

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.:

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

Plaintiff,

v.

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

Defendant.

CLASS ACTION COMPLAINT

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

Nature of Action

1. HOME DEPOT is a massive, Fortune 50 corporation, with over 2,200 big-box, home improvement stores scattered throughout the United States, Canada, and Mexico. The stores sell a full slate of home improvement items, including but not limited to tools, hardware, lumbar, flooring, appliances, fixtures, paints, outdoor items, equipment, supplies, cleaning products, etc.

2. As part of its suite of products, HOME DEPOT sells various paint stripper products, many of which manufactured by W.M. Barr & Company (hereinafter “W.M. Barr”) under the brand name ‘Klean Strip’ (hereinafter “Klean Strip”) – with one such Klean Strip product being the ‘Klean Strip Premium Stripper’ (hereinafter “Premium Stripper”).

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

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

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

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

Parties

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

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

Jurisdiction and Venue

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

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

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

services.

Class Representation Allegations

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

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

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

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

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

COUNT I
Breach of the Implied Warranty of Merchantability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT III
Unjust Enrichment

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

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

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

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

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

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

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

COUNT IV
Negligent Misrepresentation

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

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

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

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

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

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

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

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

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

DEPOT.

COUNT V
Fraud

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

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

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

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

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

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

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

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

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

consumers in Florida and throughout the United States.

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

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

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

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

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

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

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

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

Demand for Jury Trial

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

Dated this 30th day of January, 2019.

Respectfully submitted,

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