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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

EDUARDO SANDOVAL on behalf of himself
and all aggrieved employees,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC.; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 22CV015414

**FIRST AMENDED COMPLAINT FOR
PENALTIES FOR VIOLATION OF
LABOR CODE § 2698 *et seq.* (PRIVATE
ATTORNEYS GENERAL ACT OF 2004)**

FILED
Superior Court of California
County of Alameda

09/21/2022

Clerk of the Court, Executive Officer / Clerk of the Court

By: *Cheryl Clark* Deputy
C. Clark

1 Plaintiff EDUARDO SANDOVAL (“Plaintiff” or “SANDOVAL”) hereby submits his complaint
2 (“Complaint”) against Defendant HOME DEPOT U.S.A., INC. (“HOME DEPOT”) and DOES 1 through
3 25, inclusive (collectively, “Defendants” or “HOME DEPOT”), on behalf of himself and other current
4 and former aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the Private
7 Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations of Labor Code §§ 2802 and 2800,
8 *et seq.* This is a PAGA action and not a class action.

9 2. This Complaint challenges Defendants’ systemic illegal employment practices resulting
10 in violations of the stated provisions of the Labor Code against the identified group of employees.

11 3. This putative representative action is brought by Plaintiff, against Defendants, and each
12 of them for the recovery of civil penalties under PAGA on behalf of Plaintiff, EDUARDO SANDOVAL
13 and all other aggrieved employees based on Defendants’ wrongful actions: (1) Failure to Reimburse
14 Business Expenses and Losses.

15 4. Plaintiff petitions this Court to allow him to represent and prosecute claims against
16 Defendants in a representative action proceeding on behalf of himself and all current and former Delivery
17 Puller Associates including employees with similar responsibilities/titles (hereinafter referred to as
18 “aggrieved employees”), who worked in the state of California.

19 **JURISDICTION AND VENUE**

20 5. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiff exceed
21 the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 6. This Court has jurisdiction over this action pursuant to California Constitution, Article VI,
23 Section 10, which grants the Superior Court original jurisdiction in all causes except those given by
24 statute to other courts. The statutes under which this action is brought do not specify any other basis for
25 jurisdiction.

26 7. This Court has jurisdiction over the violations of Labor Code §2698, *et seq.* i.e. PAGA.

27 8. This Court has jurisdiction over all Defendants because, upon information and belief, each
28

party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have locations in this county, or the acts and omissions alleged herein took place in this county.

PARTIES

10. Plaintiff EDUARDO SANDOVAL is a resident of Los Angeles and is a citizen of the State of California.

11. Defendant HOME DEPOT U.S.A., INC. is a Delaware corporation with its principal place of business located in Atlanta, Georgia, and, at all times mentioned herein, whose employees that are the subject of this action were and are employed in the State of California.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 25, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

14. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to Labor Code §2698, *et seq.*

FACTUAL ALLEGATIONS

15. Plaintiff, upon information and belief and based upon such basis, alleges that HOME DEPOT has employed hundreds of individuals, such as Plaintiff SANDOVAL, during the relevant period, in an effort to operate its business. Plaintiff SANDOVAL was employed as a “Delivery Puller Associate” which is classified as a non-exempt position by Defendant. Delivery Puller Associates are responsible for loading orders onto trucks, delivering orders to the appropriate locations, and unloading orders at the appropriate locations.

16. The employees that are the subject of this lawsuit, including Plaintiff SANDOVAL have been or are employed by HOME DEPOT within the State of California as non-exempt Delivery Puller Associates.

17. Plaintiff, upon information and belief and based upon such basis, alleges that HOME DEPOT’S employees employed in the position of Delivery Puller Associates who were not reimbursed for business expenses as a result of incurring expenses while performing duties for HOME DEPOT. Upon information and belief, to date, HOME DEPOT’S practices are set forth fully herein and are present and continuing.

18. In approximately 2015 HOME DEPOT hired and employed Plaintiff as a non-exempt employee in the position of Delivery Puller Associate. During his employment with HOME DEPOT, Plaintiff held the title and/or position of “Order Fulfillment Associate,” “Customer Service,” and “Delivery Puller Associate.” Plaintiff resigned from his position with HOME DEPOT located in Los Angeles in or about September 2021 and his last position with HOME DEPOT is Delivery Puller Associate.

19. HOME DEPOT employed Plaintiff and aggrieved employees in the position of Delivery Puller Associates were also non-exempt employees, who were employed within the State of California.

20. During the relevant time frame, HOME DEPOT compensated Plaintiff and aggrieved employees based upon an hourly rate.

21. While performing their duties to HOME DEPOT, Plaintiff and aggrieved employees were/are regularly required to use their personal cell phones in order to discharge their duties for HOME

DEPOT to meet the demands of their job including while loading orders onto trucks, while delivering orders, and unloading orders to the required destinations. Plaintiff and aggrieved employees were/are required to use their personal cell phones for HOME DEPOT to make and/or receive calls, send and/or receive text messages, scan items, use GPS, and use the calculator on their personal cell phone which was a direct consequence of Plaintiff and aggrieved employees' discharging their duties to HOME DEPOT. Plaintiff and aggrieved employees were required to use their personal cell phones on an everyday basis, throughout the day, throughout their employment with HOME DEPOT. HOME DEPOT provides its in-stores HOME DEPOT associates with a "FirstPhone," which is an on-site phone. Delivery Puller Associates were not able to use the FirstPhone outside of HOME DEPOT property because the FirstPhone did not work off-site. These expenses incurred by Plaintiff and aggrieved employees were reasonable and necessary for Plaintiff and aggrieved employees to perform their work for HOME DEPOT. Plaintiff and aggrieved employees have incurred cell phone expenses in discharging their duties to HOME DEPOT and have not been reimbursed by HOME DEPOT to date.

22. At all times, HOME DEPOT knew or should have known that Plaintiff and the aggrieved employees were incurring necessary business expenses to benefit HOME DEPOT'S business enterprise.

23. HOME DEPOT, at all material times, has had, and continues to have, a policy and practice of not reimbursing Plaintiff, and the aggrieved employees located throughout the State of California for the expenses incurred as stated hereinabove.

24. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that they had a duty to accurately compensate Plaintiff and the aggrieved employees for reimbursement of business expenses, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

25. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code and IWC Wage Orders.

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**CAUSE OF ACTION
VIOLATION OF PAGA
(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25 as though fully set forth herein.

27. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

28. On February 4, 2022, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. Plaintiff believes that on or about April 11, 2022, the sixty-five (65) days notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time period to bring this action.

29. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Reimburse Expenses

30. Under California Labor Code section 2802, Defendants must reimburse and indemnify Plaintiff and other aggrieved employees for all necessary expenditures Plaintiff and all other aggrieved employees incurred. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of California Labor Code sections 2800 and 2802. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved employees all business expenses incurred and owing them within the required time period, including for cell phone expenses.

31. Plaintiff and aggrieved employees were/are required to use their personal cell phones for HOME DEPOT to make and/or receive calls, send and/or receive text messages, scan items, use GPS,

1 and use the calculator on their personal cell phone which was a direct consequence of Plaintiff and
2 aggrieved employees' discharging their duties to HOME DEPOT. Plaintiff and aggrieved employees
3 were required to use their personal cell phones on an everyday basis, throughout the day, throughout their
4 employment with HOME DEPOT. HOME DEPOT provides its in-stores HOME DEPOT associates with
5 a "FirstPhone," which is an on-site phone. Delivery Puller Associates including employees with similar
6 responsibilities/titles were not able to use the FirstPhone outside of HOME DEPOT property because the
7 FirstPhone did not work off-site. These expenses incurred were reasonable and necessary for Plaintiff
8 and aggrieved employees to perform their work for HOME DEPOT. Plaintiff and aggrieved employees
9 have incurred cell phone expenses in discharging their duties to HOME DEPOT and have not been
10 reimbursed by HOME DEPOT to date.

11 **32.** Defendants violated Labor Code Section 2800, et seq. by failing to reimburse Plaintiff and
12 aggrieved employees for expenses incurred on behalf of Defendants while performing work on behalf of
13 Defendants. Plaintiff and aggrieved employees incurred cell phone expenses to perform work for HOME
14 DEPOT. Defendants failed to reimburse Plaintiff and all aggrieved employees for any of the expenses
15 they incurred while working on behalf of Defendants.

16 **Penalties**

17 **33.** Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of other
18 current and former aggrieved employees, requests and is entitled to recover from Defendants, and each
19 of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties
20 against Defendants, and each of them, including but not limited to:

21 **34.** Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100)
22 for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
23 each aggrieved employee per pay period for each subsequent violation;

24 **35.** Penalties under California Code of Regulations Title 8 § 11070 in the amount of fifty
25 dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars
26 (\$100) for each aggrieved employee per pay period for each subsequent violation;

27 **36.** Penalties under Labor Code § 2802 (d) "shall be the same as those set forth in Section
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1 1197.1” in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the
2 initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for
3 each subsequent violation;

4 **37.** Any and all additional penalties as provided by the Labor Code and/or other statutes; and

5 **38.** Attorneys’ fees and costs pursuant to Labor Code §§ 2800, et seq., and 2699, and any
6 other applicable statute.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on his own behalf and as representative of other aggrieved current and
9 former employees pursuant to PAGA, prays for judgment as follows:

- 10 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor
11 Code § 2698 *et seq.*, for Defendants’ violations of Labor Code §§ 2802 and 2800, *et seq.*;
12 2. For attorneys’ fees and costs pursuant to Labor Code §2698, et seq. for violations of
13 Labor Code §§ 2802, 2800, *et seq.*, and any other applicable statute; and
14 3. For such other and further relief the court may deem just and proper.

15
16 Dated: September 21, 2022

NATHAN & ASSOCIATES, APC

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18 By: /s/ Reuben D. Nathan
19 Attorneys for Plaintiff
EDUARDO SANDOVAL