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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 02 2020

BY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JAMES PEVEY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DIY HOME CENTER; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

CIV DS 2010240

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226(A);
- (2) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff James Pevey (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant DIY Home Center (“Defendant”) and Does 1
3 through 50 (collectively, “Defendants”) on behalf of himself and all other similarly situated
4 current and former employees of Defendants, for penalties and/or damages for failure to provide
5 complete and accurate itemized wage statements in violation of the California Labor Code as
6 follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code §§ 226 and 2698, *et seq.*

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to provide complete and accurate itemized
15 wage statements to Plaintiff and Class Members.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices, and customs that knowingly deny its employees
19 the above stated rights and benefits.

20 5. The policies, practices and customs of defendants described above and below
21 have resulted in unjust enrichment of Defendants and an unfair business advantage over
22 businesses that routinely adhere to the strictures of the California Labor Code.

23 **JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over the violations of California Labor Code §§ 226
25 and 2698, *et seq.*

26 7. Venue is proper because Defendants do business in San Bernardino County and
27 Plaintiff worked for Defendants in San Bernardino County, specifically in Big Bear Lake,
28 California.

1 **PARTIES**

2 8. Plaintiff was employed by Defendants as a salesperson from about April 2019
3 until on or about May 2020. Throughout his employment with Defendants, Plaintiff was
4 employed as an hourly, non-exempt employee.

5 9. Plaintiff was and is the victim of the policies, practices, and customs of
6 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
7 by California Labor Code §§ 226 and 2698, *et seq.*

8 10. Plaintiff is informed and believes, and based thereon alleges, that DIY Home
9 Center is a privately owned hardware store chain. Plaintiff is informed and believes, and based
10 thereon alleges, that Defendant operates and maintains business locations and facilities across the
11 State of California, including facilities in San Bernardino, California.

12 11. Plaintiff is informed and believes and thereon alleges that at all times herein
13 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
14 individuals, and partnerships, licensed to do business and actually doing business in the State of
15 California. As such, and based upon all the facts and circumstances incident to Defendants'
16 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

17 12. Plaintiff does not know the true names or capacities, whether individual, partner
18 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
19 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious defendants were responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and members of the general public and
23 class to be subject to the illegal employment practices, wrongs, and injuries complained of
24 herein.

25 13. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants and employees of each of the other
28 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 15. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 16. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
17 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
18 damages as herein alleged.

19 CLASS ACTION ALLEGATIONS

20 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
21 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: all current and
22 former employees of Defendants in the State of California who were paid any wages at any time
23 from April 6, 2019, through the present (the “Class”), and the following sub-class:

- 24 a. All current and former non-exempt employees of Defendants in the State of
25 California who were paid any hourly wages at any time from April 6, 2019,
26 through the present (the “Hourly Sub-Class”).

27 18. Plaintiff further reserves the right to amend such Class definition based upon
28 further discovery.

1 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
2 that joinder of all members would be impractical, if not impossible. The identities of the
3 members of the Class are readily ascertainable by review of Defendants' records, including
4 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 failed to provide accurate itemized wage statements to its employees that identified the
6 applicable rates of pay for hourly wages, whenever such wages were paid, in violation of Labor
7 Code § 226(a). Defendants also failed to identify the pay period start and/or end date.

8 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
9 necessary steps to represent fairly and adequately the interests of the Class defined above.
10 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
11 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
12 actions in the past and currently have a number of wage-and-hour class actions pending in
13 California state and federal courts.

14 21. Defendants uniformly administered a corporate policy and practice of failing to
15 provide accurate itemized wage statements to Plaintiff and the Class that identified the applicable
16 rates of pay and inclusive pay period dates, in violation of Labor Code § 226(a).

17 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
18 conduct is accomplished with the advance knowledge and designed intent to willfully and
19 intentionally fail to accurately record proper rates of pay and inclusive pay period dates.

20 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
21 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
22 Labor Code § 226(a).

23 24. **Common Question of Law and Fact:** There are predominant common questions
24 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
25 concerning Defendants' policy and practice of failing to provide accurate itemized wage
26 statements to Plaintiff and the Class that identified the applicable rates of pay and inclusive pay
27 period dates in violation of Labor Code § 226(a).

28 25. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the

1 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
2 as the Class Members. As with other California employees, Plaintiff was paid on an hourly
3 basis. Whenever wages were paid, however, the wage statements provided to Plaintiff simply
4 identified the hours worked and gross wages paid. No hourly rates of pay were listed, in
5 violation of Labor Code § 226(a)(9). Further, the wage statements provided to Plaintiff
6 identified one date as the “pay period date,” rather than listing a pay period start and end date, in
7 violation of Labor Code § 226(a)(6). Therefore, Plaintiff is a member of the Class and has
8 suffered the alleged violations of California Labor Code § 226(a).

9 26. The California Labor Code upon which Plaintiff bases these claims are broadly
10 remedial in nature. These laws and labor standards serve an important public interest in
11 establishing minimum working conditions and standards in California. These laws and labor
12 standards protect the average working employee from exploitation by employers who may seek
13 to take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment.

15 27. The nature of this action and the format of laws available to Plaintiff and
16 members of the Class identified herein make the class action format a particularly efficient and
17 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
18 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
19 advantage since it would be able to exploit and overwhelm the limited resources of each
20 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
21 Member to pursue an individual remedy would also discourage the assertion of lawful claims
22 by employees who would be disinclined to file an action against their former and/or current
23 employer for real and justifiable fear of retaliation and permanent damage to their careers at
24 subsequent employment.

25 28. The prosecution of separate actions by the individual Class Members, even if
26 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
27 to individual Class Members against the Defendants and which would establish potentially
28 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to

1 individual Class Members which would, as a practical matter, be dispositive of the interest of the
2 other Class Members not parties to the adjudications or which would substantially impair or
3 impede the ability of the Class Members to protect their interests. Further, the claims of the
4 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
5 considering all of the concomitant costs and expenses.

6 29. Such a pattern, practice and uniform administration of corporate policy regarding
7 illegal employee compensation described herein is unlawful and creates an entitlement to
8 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
9 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
10 § 226 and Code of Civil Procedure § 1021.5.

11 30. Proof of a common business practice or factual pattern, which the named Plaintiff
12 experienced and is a representative of, will establish the right of each of the members of the
13 Plaintiff Class to recovery on the causes of action alleged herein.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 226(A)**

16 **(BY PLAINTIFF AND THE CLASS AND HOURLY SUB-CLASS AGAINST ALL**
17 **DEFENDANTS)**

18 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
19 though fully set forth herein.

20 32. Labor Code § 226(a) requires employers to provide itemized wage statements to
21 its employees that identify accurate information, including without limitation, all applicable
22 hourly rates in effect during the pay period and the inclusive pay period dates. Defendants failed
23 in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and the
24 Class in violation of Labor Code § 226(a).

25 33. Plaintiff and the Class were paid hourly. As such, the wage statements should
26 have reflected the accurate hourly rates of pay. Whenever wages were paid, however,
27 Defendants failed to identify the applicable rates of pay on wage statements issued to Plaintiff
28 and the Class. Instead, Defendants had a policy and practice of only identifying the number of

1 hours worked and amount of gross wages earned as a lump sum, without any breakdown as to
2 the hourly rates. This policy and practice is a direct violation of Labor Code § 226(a)(9).
3 Further, said wage statements failed to include the start and end dates of the pay period. Instead,
4 the wage statements only identified one date as the “pay period date.”

5 34. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
7 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
8 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
9 California Labor Code § 226.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

12 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

13 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 36. Plaintiff brings this cause of action as a proxy for the State of California and in
16 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 21, 2019, through
17 the present, for Defendants’ violation of Labor Code § 226(a) as alleged above. Specifically,
18 Defendants violated Labor Code § 226(a) by failing to provide accurate itemized wage
19 statements to Plaintiff and other Aggrieved Employees that identified the applicable hourly rates
20 of pay and inclusive pay period dates whenever such wages were paid.

21 37. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699, as Plaintiff
22 has suffered the violations of Labor Code § 226(a) alleged above.

23 38. On or about May 21, 2020, Plaintiff sent written notice to the California Labor &
24 Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 226(a),
25 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). As of the
26 date of the filing of this Complaint, the LWDA has not responded to Plaintiff’s written notice nor
27 indicated whether it intends to investigate the Labor Code violations provided for in the written
28 notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of Defendants’

violations of the Labor Code to Defendants via certified mail.

39. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code § 226(a) for the time period described above, on behalf of himself and other Aggrieved Employees.

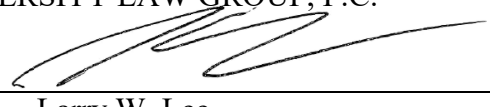
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class and the Hourly Sub-Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action, for penalties and/or damages pursuant to California Labor Code § 226, *et seq.*, and for interest, costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: June 1, 2020

DIVERSITY LAW GROUP, P.C.

By: 

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