

**ELECTRONICALLY FILED**  
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County of Placer  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF PLACER**

GERARDO NEGRETE, as an individual  
and on behalf of all others similarly situated,

Plaintiff,

vs.

ACE HARDWARE CORPORATION, a  
Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No.: S-CV-0047322

**REPRESENTATIVE ACTION COMPLAINT  
FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,  
ET SEQ., THE PRIVATE ATTORNEYS  
GENERAL ACT**

**DEMAND OVER \$25,000.00**

Plaintiff Gerardo Negrete ("Plaintiff") hereby submits this Representative Action  
("Complaint") against Defendant Ace Hardware Corporation ("Defendant") and Does 1 through

50 (collectively, “Defendants”), on behalf of himself and all aggrieved employees of Defendants for penalties pursuant to the Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), premised on Defendants’ violations of the California Labor Code, as follows:

### **INTRODUCTION**

1. This Complaint is within the Court’s jurisdiction under California Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

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

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages for all hours worked, failing to provide off-duty meal and rest breaks, failing to timely pay wages upon separation of employment, and failing to provide accurate itemized wage statements to its employees in the State of California.

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

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable IWC Wage Orders.

6. Venue is proper in Placer County, because Defendants do business there and Plaintiff worked for Defendants in Placer County.

### **PARTIES**

7. Plaintiff was employed by Defendants as a warehouse specialist/material handler from about January 2018, to about July 11, 2021, at Defendants’ distribution center in Rocklin,

1 California. Plaintiff worked as a non-exempt employee.

2 8. Plaintiff was and is the victim of the policies, practices, and customs of  
3 Defendants complained of in this action in ways that have deprived him of the rights guaranteed  
4 by California Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, and  
5 2698 et seq.

6 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Ace  
7 Hardware Corporation was and is a Delaware corporation that maintains operations and does  
8 business in the State of California, including in Placer County, California. Plaintiff is informed  
9 and believes, and based thereon alleges, that Defendant is a hardware retail cooperative.

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

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

22 12. At all times herein mentioned, each of said Defendant participated in the doing of  
23 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,  
24 Defendants, and each of them, were the agents, servants and employees of each of the other  
25 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were  
26 acting within the course and scope of said agency and employment.

27 13. Plaintiff is informed and believes, and based thereon alleges, that at all times  
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting  
2 within the course and scope of such agency, employment, joint venture, or concerted activity. To  
3 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
4 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
5 Defendants.

6 14. At all times herein mentioned, Defendants, and each of them, were members of,  
7 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course  
8 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

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

16 **FIRST CAUSE OF ACTION**

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

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

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

21 17. Plaintiff brings this cause of action as a proxy for the State of California and in  
22 this capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California  
23 from July 15, 2020 through the present for Defendant's violations of Labor Code §§ 201-204,  
24 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1 arising from Defendants' practice and policy  
25 of: (a) failing to pay minimum, regular, and overtime wages for time spent undergoing check  
26 in/out procedures, including, but not limited to COVID checks and metal detector screenings in  
27 violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide  
28 unfettered meal and rest breaks in violation of Labor Code § 226.7 and 512 and (c) failing to

1 provide accurate itemized wage statements, in violation of Labor Code § 226(a).

2 18. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved  
3 employee” as defined in Labor Code § 2699(a). As such, Plaintiff will bring this cause of action  
4 on behalf of the State of California for violations committed against all similarly situated  
5 Aggrieved Employees of Defendants.

6 19. On or about July 15, 2021, Plaintiff sent written notice to the California Labor &  
7 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-  
8 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, pursuant to the PAGA. In addition to the  
9 LWDA, Plaintiff also sent her notice to Defendants via certified mail pursuant to Labor Code §  
10 2699.3.

11 20. As of the date of the filing of this Complaint, the LWDA has not responded to  
12 Plaintiff’s written notice nor indicated that it intends to investigate the Labor Code violations  
13 provided for in the written notice.

14 21. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all  
15 applicable civil penalties for Defendants’ violations of Labor Code §§ 201-204, 226, 226.7, 510,  
16 512, 558, 1194, 1197, 1197.1, for the time period described above, on behalf of himself and  
17 other Aggrieved Employees.

18 **PRAYER FOR RELIEF**

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

21 2. Upon the First Cause of Action, for penalties pursuant to California Labor Code  
22 §§ 226.3, 2698, et seq., for costs and attorneys’ fees; and

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

24 DATED: September 17, 2021

DIVERSITY LAW GROUP, P.C.

25  
26 By: 

Larry W. Lee

27 Max W. Gavron

28 Attorneys for Plaintiff and the Class