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on behalf of the general public as private attorney general

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

LI FAN, on behalf of the general public as
private attorney general,

Plaintiff,

v.

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

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff LI FAN (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants HOME DEPOT U.S.A. INC.; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) to pay minimum and overtime wages, (b) failing to pay all wages earned and owed upon separation from Defendant’s employ, (c) failing to provide accurate itemized wage statements, and (f) failure to provide suitable seating. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of

1 Civil Procedure section 395. Defendants are doing business throughout California, including but
2 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
3 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
4 all other aggrieved employees within the State of California. Defendants employ numerous
5 aggrieved employees in in the State of California.

6 6. On information and belief, Defendants have conducted business within the State of
7 California during the purported liability period and continue to conduct business throughout the
8 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
9 similarly situated non-exempt aggrieved employees within California.

10 7. The California Superior Court also has jurisdiction in this matter because on
11 information and belief there are no federal questions at issue, as the issues herein are based solely
12 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
13 California Code of Civil Procedure, the California Civil Code, and the California Business and
14 Professions Code.

15 8. On information and belief, during the statutory liability period and continuing to
16 the present ("liability period"), Defendant consistently maintained and enforced against
17 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
18 and policies, in violation of California state wage and hour laws: (a) to pay minimum and overtime
19 wages, (b) failing to pay all wages earned and owed upon separation from Defendant's employ,
20 (c) failing to provide accurate itemized wage statements, and (f) failure to provide suitable seating.

21 9. On information and belief, during the statutory liability period and continuing to
22 the present, Defendants have had a consistent policy of failing to pay wages including overtime
23 wages for hours worked while subject to the control of Defendants.

24 10. On information and belief, during the statutory liability period and continuing to
25 the present, Defendants have had a consistent policy of failing to timely pay wages upon
26 separation.

27 11. On information and belief, during the statutory liability period and continuing to
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1 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized
2 wage statements.

3 12. During the liability period, Defendants failed to provide suitable seating to Plaintiff
4 and Aggrieved Employees while performing their job duties in violation of applicable California
5 Wage Order 5-2001 and 5-2001 sec. (14) (A)-(B).

6 13. Plaintiff on behalf of the general public as private attorney general and all other
7 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
8 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 1174, 1174.5,
9 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

10 **III. PARTIES**

11 **A. Plaintiff**

12 14. Plaintiff, LI FAN, was at all times relevant to this action, a resident of California.
13 Plaintiff was employed by Defendants in approximately July 2016 as a Non-Exempt Employee
14 and worked during the liability period for Defendants as a retail associate, until Plaintiff's
15 separation from Defendants' employ in approximately October 2020. Plaintiff was assigned to
16 work at Defendants' Madera, California facility performing duties as a cashier.

17 15. As Defendants' employee, Plaintiff, and all other aggrieved employees were
18 regularly required to and subsequently suffered:

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- 20 a) perform work subject to the control of the employer without being compensated all
 - 21 wages including overtime, all in violation of California labor laws, regulations, and the
 - 22 Industrial Welfare Commission Wage Order ("IWC");
 - 23 b) not provided accurate itemized wage statements; and
 - 24 c) not provided suitable seating.

25 16. On information and belief, Defendants willfully failed to pay all earned wages in
26 the form regular wages and overtime wages, and meal and rest period premium wages, to its
27 Non-Exempt Employees and members of the Representative Group; nor have Defendants
28 returned to Plaintiff or members of the Representative Group, upon or after separation from

1 employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor
2 Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other
3 aggrieved employees.

4 **B. Defendants**

5 17. Defendants THE HOME DEPOT USA, INC., are engaged in the ownership and
6 operation of an American home improvement supplies retailing company that sells tools,
7 construction products, and services. Defendants operate various store locations across the United
8 States and California, including but not limited to Bakersfield, Los Angeles, Orange, Sacramento,
9 San Diego, and San Francisco. Plaintiff estimates there are in excess of 100 Non-Exempt
10 Employees who work or have worked for Defendants over the last year.

11 18. Other than identified herein, Plaintiff is unaware of the true names, capacities,
12 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
13 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
14 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
15 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
16 are ascertained.

17 19. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
18 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
19 Representative Group , and exercised control over their wages, hours, and working conditions.
20 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
21 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
22 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
23 to the other defendants.

24 **IV. GENERAL ALLEGATIONS**

25 20. At all times set forth herein, Defendants employed Plaintiff and other persons in
26 the capacity of non-exempt positions, however titled, throughout the state of California.

27 21. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
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1 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
2 rules and regulations of the IWC California Wage Orders.

3 22. Defendants employed Plaintiff and Aggrieved Employees as a Non-Exempt hourly
4 paid employees during the liability period.

5 23. Defendants continue to employ Non-Exempt Employees, however titled, in
6 California and implement a uniform set of policies and practices to all non-exempt employees, as
7 they were all engaged in the generic job duties of producing, selling, and distributing hardware
8 and construction materials.

9 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
10 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
11 the requirements of California's wage and employment laws.

12 25. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
13 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
14 week and worked approximately five (5)-day work weeks.

15 26. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not
16 compensated for all time worked as a result of off-the-clock work performed. For instance,
17 Plaintiff and Aggrieved Employees, prior to every shift, were required by Defendants'
18 management to put on various equipment including but not limited to: (1) gloves, (2) masks, (3)
19 uniforms, (4) aprons, and (5) accessories to carry in the apron. Plaintiff and Aggrieved Employees
20 were also required to go through mandatory temperature checks. These tasks and temperature
21 checks had to be completed before Plaintiff and Aggrieved Employees were permitted to clock in
22 for their shifts. Further, Defendants' management, at the end of the day, also required Plaintiff and
23 Aggrieved Employees to clock out first prior to them taking off their equipment. Plaintiff and
24 Aggrieved Employees were not compensated for these pre and post shift activities and resulted in
25 a disproportionate underpayment of minimum and overtime wages.

26 27. Defendants also failed to provide accurate, lawful itemized wage statements to
27 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
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1 addition, upon information and belief, Defendants omitted an accurate accounting of all work time
2 performed, and failed to provide an accurate itemization of total hours worked, including gross
3 pay and net pay figures from Plaintiff and the Aggrieved Employees' wage statements.

4 28. Plaintiff are informed and believe, and thereon alleges, that at all times herein
5 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
6 thereof for resignations without prior notice as the case may be) they had a duty to accurately
7 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages and
8 overtime wages that Defendants had the financial ability to pay such compensation, but willfully,
9 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
10 violations.

11 29. During the liability period, Plaintiff and Aggrieved Employees were not provided
12 suitable seating and when such employees were not engaged in duties which required them to
13 stand, no seating was placed in reasonable proximity to their work stations. Thus, Defendants did
14 not provide Plaintiff and Aggrieved Employees with suitable seating in accordance with
15 applicable IWC Wage Order 7-2001 (14)(A)-(B) and California law despite the fact that the nature
16 of their work reasonably permits use of seats.

17 30. Upon information and belief, Defendants failed to keep accurate records pursuant
18 to Labor Code § 1174.5.

19 31. Upon information and belief, Defendants knew and or should have known that it is
20 improper to implement policies and commit unlawful acts such as:

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22 (a) failing to pay minimum and overtime wages;
23 (b) failing to provide accurate itemized wage statements;
24 (c) failing to timely pay Plaintiff and Aggrieved Employees; and
25 (d) failing to provide suitable seating

26 32. In addition to the violations above, and on information and belief, Defendants knew
27 they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted
28 herein, and that Defendants had the financial ability to pay such compensation, but willfully,

1 knowingly, recklessly, and/or intentionally failed to do so.

2 **V. REPRESENTATIVE CLAIMS**

3 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

4 33. Plaintiff incorporates by reference and re-alleges each and every allegation
5 contained above, as though fully set forth herein.

6 34. On March 29, 2021 Plaintiff complied with notice requirements pursuant to Labor
7 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
8 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
9 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
10 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
11 representative capacity. The substance and violations set forth in this Complaint of which the
12 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
13 Action Complaint to the LWDA.

14 35. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
15 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
16 Employees of Defendants.

17 36. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
18 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
19 including without limitation Labor Code section 201-203, 226, 226.3, 510, 558, 1174, 1174.5,
20 1175, 1194, 1197, 1197.1, and, 2698 *et seq.*, applicable IWC Wage Orders and California Code of
21 Regulations, Title 8, section 11000 *et. seq.*

22 37. At all times relevant, Plaintiff and all other aggrieved employees regularly
23 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
24 rest break requirements of the applicable IWC wage order and the Labor Code.

25 38. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
26 overtime wages owed as discussed above for Defendants' failure to account for the time it took
27 Plaintiff and Aggrieved Employees put on their work equipment and go through mandatory
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1 temperature checks while they are off-the-clock. Therefore, Defendants violated section 510, and
2 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight hours
3 (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the right
4 to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours
5 worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime
6 compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a
7 day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week

8 39. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
9 accurately pay at least minimum wages due as a result Defendants' failure to account for the time
10 it took Plaintiff and Aggrieved Employees put on their work equipment and go through mandatory
11 temperature checks while they are off-the-clock.

12 40. Defendants also willfully violated Labor Code sections 201-203 by failing to
13 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
14 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
15 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
16 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
17 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
18 The penalty cannot exceed 30 days of wages.

19 41. Plaintiff and all other aggrieved employees who were separated from employment
20 are entitled to compensation for all forms of wages earned, including but not limited to
21 compensation minimum and overtime wages, but to date have not received such compensation,
22 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

23 42. On information and belief, Defendants willfully failed to pay all wages due and
24 owing upon separation from employment. These wages include minimum and overtime wages.

25 43. On information and belief, Defendants failed to provide accurate itemized wage
26 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
27 and the aggrieved employees, and the address of the legal entity that is the employer pursuant to
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1 Labor Code section 226(a).

2 44. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
3 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
4 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
5 for each violation in a subsequent citation, for which the employer fails to provide the employee a
6 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

7 45. Additionally, Defendants have no accurate records relating to aggrieved
8 employees' work periods, total daily hours worked, total hours worked per payroll period and
9 applicable pay rates, in violation of applicable Wage Orders. Similarly, Defendants failed to
10 maintain accurate records relating to hours worked daily in violation of Labor Code sections
11 1174(d), 1174.5.

12 46. Wage Order 7-2001 states "All working employees shall be provided with suitable
13 seats when the nature of the work reasonably permits the use of seats." Plaintiff alleges that
14 Defendants failed to provide employees suitable seats while working even though the nature of the
15 work reasonably permitted the use of such seats.

16 47. Defendants' failure to provide suitable seats constitutes a violation of applicable
17 California laws and regulations, including Labor Code section 1198 and IWC Wage Order 7-2001.

18 48. Labor Code section 1198 makes it unlawful to employ an employee under
19 conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff
20 and the other current and former aggrieved employees with suitable seats in violation of Wage
21 Order 5-2001, Defendants also violated Labor Code section 1198.

22 49. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
23 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
24 worked.
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26 50. Plaintiff and the Representative Aggrieved Employees are entitled to recover
27 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: March 29, 2021

JAMES HAWKINS APLC

By: _____
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