating the customer care center, return desks
11 and self-check-out areas all in accordance with DEFENDANT's business policies and practices.

12 6. The position of Assistant Manager was represented by DEFENDANT to
13 PLAINTIFF and the other Assistant Managers as a salaried position exempt from overtime pay
14 and the legally required meal breaks.

15 7. To perform their finite set of tasks, the Assistant Managers did not engage in a
16 supervisory role given the constraints placed upon them by company policy. Assistant
17 Managers had zero responsibility in determining what work was to be done by other employees
18 or in what time frame. Furthermore, Assistant Managers also did not have a distinct role in
19 training other employees or determining what training they were to receive. Lastly, PLAINTIFF
20 and other Assistant Managers did not have the authority to hire, fire, or promote employees,
21 determine their pay rates or benefits, or give raises as they were unable to make employment-
22 related, personnel decisions. Consequently, PLAINTIFF and the other Assistant Managers did
23 not have the authority to decide whether or not an employee should be disciplined for an
24 infraction. Disciplinary decisions were made by the human resources department or dictated
25 by company policies. Overall, PLAINTIFF's and other Assistant Managers' recommendations
26 were given no weight on all the above issues. As a result, PLAINTIFF and the other Assistant
27 Managers were engaged in a type of work that required no exercise of independent judgment
28 or discretion as to any matter of significance. Therefore, PLAINTIFF and all the other Assistant

1 Managers were "managers" in name only because they did not have managerial duties or
2 authority and should therefore be properly classified as non-exempt employees.

3 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
4 defined as all persons who are or previously were employed by DEFENDANT as Assistant
5 Managers in California and were classified as exempt from overtime wages (the
6 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years
7 prior to the filing of this Complaint and ending on the date as determined by the Court (the
8 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
9 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

10 9. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members
11 was set by DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members worked
12 from time to time in excess of eight (8) hours in a workday and/or more than forty (40) hours
13 in a workweek.

14 10. PLAINTIFF and the other CALIFORNIA CLASS Members were not provided
15 with overtime compensation and meal periods required by law as a result of being classified as
16 "exempt" by DEFENDANT.

17 11. As a matter of company policy, practice, and procedure, DEFENDANT has
18 uniformly, unlawfully, unfairly and/or deceptively classified every Assistant Manager as exempt
19 from overtime pay and other related benefits, failed to pay the required overtime compensation
20 and otherwise failed to comply with all applicable labor laws with respect to these Assistant
21 Managers.

22 12. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

3 13. The agents, servants and/or employees of the Defendants and each of them acting
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendants are legally attributable to the other Defendants and
8 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 Defendants' agents, servants and/or employees.

11
12 THE CONDUCT

13 14. The finite set of tasks required of the Assistant Managers as defined by
14 DEFENDANT were executed by the Assistant Managers through the performance of non-
15 exempt labor within a defined manual skill set.

16 15. Although PLAINTIFF and the other Assistant Managers spent the vast majority
17 of their time performing these non-exempt tasks, DEFENDANT instituted a blanket
18 classification policy, practice and procedure by which all of these Assistant Managers were
19 classified as exempt from overtime compensation. By reason of this uniform exemption
20 practice, policy and procedure applicable to PLAINTIFF and the other Assistant Managers who
21 performed these non-exempt tasks, DEFENDANT committed acts of unfair competition in
22 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
23 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which
24 failed to properly classify PLAINTIFF and the other Assistant Managers and thereby failed to
25 pay them overtime wages for documented overtime worked. The proper classification of these
26 employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
27 the obligation to meet this burden, DEFENDANT failed to pay all required overtime
28 compensation for work performed by the members of the CALIFORNIA CLASS and violated

1 the California Labor Code and regulations promulgated thereunder as herein alleged.

2 16. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
3 are properly classified as exempt and that (b) DEFENDANT otherwise complied with
4 applicable laws.

5 17. During their employment with DEFENDANT, PLAINTIFF and the other
6 CALIFORNIA CLASS Members, performed non-managerial, non-exempt tasks, but were
7 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more than
8 eight (8) hours in a workday and/or more than forty (40) hours in a workweek. In addition,
9 DEFENDANT failed to provide legally required off-duty meal and rest breaks to PLAINTIFF
10 and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and
11 Labor Code. DEFENDANT did not have a policy or practice which provided meal and rest
12 breaks to PLAINTIFF and the other CALIFORNIA CLASS Members. As a result,
13 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
14 legally required meal breaks is evidenced by DEFENDANT's business records which contain
15 no record of these breaks.

16 18. PLAINTIFF and the other Assistant Managers employed by DEFENDANT were
17 not engaged in work of a type that was or now is directly related to the management or general
18 business operations of the DEFENDANT's customers, when giving these words a fair but
19 narrow construction. PLAINTIFF and the other Assistant Managers employed by
20 DEFENDANT were also not engaged in work of a type that was or now is performed at the
21 level of the policy or management of DEFENDANT. PLAINTIFF and the other Assistant
22 Managers employed by DEFENDANT were also not engaged in work requiring knowledge of
23 an advanced type in a field or science or learning customarily acquired by a prolonged course
24 of specialized intellectual instruction and study, but rather their work involved the performance
25 of routine mental, clerical, and/or physical processes. PLAINTIFF and the other Assistant
26 Managers employed by DEFENDANT were also not engaged in work that was intellectual and
27 varied in character, but rather was routine mental, clerical, and/or physical work that is of such
28 character that the output produced or the result accomplished can be standardized in relation to

1 a given period of time. The work of an Assistant Manager of DEFENDANT was work wherein
2 PLAINTIFF and the members of the CALIFORNIA CLASS were engaged in the day-to-day
3 business of DEFENDANT.

4 19. In performing these tasks, PLAINTIFF and other CALIFORNIA CLASS
5 Members follow procedures established by DEFENDANT. PLAINTIFF and other
6 CALIFORNIA CLASS Members did not set policies or establish procedures for DEFENDANT
7 and were expected to use their experience, knowledge, skill and training to operate within the
8 policy guidelines that were provided to them by DEFENDANT. As a result, PLAINTIFF and
9 the other Assistant Managers should be properly classified as non-exempt employees.

10 20. Assistant Managers were classified as exempt from California overtime and
11 related laws by DEFENDANT, however, these employees did not have managerial duties or
12 authority and were therefore managers in name only. Assistant Managers in performing these
13 ongoing day-to-day, non-exempt and non-managerial tasks had no role in supervising employees
14 and have no authority to make employment-related decisions relating to DEFENDANT's
15 employees. Furthermore, the Assistant Managers were tightly controlled by company policy and
16 by their supervisors, did not exercise discretion or independent judgment as to matters of
17 significance, and their tasks were not directly related to DEFENDANT's management policies
18 or general business operation.

19 21. PLAINTIFF and all members of the CALIFORNIA CLASS were uniformly
20 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
21 DEFENDANT failed to take the proper steps to determine whether PLAINTIFF, and the
22 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial
23 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
24 exempt from applicable California labor laws. Since DEFENDANT affirmatively and wilfully
25 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with
26 California labor laws, DEFENDANT's practices violated and continue to violate California law.
27 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFF
28 and each member of the CALIFORNIA CLASS that they were exempt from overtime pay when

1 DEFENDANT knew or should have known that this statement was false and not based on
2 known facts. DEFENDANT also acted unfairly by violating the California labor laws, and as
3 a result of this policy and practice, DEFENDANT also violated the UCL. In doing so,
4 DEFENDANT cheated the competition by paying the CALIFORNIA CLASS less than the
5 amount competitors paid who complied with the law and cheated the CALIFORNIA CLASS
6 by not paying them in accordance with California law.

7 22. By reason of this uniform conduct applicable to PLAINTIFF and all the
8 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
9 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
10 (the "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
11 classify PLAINTIFF and the CALIFORNIA CLASS of Assistant Managers as non-exempt.
12 The proper classification of these employees is DEFENDANT's burden. As a result of
13 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
14 failed to properly calculate and/or pay all required overtime compensation for work performed
15 by the members of the CALIFORNIA CLASS and violated the applicable Wage Order, the
16 California Labor Code and the regulations promulgated thereunder as herein alleged.

17 23. PLAINTIFF worked as a Assistant Manager for DEFENDANT and was classified
18 as an exempt employee from April of 1999 to October of 2017. PLAINTIFF's tasks were non-
19 managerial, non-exempt tasks, such as, greeting customers, handling customer service requests
20 and customer service complaints, answering phone calls, taking inventory, receiving product
21 shipments, assisting in the merchandising operation, printing out reports and providing the
22 reports to upper management, unlocking safes, counting money for the cash register, conducting
23 safety inspections by walking the store aisles, processing merchandise returns, operating the
24 customer care center, return desks and self-check-out areas all in accordance with
25 DEFENDANT's company policies. During the CALIFORNIA CLASS PERIOD, PLAINTIFF
26 was required to work in excess of eight (8) hours in a workday and/or more than forty (40)
27 hours in a workweek, but as a result of DEFENDANT's misclassification of PLAINTIFF as
28 exempt from the applicable California Labor Code provisions, PLAINTIFF was not

1 compensated by DEFENDANT for his overtime worked at the applicable overtime rate.
2 DEFENDANT also failed to provide the legally required off-duty meal breaks to PLAINTIFF
3 as required by the applicable Wage Order and Labor Code. DEFENDANT did not have a
4 policy or practice which provided meal and rest breaks to PLAINTIFF and also failed to
5 compensate PLAINTIFF for his missed meal and rest breaks. To date, DEFENDANT has not
6 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages owed
7 to him under Cal. Lab. Code § 203.

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9 **THE CALIFORNIA CLASS**

10 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
12 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California
13 Class, defined as all persons who are or previously were employed by DEFENDANT as
14 Assistant Managers in California and were classified as exempt from overtime wages (the
15 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years
16 prior to the filing of this Complaint and ending on the date as determined by the Court (the
17 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
18 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

19 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
21 accordingly.

22 26. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
24 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively
26 instituted a practice to ensure that the employees employed in a Assistant Manager position
27 were not properly classified as non-exempt from the requirements of California Labor Code §§
28 510, *et seq.*

1 27. DEFENDANT has the burden of proof to make sure that each and every employee
2 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
3 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in
4 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice that
5 misclassifies the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy
6 and practice in place at all times during the CALIFORNIA CLASS PERIOD and currently in
7 place is to systematically classify each and every CALIFORNIA CLASS Member as exempt
8 from the requirements of the California Labor Code §§ 510, *et seq.* This common business
9 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on
10 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
11 §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this
12 claim.

13 28. At no time during PLAINTIFF's employment with DEFENDANT has any
14 Assistant Manager been reclassified as non-exempt from the applicable requirements of
15 California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially,
16 uniformly, and systematically classified as exempt upon being hired.

17 29. Any individual declarations of any employees offered at this time purporting to
18 indicate that one or more Assistant Managers may have been properly classified is of no force
19 or affect absent contemporaneous evidence that DEFENDANT's uniform system did not
20 misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt pursuant to
21 Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
22 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
23 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations, the
24 PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT
25 to provide restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to
26 retribute these funds to the PLAINTIFF and the CALIFORNIA CLASS Members according to
27 proof.

28 30. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
3 California law by:

4 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
6 having in place company policies, practices and procedures that uniformly
7 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS
8 as exempt;

9 (b) Committing an act of unfair competition in violation of the UCL, by
10 unlawfully, unfairly, and/or deceptively failing to have in place a company
11 policy, practice and procedure that accurately determined the amount of
12 working time spent by PLAINTIFF and the members of the
13 CALIFORNIA CLASS performing non-exempt labor;

14 (c) Committing an act of unfair competition in violation of the UCL, by
15 having in place a company policy, practice and procedure that failed to
16 reclassify as non-exempt those members of the CALIFORNIA CLASS
17 whose actual tasks were comprised of non-exempt job functions;

18 (d) Committing an act of unfair competition in violation of the UCL, by
19 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
20 overtime pay to PLAINTIFF and the members of the CALIFORNIA
21 CLASS who were improperly classified as exempt, and retaining the
22 unpaid overtime to the benefit of DEFENDANT; and,

23 (e) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
25 the CALIFORNIA CLASS members.

26 32. This Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

28 (a) The persons who comprise the CALIFORNIA CLASS are so numerous

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that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was initially classified as exempt upon hiring based on the defined corporate policies and practices and labored under DEFENDANT's systematic procedure that failed to properly classify as non-exempt the PLAINTIFF and the members of the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT by deceptively advising all Assistant Managers that they are exempt from overtime wages based on the defined corporate policies and practices, and unfairly failing to pay overtime to these employees who were improperly classified as exempt; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all employees in the CALIFORNIA CLASS.

1 33. In addition to meeting the statutory prerequisites to a Class Action, this Action
2 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

3 (a) Without class certification and determination of declaratory, statutory and
4 other legal questions within the class format, prosecution of separate
5 actions by individual members of the CALIFORNIA CLASS will create
6 the risk of:

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

11 2) Adjudication with respect to individual members of the
12 CALIFORNIA CLASS which would as a practical matter be
13 dispositive of interests of the other members not party to the
14 adjudication or substantially impair or impede their ability to
15 protect their interests.

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
17 act on grounds generally applicable to the CALIFORNIA CLASS, making
18 appropriate class-wide relief with respect to the CALIFORNIA CLASS
19 as a whole in that DEFENDANT uniformly classified and treated the
20 Assistant Managers as exempt and, thereafter, uniformly failed to take
21 proper steps to determine whether the Assistant Managers were properly
22 classified as exempt, and thereby denied these employees overtime wages
23 as required by law;

24 1) With respect to the First Cause of Action, the final relief on behalf
25 of the CALIFORNIA CLASS sought does not relate exclusively to
26 restitution because through this claim the PLAINTIFF seek
27 declaratory relief holding that DEFENDANT's policies and
28 practices constitute unfair competition, along with incidental

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equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because as a practical matter a substantial number of individual CALIFORNIA CLASS Members

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will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Cal. Code of Civ. Proc. § 382.

34. This Court should permit this Action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is

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maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all DEFENDANT's Assistant Managers who were classified as exempt and who were employed in California during the CALIFORNIA CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

35. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been systematically, intentionally and uniformly subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

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THE CALIFORNIA LABOR SUB-CLASS

36. PLAINTIFF further bring the Second, Third, Fourth and Fifth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the filing of the action and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

37. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and other labor laws based on DEFENDANT's comprehensive policies and procedures in order to avoid the payment of overtime wages by misclassifying their positions as exempt from overtime wages and other labor laws. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

38. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS Members have been systematically, intentionally and uniformly misclassified as exempt as a matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek leave to amend the Complaint to include these additional job titles when they have been identified.

39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

40. Common questions of law and fact exist as to members of the CALIFORNIA

1 LABOR SUB-CLASS, including, but not limited, to the following:

- 2 (a) Whether DEFENDANT unlawfully failed to pay overtime compensation
3 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
4 the California Labor Code and California regulations and the applicable
5 California Wage Order;
- 6 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were
7 non-exempt employees entitled to overtime compensation for overtime
8 worked under the overtime pay requirements of California law;
- 9 (c) Whether DEFENDANT's policy and practice of classifying the
10 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime
11 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS
12 Members overtime violate applicable provisions of California law;
- 13 (d) Whether DEFENDANT unlawfully failed to keep and furnish
14 CALIFORNIA LABOR SUB-CLASS Members with accurate records of
15 overtime worked; and,
- 16 (e) The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS.

18 41. DEFENDANT, as a matter of corporate policy, practice and procedure,
19 erroneously classified all Assistant Managers as exempt from overtime wages and other labor
20 laws. All Assistant Managers, including PLAINTIFF, performed the same finite set of tasks
21 and were paid by DEFENDANT according to uniform and systematic company procedures,
22 which, as alleged herein above, fails to correctly pay overtime compensation. This business
23 practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-
24 CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

25 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

- 27 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
28 failing to pay the PLAINTIFF and the members of the CALIFORNIA

- 1 LABOR SUB-CLASS the correct overtime pay for a workday longer than
2 eight (8) hours and/or a workweek longer than forty (40) hours for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 4 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
6 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
7 the legally required rest breaks;
- 8 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
9 when an employee is discharged or quits from employment, the employer
10 must pay the employee all wages due without abatement, by failing to
11 tender full payment and/or restitution of wages owed or in the manner
12 required by California law to the members of the CALIFORNIA LABOR
13 SUB-CLASS who have terminated their employment.

14 43. This Class Action meets the statutory prerequisites for the maintenance of a Class
15 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 16 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
17 so numerous that the joinder of all such persons is impracticable and the
18 disposition of their claims as a class will benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
20 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
21 CLASS and will apply uniformly to every member of the CALIFORNIA
22 LABOR SUB-CLASS;
- 23 (c) The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
25 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
26 was improperly classified as exempt and denied overtime pay as a result
27 of DEFENDANT's systematic classification practices. PLAINTIFF and
28 all the other members of the CALIFORNIA LABOR SUB-CLASS

1 sustained economic injuries arising from DEFENDANT’s violations of the
2 laws of California; and,

3 (d) The representative PLAINTIFF will fairly and adequately represent and
4 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
5 retained counsel who are competent and experienced in Class Action
6 litigation. There are no material conflicts between the claims of the
7 representative PLAINTIFF and the members of the CALIFORNIA
8 LABOR SUB-CLASS that would make class certification inappropriate.
9 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
10 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

11 44. In addition to meeting the statutory prerequisites to a Class Action, this Action
12 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

13 (a) Without class certification and determination of declaratory, statutory and
14 other legal questions within the class format, prosecution of separate
15 actions by individual members of the CALIFORNIA LABOR SUB-
16 CLASS will create the risk of:

17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA LABOR SUB-CLASS which
19 would establish incompatible standards of conduct for the parties
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,

21 2) Adjudication with respect to individual members of the
22 CALIFORNIA LABOR SUB-CLASS which would as a practical
23 matter be dispositive of interests of the other members not party to
24 the adjudication or substantially impair or impede their ability to
25 protect their interests.

26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
27 or refused to act on grounds generally applicable to the CALIFORNIA
28 LABOR SUB-CLASS, making appropriate class-wide relief with respect

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to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly classified and treated the Assistant Managers as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Assistant Managers were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members

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not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Cal. Code of Civ. Proc. § 382.

45. This Court should permit this Action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
- 2 Members, will not be able to obtain effective and economic legal redress
- 3 unless the action is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
- 5 equitable relief for the acts of unfair competition, statutory violations and
- 6 other improprieties, and in obtaining adequate compensation for the
- 7 damages and injuries which DEFENDANT's actions have inflicted upon
- 8 the CALIFORNIA LABOR SUB-CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
- 10 DEFENDANT are sufficient to adequately compensate the members of the
- 11 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable
- 13 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
- 14 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
- 15 CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 17 ascertainable from the business records of DEFENDANT. The
- 18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
- 19 CLASS Members who were employed by DEFENDANT in California
- 20 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring
- 22 a efficient and rapid conclusion to all litigation of all wage and hour
- 23 related claims arising out of the conduct of DEFENDANT.

24
25 **JURISDICTION AND VENUE**

26 46. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §
27 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action
28 on behalf of similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc.

1 § 382.

2 47. Venue is proper in this Court pursuant to California Code of Civil Procedure,
3 Sections 395 and 395.5, because PLAINTIFF worked for DEFENDANT in San Francisco
4 County and DEFENDANT (i) currently maintains and at all relevant times maintained offices
5 and facilities in this County and/or conducts substantial business in this County, and (ii)
6 committed the wrongful conduct herein alleged in this County against members of the
7 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

8
9 **FIRST CAUSE OF ACTION**

10 **For Unlawful Business Practices**

11 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

13 48. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
15 Complaint.

16 49. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
17 Code § 17021.

18 50. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
19 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
20 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
21 competition as follows:

22 Any person who engages, has engaged, or proposes to engage in unfair
23 competition may be enjoined in any court of competent jurisdiction. The court
24 may make such orders or judgments, including the appointment of a receiver,
25 as may be necessary to prevent the use or employment by any person of any
26 practice which constitutes unfair competition, as defined in this chapter, or as
27 may be necessary to restore to any person in interest any money or property, real
28 or personal, which may have been acquired by means of such unfair
29 competition.

California Business & Professions Code § 17203.

51. By the conduct alleged herein, DEFENDANT has engaged and continues to

1 engage in a business practice which violates California law, including but not limited to, the
2 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code
3 Sections 204, 226.7, 510, 512, 1194 & 1198, and for which this Court should issue declaratory
4 and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to
5 prevent and remedy the conduct held to constitute unfair competition, including restitution of
6 wages wrongfully withheld.

7 52. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair
8 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous
9 or substantially injurious to employees, and were without valid justification or utility for which
10 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
11 California Business & Professions Code, including restitution of wages wrongfully withheld.

12 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and
13 fraudulent in that DEFENDANT's uniform policy and practice was to represent to PLAINTIFF
14 and other CALIFORNIA CLASS Members that they were exempt from overtime pay when in
15 fact these representations are false and likely to deceive, for which this Court should issue
16 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
17 of wages wrongfully withheld.

18 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

22 55. By the conduct alleged herein, DEFENDANT's practices were also unfair and
23 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to the PLAINTIFF and the CALIFORNIA CLASS members.

25 56. Therefore, PLAINTIFF demands on behalf of himself and on behalf of
26 each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-
27 duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour
28 of pay for each workday in which a second off-duty meal period was not timely provided for

1 each ten (10) hours of work.

2 57. PLAINTIFF further demands on behalf of himself and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
4 was not timely provided as required by law.

5 58. By and through the unlawful and unfair business practices described herein,
6 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
7 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and
8 benefits guaranteed by law and contract, all to the detriment of these employees and to the
9 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
10 who comply with the law.

11 59. All the acts described herein as violations of, among other things, the California
12 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,
13 were unlawful, were in violation of public policy, were immoral, unethical, oppressive, and
14 unscrupulous, and were likely to deceive employees, as herein alleged, and thereby constitute
15 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§
16 17200, *et seq.*

17 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
21 unfair business practices, including earned but unpaid overtime wages for all overtime worked.

22 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 62. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code §§ 510, 1194 and 1198]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 63. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
12 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 64. Cal. Lab. Code § 510 states in relevant part:

15 Eight hours of labor constitutes a day's work. Any work in excess of eight
16 hours in one workday and any work in excess of 40 hours in any one
17 workweek and the first eight hours worked on the seventh day of work in any
18 one workweek shall be compensated at the rate of no less than one and one-
19 half times the regular rate of pay for an employee. Any work in excess of 12
20 hours in one day shall be compensated at the rate of no less than twice the
21 regular rate of pay for an employee. In addition, any work in excess of eight
22 hours on any seventh day of a workweek shall be compensated at the rate of no
23 less than twice the regular rate of pay of an employee.

24 65. Cal. Lab. Code § 551 states that, "Every person employed in any occupation
25 of labor is entitled to one day's rest therefrom in seven."

26 66. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his
27 employees to work more than six days in seven."

28 67. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the
overtime rate of compensation required to be paid to a nonexempt full-time salaried
employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly
salary."

68. Cal. Lab. Code § 1194 states:

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action
4 the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney's fees, and costs
6 of suit.

7 69. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the
8 standard conditions of labor fixed by the commission shall be the maximum hours of work
9 and the standard conditions of labor for employees. The employment of any employee for
10 longer hours than those fixed by the order or under conditions of labor prohibited by the
11 order is unlawful."

12 70. DEFENDANT has intentionally and uniformly designated certain employees
13 as "exempt" employees, by their job title alone and without regard to DEFENDANT's
14 realistic expectations and actual overall requirements of the job, including the PLAINTIFF
15 and the other members of the CALIFORNIA LABOR SUB-CLASS who worked on the
16 production and non-managerial side of DEFENDANT's business. This was done in an
17 illegal attempt to avoid payment of overtime wages and other benefits in violation of the
18 Cal. Lab. Code and Industrial Welfare Commission requirements.

19 71. For an employee to be exempt as a bona fide "executive," all the following
20 criteria must be met and DEFENDANT has the burden of proving that:

- 21 (a) The employee's primary duty must be management of the enterprise, or of a
22 customarily recognized department or subdivision; and,
- 23 (b) The employee must customarily and regularly direct the work of at least two
24 (2) or more other employees; and,
- 25 (c) The employee must have the authority to hire and fire, or to command
26 particularly serious attention to his or her recommendations on such actions
27 affecting other employees; and,
- 28 (d) The employee must customarily and regularly exercise discretion and
independent judgment; and,
- (e) The employee must be primarily engaged in duties which meet the test of

1 exemption.

2 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because
3 they all fail to meet the requirements of being an "executive" within the meaning of the
4 applicable Wage Order.

5 72. For an employee to be exempt as a bona fide "administrator," all of the
6 following criteria must be met and DEFENDANT has the burden of proving that:

7 (a) The employee must perform office or non-manual work directly related to
8 management policies or general business operation of the employer; and,

9 (b) The employee must customarily and regularly exercise discretion and
10 independent judgment; and,

11 (c) The employee must regularly and directly assist a proprietor or an exempt
12 administrator; or,

13 (d) The employee must perform, under only general supervision, work requiring
14 special training, experience, or knowledge; or,

15 (e) The employee must execute special assignments and tasks under only general
16 supervision; and,

17 (f) The employee must be primarily engaged in duties which meet the test of
18 exemption.

19 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
20 they all fail to meet the requirements for being an "administrator" under the applicable Wage
21 Order.

22 73. The Industrial Welfare Commission, in Wage Order 4-2001, at section
23 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
24 with to place an employee in the "professional" exempt category. For an employee to be
25 exempt as a bona fide "professional," all the following criteria must be met and
26 DEFENDANT has the burden of proving that:

27 (a) The employee is primarily engaged in an occupation commonly recognized as
28 a learned or artistic profession. For the purposes of this subsection, "learned

1 or artistic profession" means an employee who is primarily engaged in the
2 performance of:

3 1) Work requiring knowledge of an advanced type in a field or science or
4 learning customarily acquired by a prolonged course of specialized
5 intellectual instruction and study, as distinguished from a general
6 academic education and from an apprenticeship, and from training in
7 the performance of routine mental, manual, or physical processes, or
8 work that is an essential part or necessarily incident to any of the above
9 work; or,

10 2) Work that is original and creative in character in a recognized field of
11 artistic endeavor, and the result of which depends primarily on the
12 invention, imagination or talent of the employee or work that is an
13 essential part of or incident to any of the above work; and,

14 3) Whose work is predominately intellectual and varied in character (as
15 opposed to routine mental, manual, mechanical, or physical work) and
16 is of such character cannot be standardized in relation to a given period
17 of time.

18 (b) The employee must customarily and regularly exercise discretion and
19 independent judgment; and,

20 (c) The employee earns a monthly salary equivalent to no less than two (2) times
21 the state minimum wage for full-time employment.

22 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because
23 they all fail to meet the requirements of being a "professional" within the meaning of the
24 applicable Wage Order.

25 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
26 CLASS, do not fit the definition of an exempt executive, administrative, or professional
27 employee because:

28 (a) They did not work as executives or administrators; and,

1 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
2 members of the CALIFORNIA LABOR SUB-CLASS because they did not
3 meet all the applicable requirements to work under the professional exemption
4 for the reasons set forth above in this Complaint.

5 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
6 the other members of the CALIFORNIA LABOR SUB-CLASS, worked more than eight (8)
7 hours in a workday and/or more than forty (40) hours in a workweek.

8 76. When PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
9 CLASS work overtime, DEFENDANT failed to pay PLAINTIFF, and the other members of
10 the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they work in
11 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and
12 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR
13 SUB-CLASS, were required to work, and did in fact work, overtime.

14 77. By virtue of DEFENDANT's unlawful failure to pay additional compensation
15 to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
16 their overtime work, PLAINTIFF, and the other members of the CALIFORNIA LABOR
17 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts
18 which are presently unknown to them and which will be ascertained according to proof at
19 trial.

20 78. DEFENDANT knew or should have known that PLAINTIFF, and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt and
22 DEFENDANT systematically elected, either through intentional malfeasance or gross
23 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
24 policy, practice and procedure.

25 79. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR
26 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,
27 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
28 provided by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation

1 is determined to be owed to members of the CALIFORNIA LABOR SUB-CLASS who
2 have terminated their employment, these employees would also be entitled to waiting time
3 penalties under Cal. Lab. Code § 203, which penalties are sought herein. Further,
4 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are
5 entitled to seek and recover statutory costs.

6 80. In performing the acts and practices herein alleged in violation of labor laws
7 and refusing to provide the requisite overtime compensation, DEFENDANT acted and
8 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF, and toward
9 the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter
10 disregard of their legal rights, or the consequences to them, and with the despicable intent of
11 depriving them of their property and legal rights and otherwise causing them injury in order
12 to increase corporate profits at the expense of PLAINTIFF and the members of the
13 CALIFORNIA LABOR SUB-CLASS.

14
15 **THIRD CAUSE OF ACTION**

16 **For Failure to Provide Required Meal Periods**

17 **[Cal. Lab. Code §§ 226.7 & 512]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 81. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 82. During the CALIFORNIA CLASS PERIOD, from time to time,
24 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF
25 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable
26 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from
28 being relieved of all of their duties for the legally required off-duty meal periods. As a result

1 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-
2 CLASS Members were often not fully relieved of duty by DEFENDANT for their meal
3 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
4 CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to
5 their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result,
6 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
7 forfeited meal breaks without additional compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice.

9 83. DEFENDANT further violated California Labor Code §§ 226.7 and the
10 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
11 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
12 the applicable Wage Order, one additional hour of compensation at each employee's regular
13 rate of pay for each workday that a meal period was not provided.

14 84. As a proximate result of the aforementioned violations, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
16 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
17 suit.

18
19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Rest Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

24 85. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.

27 86. Form time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-
28 CLASS Members were required to work in excess of four (4) hours without being provided

1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of
2 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first
3 and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
4 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
5 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA
6 LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof.
7 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
8 SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
9 and DEFENDANT's managers.

10 87. DEFENDANT further violated California Labor Code §§ 226.7 and the
11 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
12 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
13 the applicable Wage Order, one additional hour of compensation at each employee's regular
14 rate of pay for each workday that rest period was not provided.

15 88. As a proximate result of the aforementioned violations, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
17 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
18 suit.

19
20 **FIFTH CAUSE OF ACTION**

21 **For Failure to Pay Wages When Due**

22 **[Cal. Lab. Code §§ 201, 202, 203]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 89. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
26 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
27 paragraphs of this Complaint.

28 90. Cal. Lab. Code § 200 provides that:

1 As used in this article:

2 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of time,
3 task, piece, Commission basis, or other method of calculation.

4 (b) "Labor" includes labor, work, or service whether rendered or performed
under contract, subcontract, partnership, station plan, or other agreement if the
labor to be paid for is performed personally by the person demanding payment.

5 91. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
6 discharges an employee, the wages earned and unpaid at the time of discharge are due and
7 payable immediately."

8 92. Cal. Lab. Code § 202 provides, in relevant part, that:

9 If an employee not having a written contract for a definite period quits his or
10 her employment, his or her wages shall become due and payable not later than
72 hours thereafter, unless the employee has given 72 hours previous notice of
11 his or her intention to quit, in which case the employee is entitled to his or her
wages at the time of quitting. Notwithstanding any other provision of law, an
12 employee who quits without providing a 72-hour notice shall be entitled to
receive payment by mail if he or she so requests and designates a mailing
13 address. The date of the mailing shall constitute the date of payment for
purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

14 93. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
15 SUB-CLASS Members' employment contract.

16 94. Cal. Lab. Code § 203 provides:

17 If an employer willfully fails to pay, without abatement or reduction, in
18 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
20 more than 30 days.

21 95. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
22 CLASS Members terminated and DEFENDANT has not tendered payment of overtime
23 wages, to these employees who actually worked overtime, as required by law.

24 96. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
26 demands up to thirty days of pay as penalty for not paying all wages due at time of
27 termination for all employees who terminated employment during the CALIFORNIA
28 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,

1 plus interest and statutory costs as allowed by law.

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PRAYER FOR RELIEF

4 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

7 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a Class Action pursuant to California Code of Civil Procedure §
9 382;

10 B) An order requiring DEFENDANT to correctly calculate and pay all wages and
11 all sums unlawfully withheld from compensation due to the PLAINTIFF and
12 the other members of the CALIFORNIA CLASS;

13 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
14 fund for restitution of the sums incidental to DEFENDANT's violations due to
15 the PLAINTIFF and to the other members of the CALIFORNIA CLASS
16 according to proof; and,

17 D) An order temporarily, preliminarily, and permanently enjoining and restraining
18 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

19 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

20 A) That the Court certify the Second, Third, Fourth and Fifth Causes of Action
21 asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action
22 pursuant to California Code of Civil Procedure § 382;

23 B) Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation due to the PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
26 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
27 statutory rate;

28 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512

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and the applicable IWC Wage Order; and,

D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Cal. Labor Code §218.5 and/or §1194.

Dated: January 11, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 11, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

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

HOME DEPOT U.S.A., INC., a Corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CRAIG SMITH, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/11/2019 at 02:08:58 PM

Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte pueda decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central

330 W. Broadway, San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2019-00001930-CU-DE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman Blumenthal (Bar # 68687)
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara, La Jolla, CA 92037

Fax No.: (858) 551-1232

Phone No.: (858) 551-1223

DATE: 01/14/2019
(Fecha)

Clerk, by
(Secretario)

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): HOME DEPOT U.S.A., INC.

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date): 1/28/19



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Norman Blumenthal (Bar # 68687) Kyle Nordrehaug (Bar # 205975) Blumenthal Nordrehaug Bhowmik De Blouw LLP 2255 Calle Clara, La Jolla, CA 92037 TELEPHONE NO: (858) 551-1223 FAX NO: (858) 551-1232 ATTORNEY FOR (Name): Plaintiff Craig Smith	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/11/2019 at 02:09:58 PM Clerk of the Superior Court By Gen Dieu, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: CENTRAL	CASE NUMBER: 37-2019-0000193D-CU-OE-CTL JUDGE: Judge Richard E. L. Strauss DEPT:
CASE NAME: CRAIG SMITH v. HOME DEPOT U.S.A., INC.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

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

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) Non-PIP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (16) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Will of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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): FIVE (5)

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: January 11, 2019
 Norman Blumenthal
 (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 rules.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7075	
PLAINTIFF(S) / PETITIONER(S): Craig Smith	
DEFENDANT(S) / RESPONDENT(S): Home Depot USA Inc	
SMITH VS HOME DEPOT USA INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00001930-CU-OE-CTL

CASE ASSIGNMENT

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 01/11/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	09/13/2019	10:30 am	C-75	Richard E. L. Strauss

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

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

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

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

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

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

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

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

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

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

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



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00001930-CU-OE-CTL CASE TITLE: Smith vs Home Depot USA Inc (E-FILE)

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

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

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial.

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

Potential Advantages and Disadvantages of ADR

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

Potential Advantages

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

Potential Disadvantages

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

Most Common Types of ADR

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

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

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

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

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

Local ADR Programs for Civil Cases

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

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

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

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

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

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

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

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

Legal Representation and Advice

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Craig Smith	
DEFENDANT(S): Home Depot USA Inc	
SHORT TITLE: SMITH VS HOME DEPOT USA INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2019-00001930-CU-OE-CTL

Judge: Richard E. L. Strauss

Department: C-75

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

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

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

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

Date: _____ Date: _____

Name of Plaintiff _____ Name of Defendant _____

Signature _____ Signature _____

Name of Plaintiff's Attorney _____ Name of Defendant's Attorney _____

Signature _____ Signature _____

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.
 It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.
 No new parties may be added without leave of court.
IT IS SO ORDERED.

Dated: 01/14/2019 _____ JUDGE OF THE SUPERIOR COURT

EXHIBIT B

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

NORMAN BLUMENTHAL, (SBN 068687)
BLUMENTHAL, NORDREHAUG & BHOWMIK
2255 CALLE CLARA
LA JOLLA, CA 92037
858-551-1223
Attorney for: CRAIG SMITH, ETC.
Atty. File No.: 1569

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/01/2019 at 11:11:00 AM

Clerk of the Superior Court
By E-Filing, Deputy Clerk

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO
CENTRAL DIVISION-HALL OF JUSTICE

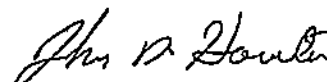
PLAINTIFF : CRAIG SMITH, ETC.
DEFENDANT : HOME DEPOT U.S.A., INC., A CORPORATION

Case No. : 37-2019-00001930-CU-OE-CTL
PROOF OF SERVICE OF SUMMONS

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; COMPLAINT; CIVIL CASE COVER SHEET; NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE ON MANDATORY EFILE CASE; ALTERNATIVE DISPUTE RESOLUTION(ADR) INFORMATION; STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION
3.
 - a. Party Served : HOME DEPOT U.S.A., INC., A CORPORATION
C/O CSC LAWYERS INCORPORATING SERVICE
 - b. Person Served : BECKY DEGEORGE, PROCESS SPECIALIST
(AUTHORIZED AGENT FOR CSC LAWYERS INC.)
4. Address where the party was served: 2710 GATEWAY OAKS DRIVE SUITE 150N
SACRAMENTO, CA 95833 (Business)
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 service of process for the party (1) on January 28, 2019 (2) at: 03:00 PM
6. The "Notice to the person served" (on the summons) was completed as follows:
 - c. on behalf of: HOME DEPOT U.S.A., INC., A CORPORATION
C/O CSC LAWYERS INCORPORATING SERVICE
under [xx] CCP 416.10 (corporation)
7. **Person who served papers**
 - a. JOHN D. HOUSTON
 - b. KNOX ATTORNEY SERVICE
2250 FOURTH AVENUE
SAN DIEGO, CA 92101
 - c. 619-233-9700
 - d. Fee For Service : \$ 104.55
 - e. I am
 - (3) a registered California process server
 - (i) an independent contractor
 - (ii) Registration No.: 508
 - (iii) County: YOLO, CA
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date : February 1, 2019

Signature: _____



JOHN D. HOUSTON

EXHIBIT C

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

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

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/26/2019 at 04:56:00 PwI
Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

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

12
13 CRAIG SMITH, an individual, on
behalf of himself and all persons
14 similarly situated,

15 Plaintiff,

16 vs.

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

19 Defendants.
20
21

Case No. 37-2019-00001930-CU-OE-
CTL

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

Date Action Filed: October 19, 2018

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

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

7 DEFENSES

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

10 FIRST DEFENSE

11 (Failure to State a Cause Of Action)

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

14 SECOND DEFENSE

15 (Statute of Limitations)

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

18 THIRD DEFENSE

19 (Estoppel)

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

23 FOURTH DEFENSE

24 (No Willfulness)

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

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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.

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1 TENTH DEFENSE

2 (Accord and Satisfaction)

3 The complaint, and each purported cause of action contained therein, is barred to
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.

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FIFTEENTH DEFENSE

(Class Action)

Plaintiff cannot satisfy the requirements for a class action.

SIXTEENTH DEFENSE

(Unjust Enrichment)

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

SEVENTEENTH DEFENSE

(No Unlawful Conduct)

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

EIGHTEENTH DEFENSE

(No Unfair Conduct)

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

NINETEENTH DEFENSE

(No Fraudulent Conduct)

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

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1 TWENTIETH DEFENSE

2 (Exemption)

3 The complaint, and each purported cause of action contained therein, is barred
4 because plaintiff and the individuals plaintiff purports to represent were properly
5 classified as exempt employees, including, but not limited to, under the administrative
6 or executive exemptions of the California Labor Code (Cal. Lab. Code § 515; IWC
7 Wage Order No. 4-2001). Plaintiff was an exempt administrative employee because he
8 was primarily engaged in exempt duties, customarily and regularly exercised discretion
9 and independent judgment in performing those duties, and earned a monthly salary
10 equivalent to no less than two times the state minimum wage for full-time employment.
11 Cal. Lab. Code § 515; Wage Order No. 4-2001. Plaintiff was an exempt executive
12 employee because he was primarily engaged in duties and responsibilities that involved
13 the management of an enterprise or a customarily recognized department or subdivision,
14 customarily and regularly directed the work of two or more employees, had the
15 authority to hire or fire other employees (or his suggestions as to hiring, firing,
16 advancement and promotion were given particularly weight), regularly exercised
17 discretion and independent judgment, and earned a monthly salary equivalent to no less
18 than two times the state minimum wage for full-time employment. Cal. Lab. Code §
19 515; Wage Order No. 4-2001.

20 TWENTY-FIRST DEFENSE

21 (Unclean Hands)

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

24 TWENTY-SECOND DEFENSE

25 (No Injury)

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

3 TWENTY-THIRD DEFENSE

4 (Adequate Remedy)

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

9 TWENTY-FOURTH DEFENSE

10 (*De Minimis* Doctrine)

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

13 TWENTY-FIFTH DEFENSE

14 (Impermissible Representative Action)

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

19 RESERVATION OF RIGHTS

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

24 WHEREFORE, defendant prays for judgment as follows:

- 25 1. That plaintiff take nothing by reason of the complaint;
26 2. That the complaint be dismissed with prejudice;
27 3. That judgment be entered in favor of defendant;
28 4. That defendant recover its costs of suit herein;

1 5. That defendant recover its attorneys' fees pursuant to Labor Code § 218.5
2 and California Code of Civil Procedure § 128.7 and any other appropriate basis; and

3 6. That defendant be granted such further relief as the Court deems just and
4 proper.

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Dated: February 26, 2019

AKIN GUMP STRAUSS HAUER & FELD LLP

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco California 94104. On February 26, 2019, I served the foregoing document(s) described as: **DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER TO COMPLAINT**, on the interested party(ies) below, using the following means:

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232

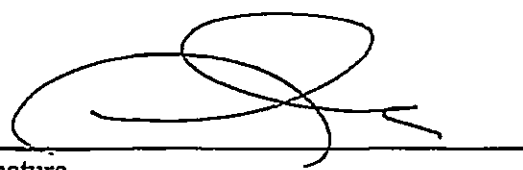
BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection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

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

Executed on February 26, 2019. at San Francisco, California.

JEREMIAS V. CORDERO

Print Name



Signature

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

10 Attorneys for defendant
11 HOME DEPOT U.S.A., INC.

12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 CRAIG SMITH, an individual, on
16 behalf of himself, and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 HOME DEPOT U.S.A., INC., a
21 Delaware corporation; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No. '19CV0402 BEN MSB

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

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

(*San Diego County Superior Court,
Case No. 37-2019-00001930-CU-OE-
CTL*)

Date Action Filed: January 11, 2019

DECLARATION OF CHRISTINA JOSIAH

I, Christina Josiah, certify and declare as follows:

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

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

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

4. Craig Smith's employment records reflect that he worked at Home Depot retail stores throughout California, including in Genesee, Santee, Chula Vista, and Lemon Grove from April 1999 through October 2017, and that his residential address on file throughout his employment was in La Mesa and El Cajon, California.

5. Assistant Store Managers employed by Home Depot in California and classified as exempt have, since January 11, 2015, been full time employees. They typically work at least 40 hours each week.

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. Executed on February 25, 2019, in San Diego
3 California.

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

10 Attorneys for defendant
11 HOME DEPOT U.S.A., INC.

12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 CRAIG SMITH, an individual, on
16 behalf of himself, and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 HOME DEPOT U.S.A., INC., a
21 Delaware corporation; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No. '19CV0402 BEN MSB

DECLARATION OF G. EDWARD
ANDERSON, PH.D.

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

*(San Diego County Superior Court,
Case No. 37-2019-00001930-CU-OE-
CTL)*

Date Action Filed: January 11, 2019

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

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

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

3 5. I reviewed human resource records for Home Depot's Assistant Manager
4 employees working in California since January 11, 2015.

5 6. Since January 11, 2015, Home Depot employed more than 1,875 exempt
6 Assistant Managers in California stores.

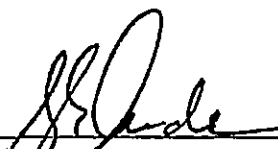
7 7. The individuals identified in paragraph 6 earned an average annual salary
8 of more than \$62,500 since January 11, 2015. During this time period, exempt assistant
9 managers in California stores worked more than 217,000 work weeks.

10 8. Since January 11, 2016, more than 350 Home Depot Assistant Managers
11 terminated their employment with Home Depot in California.

12 9. The individuals identified in paragraph 8 earned an annualized average
13 salary of more than \$62,500 during their final three months of employment in
14 California, or more than \$240.00 per work day.
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19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct.

21 Executed on February 26, 2019, in Los Angeles, California.
22

23
24 By  _____
25 G. Edward (Ted) Anderson, Ph.D.
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JS 44 (Rev. 12/12)

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
 CRAIG SMITH, an individual on behalf of himself, and on behalf of all persons similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Norman B. Blumenthal (SBN 068687)
 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
 2255 Calle Clara, La Jolla 92037 Tel: (858) 551-1223

DEFENDANTS
 HOME DEPOT U.S.A., INC., a Corporation; and DOES 1 through 50, inclusive

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

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

'19CV0402 BEN MSB

Attorneys (If Known)
 Donna Mezas (SBN 111902) Dorothy Kaslow (SBN 287112)
 AKIN GUMP STRAUSS HAUER & FELD LLP
 580 California St., Ste 1500, San Francisco, CA 94104 T(415)765-9500

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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Others: <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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. Removal under CAFA.

Brief description of cause:
Underlying causes of action are various California state wage and hour claims.

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/27/2019 SIGNATURE OF ATTORNEY OF RECORD: Donna M. Mezas

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Home Depot Owes Assistant Managers Overtime Pay](#)
