

Reuben D. Nathan, Esq. (SBN: 208436)
rnathan@nathanlawpractice.com
NATHAN & ASSOCIATES, APC
2901 W. Coast Hwy., Ste. 200
Newport Beach, CA 92663
Telephone: (949) 270-2798
Fax: (949) 209-0303

Matthew Righetti (SBN 121012)
matt@righettilaw.com
John Glugoski (191551)
jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, P.C.
220 Halleck Street, Suite 220
San Francisco, CA 94129
Telephone: (415) 983-0900

Attorneys for Plaintiff, EDUARDO SANDOVAL on behalf of himself and all aggrieved employees

**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**

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

1 Plaintiff EDUARDO SANDOVAL ("Plaintiff" or "SANDOVAL") hereby submits his
2 complaint ("Complaint") against Defendant HOME DEPOT U.S.A., INC. ("HOME DEPOT") and
3 DOES 1 through 25, inclusive (collectively, "Defendants" or "HOME DEPOT"), on behalf of himself
4 and other current 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
13 SANDOVAL and all other aggrieved employees based on Defendants' wrongful actions: (1) Failure to
14 Reimburse 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
17 Delivery Puller Associates including employees with similar responsibilities/titles (hereinafter referred
18 to as "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
23 VI, 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
25 for jurisdiction.

26 7. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 2802 and
27 2800, *et seq.*

8. This Court has jurisdiction over all Defendants because, upon information and belief, each 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 PAGA and Labor Code §§ 2802 and 2800, *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 an “Order Fulfillment Associate/Delivery Puller Associate” which is classified as a non-exempt position by Defendant.

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

17. Plaintiff, upon information and belief and based upon such basis, alleges that HOME DEPOT'S employees employed in the position of Order Fulfillment Associates/Delivery Puller Associates including employees with similar responsibilities/titles were not reimbursed for business expenses and were subjected to unlawful and unfair business practices as a result of not reimbursing Plaintiff and aggrieved employees. Upon information and belief, to date, HOME DEPOT'S illegal practices set forth herein this Complaint 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 all other similarly situated Delivery Puller Associates as 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.

1 **21.** While performing their duties to HOME DEPOT, Plaintiff and aggrieved employees
2 were/are regularly required to use their personal cell phones in order to discharge their duties for
3 HOME DEPOT to meet the demands of their job including while delivering to HOME DEPOT'S
4 customers' residences. Plaintiff and aggrieved employees were/are required to use their personal cell
5 phones for HOME DEPOT to make and/or receive calls, send and/or receive text messages, scan items,
6 and use the calculator on their personal cell phone which was a direct consequence of Plaintiff and
7 aggrieved employees' discharging their duties to HOME DEPOT. Plaintiff and aggrieved employees
8 were required to use their personal cell phones on an everyday basis, throughout the day, throughout
9 their employment with HOME DEPOT. HOME DEPOT provides its in-stores HOME DEPOT
10 associates with a "FirstPhone," which is an on-site phone. Delivery Puller Associates including
11 employees with similar responsibilities/titles were not able to use the FirstPhone outside of HOME
12 DEPOT property because the FirstPhone did not work off-site. These expenses incurred were
13 reasonable and necessary for Plaintiff and aggrieved employees to perform their work for HOME
14 DEPOT. Plaintiff and aggrieved employees have incurred cell phone expenses in discharging their
15 duties to HOME DEPOT and have not been reimbursed by HOME DEPOT to date.

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

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

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

26 //

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

3
4 **CAUSE OF ACTION**
5 **VIOLATION OF PAGA**
6 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

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

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

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

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

22 **Failure to Reimburse Expenses**

23 **30.** Under California Labor Code section 2802, Defendants must reimburse and indemnify
24 Plaintiff and other aggrieved employees for all necessary expenditures Plaintiff and all other aggrieved
25 employees incurred. At all times relevant herein, Defendants were required to reimburse its employees
26 for any and all necessary expenditures or losses incurred by the employees in direct consequences of
27 the discharge or his or her duties pursuant to the mandate of California Labor Code sections 2800 and
28 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, 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 including employees with similar responsibilities/titles were not able to use the FirstPhone outside of HOME DEPOT property because the FirstPhone did not work off-site. These expenses incurred 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.

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

Penalties

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

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

