

FILED/ENDORSED
Clerk of the Superior Court

NOV 23 2020

By **D. HERTZ**
DEPUTY CLERK

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP LLP
William L. Marder (State Bar No. 170131)
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Filed by fax

Attorneys for Plaintiff, the Class, and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

MARIA JOHNSON, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

LOWE'S HOME CENTERS, LLC, a North
Carolina limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. **FCS055726**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Unpaid Sick Pay
(Lab. Code §§ 201-204, 233, 246)
- (2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (4) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

COPY

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Maria Johnson, submits this Class and
3 Representative Action Complaint against Defendant, Lowe’s Home Centers, LLC, and Does 1 through
4 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint addresses Defendants’ violations of Labor Code sections 201-202, 204, 226, 233, and 246,
9 and seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections
10 203, 210, 218, 218.5, 218.6, 248.5, and 2698 et seq., and the Unfair Competition Law, codified at
11 Business and Professions Code sections 17200 *et seq.* (the “UCL”).¹

12 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
13 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
14 underpaying sick pay wages and failing to provide accurate itemized wage statements.

15 3. Defendants routinely underpay sick pay wages by failing to pay such wages at the
16 regular rate of pay. Specifically, Plaintiff and other non-exempt employees regularly earn non-
17 discretionary remuneration, including for example incentives or bonuses. Defendants fail to account for
18 such earnings when paying sick pay. Rather than pay sick pay at the regular rate of pay, Defendants
19 underpay sick pay to Plaintiff and other non-exempt employees at their base rates of pay.

20 4. Defendants also routinely fail to provide accurate itemized wage statements to Plaintiff
21 and other non-exempt employees. First, whenever sick pay wages are underpaid to Plaintiff and other
22 non-exempt employees, Defendants fail to furnish wage statements that accurately show and itemize
23 applicable hourly rates, gross wages earned, and net wages earned. Second, whenever overtime
24 adjustment wages are paid to Plaintiff and other non-exempt employees, Defendants again fail to
25 furnish wage statements that accurately show and itemize applicable hourly rates. No rates are shown at
26 all. Third, whenever hours worked differential wages are paid to Plaintiff and other non-exempt
27 employees, Defendants fail to furnish wage statements that accurately show and itemize total hours
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 worked. Moreover, when the hours shown on the wage statements are added up, the sum also does not
2 equal the total hours worked.

3 5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
4 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
5 customs that knowingly deny its employees the above stated rights and benefits.

6 6. The policies, practices, and customs of Defendants resulted in unjust enrichment of
7 Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of
8 the Labor Code.

9 **JURISDICTION AND VENUE**

10 7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
11 Defendants' violations of Sections 201-204, 226, 233, and 246, and the UCL.

12 8. Venue is proper in the County of Solano. Plaintiff worked for Defendants in Fairfield.

13 **PARTIES**

14 9. Plaintiff began working for Defendants in or about April of 2015 and worked in
15 California for Defendants for 30 or more days within a year. Until her employment as a delivery
16 coordinator ended in or about October of 2020, Plaintiff was paid on an hourly basis as a non-exempt
17 employee. Plaintiff earned and was paid non-discretionary remuneration, including for example
18 incentives or bonuses. Plaintiff also earned and was paid sick pay, hours worked differential wages, and
19 overtime adjustment wages. Plaintiff, however, was not paid sick pay wages at the regular rate of pay.
20 Nor was Plaintiff provided with accurate itemized wage statements. Plaintiff thus is a victim of the
21 policies, practices, and customs of Defendants complained of in this action in ways that have deprived
22 her of the rights guaranteed by the Labor Code and the UCL.

23 10. Plaintiff is informed and believes that Defendant, Lowe's Home Centers, LLC, was and
24 is a North Carolina limited liability company. Plaintiff is informed and believes that at all times herein
25 mentioned named defendants and Does 1 through 50, were and are corporations, business entities,
26 individuals, or partnerships that are and were licensed to do business and actually doing business in the
27 State of California. Based upon all the facts and circumstances incident to Defendants' business,
28 Defendants are subject to Sections 201-204, 226, 233, and 246, and the UCL.

11. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

12. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

13. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

14. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

15. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who were paid sick pay wages in a workweek in which they earned non-discretionary remuneration, including incentives or bonuses, at any time since May 27, 2016 (the “Sick Pay Class”); (ii) all current and former non-exempt employees of Defendants in the State of California who were paid overtime adjustment wages at any time since May 27, 2019 (the “Overtime Adjustment Class”); and (iii) all current and former non-exempt employees of Defendants in the State of California

1 who were paid hours worked differential wages at any time since May 27, 2019 (the “Differential
2 Wages Class”). The Sick Pay Class, Overtime Adjustment Class, and Differential Wages Class are
3 collectively referred to as the “Class.”

4 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
5 joinder of all members would be impractical, if not impossible. The identities of the members of the
6 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
7 informed and believes that Defendants violate Sections 201-204, 226, 233, and 246, and the UCL.
8 against Plaintiff and the Class by underpaying sick pay wages and failing to provide accurate itemized
9 wage statements.

10 17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
11 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
12 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have
13 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
14 and-hour class actions currently pending in California state and federal courts.

15 18. **Common Question of Law and Fact:** There are predominant common questions of law
16 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
17 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
18 failing to (i) pay sick pay at the regular rate of pay and (ii) provide accurate itemized wage statements.

19 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
20 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
21 suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt
22 employee and earned and was paid hours worked differential wages, overtime adjustment wages, and
23 non-discretionary remuneration, including for example incentives or bonuses. Plaintiff also earned sick
24 pay but was not paid sick pay wages at the regular rate of pay. Nor was Plaintiff provided with accurate
25 itemized wage statements. Plaintiff thus is a member of the Class and has suffered the alleged violations
26 of the Labor Code.

27 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
28 in establishing minimum working conditions and requirements in California. These labor standards

1 protect employees from onerous terms and conditions of employment or exploitation by employers who
2 have superior economic and bargaining power.

3 21. The nature of this action and the format of laws available to Plaintiff and members of the
4 Class make the class action format a particularly efficient and appropriate procedure to redress the
5 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
6 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
7 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
8 legal resources. Requiring each member of the Class to pursue an individual remedy would also
9 discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former or current employer for real and justifiable fear of retaliation and permanent
11 damage to their careers at their current or subsequent employment.

12 22. The prosecution of separate actions by individual members of the Class, even if possible,
13 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
14 members of the Class that would establish potentially incompatible standards of conduct for
15 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
16 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
17 of other members of the Class not parties to the adjudications. Further, the claims of the individual
18 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
19 the concomitant costs and expenses.

20 23. Defendants' pattern, practice, and uniform administration of corporate policy in violation
21 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
22 rights of Plaintiff and the Class under Sections 201-204, 226, 233, and 246, applicable IWC Wage
23 Orders, the UCL, and Code of Civil Procedure section 1021.5, among other provisions, to recover
24 underpaid sick pay wages, and interest thereon, applicable penalties, reasonable attorneys' fees, and
25 costs of suit.

26 24. This action is brought for the benefit of the Class, which is commonly entitled to a
27 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
28 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

1 **FIRST CAUSE OF ACTION**

2 **Unpaid Sick Pay (Lab. Code §§ 201-204, 233, 246)**

3 **(By Plaintiff and the Sick Pay Class Against All Defendants)**

4 25. The preceding paragraphs are re-alleged and incorporated by this reference.

5 26. Section 233 provides that an employer must permit an employee to use accrued sick
6 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
7 provides that an employee is entitled to sick pay wages for use of accrued sick leave. An employer must
8 calculate paid sick time by using one of two calculations: (i) "Paid sick time for nonexempt employees
9 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
10 employee uses paid sick time, whether or not the employee actually works overtime in that workweek,"
11 or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total
12 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
13 periods of the prior 90 days of employment." Section 204 generally provides that wages are due and
14 payable twice during each calendar month, on days designated in advance by the employer as the
15 regular paydays. Consistent with Section 204, Section 246 specifically requires that an employer shall
16 provide payment for sick leave taken by an employee no later than the payday for the next regular
17 payroll period after the sick leave was taken.

18 27. As a matter of policy and practice, Defendants pay Plaintiff and the Sick Pay Class for
19 sick time at the incorrect rate of pay. Defendants pay Plaintiff and the Sick Pay Class at the base hourly
20 rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary
21 remuneration in addition to their base hourly wages, including for example incentives or bonuses, or the
22 rate resulting from dividing the employees' total wages, not including overtime premium pay, by the
23 employees' total hours worked in the full pay periods of the prior 90 days of employment, as required
24 by Section 246. This results in underpayments of sick pay wages to Plaintiff and the Sick Pay Class.

25 28. Section 246 specifically requires that an employer shall provide payment for sick leave
26 taken by an employee no later than the payday for the next regular payroll period after the sick leave
27 was taken. Moreover, Section 204 generally provides that wages are due and payable twice during each
28 calendar month, on days designated in advance by the employer as the regular paydays. Section 201

1 provides that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive
3 all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the
4 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
5 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an
6 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
7 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
8 wages shall not continue for more than thirty (30) days.

9 29. As alleged herein and as a matter of policy and practice, Defendants routinely underpays
10 sick pay wages to Plaintiff and the Sick Pay Class. Because Defendants do not pay or timely pay
11 Plaintiff and the Sick Pay Class all owing and underpaid sick pay wages, Defendants violate Sections
12 201-204, 233, and 246, and other Labor Code provisions. Defendants willfully fail to timely pay
13 Plaintiff and the Sick Pay Class all their sick pay wages due and are therefore subject to applicable
14 penalties. On information and belief, Defendants were advised by skilled lawyers and knew, or should
15 have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since
16 the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include
17 those benefits to which an employee is entitled as a part of his or her compensation, including money,
18 room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th
19 1094, 1103 (2007) (emphasis added).

20 30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
21 entitles Plaintiff and the Sick Pay Class to underpaid sick pay, including interest thereon, applicable
22 penalties, attorneys' fees, and costs of suit.

23 **SECOND CAUSE OF ACTION**

24 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

25 **(By Plaintiff and the Class Against All Defendants)**

26 31. The preceding paragraphs are re-alleged and incorporated by this reference.
27
28

32. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, gross wages earned, net wages earned, and total hours worked.

33. As a matter of policy and practice, Defendants fail to provide accurate itemized wage statements to Plaintiff and the Sick Pay Class. Specifically, because of Defendants' sick pay violations, Defendants fail to furnish Plaintiff and the Sick Pay Class with wage statements that accurately show and itemize applicable hourly rates, gross wages earned, and net wages earned.

34. As a matter of policy and practice, Defendants also fail to provide accurate itemized wage statements whenever Plaintiff and the Overtime Adjustment Class are paid overtime adjustment wages. Specifically, whenever overtime adjustment wages are paid to Plaintiff and the Overtime Adjustment Class, Defendants fail to furnish wage statements that accurately show and itemize applicable hourly rates. While such earnings were overtime wage payments, the wage statements do not show any applicable hourly rates at all.

35. As a matter of policy and practice, Defendants also fail to provide accurate itemized wage statements Plaintiff and the Differential Wages Class are paid hours worked differential wages. Specifically, whenever hours worked differential wages are paid to Plaintiff and the Differential Wages Class, Defendants fail to furnish wage statements that accurately show and itemize total hours worked. Moreover, when the hours shown on the wage statements are added up, the sum also does not equal the total hours worked.

36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)

(By Plaintiff and the Sick Pay Class Against All Defendants)

37. The preceding paragraphs are re-alleged and incorporated by this reference.

38. Plaintiff is informed and believes that Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failure to pay all sick pay wages.

39. Defendants' utilization of such unfair and unlawful business practices constitutes unfair or unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Sick Pay Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

40. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Sick Pay Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff and Aggrieved Employees Against All Defendants)

41. The preceding paragraphs are re-alleged and incorporated by this reference.

42. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-204, 226, 233, and 246 committed since May 27, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants. As stated herein, Defendants underpay sick pay wages and fail to provide accurate itemized wage statements.

43. On or about November 17, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226, 233, and 246. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

44. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

1 **PRAYER FOR RELIEF**

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

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiff as the representative of the Class;
- 6 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 7 4. Upon the First Cause of Action for damages, including unpaid sick pay and interest
8 thereon, applicable penalties, pursuant to Sections 201-204, 210, 218, 218.5, 218.6, 233, 246, and 248.5,
9 and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs
11 and attorneys' fees;
- 12 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
13 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
14 and for costs and attorneys' fees;
- 15 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections
16 210, 226.3, 248.5, and 2699, and for costs and attorneys' fees;
- 17 8. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
18 218.6, 226, 233, and 2699, and Code of Civil Procedure section 1021.5; and
- 19 9. For such other and further relief that the Court may deem just and proper.

20 DATED: November 23, 2020

DIVERSITY LAW GROUP, P.C.

21 By: 
22 _____

Larry W. Lee
Simon L. Yang

23 Attorneys for Plaintiff
24
25
26
27
28