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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

MARIA JOHNSON, 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. 2:21-cv-00087-TLN-JDP

**FIRST AMENDED REPRESENTATIVE  
ACTION COMPLAINT**

**DEMAND OVER \$25,000.00**

1 Plaintiff, Maria Johnson, as a proxy for the State of California, submits this First Amended  
2 Representative Action Complaint against Defendant, Lowe’s Home Centers, LLC, and Does 1 through  
3 50 (collectively, “Defendants”).

#### 4 INTRODUCTION

5 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698  
6 *et seq.* (“PAGA”), this representative action challenges systemic employment practices resulting in  
7 violations of the California Labor Code against individuals who worked for Defendants. The Complaint  
8 seeks penalties and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210,  
9 226, 226.3, 233, 246, 248.5, and 2698 *et seq.*<sup>1</sup>

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

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

19 4. Defendants also routinely fail to provide accurate itemized wage statements to Plaintiff  
20 and other non-exempt employees. First, whenever sick pay wages are underpaid to Plaintiff and other  
21 non-exempt employees, Defendants fail to furnish wage statements that accurately show and itemize  
22 applicable hourly rates, gross wages earned, and net wages earned. Second, whenever overtime  
23 adjustment wages are paid to Plaintiff and other non-exempt employees, Defendants again fail to  
24 furnish wage statements that accurately show and itemize applicable hourly rates. No rates are shown at  
25 all. Third, whenever hours worked differential wages are paid to Plaintiff and other non-exempt  
26 employees, Defendants fail to furnish wage statements that accurately show and itemize total hours  
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<sup>1</sup> 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. The Labor Code is broadly remedial in nature. Its laws serve an important public interest  
4 in establishing minimum working conditions and requirements in California. These labor standards  
5 protect employees from onerous terms and conditions of employment or exploitation by employers who  
6 have superior economic and bargaining power. Plaintiff is informed and believes that Defendants have  
7 engaged in, among other things, a system of willful violations of the Labor Code by creating and  
8 maintaining policies, practices, and customs that knowingly deny its employees the above stated rights  
9 and benefits.

10 6. Defendants' pattern, practice, and uniform administration of corporate policy in violation  
11 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the  
12 rights of Plaintiff and aggrieved employees under Sections 201-204, 210, 226, 226.3, 233, 246, and  
13 248.5, applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5, among other  
14 provisions, to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

#### 15 JURISDICTION AND VENUE

16 7. Pursuant to the notice of removal filed by Defendant, this Court has jurisdiction under 28  
17 U.S.C. §§ 1332. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) as a substantial part of  
18 the events or omissions giving rise to the claim occurred in this judicial district, and pursuant to 28  
19 U.S.C. § 84(b) as Plaintiff worked for Defendants in Fairfield, California, in the County of Solano.

#### 20 PARTIES

21 8. Plaintiff began working for Defendants in or about April of 2015 and worked in  
22 California for Defendants for 30 or more days within a year. Until her employment as a delivery  
23 coordinator ended in or about October of 2020, Plaintiff was paid on an hourly basis as a non-exempt  
24 employee. Plaintiff earned and was paid non-discretionary remuneration, including for example  
25 incentives or bonuses. Plaintiff also earned and was paid sick pay, hours worked differential wages, and  
26 overtime adjustment wages. Plaintiff, however, was not paid sick pay wages at the regular rate of pay.  
27 Nor was Plaintiff provided with accurate itemized wage statements. Plaintiff thus is a victim of the  
28

1 policies, practices, and customs of Defendants complained of in this action in ways that have deprived  
2 her of the rights guaranteed by the Labor Code.

3 9. Plaintiff is informed and believes that Defendant, Lowe's Home Centers, LLC, was and  
4 is a North Carolina limited liability company. Plaintiff is informed and believes that at all times herein  
5 mentioned named defendants and Does 1 through 50, were and are corporations, business entities,  
6 individuals, or partnerships that are and were licensed to do business and actually doing business in the  
7 State of California. Based upon all the facts and circumstances incident to Defendants' business,  
8 Defendants are subject to Sections 201-204, 210, 226, 226.3, 233, 246, and 248.5.

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

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

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

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

**PAGA ALLEGATIONS**

14. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks penalties for Defendants' Labor Code violations committed against all aggrieved employees since May 27, 2019, pursuant to Sections 201-204, 210, 226, 226.3, 233, 246, 248.5, and 2698 et seq. As stated herein, Defendants underpay sick pay wages and fail to provide accurate itemized wage statements. 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.

15. 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, 210, 226, 226.3, 233, 246, and 248.5. 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.

16. 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.

**FIRST CAUSE OF ACTION**

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

**(By Plaintiff and Aggrieved Employees Against All Defendants)**

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

18. Section 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

1           19. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and  
 2 aggrieved employees at the incorrect rate of pay. Plaintiff and aggrieved employees regularly use  
 3 accrued sick leave in workweeks in which they also earn non-discretionary remuneration, including for  
 4 example incentives or bonuses. As a matter of policy and practice, Defendants pay Plaintiff and  
 5 aggrieved employees at the base hourly rate of pay, as opposed to the regular rate of pay, which would  
 6 consider all non-discretionary remuneration in addition to their base hourly wages, including for  
 7 example incentives or bonuses, or the rate resulting from dividing the employees' total wages, not  
 8 including overtime premium pay, by the employees' total hours worked in the full pay periods of the  
 9 prior 90 days of employment, as required by Section 246. This results in underpayments of sick pay  
 10 wages to Plaintiff and aggrieved employees.

11           20. Section 204 generally provides that wages are due and payable twice during each  
 12 calendar month and are generally to be paid no later than the payday for the next regular payroll period.  
 13 Consistent with Section 204, Section 246 specifically requires that vested sick pay wages are due and to  
 14 be paid no later than the payday for the next regular payroll period after accrued sick leave is used as  
 15 paid sick time. Similarly, Section 201 provides that if an employer discharges an employee, the wages  
 16 earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that  
 17 an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or  
 18 her employment, unless the employee has given seventy-two (72) hours previous notice of his or her  
 19 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. The  
 20 Labor Code penalizes untimely payments. For example, Section 210 provides penalties for violations of  
 21 Section 204.

22           21. As alleged herein and as a matter of policy and practice, Defendants routinely underpay  
 23 sick pay wages and thus do not timely pay Plaintiff and aggrieved employees all owing and underpaid  
 24 sick pay wages. As a result, Defendants violate Sections 201-204, 210, 233, 246, and 248.5, among  
 25 other Labor Code provisions. On information and belief, Defendants were advised by skilled lawyers  
 26 and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's  
 27 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized  
 28 that 'wages' also include those benefits to which an employee is entitled as a part of his or her

1 compensation, including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy v. Kenneth*  
2 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to  
3 timely pay Plaintiff and aggrieved employees all sick pay wages due, Defendants are subject to  
4 applicable penalties.

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

8 23. As a matter of policy and practice, Defendants fail to provide accurate itemized wage  
9 statements to Plaintiff and aggrieved employees. Specifically, because of Defendants’ sick pay  
10 violations, Defendants fail to furnish Plaintiff and aggrieved employees with wage statements that  
11 accurately show and itemize applicable hourly rates, gross wages earned, and net wages earned.

12 24. As a matter of policy and practice, Defendants also fail to provide accurate itemized  
13 wage statements whenever Plaintiff and aggrieved employees are paid overtime adjustment wages.  
14 Specifically, whenever overtime adjustment wages are paid to Plaintiff and aggrieved employees,  
15 Defendants fail to furnish wage statements that accurately show and itemize applicable hourly rates.  
16 While such earnings were overtime wage payments, the wage statements do now show any applicable  
17 hourly rates at all.

18 25. As a matter of policy and practice, Defendants also fail to provide accurate itemized  
19 wage statements whenever Plaintiff and aggrieved employees are paid hours worked differential wages.  
20 Specifically, whenever hours worked differential wages are paid to Plaintiff and aggrieved employees,  
21 Defendants fail to furnish wage statements that accurately show and itemize total hours worked.  
22 Moreover, when the hours shown on the wage statements are added up, the sum also does not equal the  
23 total hours worked.

24 26. For the above reasons, Plaintiff seeks penalties for Defendants’ Labor Code violations  
25 committed against all aggrieved employees since May 27, 2019.

26 **PRAYER FOR RELIEF**

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

1           1.       Upon the First Cause of Action for penalties according to proof pursuant to Sections 210,  
2 226.3, 248.5, and 2699, and for costs and attorneys' fees;

3           2.       Upon each cause of action for attorneys' fees and costs as provided by Section 2699,  
4 Code of Civil Procedure section 1021.5, and any other applicable laws; and

5           3.       For such other and further relief that the Court may deem just and proper.

6 DATED: February 2, 2021

DIVERSITY LAW GROUP, P.C.

7  
8 By: 

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9 Attorneys for Plaintiff  
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