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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
UNLIMITED CIVIL JURISDICTION

ROSA LINDA PEDONE,

Plaintiff,

-v-

LOWE'S HOME CENTERS, LLC; DOES 1-
10, inclusive,

Defendants.

No. SCV-265304

PLAINTIFF'S APPLICATION FOR
ORDER APPROVING AGREEMENT
RE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
(PAGA) CAUSE OF ACTION;
DECLARATION OF BRUCE
HIGHMAN RE NOTICE AND IN
SUPPORT OF APPLICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: October 7, 2019
Department: 16
Judge: Honorable Patrick M. Broderick
Date Action Filed: October 7, 2020
Trial Date: September 24, 2021

Plaintiff hereby applies for an Order approving the Agreement re Labor Code Private Attorneys General Act (PAGA) Cause of Action, a true and correct copy of which is attached hereto as Exhibit 1.

The attorney for the plaintiff in this action is Bruce J. Highman whose address, email address and telephone number is set forth above.

The attorneys for the defendants in this action are:

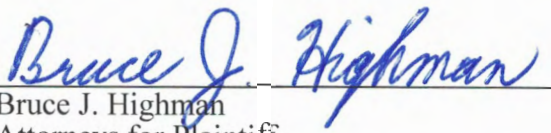
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8 DATED: October 5, 2020

HIGHMAN & HIGHMAN
A PROFESSIONAL LAW ASSOCIATION

9 By 
10 Bruce J. Highman
11 Attorneys for Plaintiff

12 DECLARATION OF BRUCE HIGHMAN RE
13 NOTICE AND IN SUPPORT OF APPLICATION

14 I, Bruce J. Highman, hereby declare:

15 1. I am plaintiff's attorney of record in the present action.

16 2. The sixth and last cause of action in the First Amended Complaint (FAC), which is the
17 current operative complaint, in the present action is a representative cause of action brought on
18 behalf of plaintiff and other employees of defendant Lowe's under the Labor Code Private Attorneys
19 General Act (PAGA). It includes without limitation allegations that defendant Lowe's did not
20 provide plaintiff and other employees with suitable seats for work which could be done while sitting.
21 The other five causes of action in the FAC are plaintiff's individual causes of action alleging sexual
22 harassment and retaliatory discharge.

23 3. The parties have agreed to allow plaintiff's individual causes of action for harassment and
24 retaliation to remain in Sonoma County where she lives and worked for Lowe's. On the other hand
25 they want plaintiff's PAGA cause of action to be coordinated as an add-on case with six other PAGA
26 cases against defendant Lowe's which on August 24, 2020 were ordered coordinated in *Lowe's Wage*
27 *and Hour Cases*, JCCP No. 5110. To the best of my knowledge, a coordination trial judge has not
28 yet been assigned to *Lowe's Wage and Hour Cases* but is expected to be assigned shortly. The
coordination petition had requested the coordination of eight cases, but one of the cases settled
before the petition was heard, and the Order denied the petition as to one of the other eight cases. A

1 true and correct copy of the Order re coordination is attached hereto as Exhibit 2.

2 4. To effectuate the parties' goal, as set forth in paragraph 3 above, they filed a stipulation
3 and proposed Order to sever the PAGA cause of action from the rest of this case. The proposed
4 Order stated:

5 "Pursuant to the stipulation of the parties, the Court hereby Orders that the sixth cause of
6 action under the Labor Code Private Attorneys General Act in the first amended complaint
7 filed on July 17, 2020, be severed from the other causes of action in the first amended
8 complaint. Defendant Lowe's Home Centers, LLC shall have until 30 days following any
9 ruling on the Petition for Coordination, JCCP No. 5110, to file its responsive pleading to
10 Plaintiff's severed PAGA claim."

11 5. The Court added the following sentence to the proposed Order: "Plaintiff and her counsel
12 shall take the steps to file a separate complaint for the PAGA claims and to coordinate with JCCP
13 5110." The Court signed the Order as modified on September 11, 2020. I learned of the Order on
14 September 14, 2020. On September 16, 2020, I filed a new PAGA complaint, *Pedone v. Lowe's*
15 *Home Centers, LLC, et al., Sonoma County Superior Court No. SCV-267074*, a true and correct copy
16 of which is attached hereto as Exhibit 3. Its allegations are the same as in the sixth cause of action
17 under PAGA in the FAC in the present action.

18 6. The Court's Order did not order the dismissal of the PAGA action from the present action,
19 but rather only the filing of a new action containing the PAGA cause of action. I believe the PAGA
20 cause of action in the present action should be dismissed without prejudice so that plaintiff is not
21 prosecuting duplicate PAGA causes of action in two different lawsuits, one of which will probably
22 be coordinated and transferred to another county. However, the statute of limitations likely bars the
23 new PAGA action if the statute of limitations is not found to be tolled by the PAGA cause of action
24 in the present action. I believe the statute of limitations will be found to be tolled including without
25 limitation by equitable tolling. But in an abundance of caution, the parties have entered into the
26 Agreement of which a true and correct copy is attached hereto as Exhibit 1. The Agreement
27 expressly provides for both (1) dismissal of the PAGA cause of action from the present action
28 without prejudice, and (2) tolling of the statute of limitations on the new PAGA action. Without this

1 tolling provision, I, in an abundance of caution, would not dismiss the PAGA cause of action from
2 the present action.

3 7. I have a concern that the Agreement might be argued to be a settlement of a PAGA action
4 requiring Court approval under Labor Code § 2699, subdivision (1)(2). Therefore, in a further
5 abundance of caution, the Agreement provides that it goes into effect only if the Court issues an
6 Order approving it. Plaintiff submits this Application to approve the Agreement.

7 8. This Application should be granted. It will allow dismissal of the duplicative PAGA cause
8 of action in the present action and eliminate any possibility that that dismissal will result in plaintiff
9 being barred by the statute of limitations from prosecuting her PAGA claim. The Agreement does
10 not prejudice the rights of plaintiff, the State of California, or any of plaintiff's fellow employees
11 regarding the claims in the PAGA cause of action since the dismissal is without prejudice and the
12 statute of limitations is tolled. If the Court grants this application, then as soon as possible after I
13 learn it has been granted, I will dismiss the PAGA cause of action in the present action without
14 prejudice.

15 9. Plaintiff is seeking this approval via ex parte order since this is a stipulation and I believe
16 it important to straighten everything out procedurally as soon as possible. While Labor Code § 2699,
17 subdivision (1)(2), says that settlement of a PAGA action must be approved by the Court, it does not
18 say the approval has to be obtained by noticed motion or any other particular means.

19 10. On October 5, 2020, I electronically served a copy of this PLAINTIFF'S APPLICATION
20 FOR ORDER APPROVING AGREEMENT RE LABOR CODE PRIVATE ATTORNEYS
21 GENERAL ACT (PAGA) CAUSE OF ACTION; DECLARATION OF BRUCE HGIHMAN RE
22 NOTICE AND IN SUPPORT OF APPLICATION; MEMORANDUM OF POINTS AND
23 AUTHORITIES on defendant Lowe's Home Centers, LLC, by emailing a true copy thereof to their
24 attorneys:

25 Michele L. Maryott
26 Email: mmaryott@gibsondunn.com
27 Katie M. Magallanes
28 Email: kmagallanes@gibsondunn.com
Katherine V.A. Smith
Email: ksmith@gibsondunn.com

1 My cover email to them stated in relevant part:

2 I will be filing on October 5, 2020, in the Sonoma County Superior Court the attached
3 Plaintiff's Application for Order Approving Agreement re Private Attorneys General Act
(PAGA) Cause of Action.

4 Department 16 of the Court will consider the Application on Wednesday, October 7, 2020.
5 The Court decides on the papers. There is no oral hearing. If you wish to submit any papers
6 regarding the application, you must efile them with the Court no later 10:30 a.m. on
Wednesday, October 7, 2020.

7 The parties have stipulated to electronic service of all papers in this case, and that it shall be treated
8 as personal service.

9 11. On October 5, 2020, I electronically served a copy of this PLAINTIFF'S APPLICATION
10 FOR ORDER APPROVING AGREEMENT RE LABOR CODE PRIVATE ATTORNEYS
11 GENERAL ACT (PAGA) CAUSE OF ACTION; DECLARATION OF BRUCE HIGHMAN RE
12 NOTICE AND IN SUPPORT OF APPLICATION; MEMORANDUM OF POINTS AND
13 AUTHORITIES on the California Labor and Workforce Development Agency (LWDA) by
14 electronically submitting it to them through their webpage, <https://dir.tfaforms.net/271>, as their
15 website instructs parties to do when they are seeking Court approval of a PAGA settlement
16 agreement. The webpage also had a cover form which I filled out and submitted to the LWDA with
17 the settlement agreement. In the box on the form asking for the hearing date, I put "10/7/2020." In
18 the box on the form asking for the hearing time, I put, "Papers supporting or opposing approval shall
19 be efiled by 10:30 a.m. on 10-7-2020. No oral hearing."

20 12. Defendant Lowe's supports granting this application. The LWDA has not informed me
21 of their position on the Application. I would be very surprised if they took a position. I am informed
22 and believe that the LWDA rarely takes a position on whether a PAGA settlement should or should
23 not be approved. Here there is no reason for them to take a position since they aren't prejudiced since
24 the dismissal is without prejudice, the statute of limitations is tolled, and plaintiff has refiled the
25 PAGA cause of action as a new and separate action.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing

27 /

28 /

1 is true and correct, and that this declaration was executed on October 5, 2020.

2
3 Bruce J. Highman
4 Bruce J. Highman

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 For the reasons set forth in the above Declaration of Bruce Highman, this Application should
7 be granted.

8 DATED: October 5, 2020

9 HIGHMAN & HIGHMAN
A PROFESSIONAL LAW ASSOCIATION

10 By Bruce J. Highman
11 Bruce J. Highman
12 Attorneys for Plaintiff
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INDEX OF EXHIBITS

- 1. Agreement re Labor Code Private Attorneys General Act (PAGA) Cause of Action
- 2. Order re coordination
- 3. PAGA complaint in Action SCV-267074

EXHIBIT 1

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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
UNLIMITED CIVIL JURISDICTION

ROSA LINDA PEDONE,

Plaintiff,

-v-

LOWE'S HOME CENTERS, LLC; DOES 1-
10, inclusive,

Defendants.

No. SCV-265304

AGREEMENT RE LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT (PAGA) CAUSE OF ACTION

Plaintiff Rosa Linda Pedone and defendant Lowe's Home Centers, LLC, hereby agree: (1) the sixth cause of action under the Labor Code Private Attorneys General Act (PAGA) in the first amended complaint in the present action shall be dismissed without prejudice; (2) the statute of limitations on plaintiff's refiling the PAGA cause of action in a new action shall be tolled from the date the PAGA cause of action is considered to have been filed in the present action for purposes of the statute of limitations through September 16, 2020, when plaintiff filed a new PAGA action, *Pedone v. Lowe's Home Centers, LLC, et al., Sonoma Superior Court No. SCV-267074*; (3) the tolling provided by this Agreement is in addition to any tolling allowed by law for the time period up until the date the PAGA cause of action is considered to have been filed in the present action for purposes of the statute of limitations; and (4) this Agreement shall go into effect if and only if the Court issues an Order approving it.

The Parties are entering into this Agreement so that Plaintiff Pedone's PAGA claim may be

1 included as an add on case to the recently coordinated proceedings, JCCP No. 5110, *The Lowe's*
2 *Wage and Hour Cases*.

3
4
5 DATED: September 28, 2020

By Rosa Linda Pedone
Rosa Linda Pedone

6
7 DATED: September 25, 2020

By Sandra H. Dermody
Sandra Dermody (Sep 25, 2020 16:06 EDT)

8
9 Sandra H. Dermody, Senior Counsel for
10 Lowe's Companies, Inc., on behalf of
11 Lowe's Home Centers, LLC
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EXHIBIT 2

1 Superior Court of California
2 County of San Bernardino
247 W. Third Street, Dept. S-26
San Bernardino, CA 92415-0210

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

AUG 24 2020

BY 
ERIN MUELLER, DEPUTY

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6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT
8

9 Coordination Proceeding
10 Special Title (Rule 3.550)

**Judicial Council Coordination
Proceeding Case No.: JCCP 5110**

11 **LOWE'S WAGE AND HOUR CASES**

**PETITION FOR COORDINATION:
GRANTED IN PART AND DENIED IN
PART**

12 Included actions:

13
14 Leenay v. Lowe's Home Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
NO. 19STSCV33154

15
16 Soto v. Lowe's Home Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
NO. 19STSCV33064

17
18 Sanchez, et al. v. Lowe's Home
Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED
NO. 20CV-00049

19
20 Morales v. Lowe's Home
Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
NO. CIVDS1827964

21
22 Kalivas v. Lowe's Home Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
NO. 37-2019-00001954

23
24 Cenicerros, et al, v. Lowe's Home
Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
NO. 37-2019-00010047

25
26 Ayala v. Lowes Home Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA
NO. 56-2018-00521531-CU-OE-VTA

27
28 Alvarado v. Lowes Home Centers, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
NO.18CIV05927

Background

The petition for coordination seeks to coordinate eight separate cases pending in six different counties—two cases from Los Angeles County (*Leenay* and *Soto*), two from San Diego County (*Kalivas* and *Ceniceros*), and one each from San Mateo County (*Alvarado*), Ventura County (*Ayala*), Merced County (*Sanchez*), and San Bernardino County (*Morales*). Additionally, counsel have identified two more cases which may become subject to an add-on petition if the Court orders coordination—one case from Sonoma County¹ and a third case from San Diego County.²

The petitioners seeking coordination are the plaintiffs in one of the San Diego cases (*Ceniceros*). The defendants support coordination of all the cases, as sought by petitioners. Additionally, the plaintiffs in the second San Diego case (*Kalivas*), in the San Mateo case (*Alvarado*), and in the San Bernardino case (*Morales*) all support coordination. The plaintiff in the potential add-on case from Sonoma County (see fn. 1) supports coordination as well. The only opposition comes from the plaintiffs in one of the Los Angeles cases (*Leenay*) and from the plaintiff in the Merced case (*Sanchez*). Others have not weighed in, neither supporting nor opposing coordination.

For the reasons explained below, the Court grants the petition for coordination, with the exception of the *Soto* and *Sanchez* cases. *Soto* has settled and, as explained below, *Sanchez* asserts only one claim, which is not raised in any way in of the other

¹ *Pedone v. Lowe's Home Centers, LLC, et al.* Sonoma County Case No. SCV-265304.

² *Andrade v. Lowes*, San Diego County Case No. 37-2020-00022729-CU-OW-CTL.

1 cases. Notwithstanding objections to coordination by the plaintiffs in the *Leenay* case,
2 that case is included in the order for coordination.

3 II

4 **Coordination is Proper for the Cases Other than *Sanchez* and *Soto***

5 Under Code of Civil Procedure section 404, “[w]hen civil actions sharing a
6 common question of fact or law are pending in different courts, a petition for
7 coordination may be submitted to the Chairperson of the Judicial Council” The
8 purpose of coordination is for similar cases with the same or overlapping issues and
9 evidence, but pending in different courts, to be handled together for discovery and
10 pretrial proceedings and possibly for trial. But coordination is not the equivalent of
11 consolidation. The coordination trial judge may remand cases to their originating courts,
12 transfer cases to other courts, or terminate cases that are part of the coordinated
13 proceedings. (Calif. Rules of Court, rule 3.542-3.545.) Nevertheless, the parties may
14 agree to treat the matters as consolidated, or an affected party may file a motion to
15 consolidate the cases for all purposes including trial once they have been coordinated
16 before the Coordination Trial Judge.

17 “A petition for coordination ... shall be supported by a declaration stating facts
18 showing that the actions are complex, as defined by the Judicial Council and that the
19 actions meet the standards specified in Section 404.1.” (Code Civ. Proc., § 404.)
20 Therefore, the initial issue the Coordination Motion Judge must determine is whether
21 the cases are “complex” within the meaning of section 404, as defined by California
22 Rules of Court, rule 3.400. (Calif. Rules of Court, rule 3.502.) In deciding whether a
23 case is complex, the court should consider whether the action is likely to involve (1)
24 numerous pretrial motions raising difficult or novel legal issues that will be time-
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1 consuming to resolve, (2) management of a large number of witnesses or substantial
2 amount of documentary evidence, (3) management of a large number of separately
3 represented parties, (4) coordination with related actions pending in one or more courts
4 in other counties, or (5) substantial postjudgment judicial supervision. (Calif. Rules of
5 Court, rule 3.400(b).)

6
7 In this case, not all eight cases were previously designated as “complex” in their
8 originating courts, or at least that information has not been provided to this Court.
9 Nevertheless, all the cases involve claims for Labor Code violations brought pursuant to
10 the Labor Code Private Attorneys General Act, Labor Code section 2698 *et seq.*
11 (“PAGA”). As such, they all involve alleged Labor Code violations affecting large
12 numbers of “aggrieved employees” who worked for defendants in numerous facilities
13 throughout the State. This Court finds all the cases to be “complex,” whether or not the
14 originating courts formally designated them as such.
15

16 Once the Court has found the matters to be ‘complex,’ the factors to be
17 considered in determining whether the cases should be coordinated are: (1) whether
18 common questions of fact or law predominate and are significant to the litigation; (2) the
19 convenience of parties, witnesses, and counsel; (3) the relative development of the
20 actions and the work product of counsel; (4) the efficient utilization of judicial facilities
21 and manpower; (5) the calendar of the courts; (6) the disadvantages of duplicative and
22 inconsistent rulings, orders, or judgment; and (7) the likelihood of settlement of the
23 actions without further litigation should coordination be denied. (Code Civ. Proc., §
24 404.1.)
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Common Questions of Law and Fact

Each case—excluding *Sanchez* for reasons addressed below—shares core issues of fact and law with the other cases: primarily, whether Lowe’s had legally-compliant policies and practices regarding overtime, meal and rest breaks, and the calculation and payment of wages and premiums for missed breaks. The cases all involve similar issues arising from company-wide policies practices. While all the claims are not strictly identical in every case, and while discovery may reveal individual practices or circumstances that do not apply to all the other cases, there is substantial overlap.

Plaintiffs in the *Leenay* case argue that their case raises a narrow, technical issue concerning the calculation of the regular rate of pay for employees paid on commission, which is not at issue in any of the other cases. But even that narrow issue is still based on Lowes’ company-wide policies and practices—it is simply one subset of a larger set of issues concerning pay calculations. There are sufficient common questions of law and fact, arising from Lowes’ policies and practices, warranting coordinating discovery and pre-trial proceedings, and possibly even trial.

If the issue in *Leenay* turns out to be truly separate and distinct, the *Leenay* plaintiffs can always seek severance and remand upon completion of discovery addressing that issue. Alternatively, a dispositive motion on the issue may be appropriate, and that can be brought and heard as easily in coordinated proceedings as in non-coordinated proceedings.

While the plaintiffs in *Morales*, *Alvarado*, and *Kalivas* refer to prosecuting a master consolidated complaint, that issue is not before this Court. Once consolidation has been finalized with the appointment of the Coordination Trial Judge, the issue can

1 then be raised. Similarly, whether appointment of lead counsel is appropriate, and who
2 should serve in that role, are matters for determination by the Coordination Trial Judge.

3 At this time, given the common Labor Code violations being asserted, petitioners
4 have demonstrated a sufficient number and importance of predominating common
5 questions of fact and law.
6

7 **Convenience of Parties, Witnesses, and Counsel**

8 Coordination will allow discovery to be coordinated and shared in the different
9 cases, which will maximize convenience and efficiency of the parties, witnesses, and
10 counsel. Duplicative discovery will be eliminated. Counsel in the *Morales* and *Alvarado*
11 cases have already agreed, as part of their argument in favor of coordination, to share
12 discovery. At oral argument, however, counsel in *Morales* retreated somewhat from the
13 idea of sharing discovery, at least pending appointment of the Coordination Trial Judge.
14 In fact, she frankly indicated that she intends to move promptly to stay the other cases,
15 on the ground that the other cases, all older than *Morales* and *Alvarado*, assert claims
16 subsumed within the earlier cases.
17

18
19 Counsel for *Leenay* argues that this position undermines the argument for
20 coordination, and counsel is partially correct. But these are matters that can be
21 addressed by a Coordination Trial Judge. Whether stays are proper or improper,
22 having a uniform decision on that question still makes the most sense, rather than
23 having potentially inconsistent rulings by different courts.
24

25 *Leenay* also argues there is no risk of duplicative discovery if *Leenay* remains
26 separate, because, as mentioned above, none of the other cases involve the calculation
27 of the regular rate of pay for employees paid on commission. But, as noted, several
28 other cases raise similar issues regarding the calculation for pay related to missed meal

1 periods as a result of not including compensation such as bonus pay and all non-
2 discretionary forms of pay to calculate wages owed for missed meal periods. *Leenay*
3 fails to demonstrate sufficient dissimilarity of the issue as between hourly employees
4 and those being paid commissions to warrant separate handling of her case.

5 *Leenay* also complains she will be delayed, waiting for other cases to complete
6 discovery. But she fails to explain or support her argument of delay. She may conduct
7 and complete her discovery within a coordinated discovery plan, and if her discovery is
8 completed first, and if she demonstrates that her case warrants a separate and earlier
9 trial, she can seek severance at that time.

11 **Relative Development of Actions and Work Product of Counsel**

12 The *Morales* and the *Alvarado* cases are the oldest cases and these parties
13 represent that substantial written discovery has occurred, as well as mediation. (Drexler
14 Decl. ¶¶ 2-6.) Contact information has been produced for some 5,500 employees and
15 counsel has undertaken some employee interviews. Defendants have produced
16 employee time records and wage data and plaintiff's expert consultant has reviewed the
17 information. (Drexler Decl. ¶ 5.) Other cases have been stayed, such as *Ayala* and
18 *Kalivas*, for reasons related to the overlap in issues with the earlier cases.

19 Several cases are more recent, including *Ceniceros*, filed in February 2020.
20 Others were filed in the fall of 2019, including *Soto* and *Leenay*. If anything, the fact
21 that the parties have already conducted substantial discovery in the older cases will
22 likely *expedite* discovery in the newer cases, insofar as the results of discovery can be
23 shared.

1 **Efficient Use of Judicial Facilities and Manpower, Calendar of Courts**

2 Given the overlap in issues of the cases, having one judge hear and coordinate
3 these cases will lead to the efficient use of judicial facilities and manpower and avoid
4 the duplication of efforts.

5 **Disadvantages of Duplicative and Inconsistent Rulings, Orders, or Judgments**

6
7 There is a concern that if the cases not coordinated, or if some cases are
8 excluded from coordination, settlement of one may have preclusive effect on the others.
9 Coordination addresses this concern. Moreover, coordination will lessen the risk of
10 potentially conflicting rulings, especially with respect to discovery and dispositive or
11 other pre-trial motions. It will ensure that issues concerning protective orders are
12 uniformly resolved. Coordination will lessen the disadvantages of duplicative and
13 inconsistent rulings.
14

15 **Likelihood of Settlement should Coordination be Denied**

16 The plaintiffs in *Morales*, *Alvarado*, and *Kalivas* assert coordination will increase
17 the likelihood of settlement because all parties can be involved in attempting to settle
18 the cases. They claim this will avoid duplicative and potentially inconsistent settlement
19 negotiations. It also minimizes the risk of Lowe's attempting a reverse auction in an
20 effort to settle for less than fair market value and trying to take advantage of potentially
21 inconsistent rulings in other cases.
22

23
24 The plaintiff in *Leenay* argues she will be hampered in settlement because she
25 has a narrow straightforward issue. But coordination does not prevent a partial
26 settlement of a discrete claim, if that turns out to be the case.

27 For all these reasons, coordination is appropriate as to all cases, except *Soto*
28 and *Sanchez*, which is addressed below.

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Coordination is Improper for *Sanchez*

Unlike *Leenay*, the issues in *Sanchez* are entirely distinct from the issues in the remaining cases. The sole issue in *Sanchez*, after the filing of a First Amended Complaint which abandoned certain claims, concerns unreimbursed mileage expenses for employees who use their personal vehicles during the work-day. This issue is not raised in any of the other cases. The discovery needed in *Sanchez* is discrete from the discovery needed in the other cases. Moreover, the risk of issue or claim preclusion arising from any settlement in *Sanchez* appears to be non-existent. Accordingly, coordination is denied as to *Sanchez*.

IV

Order for Coordination

The petition for coordination is granted for all cases subject to the petition with the exception of *Soto* and *Sanchez*. The potential add-on cases will be addressed if and when add-on petitions are filed.

Pursuant to California Rules of Court, rule 3.529(a), petitioner is ordered to file this order in each coordinated action, as well as in the *Soto* and *Sanchez* cases, serve it on each party appearing in each coordinated action, as well as each party in the *Soto* and *Sanchez* cases, and submit it to the Chair of the Judicial Council.

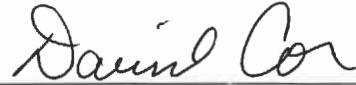
Pursuant to California Rules of Court, rule 3.529(b), all proceedings in the individual actions are hereby stayed until such time as the Coordination Trial Judge lifts the stay.

Considering the factors listed in California Rules of Court, rule 3.530(b), and based on the unopposed recommendation of some of the parties, the Coordination

1 Motion Judge recommends to the Chair of the Judicial Council that the actions be
2 coordinated in San Bernardino County.

3 Pursuant to Code of Civil Procedure section 404.2, the Fourth District Court of
4 Appeal, Division 2, is selected as the appropriate reviewing court.

5
6 Dated: August 24, 2020.

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8 David Cohn,
9 Judge of the Superior Court
10 Coordination Motion Judge
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EXHIBIT 3

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County of Sonoma
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
UNLIMITED CIVIL JURISDICTION

ROSA LINDA PEDONE,

Plaintiff,

-v-

LOWE'S HOME CENTERS, LLC; DOES 1-10, inclusive,

Defendants.

No. SCV-267074

COMPLAINT FOR RELIEF UNDER
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT

FACTS

1. Plaintiff Rosa Linda Pedone worked for defendant Lowe's Home Centers, LLC, (hereinafter "Lowe's") from November 11, 2017, through October 5, 2018, as a part-time Sales Associate, also known as a Customer Service Associate, in the Paint Department at the Lowe's store in Cotati, California.

2. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of defendants sued herein as Does 1-10, inclusive, are unknown to plaintiff Pedone, who therefore sues said defendants by such fictitious names and will pray leave to amend this complaint together with appropriate charging allegations when the same have been ascertained. Pedone is informed and believes and thereupon alleges that each of said fictitiously named defendants are responsible in some manner for the occurrences herein alleged, and that Pedone's damages as herein alleged, were proximately caused by their conduct.

3. Prior to Pedone actually meeting Dan Mulligan, a new co-worker in Paint in August 2018,

1 she had received "verbal warning" from another co-worker that Mulligan had been making
2 inappropriate remarks of a sexual nature about customers and other female employees. The first two
3 times she worked with Mulligan, she did not encounter anything of this nature.

4 4. On Wednesday, August 22, 2018, Pedone worked the closing shift in the Paint Department
5 from 5:15 to 10:00 p.m. When she arrived, Mulligan was there. (She believes he was due to end his
6 shift at 7:00.) Almost immediately, he began to relate something that had occurred that day with
7 either a difficult female customer or difficult assignment from that customer (she doesn't remember
8 which). He said he had not minded, however, because "she had a good body." Pedone responded by
9 saying "I hope you didn't say that to the customer, because that would be a no-no." He laughed. A
10 short time later, Mulligan started a conversation about differences in working for a union versus non-
11 union shop. He proceeded to relate a story about an experience he had with some co-workers at a
12 former job-- one of whom, one day at lunch, remarked to Mulligan that his sandwich looked as if
13 it had "semen" in it. Pedone's immediate reaction was to just roll her eyes and walk away. Though
14 she said nothing, she felt disgusted and uncomfortable.

15 5. That evening after Mulligan had finished his shift, Pedone sought out Gary Cooper (the
16 manager over the Paint Department and thus over Mulligan and her) to report Mulligan's remarks,
17 but learned Cooper was not working that day. Instead, Pedone relayed this incident with Mulligan
18 to Cara (last name unknown), one of the on-duty managers. She told Cara that she was going to
19 request to not be scheduled to work with Mulligan again, and said that she hoped she would be able
20 to avoid him altogether because he had said he was soon to be assigned to work closing shifts on
21 nights that she did not work. (She only worked two evening shifts, Tuesdays and Wednesdays.)

22 6. On August 26, Pedone was scheduled to work from 10 a.m. to 2:45 p.m. When she arrived
23 at work, she was disheartened to see Mulligan behind the paint desk. When she checked the
24 schedule, she noticed he was going to be there for the duration of her shift. It was not long after she
25 clocked in that he began a conversation about The Grateful Dead. He told her he had once worked
26 in a house in Marin belonging to one of the band members. That particular band member had a
27 "beautiful" wife who supposedly attempted suicide before their divorce because on one occasion she
28 had walked in on her husband who had their maid on his lap, giving him a "blow job." Pedone's only

1 response was to give Mulligan a look of disgust. He went on about some other person connected
2 with this group who he claims to have seen at a courthouse one day. Pedone was barely listening by
3 this point. Mulligan said something about their having kicked someone else in his crotch, rendering
4 him impotent. But then there was some woman later who claimed he was able to "perform" - ??
5 Pedone really lost the whole story line. She isn't sure of all the details that Mulligan said, but she
6 knows that she heard very clearly these anecdotes of a sexual nature.

7 7. When Mulligan finished his shift and left the store on August 26, 2018, Pedone searched
8 out and asked Cooper if Cara had said anything to him about Mulligan. Cooper said "No." So Pedone
9 told Cooper what had happened, both on her previous shift with Mulligan, and the one that just
10 occurred. She reiterated that she did not want to be scheduled to have to work with Mulligan again.
11 Cooper assured her he would speak to Mulligan and then asked if she would be willing to provide
12 a written statement. She said she would. She delivered her written statement detailing the sexual
13 harassment to the store HR Manager, Derek Johnson, the very next day. When she handed it to him,
14 he acknowledged that he already knew about the situation with Mulligan and was expecting her
15 statement. Not knowing what the Lowe's company process was in situations like these, she asked
16 Johnson, "What is going to happen to my complaint now?" He replied, "Whatever I decide to do with
17 it."

18 8. During the month of September 2018, Pedone learned that another female employee in the
19 Paint Department, Lily Akers, reported that Mulligan had made some sexually suggestive remarks
20 to her (or in her presence) and had inappropriately touched her and she had also made a formal
21 complaint. In addition, Cooper, the Paint Department manager, informed Pedone that one of the
22 cashiers in the store had been sexually harassed by Mulligan and had made a complaint too, but he
23 did not provide any details. Still, Pedone continued to have shifts that overlapped with Mulligan's
24 and so was forced to interact with him. She wanted to insist that she not be scheduled to work with
25 him, but she did not because she knew the store was short-staffed and it would make scheduling
26 difficult if not impossible to accommodate her. Mulligan continued to offend. On one occasion, he
27 arrived early for his shift and began to clock in. She asked if he always clocked in early (something
28 she understood was frowned upon). He replied yes, he had to, so that Lowe's didn't "Jew him" out

1 of his eight hours. Pedone told him, and other employees she related this to afterwards, including
2 Cooper, that she found his remark very offensive. She has a Jewish aunt, uncle and cousins. There
3 were no further incidents with inappropriate sexual remarks, but she was never relaxed around him
4 and kept wondering why he was still employed. Sometime around mid-September, during one of her
5 shifts, she saw Akers in the store on her day off. Akers told Pedone that she had been contacted by
6 "corporate" with regard to the complaint she had made about having been sexually harassed by
7 Mulligan, and the incident in which he had physically touched her. She told Pedone that she had been
8 promised her complaint would remain confidential. Pedone was never contacted for follow up of any
9 kind by Lowe's corporate, HR or anyone else after she submitted her written complaint of sexual
10 harassment to Johnson on August 27, and wondered why no one had bothered to contact her.

11 9. On Saturday or Sunday, September 22 or 23, 2018, Cooper called Pedone at home on one
12 of her days off to let her know that Mulligan "no longer worked for the company," and he needed
13 to reschedule her shifts for the coming week. This necessitated her having to alter some personal
14 plans, but she agreed and said, "No problem." On or about Monday, September 24, 2018, a new
15 seasonal part-time employee, Griffith (last name unknown), started in the Paint Department. On
16 Griffith's first day, Johnson in HR asked Pedone to train him during her shift, which she did.

17 10. On Wednesday, October 3, 2018, Pedone went to the UPS store in Rohnert Park. As she
18 was standing at the counter waiting for copies, she heard a voice behind her say "I was hoping I'd
19 never have to see YOU again!" She turned around and saw it was Mulligan. She replied, "Why is
20 that?" He began to verbally assault her in front of customers and several store employees. He told
21 her he knew about all the "nasty, dirty things" she told Lowe's he had said to her, asked why she had
22 made a "federal case" out of it, said she got him fired, that she must be proud of herself, etc., etc. She
23 told him she had only told the truth, and that if he behaved, he wouldn't have to worry about bad
24 things happening to him. She then left the store, worried he might follow her. She also wondered if
25 he was under the impression it was only her complaint that had gotten him fired, since he did not
26 mention anyone else.

27 11. On Thursday, October 4, 2018, at work, Pedone saw the store manager, Dave Berlin, and
28 told him what had happened in the UPS store with Mulligan. She expressed some concern about her

1 safety and possibly being retaliated against (Mulligan knew her last name and could find out where
2 she lived). She also told Berlin that she was "not happy" about the way in which her sexual
3 harassment complaint had been handled, because obviously Mulligan knew not only that it was she
4 who had filed a complaint, but he also knew what things she claimed he had said to her. She wanted
5 to know if corporate had ever received her complaint (and if they did, why was she never contacted
6 and promised anonymity like Akers)-- or if it had only been handled at the store by Johnson. Berlin
7 acknowledged that Mulligan had been confronted with the statements Pedone claimed he had made,
8 had admitted to making them, and could therefore figure out who his accuser was. Berlin also told
9 Pedone that he really doesn't get involved in personnel issues like this (that's HR's responsibility) and
10 his job was to "just run the store."

11 12. On Friday, October 5, 2018, Pedone reported for her 8:00 a.m.-1:00 p.m. shift. Around
12 11:30 she received a call from Sean Basurto, an Assistant Store Manager (ASM) and Cooper's
13 supervisor, asking her to come in to the manager's office as soon as she could. Her co-worker Brody
14 Hall was at lunch, so she waited until he returned and then went to the manager's office where she
15 was informed by Basurto that she was being "let go." In shock, and upset, she asked why, and
16 Basurto told her it was because they were "cutting hours" in Paint. Basurto assured her it was not due
17 to poor performance or anything she had done. She asked if there was another department they could
18 move her into. He said there were no other available positions anywhere in the store. He handed her
19 an envelope with her final pay in cash (he did not ask her to sign for it) and told her she could leave
20 the store and did not have to finish her shift. He also told her she was welcome to re-apply for future
21 employment. Later that afternoon she called and spoke to Johnson, the store HR manager. She told
22 him she would need a letter from Lowe's simply stating that she no longer worked there. She
23 explained that she received housing assistance and was obligated to report any time she had a change
24 in income. She told Johnson she would pick up the letter on Monday, October 8.

25 13. On Sunday, October 7, 2018, Pedone called her former co-worker Brody Hall at home
26 to ask if he had heard anything further about her unexpected departure. He told her that Cooper had
27 told him he had "no idea" why she had been fired. She asked if he had Akers's phone number. He
28 did not, but told Pedone to call the store because he was sure Akers was working. When she called

1 the store, Cooper answered the phone in the Paint Department. Pedone asked him why she had been
2 let go. At first he told her he didn't know. He said he had only learned about it when he arrived at
3 work on Friday afternoon and was told by Johnson in HR that they were "firing a bunch of people"
4 and that she was one of them. She said she had been told by Basurto that it was because they were
5 cutting hours in Paint, which didn't make sense to Pedone because they had just hired Griffith.
6 Cooper fumbled around for words. Then he said, "I think it was due to availability." Pedone asked
7 what he meant by that since she was available seven days a week for any shift. He responded with
8 "It's because you complained about half of the shifts I gave you." She asked how Johnson, who was
9 in HR and not involved with scheduling, would know that. Cooper replied that he had told him. She
10 asked, "When did you do that?" She did not get a reply because Cooper immediately told her he had
11 to wait on a customer and would call her back later. He never did.

12 14. Cooper's claim that Pedone had complained about half the shifts she was given was false.
13 Sometimes she had indicated her shift preferences. Sometimes when the shifts she was given were
14 not the shifts she preferred, she so indicated. But she was polite about it and she always worked the
15 shifts she was given. Her co-worker Brody Hall, by contrast, could be very vocal in expressing his
16 displeasure about shifts he was assigned, and he refused to work some shifts. But he was not
17 terminated.

18 15. On Monday, October 8, 2018, Pedone returned to Lowe's to pick up the letter of
19 termination she had requested from Johnson in HR. While in his office, she read it over and noticed
20 that it said, "She had a seasonal evaluation and was let go due to hours being cut. She was a great
21 worker and we appreciated her time with us." Pedone asked if it was true that she was let go due to
22 hours being cut, why did the Paint Department just hire Griffith? Johnson gave her a blank stare.
23 Then he said she had just had an "evaluation." She told him she was not aware of any "evaluation."
24 He replied that they don't share them with the employees. She said she didn't understand - if the
25 evaluation was bad, and that's why she was let go, why wouldn't they tell her? She then told him that
26 Cooper had acknowledged to her that he had been "blindsided" when he learned she had been
27 terminated, so if that was true, who did her evaluation? Johnson told her that Basurto, the ASM, had
28 done it. She asked how Basurto could effectively evaluate her performance when he had never

1 worked with her, supervised her, nor ever spoken to her beyond a Hello or Good Morning. Johnson
2 said that Cooper probably sat in on it. When she questioned how that could be true because Cooper
3 had claimed he had no idea she was being let go, Johnson replied, "We usually don't tell employees
4 that." She stated that none of what he was saying to her made any sense, and left.

5 16. On October 12, 2018, Brody Hall called Pedone "to vent." He said that Cooper was
6 "really mad" at him for refusing to work two opening shifts and felt he had been purposely scheduled
7 for some other undesirable shifts as "punishment" and "retaliation." He was worried about being
8 fired and wondered if he should give his two-week notice. A few days later she called Hall to ask
9 what had happened and he told her, "Me and Gary [Cooper] worked it out."

10 17. On January 11, 2019, Pedone received a copy of her personnel file and payroll records
11 from Lowe's (originally requested in November 2018). Included was her Seasonal Employee
12 Evaluation, dated September 8, 2018 and signed by ASM Sean Basurto. Prior to her termination on
13 October 5, 2018, she had not been made aware of this evaluation, nor was it brought to her attention
14 by Basurto the day he fired her because they were "cutting hours" and "not due to poor performance."
15 The evaluation rated her Dependability, Teamwork, and Communication as "Unacceptable." The
16 evaluation was false. At no time during her 11 month employment at Lowe's was she told her
17 performance was not satisfactory.

18 18. Lowe's terminated Pedone because of her complaints about harassing conduct. This is
19 shown by various factors, including without limitation: (1) the fact that her termination occurred
20 shortly after she engaged in protected conduct, including without limitation, in that it occurred the
21 day after she disclosed and complained about the harassing conduct to Berlin; (2) she was given
22 multiple and conflicting reasons for the termination; and (3) the reasons she was given for the
23 termination were false and pretextual.

24 **CAUSE OF ACTION UNDER LABOR CODE**
25 **PRIVATE ATTORNEYS GENERAL ACT**

26 19. Plaintiff Pedone refers to the allegations of paragraphs 1-18 above of the complaint and
27 incorporates the same herein by this reference as though set forth in full.

28 20. Plaintiff Pedone brings this cause of action under the Labor Code Private Attorneys

1 General Act (PAGA) on behalf of herself and all other current and former employees of Lowe's
2 Home Centers, LLC, against whom defendants committed violations of Labor Code §§ 1198, 1102.5
3 and 98.6.

4 21. Defendant Lowe's violated Government Code § 12940, subdivision (j), of the Fair
5 Employment and Housing Act (FEHA) in that Pedone was harassed based on sex, female, and
6 religion, Jewish. Although Pedone is not Jewish, she has a Jewish aunt, uncle and cousins. Lowe's,
7 including without limitation its supervisors and agents, knew about the harassment when Pedone
8 complained about it on August 22, 26 and 27, 2018, and when Akers and another female employee
9 complained about it, but Lowe's did not take immediate and appropriate corrective action, which
10 among other things resulted in Pedone having to continue to work with Mulligan. Rather Lowe's
11 only took corrective action when it terminated Mulligan which appears to have been on or about
12 September 21 or 22, 2018. Even then, its corrective action was not appropriate, including without
13 limitation, because when Pedone complained on October 4, 2018 to Berlin about the harassment, she
14 was terminated in retaliation the next day.

15 22. Lowe's also violated Government Code § 12940, subdivision (k), in that it failed to take
16 all reasonable steps necessary to prevent harassment from occurring.

17 23. Lowe's violated Government Code § 12940, subdivision (h), of the FEHA in that it
18 discharged Pedone because she "opposed...practices forbidden under this part" including without
19 limitation her opposition to and complaints about the harassment.

20 24. Labor Code § 1102.5 states, "An employer, or any person acting on behalf of the
21 employer, shall not retaliate against an employee for disclosing information, or because the employer
22 believes that the employee disclosed or may disclose information . . . to a person with authority over
23 the employee or another employee who has the authority to investigate, discover, or correct the
24 violation or noncompliance...if the employee has reasonable cause to believe that the information
25 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state,
26 or federal rule or regulation...."

27 25. Pedone disclosed and complained about what she had reasonable cause to believe was
28 unlawful conduct in violation of state and federal discrimination, harassment and retaliation statutes,

1 and which in fact did violate such statutes including without limitation the FEHA, when as discussed
2 above she disclosed and complained about harassing conduct to: (1) Cara, one of the on-duty
3 managers; (2) Cooper, the manager over the Paint Department; (3) Berlin, the store manager; and
4 (4) Johnson, the HR manager. Cara, Cooper and Berlin were persons with authority over her.
5 Johnson was another employee who had the authority to investigate, discover, or correct Mulligan's
6 harassment. Therefore, her conduct in disclosing and complaining about harassing conduct to Cara,
7 Cooper, Berlin and Johnson was protected from retaliation under Labor Code § 1102.5.

8 26. Lowe's terminated Pedone in violation of Labor Code § 1102.5 in that her above
9 discussed conduct that was protected from retaliation under Labor Code § 1102.5 was a contributing
10 factor in causing Lowe's to terminate her.

11 27. Labor Code § 98.6, subdivision (a), among other things, provides: "A person shall not
12 discharge an employee or in any manner discriminate, retaliate, or take adverse action against any
13 employee or applicant for employment because the employee or applicant engaged in any conduct
14 delineated in...Chapter 5 (commencing with Section 1101) of Part 3 of Division 2," Labor Code
15 § 1102.5 is part of Chapter 5 of Part 3 of Division 2. Therefore, Pedone's conduct that was protected
16 from retaliation under Labor Code § 1102.5 was also protected from retaliation under Labor Code
17 § 98.6, and her termination in violation of § 1102.5 also violated § 98.6.

18 28. The Wage Order which applied to Pedone's employment was Wage Order 7. Section 14,
19 subpart (A), of Wage Order 7 provides: "All working employees shall be provided with suitable seats
20 when the nature of the work reasonably permits the use of seats." Labor Code § 1198 makes it illegal
21 to employ an employee under conditions of labor that are prohibited by the applicable wage order.

22 29. During the entire time Pedone worked at Lowe's and continuing through the present,
23 Lowe's has violated Wage Order 7, § 14, and thus Labor Code § 1198, as to Pedone and other
24 employees in the Paint Department, and she is informed and believes in the Seasonal, Plumbing,
25 Lumber, Tools, Hardware, Customer Service>Returns Desk and Electrical Departments also, at the
26 Lowe's Cotati store in that she and the other employees in those departments have not been provided
27 with suitable seats even though the nature of their work for much of each day reasonably has
28 permitted the use of seats, including without limitation when they talk with customers and when they

1 work on shelves or on the computer. Pedone is informed and believes that CSAs in the Garden,
2 Fashion Bath, Kitchens, Home Décor, Flooring, Doors & Window, and Pro Desk Departments at
3 Lowe's in Cotati have had seats which they can use, including without limitation when talking with
4 customers and when working on the computer. Nonetheless, Pedone is informed and believes that
5 during the entire time she worked at Lowe's and continuing through the present, Lowe's has also
6 violated Wage Order 7, § 14, and thus Labor Code § 1198, as to the employees in the Fashion Bath,
7 Home Décor, and Flooring Departments at the Lowe's Cotati store, and all other employees at the
8 Lowe's Cotati store who work on shelves, in that they have not been provided with suitable seats that
9 they could use to work on shelves, although their work on shelves reasonably permitted the use of
10 seats suitable for that work.

11 30. Pedone is informed and believes that during the entire time she worked at Lowe's, and
12 continuing through the present, Lowe's has violated Wage Order 7, § 14, and thus Labor Code
13 § 1198 as to many other employees at many other California stores, i.e., Pedone is informed and
14 believes that many other employees at many other Lowe's stores in California have not been
15 provided with suitable seats even though the nature of their work for much of each day reasonably
16 has permitted the use of seats, including without limitation when they talk with customers and when
17 they work on shelves or on the computer.

18 31. On Monday, October 7, 2019, Pedone filed Action No. SCV-265304, *Pedone v. Lowe's*
19 *Home Centers, LLC, et al.*, in Sonoma County Superior Court, alleging individual causes of action
20 for harassment and retaliation under the Fair Employment and Housing Act, Labor Code §§ 1102.5
21 and 98.6, and for tortious discharge in violation of public policy. Pedone had given written notice
22 three days earlier on October 4, 2019 of the alleged violations of Labor Code §§ 1198, 1102.5 and
23 98.6 and the facts and theories to support the violations electronically to the California
24 Labor and Workforce Development Agency (LWDA) through its website, and by certified mail,
25 return receipt requested, to Lowe's. 65 days from October 4, 2019, was Sunday, December 8, 2019.
26 Because that day was a Sunday, the LWDA had until Monday, December 9, 2019 to notify plaintiff
27 that it intended to investigate. (*Code of Civil Procedure* §§ 12, 12a, 12b and 135; *Government Code*
28 § 6700.) Plaintiff did not receive any notice back from the LWDA as of December 9, (and indeed

1 has not received any such notice back from the LWDA since then) as to whether it intends to
2 investigate the alleged violations.

3 32. Pedone filed a First Amended Complaint (FAC) in Action No. SCV-265304 adding the
4 PAGA cause of action on December 10, 2019, which was the first day the PAGA cause of action
5 could be added. The FAC also made three minor, nonsubstantive changes unrelated to the PAGA
6 cause of action.

7 33. Pedone did not seek leave of court to file the FAC in Action No. SCV-265304. Pedone
8 had not yet received defendants' answer and therefore assumed they had not yet filed it. The clerk
9 filed the FAC on December 10. As it turned out, defendants had filed their answer to the original
10 complaint on December 3, 2019, and served the answer by mail on Pedone's attorney on that date,
11 but Pedone's attorney did not receive it until December 11, 2019, the day after he filed the FAC.

12 34. Pedone therefore filed a motion for leave to file the FAC on February 6, 2020. The Court
13 signed an Order granting the motion on July 15, 2020. The Order ordered Pedone to file the FAC
14 within five days of notice of entry of the Court's Order. Pedone received the Order on July 17, 2020,
15 and filed the FAC later that same day.

16 35. There is another case which also alleges a PAGA cause of action against Lowe's for not
17 providing suitable seats— *Morales v. Lowe's Home Centers, LLC, et al.*, San Bernardino Superior
18 Court No. CIVDS1827964. On August 24, 2020, the *Morales* case was ordered coordinated with five
19 other PAGA cases against Lowe's in *Lowe's Wage and Hour Cases*, No. JCCP 5110.

20 36. Pedone and Lowe's have agreed to trial of Pedone's individual causes of action for
21 harassment and retaliation in Sonoma County Superior Court where she lives and worked for
22 Lowe's, and that her PAGA cause of action should be coordinated as an add-on case with *Lowe's*
23 *Wage and Hour Cases*, No. JCCP 5110. Pedone and Lowe's therefore submitted a stipulation and
24 proposed Order to the Court in Action No. SCV-265304 to sever the PAGA cause of action from the
25 rest of that Action. The proposed Order stated:

26 "Pursuant to the stipulation of the parties, the Court hereby Orders that the sixth cause of
27 action under the Labor Code Private Attorneys General Act in the first amended complaint
28 filed on July 17, 2020, be severed from the other causes of action in the first amended

1 complaint. Defendant Lowe's Home Centers, LLC shall have until 30 days following any
2 ruling on the Petition for Coordination, JCCP No. 5110, to file its responsive pleading to
3 Plaintiff's severed PAGA claim."

4 37. The Court added the following sentence to the proposed Order: "Plaintiff and her counsel
5 shall take the steps to file a separate complaint for the PAGA claims and to coordinate with JCCP
6 5110." The Court signed the Order with this addition on September 11, 2020. Plaintiff's attorney
7 learned on September 14, 2020, that the Court had signed the Order.

8 38. Civil monetary penalties should be awarded according to proof as prescribed by the
9 PAGA against defendants and in favor of plaintiff and all other current and former employees of
10 Lowe's Home Centers, LLC, against whom defendants committed violations of Labor Code §§ 1198,
11 1102.5 and 98.6.

12 39. As the further proximate result of defendants' violation of Labor Code §§ 1198, 1102.5
13 and 98.6, Pedone has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and
14 is entitled to an award of reasonable attorneys' fees and litigation expenses therefor to be shown
15 according to proof.

16 WHEREFOR, plaintiff Pedone prays judgment as follows:

17 1. For herself and all other current and former employees of defendant Lowe's Home
18 Improvement Centers, LLC, against whom defendants committed violations of Labor Code §§ 1198,
19 1102.5 and 98.6, for relief to be shown according to proof, including without limitation civil
20 monetary penalties and reasonable attorneys' fees and litigation expenses;

21 2. For costs of suit; and

22 3. For such other and further relief as this Court deems just and proper.

23 DATED: September 16, 2020

24 HIGHMAN & HIGHMAN
A PROFESSIONAL LAW ASSOCIATION

25
26 By/s/ Bruce J. Highman

27 Bruce J. Highman
Attorneys for Plaintiff

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I am employed in the county of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 582 Market Street, Suite 1212, San Francisco, California 94104. On October 5, 2020, I electronically served the PLAINTIFF'S APPLICATION FOR ORDER APPROVING AGREEMENT RE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (PAGA) CAUSE OF ACTION; DECLARATION OF BRUCE HIGHMAN RE NOTICE AND IN SUPPORT OF APPLICATION; MEMORANDUM OF POINTS AND AUTHORITIES on the defendant in said cause, by emailing a true copy thereof from my email address, bruce.highman@highmanlaw.com, to:

The parties have stipulated to electronic service and that it shall constitute personal service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 5, 2020.

Bruce J. Highman
Bruce J. Highman