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9 ADDITIONAL COUNSEL ON THE NEXT
 10 PAGE

11 *Attorneys for Plaintiffs John Utne and Alfred*
 12 *Pinto, individually and on behalf of all others*
similarly situated and aggrieved

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 THE ESTATE OF JOHN UTNE THROUGH
 16 HIS SUCCESSOR IN INTEREST KAREN
 17 UTNE and ALFRED PINTO, on behalf of
 themselves and all others similarly situated,
 and the general public;

18 Plaintiff,

19 vs.

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

22 Defendants.
 23

CASE No. 3:16-cv-01854-RS

**DECLARATION OF CODY R.
 KENNEDY IN SUPPORT OF MOTION
 FOR ATTORNEY FEES, LITIGATION
 EXPENSES, AND CLASS
 REPRESENTATIVE SERVICE
 AWARDS**

Date: February 15, 2024

Time: 1:30pm

Courtroom: 3

Action Filed: March 8, 2016

1 **MARLIN & SALTZMAN**
Alan Lazar, Esq. (SBN 125820)
2 Cody Kennedy Esq. (SBN 296061)
Marissa Mayhood (SBN 334376)
3 29800 Agoura Road, Suite 210
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1 I, Cody R. Kennedy, hereby declare as follows:

2 1. I am an attorney, duly licensed to practice law before this Court. All facts stated herein are
3 to the best of my own personal knowledge.

4 **EXPERIENCE & QUALIFICATIONS OF CLASS COUNSEL**

5 2. I have previously provided a declaration detailing the experience and qualifications of my
6 firm in support of Plaintiffs' Preliminary Approval Motion (Doc. 363-2) which is incorporated by
7 reference herein, and will thus provide only a truncated reiteration to the extent that it applies to
8 the fees and rates of Marlin & Saltzman counsel.

9 3. Marlin & Saltzman is extremely experienced in litigating class action cases, with well over
10 100 class actions having been handled, and it has acted as lead or co-lead counsel in almost all of
11 these matters. I have been personally involved in most of the matters during my tenure with the
12 firm and have acted as lead counsel on behalf of the firm for many of these matters. I have
13 personally acted as lead trial counsel in Class and PAGA actions, and have argued before both the
14 Ninth Circuit and California Court of Appeal in relation to class action and PAGA cases.

15 4. The firm has been fortunate enough, through extremely hard work and often intense
16 litigation, to achieve settlement and trial results which have yielded over One Billion Dollars (as
17 of May, 2021) in payments to the class members and clients in our cases. Of this total sum, just
18 under \$100,000,000.00 has been through trials, and another \$125,000,000.00 came from a case
19 that settled during jury selection. This includes a trial verdict which was affirmed by the Ninth
20 Circuit, in the amount of \$60,800,000.00 for wages and Section 17200 restitution, and statutory
21 fees totaling an additional \$13,000,000.00, which was awarded in a class action trial in which
22 Marlin & Saltzman held the position of co-lead trial counsel for the class. The four-week class
23 trial was held before the Honorable Susan Illston, presiding, in the Northern District of California,
24 in the matter of *Ridgeway v. Walmart Stores Inc.*, Case No. C-08-5221 SI.

25 5. Over the twenty years devoted to handling plaintiff-side class actions, the firm has engaged
26 in six class action trials, including jury trials, court trials and/or binding arbitrations. These trials
27 normally have involved either a trial team within our firm, or a team including co-counsel.

28 ///

1 6. Marlin & Saltzman also regularly handles complex class and representative action appeals
2 in-house, with all aspects of appellate briefing and oral argument being handled by Marlin &
3 Saltzman attorneys and staff, under the supervision of a partner such as myself, Mr. Lazar, or
4 (formerly) Mr. Saltzman.

5 7. Further, Marlin & Saltzman was honored to be asked to associate in as counsel in the
6 matter of *Troester v. Starbucks*, for the purpose of arguing the appeal of the case to the California
7 Supreme Court. Setareh Law Group served as Class Counsel in that action alongside my firm. The
8 resulting decision has resulted in the federal “*de minimis*” defense being declared largely
9 inapplicable to California state law wage claims, a critical victory for workers in this state.

10 8. It is my experienced opinion and belief that the victory obtained in *Troester v. Starbucks*
11 by my firm and the Setareh Law Group served as a critical stepping stone in this action necessary
12 to obtain the full value of the currently proposed settlement.

13 9. Each of the attorneys at Marlin & Saltzman who have worked on this case, including
14 myself, are highly versed in complex class and representative actions. Marlin & Saltzman
15 attorneys are expected to be proficient in handling all aspects of class litigation from initial filing,
16 through trial and appeals. Our attorneys regularly achieve outstanding results, and the firm is
17 known for litigating through class certification and even trial if a reasonable settlement cannot be
18 reached. It is for this reason that the vast majority of our cases come from other Plaintiffs’
19 Counsel, who wish to associate our firm in to add value to the case and provide manpower in
20 highly contested and difficult cases.

21 10. The hours incurred by Marlin & Saltzman were primarily worked by attorneys Stanley
22 Saltzman, myself, Alan Lazar, Karen Gold (former), Marissa Mayhood (former), Joel Gordon
23 (former), and by our most senior paralegal, Ms. Susan Joseph.

24 11. Based upon a review of our records,¹ compared against the docket, documents, and
25 materials in this case, the total lodestar hours worked by Marlin & Saltzman is 2,258.7. The
26

27 ¹ Detailed billing entries for Marlin & Saltzman may be made available to the Court if
28 requested via a subsequent filing under seal.

1 Marlin & Saltzman base lodestar amount is \$2,208,817.50.

2 12. Broken down by attorney, 825.5 hours were worked by Mr. Saltzman, 223.6 hours were
3 worked by Mr. Kennedy, 110.1 hours were worked by Mr. Lazar, 931.9 hours were worked by
4 Ms. Gold, 10.7 hours were worked by Mr. Gordon, 135.4 hours were worked by Ms. Mayhood,
5 and 21.5 hours were worked by Mrs. Joseph.

6 13. As the most experienced partner on this case, with more than forty years of practice at the
7 time of his passing, Mr. Saltzman's hourly rate was set at \$1,200. Mr. Lazar, a partner with nearly
8 thirty-seven years of experience, has been billed out at \$1,100. I, Cody Kennedy, a partner with
9 nearly 10 years of experience, virtually all of which is in the realm of class action and complex
10 litigation, have been billed out at \$925. Mrs. Gold, a former Associate admitted to the Bar in 2008
11 was billed out at \$875, former associate attorney Joel Gordon, admitted to the Bar in 2011 was
12 billed out at \$800, former associate attorney Marissa Mayhood, admitted to the Bar in 2021 was
13 billed out at \$450, Ms. Joseph, our senior paralegal with over twenty years of experience, is billed
14 out at \$250 per hour. These rates are periodically updated and have been calculated by Marlin &
15 Saltzman to reflect the current market rate and value of the work performed by the Marlin &
16 Saltzman attorneys. The rates are calculated so as to be reasonable and are further supported by
17 the complex and highly niche knowledge and experience that the firm provides.

18 **LITIGATION COSTS EXPENDED BY MARLIN & SALTZMAN**

19 14. Marlin & Saltzman has incurred costs in this litigation totaling \$718,220.51. The costs are
20 set forth in the attached **Exhibit 1**.

21 15. The vast majority of these costs were paid in relation to experts retained by Class Counsel
22 in furtherance of the case. Specifically, \$690,447.04 of the total costs was paid towards expert
23 fees, with \$225,742 paid to Dr. Krosnick, \$457,970.02 to The Strategy Team, and \$6,735.02 to
24 Econ One. The other expenses incurred related to court filings, deposition transcripts, and
25 investigative work performed in preparation for trial, each of which have been set forth in the
26 attached exhibit.

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COMPLEXITY AND RISK INVOLVED IN THIS LITIGATION

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2 16. Based upon my detailed review of the case file following Mr. Saltzman’s passing, my
3 subsequent work on this case to date, and my general knowledge of this action since my firm was
4 first involved by the Setareh Law Group, it is my reasoned opinion and belief that this case was
5 much more complex and risky than the average wage and hour class action.

6 17. The massive amount of expert costs alone placed a significant burden upon my firm and
7 the Setareh Law Group. Although Marlin & Saltzman is well acquainted with major case costs
8 necessary to bring large class action settlements and verdicts to fruition, the total amounts
9 expended by the two firms in this action are very likely some of the highest in the firms’ collective
10 history.

11 18. The amount of time and manpower devoted to this case was also significant. Marlin &
12 Saltzman devoted six attorneys to the prosecution of this action from the time that the firm was
13 first associated into this action in Nov. of 2019. Due to the importance of this case, Mr. Saltzman
14 remained heavily involved in review analysis and decision making nearly all the way up to the
15 time of his passing. Following Mr. Saltzman’s death the two remaining partners, Mr. Lazar and I,
16 jointly took over the supervision of the case on behalf of Marlin & Saltzman, which was deemed
17 necessary given the case’s size, complexity, and long procedural history.

18 19. Further, the number of novel claims and unsettled issues of law added a significant amount
19 of complexity to this action not typically seen in a single case. I have previously briefed many of
20 the time rounding and de-minimis issues at issue here, and prior to the *Troester* decision those
21 were considered very difficult claims to maintain.

22 20. Additionally, the massive number of class members involved in this litigation magnified
23 the complexity and risks in pursuing this action. Had Plaintiffs and Class Counsel failed to obtain
24 a favorable settlement or trial verdict, that failure would have affected nearly 300,000 individuals.

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POTENTIAL NON-MONETARY BENEFITS OF THIS LITIGATION

21. It is my understanding and belief that during the course of this lawsuit Defendant has changed its time rounding policies nationwide to provide payment for time worked to the nearest minute. Attached hereto as **Exhibit 2** is a Reuters news article discussing said policy change.

I declare under penalty of perjury, under the laws of the State of California and the United States, that the foregoing is true and correct to the best of my personal knowledge. This declaration is executed at Agoura Hills, California on November 13, 2023.

By: s/ Cody R. Kennedy
Cody R. Kennedy, Esq.

EXHIBIT 1

to

Declaration of Cody R. Kennedy

11/13/2023
9:50 AM

Marlin & Saltzman, LLP
Pre-bill Worksheet

Page 1

Selection Criteria

Clie.Selection Include: 22-3919
Atto.Selection Include: Joy
Slip.Transaction Date Earliest - 11/13/2023

Nickname 22-3919 | Home Depot
Full Name Home Depot Class Action
Address
Phone 1 Phone 2
Phone 3 Phone 4
In Ref To
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt

Total of billable time slips \$0.00

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
12/26/2019	Joy 196329 \$Expenses Expense re Jon Krosnick; December 26, 2019 invoice; Professional fees from 10/1/19 through 12/18/19	11000.00	1.000	11,000.00	Billable
1/31/2020	Joy 196478 \$Expenses Expense re Econ One Research; Invoice 17920; rebuttal report preparation	6735.02	1.000	6,735.02	Billable
2/5/2020	Joy 196476 \$Expenses Expense re The Strategy Team; Invoice 2986; Professional fees for research assistance through 1/31/2020	44793.07	1.000	44,793.07	Billable
3/5/2020	Joy 196616 \$Expenses Expense re The Strategy Team; Invoice 2995; professional fees for research assistance through 02/29/20	66995.41	1.000	66,995.41	Billable
3/13/2020	Joy 197291 \$Expenses Expense re Journal Technologies Court Portal; Invoice 138053901344; Motion to Compel on 8/19/20	61.65	1.000	61.65	Billable
3/16/2020	Joy 196618 \$Expenses Expense re Dr. Jon Krosnick,; Statistician expert	52125.00	1.000	52,125.00	Billable

11/13/2023
9:50 AMMarlin & Saltzman, LLP
Pre-bill Worksheet

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22-3919:Home Depot Class Action (continued)

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
4/2/2020 197069	Joy \$Expenses Expense re The Strategy Team; Invoice 3006; professions fees for research assistance through March 31, 2020	63892.57	1.000	63,892.57	Billable
4/4/2020 197068	Joy \$Expenses Expense re Jon Krosnick ; professional fees; report draft & report	8780.00	1.000	8,780.00	Billable
5/4/2020 197169	Joy \$Expenses Expense re The Strategy Team; Invoice 3011; Professional fees for research assistance through April 30, 2020	115300.22	1.000	115,300.22	Billable
11/24/2020 198059	Joy \$Expenses Expense re Los Angeles Superior Court; Invoice BC482968 ; copy of report to send to experts	40.00	1.000	40.00	Billable
12/11/2020 197642	Joy \$Expenses Expense re The Strategy Team; Invoice 3081; professional fees for research through November 30th , 2020	74043.75	1.000	74,043.75	Billable
1/4/2021 197807	Joy \$Expenses Expense re Jon Krosnick ; expert services from 12/18/20 through 1/1/21	11050.00	1.000	11,050.00	Billable
3/31/2021 197969	Joy \$Expenses Expense re Veronica Lee McDaniels ; Invoice 021; call re data pull	190.00	1.000	190.00	Billable
12/8/2021 199099	Joy \$Expenses Expense re Jon Krosnick ; Professional services from 11/8/21 to 12/05/21	49270.00	1.000	49,270.00	Billable
1/8/2022 198698	Joy \$Expenses Expense re Jon Krosnick ; Invoice for 12/06/21 - 01/06/21; Professional services; report	86600.00	1.000	86,600.00	Billable
1/25/2022 198702	Joy \$Expenses Expense re Veritext ; Invoice 5535926; Certified transcript; deposition of Gary White on January 20, 2022	2219.15	1.000	2,219.15	Billable

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Pre-bill Worksheet

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22-3919:Home Depot Class Action (continued)

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
1/25/2022 198703	Joy \$Expenses Expense re Veritext ; Invoice 5535196; Certified transcript; deposition of Expert Brian R. Kriegler , Ph.D. on January 21, 2022	1045.65	1.000	1,045.65	Billable
2/2/2022 198714	Joy \$Expenses Expense re Veritext ; Invoice 5554119; Video Services; deposition of G. Edward Anderson on 1/19/22	2458.50	1.000	2,458.50	Billable
2/3/2022 198738	Joy \$Expenses Expense re Veritext ; Invoice 5554590; Video services; deposition of Timothy Trujillo on January 18, 2022	1300.50	1.000	1,300.50	Billable
2/7/2022 198720	Joy \$Expenses Expense re The Strategy Team; Invoice 3265; Professional fees for research assistance through 2/5/22	62966.25	1.000	62,966.25	Billable
2/9/2022 198727	Joy \$Expenses Expense re Veritext ; Invoice 5563979; Transcript services; Deposition of Jon A. Krosnick , PhD on February 2, 2022	4137.00	1.000	4,137.00	Billable
2/12/2022 198725	Joy \$Expenses Expense re Veritext ; Invoice 5568737; Video services; deposition of George Edward Anderson PhD on January 26, 2022	1485.50	1.000	1,485.50	Billable
2/12/2022 198726	Joy \$Expenses Expense re Veritext ; Invoice 5569696; Certified transcript; deposition of Robert Crandall on February 4, 2022	5180.90	1.000	5,180.90	Billable
2/18/2022 198772	Joy \$Expenses Expense re Veritext ; Invoice 5587890; Video Services; Witness Robert Crandall on February 4, 2022	2354.00	1.000	2,354.00	Billable
3/23/2022 198792	Joy \$FedEx Federal Express charges to Clerk's Office, U.S. District Court, San Francisco, CA	28.63	1.000	28.63	Billable
4/5/2022 198976	Joy \$Expenses Expense re Ace Attorney; Invoice 2051046; Courtesy copy to court	119.60	1.000	119.60	Billable

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Pre-bill Worksheet

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22-3919:Home Depot Class Action (continued)

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
4/28/2022 199001	Joy \$FedEx Federal Express charges to Office of the Clerk; U.S. District Court, San Francisco, CA	41.90	1.000	41.90	Billable
5/6/2022 199012	Joy \$Expenses Expense re Ace Attorney; Invoice 452956; Courtesy copy to court	350.35	1.000	350.35	Billable
5/6/2022 199037	Joy \$Expenses Expense re postage to mail ISO Motion to Intervene	14.24	1.000	14.24	Billable
6/1/2022 199025	Joy \$Expenses Expense re Batza & Associates; Expert investigative case work	5268.20	1.000	5,268.20	Billable
7/7/2022 199101	Joy \$Expenses Expense re The Strategy Team; Invoices 3254, 3265, 3289; Professional services	27093.00	1.000	27,093.00	Billable
7/20/2022 199141	Joy \$Expenses Expense re Jon Krosnick ; July 20, 2022 invoice ; expert services	2780.00	1.000	2,780.00	Billable
8/8/2022 199132	Joy \$Expenses Expense re The Strategy Team; Invoice 3337; Professional fees for research assistance from 5/1 through 08/25/2022	2885.75	1.000	2,885.75	Billable
8/25/2022 199271	Joy \$Expenses Expense re Illuminology ; Invoice 3347; Professional fees for research from June 1, 2022 through August 25, 2022,	3549.25	1.000	3,549.25	Billable
9/6/2022 199111	Joy \$Expenses Expense re Veritext ; Invoice 6016190; Certified transcript; deposition of Robert Crandall on August 23, 2022	2065.45	1.000	2,065.45	Billable
TOTAL	Billable Costs				\$718,220.51
				Amount	Total
Total of Fees (Time Charges)					\$0.00

11/13/2023
9:50 AM

Marlin & Saltzman, LLP
Pre-bill Worksheet

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22-3919:Home Depot Class Action (continued)

	<u>Amount</u>	<u>Total</u>
Total of Costs (Expense Charges)		\$718,220.51
Total new charges		<u>\$718,220.51</u>
New Balance Current	\$718,220.51	
Total New Balance		<u><u>\$718,220.51</u></u>

EXHIBIT 2

to

Declaration of Cody R. Kennedy

Learn more about **LSEG**



My View Following Saved

Retail & Consumer

Home Depot to change pay policy for hourly employees

Reuters

January 11, 2023 3:27 PM PST · Updated 10 months ago



Feedback

A Home Depot employee is seen outside a store in Los Angeles, California March 17, 2015. REUTERS/Lucy Nicholson/File Photo [Acquire Licensing Rights](#)

Jan 11 (Reuters) - Home Depot Inc (HD.N) said on Wednesday it will change its pay policy for hourly employees starting Jan. 16, with associates being paid based on exact time punches.

"Our policy has been to round total shift time up or down to the nearest 15 minutes ... we're changing our practice nationwide to pay hourly associates to the nearest minute," a company spokesperson said.

Business Insider [first reported](#) on the development, adding that several Home Depot employees filed lawsuits in recent years accusing the company of purposefully rounding down their pay.

According to the [Fair Labor Standards Act \(FLSA\)](#), some employers track employee hours worked in 15 minute increments, and the FLSA allows an employer to round employee time to the nearest quarter hour.

Reporting by Granth Vanaik in Bengaluru

Our Standards: [The Thomson Reuters Trust Principles.](#)

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World at Work

Stellantis offering buyouts to about half its US salaried employees

5:33 AM UTC



Sustainable Finance & Reporting

Workers United calls for walkouts at hundreds of Starbucks stores on Red Cup day

8:26 AM UTC



Retail & Consumer

'Can't buy new jeans': Argentina inflation hits 143% as shoppers tighten belts

6:00 AM UTC



Markets

US retailers stuck with excess stock offer bargains as holiday season nears

9:02 PM UTC



Feedback

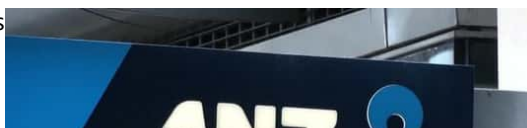


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Australia's ANZ bank posts record profits

01:05