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| LUIS ALBINO, LISA FERRER, ERIKA ROMAN, BRITTANY CARMONA, ISMAEL LINARES and FRANKLIN MORENO,<br><br><p style="text-align: center;">Plaintiffs,</p> v.<br><br>THE HOME DEPOT,<br><br><p style="text-align: center;">Defendant.</p> | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION<br>MONMOUTH COUNTY<br><br>DOCKET NO. MON-L-_____-20<br><br><i>Civil Action</i><br><br><b>COMPLAINT AND JURY DEMAND</b> |
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Plaintiffs, Luis Albino, Lisa Ferrer, Brittany Carmona, Erika Roman, Ismael Linares and Franklin Moreno, by way of Complaint against Defendant, state:

**THE PARTIES**

1. Plaintiff Luis Albino (“Albino”) is an employee of Defendant, working in Defendant’s branch store #0907 (“Store #0907”) in West Long Branch, New Jersey.
2. Plaintiff Lisa Ferrer (“Ferrer”) is an employee of Defendant, working in Store #0907.
3. Plaintiff Erika Roman (“Roman”) is an employee of Defendant, working in Store #0907.
4. Plaintiff Brittany Carmona (“Carmona”) is a former employee of Defendant, who worked in Store #0907.
5. Plaintiff Ismael Linares (“Linares”) is an employee of Defendant, working in Store #0907.

6. Plaintiff Franklin Moreno (“Moreno”) is an employee of Defendant, working in Store #0907.

7. Defendant is a home improvement retailer which operates stores across the United States, including Store #0907.

### **FACUAL BACKGROUND**

8. Each Plaintiff is of the Hispanic race and ancestry.

9. Each Plaintiff is bilingual and can speak both English and Spanish.

10. Each Plaintiff has been subject to directions from various managers and supervisory employees of Defendant in Store #0907 not to speak Spanish in the store.

11. Additionally, Plaintiffs have been subject to derision and ostracization by co-employees for speaking Spanish in the store and derision, ostracization and hostile treatment by employees and supervisors for raising concerns under the law regarding their right to be able to speak the native language of their heritage.

12. Store #0907 has many Spanish-speaking customers and Defendant actively seeks bilingual employees in order to facilitate communication with such customers.

### **Luis Albino**

13. Albino transferred to Store #0907 in 2018 after working at Defendant’s Totowa, New Jersey store for four (4) successful years.

14. His transfer occurred as a result of a posting for an opening for a bilingual sales person at the “Pro Desk” at Store #0907.

15. Albino had worked at the Pro Desk in the Totowa store.

16. Despite the harassment that has occurred, Albino has been very successful at the Pro Desk in Store #0907, closing on nearly \$1 million in business in a year.

17. Because of some friction from two co-employees, Amber Zabe, who was

subsequently transferred, and Taylor DeSantis, who was subsequently terminated, Albino was called to a meeting regarding Zabe and DeSantis by a former Assistant Store Manager, Marlana Kramer, who was friendly with Zabe and DeSantis, neither of whom spoke Spanish or were of Hispanic heritage.

18. Kramer's call for a meeting occurred after Zabe and DeSantis witnessed Albino and Moreno speaking together in Spanish.

19. At that meeting, at which Moreno was also present, Kramer specifically instructed Albino and Moreno not to speak Spanish in Store #0907 because non-Spanish-speaking people would assume that they were being talked about.

20. Albino immediately raised objection to this direction, stating he should be allowed to speak Spanish in the workplace.

21. Both prior to and subsequent to that meeting, Albino was the subject of harassment from Zabe and DeSantis, who berated him in front of customers.

22. DeSantis also disposed of Albino's apron, on which were placed the many badges and awards he received from Defendant.

23. Albino made complaints to Defendant's corporate office regarding this incident and the treatment he received.

24. Albino also met with a corporate representative, June McCormack, regarding same.

25. It is apparent that Kramer's instruction to Albino not to speak Spanish, as well as the harassment Albino experienced, were motivated by Albino's ethnicity and, particularly, his speaking of Spanish.

26. Zabe was promoted to Department Head at Defendant's Neptune, New Jersey store, where Kramer's husband also works.

27. Albino was informed by a coworker that another coworker had used a

racial slur to refer to an Assistant Store Manager.

**Lisa Ferrer**

28. Ferrer has worked at Store #0907 for sixteen years.

29. She has been told more than once by Lisa Jackson, a front-end supervisor, not to speak Spanish because "customers would become offended."

30. Additionally, at points when Ferrer was speaking Spanish, another employee would loudly instruct her to "stop speaking that Italian or whatever it is."

31. Ferrer has also been witness to other derogatory comments about employees speaking Spanish, made by another employee named Claudette.

32. Ferrer suffered hostile treatment from co-employees because she spoke Spanish, with one employee even informing her that it was her fault that another employee who made comments about the Spanish-speaking was terminated.

33. Ferrer has complained to management about the hostile treatment but management but no corrective action has been taken.

34. Ferrer was told by a coworker that a department head had warned him against associating with Ferrer if he wanted to advance in the company.

**Erika Roman**

35. Roman is employed as a head cashier in Store #0907.

36. On one occasion, while Roman was speaking Spanish with Carmona, Kramer instructed both Roman and Carmona that they "can't speak Spanish here."

37. This upset Roman greatly, as she felt she was being reprimanded simply for speaking her native language.

38. She reported the incident to Defendant's corporate office but did not receive a response.

39. On another occasion, Roman was speaking Spanish with a coworker during

her lunch break, and another coworker interrupted and said, "Why are you speaking Spanish? You should not be speaking Spanish at work."

40. In an effort to provide good customer service, Roman spoke Spanish to Store #0907 customers who did not speak English.

41. This upset a coworker, Claudette, who complained to another coworker, George, in front of customers, saying, "I don't understand why Erika is still speaking Spanish."

42. After George was terminated, he returned to Store #0907 for three consecutive days to taunt Roman, blame her for his termination and bully her in front of others.

43. Roman's supervisor stated that George was terminated because of the "stupid comments people make around here, comments from people that can barely speak English," apparently referring to Roman.

44. Roman complained to management about her mistreatment because of her Spanish speaking.

45. Roman has been subject to the same ostracization and changed attitudes by the employees as the other Plaintiffs, since the complaints about being told not to speak Spanish have become common knowledge in Store #0907.

**Brittany Carmona**

46. Carmona was a cashier in Store #0907 until September 2019.

47. As stated above, on one occasion, while Roman was speaking Spanish with Carmona, Kramer instructed both Roman and Carmona that they "can't speak Spanish here."

48. Because of that comment, Carmona felt extremely uncomfortable and reported the incident to corporate headquarters.

49. Carmona felt the same hostility and unfriendly atmosphere as the other employees.

**Ismael Linares**

50. Linares has been an employee of Defendant for twenty-nine (29) years.

51. On one occasion, after Linares was speaking in Spanish with Roman, Jackson stopped him and told him not to speak Spanish in front of customers and that, in regard to same, he should be more "considerate" if customers are around.

**Franklin Moreno**

52. Moreno is currently the supervisor of the Pro Department at Store #0907, and was formerly an associate in the Hardware Department.

53. Moreno is originally from Honduras and was raised by Spanish-speaking parents and English is a second language to him.

54. Moreno has been mocked by coworkers for pronouncing English words incorrectly.

55. As mentioned above, at a meeting with Kramer and Albino, Kramer specifically instructed Albino and Moreno not to speak Spanish in Store #0907 because other people would assume that they were being talked about.

56. Moreno was upset that his supervisor had instructed him not to speak his native language at the store.

57. Moreno learned of another incident that occurred on October 9, 2019 while he was away from Store #0907 at a training session in another store.

58. The incident involved a walk-through of Store #0907 by District Manager Corey Lilliston.

59. As English is Moreno's second language, the notes Moreno keeps in the computer system at Store #0907, although readily understandable, contain certain

grammatical and spelling errors.

60. During his walk-through, Lilliston instructed an assistant store manager, Robert Rapricano, to read Moreno's notes out loud in front of a group of six other supervisors present.

61. When Rapricano read the notes in such a way as to convey what the notes were saying, but not verbatim as to include spelling and grammar errors, Lilliston instructed him to read them again.

62. When again Rapricano read the notes to convey the meaning, Lilliston again instructed him to read them "exactly as written."

63. Rapricano refused, saying that he was not comfortable doing so, rightfully recognizing that it was simply a way of shaming Moreno for imperfect English when English is Moreno's second language.

64. However, Moreno has been in the position for several years and has made notes throughout that time, and neither Lilliston nor anyone else has complained that they were unable to read the notes.

65. Moreno reported the incident to the Home Depot AwareLine, but no corrective action was taken.

66. Moreno was deeply offended and emotionally hurt that his use of language was being belittled and demeaned.

67. His feelings were augmented by the realization that Lilliston would ultimately make decisions as to whether Moreno would ever be further promoted.

68. Lilliston merely apologized via telephone for the incident, whereas for a previous incident, he apologized in person for rude comments he had made.

COUNT I

**VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION  
(NJLAD)—RACE AND ANCESTRY DISCRIMINATION**

69. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing Paragraphs as if fully set forth herein.

70. Each Plaintiff is of the Hispanic race and ancestry.

71. Albino, Ferrer, Roman, Linares and Moreno have each been performing in his or her position with Defendant.

72. Carmona was performing in her position until her employment with Defendant ended in September 2019.

73. Nevertheless, each Plaintiff has been subject to directions from various managers and supervisory employees of Defendant in Store #0907 not to speak Spanish in the store.

74. Plaintiffs have also been subject to derision and ostracization by co-employees of Store #0907 for speaking Spanish in the store and derision, ostracization and hostile treatment by employees for raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

75. As a result of the foregoing, Defendant did violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq. with knowing and reckless disregard of the statute's proscriptions.

76. As a direct and proximate result of Defendant's conduct in discriminating as aforesaid, Albino, Ferrer, Roman, Linares and Moreno have suffered monetary damages, great emotional pain, suffering and humiliation and mental distress and anguish, including physical manifestations of same.



77. As a direct and proximate result of Defendant's conduct in discriminating as aforesaid, Carmona has suffered loss of employment, monetary damages, great emotional pain, suffering and humiliation and mental distress and anguish, including physical manifestations of same.

78. Defendant's management actively participated in or was willfully indifferent to the aforesaid discrimination.

WHEREFORE, Plaintiffs pray that this Court:

- a. declare Defendant's conduct to be in violation of their rights under the New Jersey Law Against Discrimination;
- b. enjoin Defendant from engaging in such conduct;
- c. order front pay and benefits;
- d. award, where applicable, back pay and benefits;
- e. award punitive damages;
- f. award compensatory and emotional distress damages;
- g. award costs and attorney's fees; and
- h. award all other relief the Court deems just and equitable.

## COUNT II

### **VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-12(d) – RETALIATION**

79. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing Paragraphs as if fully set forth herein.

80. Each Plaintiff has been subject to directions from various managers and supervisory employees of Defendant in Store #0907 not to speak Spanish in the store.

81. Plaintiffs have been subject to derision and ostracization by co-employees of Store #0907 for speaking Spanish in the store and derision, ostracization and hostile

treatment by employees for raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

82. Defendant's actions constitute a violation of the New Jersey Law against Discrimination (*NJLAD*), specifically N.J.S.A. 10:5-12d.

83. Defendant did commit an unlawful employment practice pursuant to the *NJLAD* by permitting its employees to deride, ostracize and treat Plaintiffs in a hostile manner in reprisal for raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

84. Defendant's permission of its employees' mistreatment of Plaintiffs was motivated by reprisal for Plaintiffs' raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

85. Because reprisal was the motivating factor and it made a difference in said actions by Defendant, Defendant violated the *NJLAD*, N.J.S.A. 10:5-1, et seq. with knowing and reckless disregard of the statute's proscriptions.

86. As a direct and proximate result of Defendant's conduct in discriminating as aforesaid, Plaintiffs were caused to suffer loss of employment, monetary damages, great emotional pain, suffering and humiliation, and mental distress and anguish, including physical manifestations of same.

WHEREFORE, Plaintiffs pray that this Court:

- a. declare Defendant's conduct to be in violation of their rights under the New Jersey Law against Discrimination;
- b. enjoin Defendant from engaging in such conduct;
- c. order front pay and benefits;
- d. award, where applicable, back pay and benefits;
- e. award punitive damages;

- f. award compensatory and emotional distress damages;
- g. award costs and attorney's fees; and
- h. award all other relief the Court deems just and equitable.

**COUNT III**

**RACIAL HARASSMENT IN VIOLATION OF THE NJLAD**

87. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing Paragraphs as if fully set forth herein.

88. Each Plaintiff has been subject to directions from various managers and supervisory employees of Defendant in Store #0907 not to speak Spanish in the store.

89. Plaintiffs have been subject to derision and ostracization by co-employees of Store #0907 for speaking Spanish in the store and derision, ostracization and hostile treatment by employees for raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

90. The foregoing conduct would not have occurred but for Plaintiffs' race.

91. The foregoing conduct was severe and pervasive enough to make a reasonable Hispanic person believe that the conditions of employment are altered and the working environment is hostile or abusive.

92. Defendant was aware of the foregoing harassment but failed to take appropriate remedial action.

WHEREFORE, Plaintiffs pray that this Court:

- a. declare Defendant's conduct to be in violation of their rights under the New Jersey Law against Discrimination;
- b. enjoin Defendant from engaging in such conduct;
- c. order front pay and benefits;
- d. award, where applicable, back pay and benefits;

- e. award punitive damages;
- f. award compensatory and emotional distress damages;
- g. award costs and attorney's fees; and
- h. award all other relief the Court deems just and equitable.

**COUNT IV**

**RETALIATORY HARASSMENT IN VIOLATION OF THE NJLAD**

93. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing Paragraphs as if fully set forth herein.

94. Each Plaintiff has been subject to directions from various managers and supervisory employees of Defendant in Store #0907 not to speak Spanish in the store.

95. Plaintiffs have been subject to derision and ostracization by co-employees of Store #0907 for speaking Spanish in the store and derision, ostracization and hostile treatment by employees for raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

96. The foregoing conduct would not have occurred but for Plaintiffs' raising concerns under the law regarding their right to be able to speak the native language of their race and ancestry.

97. The foregoing conduct was severe and pervasive enough to make a reasonable person believe that the conditions of employment are altered and the working environment is hostile or abusive.

98. Defendant was aware of the foregoing harassment but failed to take appropriate remedial action.

WHEREFORE, Plaintiffs pray that this Court:

- a. declare Defendant's conduct to be in violation of their rights under the New Jersey Law against Discrimination;

- b. enjoin Defendant from engaging in such conduct;
- c. order front pay and benefits;
- d. award, where applicable, back pay and benefits;
- e. award punitive damages;
- f. award compensatory and emotional distress damages;
- g. award costs and attorney's fees; and
- h. award all other relief the Court deems just and equitable.

**DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Richard J. Shaklee, Esq. as trial counsel pursuant to R.  
4:25-4.

**NOTICE PURSUANT TO R. 1:5-1(a) AND 4:17-4(c)**

**TAKE NOTICE** that the undersigned attorneys for Plaintiffs do and hereby demand, pursuant to R. 1:5-1(a) and 4:17-4(c), that each party herein serving pleadings and interrogatories and receiving answers thereto and documents received pursuant to Subpoenas issued in this matter, serve copies of all such pleadings and documents and answers to interrogatories received from any party, including any documents, papers and other material, referred to therein upon the undersigned attorneys; and **TAKE FURTHER NOTICE** that this is a continuing demand.

**R. 4:5-1 CERTIFICATION**

Pursuant to R. 4:5-1, the undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated.

**R. 1:38-7(b) CERTIFICATION**

I further certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and they will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues of this Complaint, so triable.

**McLAUGHLIN STAUFFER & SHAKLEE, P.C.**  
*Attorneys for Plaintiffs*

BY:   
RICHARD J. SHAKLEE, ESQ.

Dated: 2/21/2020