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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 DIANA MELODY, an individual, on
behalf of herself and others similarly
15 situated,

16 Plaintiff,

17 v.

18 LOWE'S HOME CENTERS, LLC, and
DOES 1 through 10, inclusive,

19 Defendants.
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CASE NO. 2:20-cv-06047

**DEFENDANT LOWE'S HOME
CENTERS, LLC'S NOTICE OF
REMOVAL**

(Santa Barbara County Superior Court
Case No. 20CV01653)

Action Filed: April 15, 2020
Trial Date: None Set

TABLE OF CONTENTS

Page

1
2
3 TIMELINESS OF REMOVAL 1
4 SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL 1
5 A. There is Complete Diversity of Citizenship..... 2
6 B. The Amount in Controversy Exceeds \$75,000 3
7 THE COURT HAS JURISDICTION AND REMOVAL IS PROPER 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

Cases

1

2

3

4 *Amado v. US Bancorp,*
2015 WL 5618877 (C.D. Cal. Sept. 24, 2015)..... 6

5

6 *Archuleta v. Avcorp Composite Fabrication, Inc.,*
2018 WL 6382049 (C.D. Cal. Dec. 6, 2018)..... 4

7

8 *Ayala v. Cox Auto., Inc.,*
2016 WL 6561284 (C.D. Cal. Nov. 4, 2016) 2

9

10 *Bayol v. Zipcar, Inc.,*
2015 WL 4931756 (N.D. Cal. Aug. 18, 2015)..... 7

11

12 *Byrd v. Masonite Corp.,*
2016 WL 2593912 (C.D. Cal. May 5, 2016)..... 5

13

14 *Campbell v. Vitran Exp., Inc.,*
471 F. App’x 646 (9th Cir. 2012)..... 4

15

16 *Castillo v. ABM Indus. Inc.,*
2017 WL 5609791 (C.D. Cal. Nov. 20, 2017) 7

17

18 *Fritsch v. Swift Transportation Co. of Arizona, LLC,*
899 F.3d 785 (9th Cir. 2018) 7

19

20 *Guytan v. Swift Transp. Co. of Arizona, LLC,*
2017 WL 2380159 (C.D. Cal. June 1, 2017)..... 7

21

22 *Johnson v. Columbia Props. Anchorage, LP,*
437 F.3d 894 (9th Cir. 2006) 3

23

24 *Kanter v. Warner-Lambert Co.,*
265 F.3d 853 (9th Cir. 2001) 3

25

26 *Kantor v. Wellesley Galleries, Ltd.,*
704 F.2d 1088 (9th Cir. 1983) 2

27

28 *Korn v. Polo Ralph Lauren Corp.,*
536 F. Supp. 2d 1199 (E.D. Cal. 2008) 4

Lewis v. Verizon Commc’ns., Inc.,
627 F.3d 395 (9th Cir. 2010) 2, 4

TABLE OF AUTHORITIES

	<u>Page</u>
1	
2 <i>Lippold v. Godiva Chocolatier, Inc.</i> ,	
3 2010 WL 1526441 (N.D. Cal. Apr. 15, 2010).....	4
4 <i>Mathews v. Happy Valley Conference Ctr., Inc.</i> ,	
5 43 Cal. App. 5th 236 (2019).....	6
6 <i>McPhail v. Deere & Co.</i> ,	
7 529 F.3d 947 (10th Cir. 2008).....	4
8 <i>Mejia v. Parker Hannifin Corp.</i> ,	
9 2018 WL 582325 (C.D. Cal. Jan. 26, 2018).....	6
10 <i>Molnar v. 1-800-Flowers.com, Inc.</i> ,	
11 2009 WL 481618 (C.D. Cal. Feb. 23, 2009).....	6
12 <i>Ortega v. Carson Wild Wings LLC</i> ,	
13 2020 WL 1812491(Cal. Super. February 11, 2020).....	7
14 <i>Patel v. Nike Retail Servs., Inc.</i> ,	
15 58 F. Supp. 3d 1032 (N.D. Cal. 2014).....	3, 4
16 <i>Ponce v. Med. Eyeglass Ctr., Inc.</i> ,	
17 2015 WL 4554336 (C.D. Cal. July 27, 2015).....	8
18 <i>Sanchez v. Monumental Life Ins. Co.</i> ,	
19 102 F.3d 398 (9th Cir. 1996).....	3
20 <i>Simmons v. PCR Tech.</i> ,	
21 209 F. Supp. 2d 1029 (N.D. Cal. 2002).....	6, 7
22 <i>Smith v. Equinox Holdings, Inc., et al.</i> ,	
23 2015 WL 6375779 (N.D. Cal. August 10, 2015).....	7
24 Statutes	
25 28 U.S.C. § 84(c).....	8
26 28 U.S.C. § 1332.....	2, 3, 8
27 28 U.S.C. § 1441.....	8
28 28 U.S.C. § 1446.....	3, 5, 8
Cal. Civ. Proc. Code § 340(a).....	5

TABLE OF AUTHORITIES

	<u>Page</u>
1	
2 Cal. Lab. Code § 226(e)(1)	5
3 Cal. Lab. Code § 1102.5(f)	6
4 Cal. Lab. Code § 203	1, 5
5 Cal. Lab. Code § 226	1, 2, 5
6	
7 Cal. Lab. Code §§ 1102.5	1, 6
8 Cal. Lab. Code § 2698	1
9 Cal. Lab. Code § 2699	1

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA, AND TO PLAINTIFF DIANA MELODY
3 AND HER COUNSEL OF RECORD:

4 **PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§ 1332 and 1441,
5 Defendant Lowe’s Home Centers, LLC (“Lowe’s”) hereby removes to the United States
6 District Court for the Central District of California the above-captioned state court
7 action, originally filed as Case No. 20CV01653 in Santa Barbara County Superior Court,
8 State of California. Removal is proper on the following grounds:

9 **TIMELINESS OF REMOVAL**

10 1. Plaintiff Diana Melody (“Plaintiff”) filed her Complaint in the State Court
11 Action on April 9, 2020. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the
12 (a) Summons, (b) Complaint, (c) Notice of Order of Case Assignment and Case
13 Management Conference, and (d) Notice of Service of Process are attached hereto as
14 Exhibits A through D to the Declaration of Michele L. Maryott (“Maryott Decl.”), filed
15 concurrently herewith. *See also id.*, ¶ 7, Ex. E.

16 2. According to the Proof of Service of Summons, Plaintiff completed service
17 on Lowe’s on June 9, 2020. Maryott Decl., Ex. D.

18 **SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

19 3. In her Complaint, Plaintiff alleges seven causes of action against Lowe’s:
20 (1) Failure to Pay Reporting Time Wages; (2) Violation of Labor Code § 203; (3)
21 Violation of Labor Code § 226; (4) Unfair Business Practices; (5) Penalties under Labor
22 Code §§ 2698 and 2699 (“PAGA”); (6) Wrongful Termination in Violation of Public
23 Policy; and (7) Individual Claim for Violation of Labor Code §§ 1102.5. *See* Maryott
24 Decl., Ex. B (Compl.)

25 4. Plaintiff alleges that while employed by Lowe’s, she “and other hourly
26 employees reported to work in accordance with the published schedule, but were
27 unexpectedly sent home . . . upon their arrival to their scheduled shift” and “did not
28 receive any reporting time wages for th[o]se days.” *Id.* ¶¶ 11, 13. She further alleges

1 that she was wrongfully terminated and retaliated against for making a complaint that
2 she was owed unpaid wages. *See id.* ¶¶ 16–22, 54–56.

3 5. Plaintiff also alleges that “[m]ore than thirty days have past since [she] was
4 discharged” and Lowe’s has not paid “the minimum wages to which [she is] entitled.”
5 *Id.* ¶¶ 33–34. Plaintiff further alleges that Lowe’s “failed to provide paycheck deduction
6 statements” in compliance with California Labor Code § 226. *Id.* ¶ 37.

7 6. Lowe’s denies that liability or damages can be established as to Plaintiff.
8 Lowe’s does not concede and reserves the right to contest, at the appropriate time, that
9 any of Plaintiff’s allegations constitute a cause of action against it under applicable
10 California law. No statement or reference contained herein shall constitute an admission
11 of liability or a suggestion that Plaintiff will or could actually recover any damages based
12 upon the allegations contained in the Complaint or otherwise. Lowe’s Notice seeks only
13 to establish that the amount in controversy is more likely than not in excess of section
14 1332’s jurisdictional minimum. “The amount in controversy is simply an estimate of
15 the total amount in dispute, not a prospective assessment of [Lowe’s] liability.” *Lewis v.*
16 *Verizon Commc’ns., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). Thus, for purposes of this
17 removal *only*, Lowe’s assumes Plaintiff’s allegations are true.

18 7. Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete
19 diversity between Plaintiff and Lowe’s and the amount in controversy exceeds \$75,000.
20 *See* 28 U.S.C. § 1332. Lowe’s denies Plaintiff’s factual allegations and denies that she
21 is entitled to the relief requested. However, based on the allegations in the Complaint
22 and the prayer for relief, all requirements for federal jurisdiction under section 1332 have
23 been met, and this Court accordingly has original jurisdiction over this action.

24 **A. There is Complete Diversity of Citizenship**

25 8. Plaintiff and Lowe’s are “citizens of different states.” 28 U.S.C. § 1332(a).

26 9. For diversity purposes, a person is a citizen of the state in which he or she
27 is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).
28 A party’s residence is prima facie evidence of his or her domicile. *Ayala v. Cox Auto.*,

1 *Inc.*, 2016 WL 6561284, at *4 (C.D. Cal. Nov. 4, 2016) (citing *State Farm Mut. Auto*
2 *Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)). A party is domiciled where she
3 “resides with the intention to remain or to which she intends to return.” *Kanter v.*
4 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). While employed with Lowe’s,
5 Plaintiff resided in San Luis Obispo County, California, in the City of Nipomo,
6 California. See Declaration of Casey Morales (“Morales Decl.”) ¶ 2; *Kanter*, 265 F.3d
7 at 857.

8 10. Lowe’s is a limited liability company organized under the laws of North
9 Carolina and has its principal place of business in North Carolina. Morales Decl. ¶ 2.
10 “[A]n LLC is a citizen of every state of which its owners/members are citizens.”
11 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Lowe’s
12 Companies, Inc. is the sole member of Lowe’s, and is also the sole owner of Lowe’s.
13 Because a corporation is a citizen of its state of incorporation and the state of its principal
14 place of business (28 U.S.C. § 1332(c)(1)), Lowe’s Companies, Inc. is a citizen of North
15 Carolina, where it is incorporated and has its principal place of business. *Id.* Thus,
16 Lowe’s too is a citizen of North Carolina. See 28 U.S.C. § 1332(c)(1); *Johnson*, 437
17 F.3d at 899.

18 11. Accordingly, at the time the Complaint was filed and at the time of removal,
19 there was and is complete diversity of citizenship between Plaintiff and Lowe’s. See 28
20 U.S.C. § 1332(a).

21 **B. The Amount in Controversy Exceeds \$75,000**

22 12. Courts evaluate a removing defendant’s assertion of the amount in
23 controversy under a “preponderance of the evidence” standard. *Sanchez v. Monumental*
24 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); 28 U.S.C. § 1446(c)(2)(B). Although
25 “[u]sually, ‘preponderance of the evidence’ is a phrase used for determining whether a
26 factual allegation is, in fact, true,” “a defendant is not required to admit, and is certainly
27 not required to *prove*, the truth of plaintiff’s assertions before invoking diversity
28 jurisdiction.” *Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032, 1040 (N.D. Cal.

1 2014). “The amount in controversy is simply an estimate of the total amount in dispute,
2 not a prospective assessment of defendant’s liability.” *Lewis*, 627 F.3d at 400; *see also*
3 *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008) (cited with approval in
4 *Lewis*) (“The amount in controversy is not proof of the amount the plaintiff will recover.
5 Rather, it is an estimate of the amount that will be put at issue in the course of the
6 litigation.”).

7 13. A removing defendant is not required to “research, state, [or attempt to]
8 prove the plaintiff’s claims for damages.” *Lippold v. Godiva Chocolatier, Inc.*, 2010
9 WL 1526441, at *3 (N.D. Cal. Apr. 15, 2010). Instead, a removing defendant may make
10 a “reasonable extrapolation[] from the plaintiff’s allegations suffic[ient] to establish the
11 amount in controversy.” *Patel*, 58 F. Supp. 3d at 1041; *see also, e.g., Lippold*, 2010 WL
12 1526441, at *3 (finding it reasonable for defendant to assume that plaintiff worked “13
13 hours a day every day that plaintiff worked for” defendant, because plaintiff alleged that
14 he “regularly and/or consistently worked in excess of 12 hours per day”); *Archuleta v.*
15 *Avcorp Composite Fabrication, Inc.*, 2018 WL 6382049, at *3 (C.D. Cal. Dec. 6, 2018)
16 (noting that “defendants who prepare a ‘well-founded evidentiary record’ are entitled to
17 make ‘reasonable extrapolations’ from the allegations in the complaint”).

18 14. Moreover, in assessing whether the amount in controversy requirement has
19 been satisfied, “a court must ‘assume that the allegations of the complaint are true and
20 assume that a jury will return a verdict for the plaintiff on all claims made in the
21 complaint.’” *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012)
22 (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993,
23 1001 (C.D. Cal. 2002)). In other words, the focus of the Court’s inquiry must be on
24 “what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant
25 will actually owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D.
26 Cal. 2008) (citing *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.
27 2005)).

1 15. The amount in controversy in this action exceeds the sum of \$75,000,
2 exclusive of interest and costs, because Plaintiff seeks, among other relief, lost wages,
3 multiple statutory penalties under the California Labor Code, attorney’s fees, and
4 punitive damages. *See* Maryott Decl., Ex. B, Prayer for Relief; 28 U.S.C. § 1446(c)(2);
5 *see also, e.g., Byrd v. Masonite Corp.*, 2016 WL 2593912, at *2-7 (C.D. Cal. May 5,
6 2016) (reviewing various categories of wage-and-hour relief as part of removal
7 analysis).

8 16. Plaintiff seeks waiting time penalties for failure to pay all wages due at
9 termination pursuant to Labor Code section 203. *See* Maryott Decl., Ex. B (Compl.)
10 ¶¶ 31–34. Plaintiff alleges that she is entitled to “thirty days wages as penalty wages
11 under Labor Code § 203.” *Id.* ¶ 34; *see also* Cal. Lab. Code § 203 (if an employer fails
12 to pay all wages due an employee at the time of termination, then the wages “shall
13 continue as a penalty from the due date thereof at the same rate until paid or until an
14 action therefor is commenced,” for up to a maximum of 30 calendar days). Plaintiff’s
15 average hourly wage over the course of her employment with Lowe’s as a full-time
16 employee was approximately \$12.17 per hour. Morales Decl. ¶ 3. Assuming an average
17 hourly wage of \$12.17 per hour, for 8 hours a day for 30 days, Plaintiff’s claim for
18 waiting time penalties places **\$2,920** in controversy.

19 17. Plaintiff seeks wage statement penalties under Labor Code section 226 for
20 inaccurate wage statements. *See* Maryott Decl. Ex. B (Compl.) ¶¶ 35–39. Plaintiff
21 alleges she was provided inaccurate wage statements throughout her employment with
22 Lowe’s, which was from September 1, 2017 and October 11, 2019. *Id.* ¶¶ 7, 35–39.
23 Thus, during the one-year period¹ prior to the filing of the Complaint, Plaintiff worked
24 approximately 26 weeks, or approximately 13 pay periods. Therefore, Plaintiff would
25 be entitled to **\$1,250** were she to prevail on her wage statement claims (\$50 for the initial
26 pay period and \$100 for each subsequent pay period). *See* Cal. Lab. Code § 226(e)(1).

27
28 ¹ The statute of limitations for an action upon a statute for a penalty is one year. Cal.
Civ. Proc. Code § 340(a).

1 18. Plaintiff seeks lost wages for her wrongful termination claim. Plaintiff
2 alleges that “[a]s a direct and proximate result of [Lowe’s] conduct . . . Plaintiff is . . .
3 entitled to . . . damages in an amount in excess of \$50,000.00.” *Id.* ¶ 55. Accordingly,
4 **\$50,000** is properly included within the amount in controversy.

5 19. Plaintiff seeks a statutory penalty of \$10,000 under Labor Code section
6 1102.5, which permits such a penalty to be imposed against a corporate employer for
7 retaliating against an employee who exercises her legal rights. *See* Maryott Decl., Ex.
8 B (Compl.) ¶¶ 57–62; *see also* Cal. Lab. Code § 1102.5(f). Plaintiff alleges that Lowe’s
9 retaliated against her by terminating her after she complained to Lowe’s about her
10 unpaid wages. *See* Maryott Decl., Ex. B (Compl.) ¶¶ 16–19, 57–62. Accordingly, the
11 **\$10,000** penalty is properly included within the amount in controversy.

12 20. This Court may also consider Plaintiff’s request for punitive damages for
13 her wrongful termination claim in determining the amount in controversy. Punitive
14 damages are available for Plaintiff’s claims under California law. *Mathews v. Happy*
15 *Valley Conference Ctr., Inc.*, 43 Cal. App. 5th 236, 267 (2019) (noting that punitive
16 damages are available for claims brought pursuant to Cal. Lab. Code § 1102.5). And
17 “[i]t is well established that punitive damages are part of the amount in controversy in a
18 civil action.” *Amado v. US Bancorp*, 2015 WL 5618877, at *2 (C.D. Cal. Sept. 24,
19 2015); *Molnar v. 1-800-Flowers.com, Inc.*, 2009 WL 481618, at *4 (C.D. Cal. Feb. 23,
20 2009) (“In general, claims for punitive damages are considered in determining the
21 amount in controversy, as long as punitive damages are available under the applicable
22 law.”). A “defendant ‘may introduce evidence of jury verdicts in cases involving
23 analogous facts’ in order to establish probable punitive damages” even where the facts
24 of the current case are “far less egregious.” *See Mejia v. Parker Hannifin Corp.*, 2018
25 WL 582325, at *4 (C.D. Cal. Jan. 26, 2018); *see also Simmons v. PCR Tech.*, 209 F.
26 Supp. 2d 1029, 1033 (N.D. Cal. 2002) (noting that the “fact that the cited [jury verdict]
27 cases involve distinguishable facts is not dispositive”). Punitive damages have been
28 awarded in similar single plaintiff retaliation wrongful termination cases. *See, e.g.,*

1 *Ortega v. Carson Wild Wings LLC*, JVR No. 2004090009, 2020 WL 1812491(Cal.
2 Super. February 11, 2020) (awarding \$100,000 in punitive damages in single plaintiff
3 retaliation wrongful termination suit); *Smith v. Equinox Holdings, Inc., et al.*, JVR No.
4 1510220053, 2015 WL 6375779 (N.D. Cal. August 10, 2015) (awarding \$10,000 in
5 punitive damages in single plaintiff retaliation wrongful termination suit). Accordingly,
6 Lowe’s “has met its burden of showing by a preponderance of the evidence that the
7 amount in controversy should include a punitive damages award.” *Simmons*, 209 F.
8 Supp. 2d at 1033. Assuming a conservative punitive damages award based upon a one
9 to one ratio would place at least an additional **\$64,170** in controversy. *See Bayol v.*
10 *Zipcar, Inc.*, 2015 WL 4931756, at *9 (N.D. Cal. Aug. 18, 2015) (assuming “a
11 conservative” 1:1 ratio for punitive to compensatory damages for determining whether
12 amount in controversy threshold was met (citing *Guglielmino v. McKee Foods Corp.*,
13 506 F.3d 696, 701 (9th Cir. 2007)).

14 21. Plaintiff also seeks attorneys’ fees. *See* Maryott Decl., Ex. B, Prayer for
15 Relief ¶ 8. “[A] court must include future attorneys’ fees recoverable by statute or
16 contract when assessing whether the amount-in-controversy requirement is met.”
17 *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018).
18 Indeed, where “the law entitles [Plaintiff] to an award of attorneys’ fees if [she] is
19 successful, such future attorneys’ fees are at stake in the litigation, and must be included
20 in the amount in controversy.” *Id.*; *Castillo v. ABM Indus. Inc.*, 2017 WL 5609791, at
21 *3 (C.D. Cal. Nov. 20, 2017) (noting that “recent cases in this district hold that post-
22 removal attorneys’ fees should be included”) (collecting cases). Further, the Central
23 District has “determined that ‘an appropriate and conservative estimate’ for attorneys’
24 fees in [individual] employment cases in this district ‘may reasonably be expected to
25 equal at least \$30,000.’” *Castillo*, 2017 WL 5609791, at *3; *Guytan v. Swift Transp.*
26 *Co. of Arizona, LLC*, 2017 WL 2380159, at *3 (C.D. Cal. June 1, 2017) (citing *Sasso v.*
27 *Noble Utah Long Beach, LLC*, 2015 WL 898468, at *6 (C.D. Cal. Mar. 3, 2015)); *see*
28

1 *also Ponce v. Med. Eyeglass Ctr., Inc.*, 2015 WL 4554336, at *4 (C.D. Cal. July 27,
2 2015) (estimating \$30,000 of attorneys' fees in a single-plaintiff employment case).

3 22. The inclusion of \$30,000 in attorneys' fees would increase the total amount
4 in controversy to **\$158,340**. The total amount is certainly higher, as this figure does not
5 include Plaintiff's claim for reporting time wages or her PAGA claim.

6 **THE COURT HAS JURISDICTION AND REMOVAL IS PROPER**

7 23. Based on the foregoing facts and allegations, this Court has diversity
8 jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because:

- 9 a. This is a civil action within the meaning of § 1332(a);
10 b. The properly named parties are citizens of different states as required by
11 § 1332(a)(1); and
12 c. The amount in controversy exceeds \$75,000 as required by § 1332(a).

13 Accordingly, this action is properly removable under 28 U.S.C. § 1441.

14 24. The United States District Court for Central District of California, Western
15 Division is the federal judicial district in which the Santa Barbara County Superior Court
16 sits. This action was originally filed in the Santa Barbara County Superior Court, (*see*
17 *Maryott Decl., Ex. B (Compl.)*), rendering venue in this federal judicial district and
18 division proper. 28 U.S.C. § 84(c); *see also* 28 U.S.C. § 1441(a).

19 25. True and correct copies of the (a) Summons, (b) Complaint, (c) Notice of
20 Order of Case Assignment and Case Management Conference, and (d) Notice of Service
21 of Process are attached hereto as Exhibits A through D to the Maryott Declaration, filed
22 concurrently herewith. *See also id.*, ¶ 7, Ex. E. These filings constitute "all process,
23 pleadings, and orders served upon" Lowe's in this action. 28 U.S.C. § 1446(a).

24 26. Upon filing the Notice of Removal, Lowe's will furnish written notice to
25 Plaintiff's counsel, and will file and serve a copy of this Notice with the Clerk of the
26 Santa Barbara County Superior Court, pursuant to 28 U.S.C. § 1446(d).

1 Dated: July 7, 2020

2 MICHELE L. MARYOTT
3 KATIE M. MAGALLANES
4 KATHERINE V.A. SMITH
5 GIBSON, DUNN & CRUTCHER LLP

6 By: /s/ Michele L. Maryott
7 Michele L. Maryott

8 Attorneys for LOWE'S HOME CENTERS, LLC

9 103965264.5

EXHIBIT B

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
4/9/2020 4:15 PM
By: Sharon Leyden, Deputy

1 James H. Cordes (#175398)
Angelica J. Caro (#318821)
2 James H. Cordes and Associates
831 State Street, #205
3 Santa Barbara, California 93101
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5 Attorney for Plaintiff
DIANA MELODY, an individual,
6 for herself and on behalf of the State of California as Private Attorney General

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA BARBARA**

10 **COOK DIVISION**

20CV01653

11 DIANA MELODY, an individual, for
12 herself and on behalf of others similarly
situated,

13 Plaintiff,

14 vs.

15 LOWE'S HOME CENTERS, LLC, and
16 DOES 1 through 10, inclusive,

17 Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- 1. Failure to Pay Reporting Time Wages;
- 2. Violation of Labor Code §203;
- 3. Violation of Labor Code §226;
- 4. Unfair Business Practices;
- 5. Penalties under Labor Code §2699;
- 6. Wrongful Termination in Violation of Public Policy; and,
- 7. Violation of Labor Code §1102.5.

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22 **GENERAL ALLEGATIONS**

23 1. Plaintiff DIANA MELODY ("Ms. Melody" or "Plaintiff") is an individual who, at
24 all times relevant herein, worked in or near the City of Santa Maria, County of Santa Barbara,
25 State of California.

26 2. Plaintiff brings this action as an "aggrieved employee" under California Labor
27 Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §2698, *et seq.* on
28 behalf of the State of California as a private attorney general.

1 3. Defendant LOWE’S HOME CENTERS, LLC (“Lowe’s” or “Defendant”) is a
2 limited liability company which, at all times relevant herein, operated a home improvement store
3 in or near the City of Santa Maria, State of California.

4 4. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
6 Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is informed and
7 believes, and based thereon alleges, that each of the Defendants designated herein as DOE is
8 legally responsible in some manner for the events and happenings referred to herein, and caused
9 injury and damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek
10 leave of the court to amend this Complaint to reflect the true names and capacities of the
11 Defendants designated hereinafter as DOES when the same have been finally ascertained.

12 5. Whenever in this Complaint reference is made to “Defendants,” such allegations
13 shall be deemed to mean the acts of Defendants acting individually, jointly, and/or severally.

14 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 mentioned herein, that each of the Defendants was the agent, servant, employee, co-venturer, and
16 co-conspirator of each of the remaining Defendants, and was at all times herein mentioned,
17 acting within the course, scope, purpose, consent, knowledge, ratification, and authorization of
18 such agency, employment, joint venture, and conspiracy.

19 **Factual Background**

20 7. Ms. Melody was employed by Lowe’s, at the Santa Maria, California store
21 number 3352 (“Santa Maria store”), between in or about September 1, 2017 and October 11,
22 2019, as an hourly wage Customer Service Associate I, Windows and Walls and most recently as
23 a Customer Service Associate II, Windows and Walls.

24 8. Throughout her employment Ms. Melody received awards for Outstanding
25 Customer Service, bonuses for customer advocacy, and pay raises. Her most recent bonus for
26 customer advocacy was on or about September 6, 2019 and her most recent pay raise was on or
27 about September 21, 2019.

28 9. Ms. Melody and as well as and other hourly wage employees, received printed

1 schedules that covered approximately three workweeks in advance. After Jessa Imlay was hired
2 as an acting Store Manager, Imlay assumed the duties of scheduling.

3 10. Plaintiff is informed and believes and based thereon alleges that Jessa Imlay was a
4 managing agent and supervisory employee of Defendants at all times relevant herein.

5 11. Several times between July, 2019 and September, 2019, Ms. Melody and other
6 hourly wage employees reported to work in accordance with the published schedule, but were
7 unexpectedly sent home by Imlay upon their arrival to their scheduled work shift. Imlay
8 dismissed Ms. Melody and other hourly wage employees by indicating she had changed the
9 schedule the night before, after Ms. Melody and other hourly wage employees had finished their
10 shifts and had left work. On several occasions, Ms. Melody complained to Imlay, noting that she
11 was unaware of the schedule change and was operating pursuant to the published schedule and
12 should not be sent home.

13 12. In all instances, Imlay did not notify Ms. Melody and other hourly wage
14 employees that she had changed the schedule prior to them arriving at work.

15 13. Ms. Melody and other hourly wage employees did not receive any reporting time
16 wages for these days.

17 14. Also in July, 2019, Ms. Melody and other hourly wage employees stopped
18 receiving written notice from Lowe's of the amount of their accrued and unused vacation time,
19 sick leave, and holiday time.

20 15. In or about September, 2019, Ms. Melody started to notice her sick time was
21 being applied to workdays in which she reported to work and was immediately sent home by
22 Imlay. Ms. Melody did not consent or request that her sick time be used for these days. After
23 reviewing her personnel file, Ms. Melody became aware that her vacation time was also applied
24 in lieu of reporting time wages.

25 16. On or about October 9, 2019, Michelle Ortiz, Regional Human Resource
26 Manager, visited the Santa Maria store. Ms. Melody informed Ortiz that Imlay was changing the
27 published schedule without notice, not paying reporting time, and deducting sick time without
28 consent or authorization from the employees. Ortiz informed Ms. Melody that Imlay should not

1 being doing that and that she would counsel Imlay regarding the same.

2 17. Plaintiff is informed and believes and based thereon alleges that Michelle Ortiz
3 was a managing agent and supervisory employee of Defendants at all times relevant herein.

4 18. Two days later, on or about October 11, 2019, Imlay terminated Ms. Melody,
5 claiming she had failed to follow up with a client in a timely manner.

6 19. Shortly thereafter, Ms. Melody informed Stacy Valenzuela, her immediate
7 supervisor, that Imlay had terminated her and Valenzuela was shocked. Venezuela said she was
8 not aware of any wrongdoing by Ms. Melody. However, Plaintiff is informed and believes and
9 based thereon alleges that Venezuela took no steps to remedy the unjust termination.

10 20. Plaintiff is informed and believes and based thereon alleges that Stacy Valenzuela
11 was a managing agent and supervisory employee of Defendants at all times relevant herein.

12 21. Ms. Melody later called Jason McNutt, Store Manager, to inform him of her
13 termination and he too was surprised. However, McNutt as well, Plaintiff is informed and
14 believes and based thereon alleges that took no steps to rectify or reverse Ms. Melody's
15 termination.

16 22. Plaintiff is informed and believes and based thereon alleges that Jason McNutt
17 was a managing agent and supervisory employee of Defendants at all times relevant herein.

18 23. At all times relevant herein, the hours and working conditions of Plaintiff and
19 other similarly situated hourly wage workers were governed by California Code of Regulations,
20 Title 8, §11070, Industrial Welfare Commission Order No. 7-2001 regulating Wages, Hours and
21 Working Conditions in the Mercantile Industry and its predecessor wage orders (collectively
22 "Wage Order 7").

23 **FIRST CAUSE OF ACTION**

24 **(Failure to Pay Reporting Time Wages)**

25 24. Plaintiff repeats and realleges the allegations contained in the foregoing
26 paragraphs and incorporates the same by reference herein.

27 25. Wage Order 7, §5, subdivision (A), provides, "Each workday an employee is
28 required to report for work and does report, but is not put to work or is furnished less than half

1 said employee's usual or scheduled day's work, the employee shall be paid for half the usual or
2 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at
3 the employee's regular rate of pay, which shall not be less than the minimum wage."

4 26. In this case, Plaintiff elects to be compensated for her reporting time pay at the
5 California minimum wage rate in effect at the time of the violation.

6 27. At all times relevant herein, Plaintiff and other hourly wage employees were
7 required to report to scheduled shifts but were not put to work or furnished with less than said
8 employee's scheduled shift.

9 28. Despite the requirements of Wage Order 7, Defendants failed to pay reporting
10 time wages when Plaintiff and other hourly wage employees were required to report to work and
11 did report, but were furnished less than half of their scheduled day's work.

12 29. By applying accrued vacation time in lieu of the earned reporting time wages,
13 Defendants' have unlawfully deducted wages from Plaintiff and other hourly wage employees in
14 violation of Labor Code §§ 221 through 223.

15 30. In actions for the recovery of unpaid minimum wages, Labor Code §§ 1194 and
16 1194.2, provides that any employee receiving less than the legal minimum wage is entitled to
17 recover the unpaid balance of the full amount of this minimum wage compensation in a civil
18 action plus an additional equal amount as liquidated damages, interest thereon, reasonable
19 attorney's fees, and costs of suit.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of Labor Code §203)**

22 31. This action is brought by Plaintiff under Labor Code §203, which, at all times
23 relevant herein, provided that if an employer willfully fails to pay any wages of an employee who
24 is discharged or quits, the wages of such employee shall continue as from the due date thereof at
25 the same rate until paid or until an action therefor is commenced, for not more than 30 days.

26 32. Reporting time pay constitutes wages. (Murphy v. Kenneth Cole Productions,
27 Inc. (2007) 40 Cal.4th 1094).

28 33. More than thirty days have past since Plaintiff was discharged or quit her

1 employment with Defendants.

2 34. As a result of Defendants' willful conduct in not paying the minimum wages to
3 which Plaintiff was entitled, Plaintiff is entitled to thirty days wages as penalty wages under
4 Labor Code §203.

5 **THIRD CAUSE OF ACTION**

6 **(Violation of Labor Code §226)**

7 35. Plaintiff repeats and realleges the allegations contained in the foregoing
8 paragraphs and incorporates the same by reference herein.

9 36. This action is brought by Plaintiff under Labor Code §226, which sets for
10 reporting requirements for employers when paying wages, including,

11 "Every employer shall, semimonthly or at the time of each payment of
12 wages, furnish each of his or her employees...an itemized statement in writing
13 showing (1) gross wages earned, (2) total hours worked by the employee, except
14 for any employee whose compensation is solely based on a salary and who is
15 exempt from payment of overtime under subdivision (a) of Section 515 or any
16 applicable order of the Industrial Welfare Commission, ...(8) the name and
17 address of the legal entity that is the employer, and (9) all applicable hourly rates
18 in effect during the pay period and the corresponding number of hours worked at
19 each hourly rate by the employee."

20 Subdivision (e) provides, "An employee suffering injury as a result of a
21 knowing and intentional failure by an employer to comply with subdivision (a) is
22 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
23 initial pay period in which a violation occurs and one hundred dollars (\$100) per
24 employee for each violation in a subsequent pay period, not exceeding an
25 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
26 costs and reasonable attorney's fees."

27 Subdivision (g) provides, "An employee may also bring an action for
28 injunctive relief to ensure compliance with this section, and is entitled to an award

1 of costs and reasonable attorney's fees."

2 37. Plaintiff is informed and believes and based thereon alleges that Defendants
3 knowingly and intentionally failed to provide paycheck deduction statements that complied with
4 Labor Code §226 to Plaintiff by, *inter alia*, showing all hours worked by Plaintiff, including
5 reporting time.

6 38. Plaintiff has been damaged by Defendants' failures to comply with Labor Code
7 §226 by, *inter alia*, not realizing the total amount of minimum wages to which she was entitled.

8 39. As a direct and proximate result of Defendants' conduct as alleged above,
9 Plaintiff is entitled to a civil penalty of fifty dollars (\$50) for the initial pay period, and one
10 hundred dollars (\$100) for each subsequent pay period for which Defendants violated the
11 reporting requirements of Labor Code §226, up to a maximum of \$4,000, together with interest
12 thereon and attorney's fees and costs.

13 **FOURTH CAUSE OF ACTION**

14 **(Unfair Business Practices)**

15 40. Plaintiff brings this action for herself and on behalf of the People of the State of
16 California under the provisions of the Business & Professions Code §§17200 et seq. Among the
17 persons adversely affected by the unfair business practices of Defendants as alleged herein are all
18 Defendants' employees who did not receive reporting time pay and/or who suffered unlawful
19 deductions from sick leave time in lieu of reporting time pay.

20 41. A representative action pursuant to Business & Professions Code §§17200, 17203
21 and 17204 on behalf of the general public is appropriate and necessary because Defendants did
22 not pay the lawful reporting time pay and/or made unlawful deductions from sick leave time in
23 lieu of reporting time pay as a general business practice contrary to the law of the State of
24 California.

25 42. Business & Professions Code §§17200 et seq. defines unfair competition to
26 include any "unfair," "unlawful," or "deceptive" business practice. Business & Professions Code
27 §§17200 *et seq.* provides for injunctive and restitutionary relief for violations. Defendants'
28 failure to pay reporting time pay and/or making unlawful deductions from sick leave time in lieu

1 of reporting time pay constitutes an unfair, unlawful and deceptive business practice.

2 43. As a direct and proximate result of Defendants' conduct as alleged herein,
3 Plaintiff have been damaged in the amount of the sum of all unpaid reporting time pay and/or
4 deducted sick leave time to which she was entitled. Under Business & Professions Code §§17200
5 and 17203, Plaintiff and current and former employees of Defendants are entitled to restitution of
6 all unpaid reporting time pay and/or deducted sick leave time wrongfully withheld by
7 Defendants, together with interest thereon.

8 44. Under Business & Professions Code §17203, Plaintiff seeks on her own behalf
9 and on behalf of the People of the State of California an order enjoining Defendants from
10 continuing its aforesaid unlawful practices. Injunctive relief is appropriate to avoid a multiplicity
11 of suits for continuing violations of Business & Professions Code §§17200 *et seq.*

12 **FIFTH CAUSE OF ACTION**

13 **(Penalties under Labor Code §§2698 and 2699 (Private Attorney General Act))**

14 45. Plaintiff repeats and realleges the allegations contained in the foregoing
15 paragraphs and incorporates the same by reference herein.

16 46. On or about January 21, 2020, Plaintiff provided written notice by certified mail
17 to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific
18 violations of the California Labor Code that Defendants have violated and continue to violate,
19 including the facts and theories that supported each alleged violation.

20 47. To date, the LWDA has not sent notice to Plaintiff that it intended to investigate
21 the alleged violations.

22 48. Accordingly, Plaintiff has exhausted all administrative procedures required of her
23 under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in
24 bringing forward this cause of action.

25 49. As a result of the acts alleged above, Plaintiff seeks penalties for Defendants'
26 conduct as alleged herein as permitted by law. Specifically, Plaintiff seeks penalties under Labor
27 Code §2699, for the following:

28 a. Defendants' failure to comply with the requirement of Labor Code §1194 to pay

- 1 reporting time wages;
- 2 b. Defendants' failure to comply with the requirement of Labor Code §§204 and 210
- 3 to pay, without condition and within the time set by the applicable article, all
- 4 wages, or parts thereof, which Defendants conceded to be due;
- 5 c. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
- 6 wages due;
- 7 d. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
- 8 to pay wages due to former employees;
- 9 e. Defendants' failure to comply with the requirement of Labor Code §203 to pay
- 10 waiting time penalties to former employees;
- 11 f. Defendants' violation of Labor Code §558 by violating provisions of Wage Order
- 12 7 as identified above.

13 50. Under Labor Code §2699, Plaintiff and other aggrieved employees should be
14 awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys'
15 fees and costs.

16 51. Under Labor Code §2699, the State of California should be awarded seventy-five
17 percent (75%) of the penalties due under California law.

18 **SIXTH CAUSE OF ACTION**

19 **(Wrongful Termination in Violation of Public Policy)**

20 52. Plaintiff repeats and realleges the allegations contained in the foregoing
21 paragraphs and incorporates the same by reference herein.

22 53. Plaintiff brings this action for herself under Labor Code §98.6, subdivision (a),
23 which provides it is unlawful for an employer to discharge an employee or in any manner
24 discriminate, retaliate, or take any adverse action against any employee because the employee
25 made a written or oral complaint that he or she is owed unpaid wages.

26 54. It is injurious to the public and against the public good to permit an employer to
27 terminate an employee because the employee made a written or oral complaint that he or she is
28 owed unpaid wages. Such termination violates and circumvents existing and express policies of

1 the State of California.

2 55. As a direct and proximate result of the discriminatory conduct of Defendants as
3 alleged herein, Plaintiff has suffered and continues to suffer substantial losses in earnings and job
4 benefits, and has suffered extreme and severe mental anguish and emotional distress of the sort
5 naturally associated with wrongful termination of employment. Plaintiff is thereby entitled to
6 special, general, and compensatory damages in an amount in excess of \$50,000.00, to be proven
7 at the time of trial.

8 56. The outrageous conduct of Defendants, and each of them, as described herein, was
9 willful and done with fraud, oppression, and malice and with a conscious disregard for Plaintiff's
10 right to report unlawful conduct in the workplace and with the intent, design, and purpose of
11 injuring harm. Defendants, and each of them, authorized, condoned, and ratified the unlawful
12 conduct by failing to take immediate and appropriate corrective action. By reason thereof,
13 Plaintiff is entitled to punitive and exemplary damages from Defendants, and each of them, in an
14 amount appropriate to punish and make an example of Defendants.

15 **SEVENTH CAUSE OF ACTION**

16 **(Individual Claim for Violation of Labor Code §1102.5)**

17 57. Plaintiff repeats and realleges the allegations contained in the foregoing
18 paragraphs and incorporates the same by reference herein.

19 58. This cause of action is brought under Labor Code §1102.5, subdivision (b),
20 prohibits an employer from retaliating against an employee for disclosing a violation of state or
21 federal statute to a person with authority over the employee or another employee who has the
22 authority to investigate, discover, or correct the violation or noncompliance.

23 59. Plaintiff is informed and believes and based thereon allege that the above-
24 described disclosures and/or complaints motivated the decision by Defendants to terminate her.

25 60. Plaintiff is informed and believes and based thereon alleges that Defendants
26 retaliated against her for complaining about and enforcing her rights described in the preceding
27 paragraphs by terminating her employment.

28 61. The conduct of Defendants as alleged in this Complaint constitutes an unlawful

1 employment practice under Labor Code §1102.5.

2 62. As a direct and proximate result of the discriminatory conduct of Defendants as
3 alleged herein, Plaintiff has suffered and continues to suffer substantial losses in earnings and job
4 benefits, and has suffered extreme and severe mental anguish and emotional distress of the sort
5 naturally associated with employment discrimination based on violation of Labor Code §1102.5.
6 Plaintiff is thereby entitled to special, general, and compensatory damages in an amount in excess
7 of \$50,000.00, to be proven at the time of trial.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for judgment as follows:

10 1. For reporting time wages as minimum wage, according to proof, together with
11 interest thereon;

12 2. For liquidated damages on the unpaid minimum wages under Labor Code
13 §1194.2, according to proof, together with interest thereon;

14 3. For 30-day penalties under Labor Code §203, together with interest thereon, for
15 Plaintiff and other hourly wage employees;

16 4. For a wage premium of fifty dollars (\$50) for the first period for which
17 Defendants supplied Plaintiff with paycheck deduction statements in violation of Labor Code
18 §226 and one hundred dollars (\$100) for each subsequent pay period for which Defendants
19 supplied Plaintiff with paycheck deduction statements in violation of Labor Code §226;

20 5. For an order enjoining Defendants from continuing to issue paycheck deduction
21 statements in violation of Labor Code §226;

22 6. For restitution of full amounts, plus interest at the legal rate, of all unpaid wages
23 and wage premiums for Plaintiff and other hourly wage employees;

24 7. For penalties under Labor Code §2699;

25 8. For attorneys' fees, expenses and costs under Labor Code §§1194, 226, 2699,
26 and/or Code of Civil Procedure §1021.5;

27 9. For an order enjoining Defendants from continuing to engage in the
28 aforementioned unlawful business practice in violation of Business & Professions Code §17200;

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10. For interest under Labor Code §§218.6, 226, and 1194;

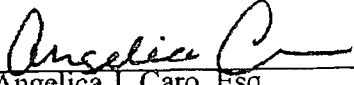
11. For special, general, and compensatory damages, including lost wages and benefits, and emotional distress damages, in excess of \$50,000.00, according to proof;

12. For punitive damages in an amount sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in future and,

13. For such other and further relief as the Court deems just and proper.

DATED: April 9, 2020

Respectfully submitted,



Angelica J. Caro, Esq.
Attorney for Plaintiff
DIANA MELODY

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Lowe's Employee Claims California Workers Owed Reporting Time Wages](#)
