

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

VICTORIA TICE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TRADER JOE'S COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV00892

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- 1. VIOLATION OF LABOR CODE §§ 201-203;**
- 2. VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

DEMAND OVER \$25,000

Plaintiff Victoria Tice ("Plaintiff") hereby submits this Class and Representative Action Complaint ("Complaint") against Defendant Trader Joe's Company ("Defendant") and Does 1 through 50 (collectively, "Defendants") on behalf of herself and the class of all other similarly situated former employees of Defendants for all damages and penalties arising from Defendants' violations of the California Labor Code as follows:

1 **INTRODUCTION**

2 1. This class and representative action is within the Court's jurisdiction under
3 California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*, and the applicable Wage Orders
4 of the California Industrial Welfare Commission ("IWC").

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

7 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
8 jointly and severally, have acted intentionally and with deliberate indifference and conscious
9 disregard to the rights of all employees resulting from Defendants': (a) issuance of paycards as
10 final wages without employee authorization or consent, and (b) failure to timely pay all final
11 wages upon separation of employment.

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

16 5. The policies, practices and customs of defendants described above and below
17 have resulted in unjust enrichment of Defendants and an unfair business advantage over
18 businesses that routinely adhere to the strictures of the California Labor Code.

19 **JURISDICTION AND VENUE**

20 6. The Court has jurisdiction over the violations of the California Labor Code §§
21 201-203, 212, 213, and 2698, *et seq.*

22 7. Venue is proper in Santa Barbara County because Defendants do business in
23 Santa Barbara County, and Plaintiff worked for Defendants in San Francisco County.

24 **PARTIES**

25 8. Plaintiff was employed by Defendants from about 2011 until on or about January
26 27, 2020. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
27 complained of in this action in ways that have deprived her of the rights guaranteed to her by
28 California Labor Code, including without limitation, §§ 201-203, 212, 213, and 2698, *et seq.*

1 9. Plaintiff is informed and believes and based thereon alleges Defendant Trader
2 Joe's Company was and is a California corporation with numerous locations nationwide,
3 including locations in the County of Santa Barbara. Defendant does business throughout the
4 State of California operating retail grocery stores.

5 10. Plaintiff is informed and believes and thereon alleges that at all times herein
6 mentioned DOES 1 through 50, are and were corporations, business entities, individuals, and
7 partnerships, licensed to do business and actually doing business in the State of California.

8 11. As such, and based upon all the facts and circumstances incident to Defendant's
9 business, Defendant is subject to California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*

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

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

23 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
25 joint venturer of, or working in concert with each of the other co-Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity.
27 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
28 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting

1 Defendants.

2 15. At all times herein mentioned, Defendants, and each of them, were members of,
3 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
4 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

12 **CLASS ACTION ALLEGATIONS**

13 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
14 California Code of Civil Procedure § 382. Plaintiff proposes the following Class:

15 a. All former employees who were employed by Defendants in the State of
16 California at any time from February 14, 2017, through the present, whose employment was
17 separated for any reason (voluntary or involuntary), including without limitation, resignation,
18 termination, and/or lay-off, and who were paid wages via a non-paycard method during their
19 employment but upon separation of employment received their final wages in the form of a
20 paycard (the "Class").

21 18. Plaintiff further reserves the right to amend such class definition based upon
22 further discovery.

23 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
24 that joinder of all members would be impractical, if not impossible. The identities of the
25 members of the Class are readily ascertainable by review of Defendants' records, including
26 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants:
27 (a) violated Labor Code §§ 212 and 213 by issuing payment of final wages to separated
28 employees in the form of a paycard without authorization, which required employees to incur

1 fees to use, was not fully cashable, and was not usable at all financial institutions, and (b)
2 violated Labor Code §§ 201-203 by failing to timely pay all final wages to separated employees
3 as a result of the issuance of paycards.

4 **20. Adequacy of Representation:** The named Plaintiff is fully prepared to take all
5 necessary steps to represent fairly and adequately the interests of the Class defined above.
6 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
7 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
8 actions in the past and currently have a number of wage-and-hour class actions pending in
9 California state and federal courts.

10 **21.** Plaintiff is informed and believes and based thereon alleges that Defendants
11 uniformly administered a corporate policy, procedure, and practice of: (a) issuing payment of
12 final wages to separated employees in the form of a paycard without authorization, which
13 required employees to incur fees to use, was not fully cashable, and was not usable at all
14 financial institutions in violation of Labor Code §§ 212 and 213, and (b) failing to timely pay all
15 wages to separated employees in violation of Labor Code §§ 201-203 as a result of the issuance
16 of paycards.

17 **22.** Plaintiff is informed and believes, and based thereon alleges, that this corporate
18 conduct is accomplished with the advance knowledge and designed intent to willfully and
19 intentionally fail to comply with the alleged Labor Codes.

20 **23. Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
22 concerning Defendants' policy and practice of: (a) violating Labor Code §§ 212 and 213 by
23 issuing payment of final wages to separated employees in the form of a paycard without
24 authorization, which required employees to incur fees to use, was not fully cashable, and was not
25 usable at all financial institutions, and (b) violating Labor Code §§ 201-203 by failing to timely
26 pay all final wages to separated employees as a result of the issuance of paycards.

27 **24. Typicality:** The claims of Plaintiff are typical of the claims of all members of
28 the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical

1 manner as the Class Members. Plaintiff is a former employee of Defendants. During her
2 employment, Plaintiff did not authorize her wages to be paid via a paycard. However, upon her
3 termination of employment on or around January 27, 2020, Plaintiff was issued her final wages
4 in the form of a paycard. Plaintiff did not give authorization or consent to receiving her final
5 wages in the form of a paycard. Moreover, Plaintiff was charged a fee to use the card and has
6 been unable to access all the monies contained on the paycard. As such, Plaintiff has not been
7 paid all final wages due upon termination, in violation of Labor Code §§ 201-203. Accordingly,
8 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
9 Code §§ 201-203, 212, and 213.

10 25. The California Labor Code upon which Plaintiff bases these claims are broadly
11 remedial in nature. These laws and labor standards serve an important public interest in
12 establishing minimum working conditions and standards in California. These laws and labor
13 standards protect the average working employee from exploitation by employers who may seek
14 to take advantage of superior economic and bargaining power in setting onerous terms and
15 conditions of employment.

16 26. The nature of this action and the format of laws available to Plaintiff and
17 members of the Class identified herein make the class action format a particularly efficient and
18 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
19 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
20 advantage since it would be able to exploit and overwhelm the limited resources of each
21 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
22 member to pursue an individual remedy would also discourage the assertion of lawful claims by
23 employees who would be disinclined to file an action against their former and/or current
24 employer for real and justifiable fear of retaliation and permanent damage to their careers at
25 subsequent employment.

26 27. The prosecution of separate actions by the individual class members, even if
27 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
28 to individual class members against the Defendants and which would establish potentially

1 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
2 individual class members which would, as a practical matter, be dispositive of the interest of the
3 other class members not parties to the adjudications or which would substantially impair or
4 impede the ability of the class members to protect their interests. Further, the claims of the
5 individual members of the class are not sufficiently large to warrant vigorous individual
6 prosecution considering all of the concomitant costs and expenses.

7 28. Such a pattern, practice and uniform administration of corporate policy regarding
8 illegal employee compensation described herein is unlawful and creates an entitlement to
9 recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of
10 the full amount of unpaid wages, including interest thereon, applicable penalties, reasonable
11 attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203,
12 218.5, and Code of Civil Procedure § 1021.5.

13 29. Proof of a common business practice or factual pattern, which the named Plaintiff
14 experienced and is a representative of, will establish the right of each of the members of the
15 Plaintiff class to recovery on the causes of action alleged herein.

16 30. The Plaintiff class is commonly entitled to a specific fund with respect to the
17 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
18 entitled to restitution of those funds being improperly withheld by Defendants. This action is
19 brought for the benefit of the entire Class and will result in the creation of a common fund.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE §§ 201-203**

22 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

23 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
24 though fully set forth herein.

25 32. Labor Code § 201 provides that all wages earned and unpaid at the time of an
26 employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the
27 case of an employee who resigns or quits, such wages must be paid not later than 72 hours
28 thereafter, unless the employee has given 72 hours' previous notice, in which case the employee

1 must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides that an
2 employer who willfully fails to pay such wages due to an employee who is discharged or quits
3 must pay that employee waiting time penalties in the form of a day's wages up to 30 days until
4 all of the wages owed are paid.

5 33. As a pattern and practice, Defendants regularly and willfully failed and refused to
6 pay all wages due and earned to discharged employees at the time of their termination, or within
7 72 hours of employees who quit and/or have resigned, or at the time of termination for those
8 employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code
9 §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to
10 employees who have been discharged and/or resigned without such employees' authorization.
11 As alleged herein, these paycards required fees for usage and did not allow employees to access
12 all of the monies contained on such cards.

13 34. As such, Defendants had a uniform corporate pattern and practice and procedure
14 regarding the above practices in violation of California Labor Code §§ 201-203.

15 35. Such a pattern, practice and uniform administration of corporate policy regarding
16 illegal employee compensation as described herein is unlawful and creates an entitlement to
17 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages
18 owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the
19 mandate of California Labor Code §§ 201-203 and 218.5.

20 **SECOND CAUSE OF ACTION**

21 **FOR VIOLATION OF LABOR CODE § 2698, ET SEQ.**

22 **(BY PLAINTIFF ON BEHALF OF AGGRIEVED EMPLOYEES AGAINST ALL**
23 **DEFENDANTS)**

24 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as
25 though fully set forth herein.

26 37. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity seeks penalties on behalf of all Aggrieved Employees from February 10, 2019,
28 through the present for Defendants' violations of Labor Code §§ 201-203, 212, and 213. As

1 identified above, Defendant violated these Labor Code sections by failing to pay Defendants'
2 employees in a way that complies with the Labor Code.

3 38. Because of Defendant's violations of the Labor Code sections described above,
4 Plaintiff is an "aggrieved employee" as defined in Labor Code section 2699(a). As such,
5 Plaintiff brings this cause of action on behalf of the State of California for violations committed
6 against all similarly situated Aggrieved Employees of Defendant.

7 39. On or about February 10, 2019, Plaintiff sent written notice to the California
8 Labor & Workforce Development Agency ("LWDA") of Defendant's violations of the Labor
9 Code sections described above, pursuant to Labor Code section 2699.3.

10 40. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
11 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the
12 written notice.

13 41. As such, pursuant to Labor Code sections 2699(a) and 2699.3, Plaintiff and the
14 Aggrieved Employees may seek recovery of all applicable civil penalties on behalf of the State
15 of California for Defendants' violations of the Labor Code sections set forth above.

16 **PRAYER FOR RELIEF**

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

19 1. For an order appointing Plaintiff as the representative of the Class as described
20 herein;

21 2. For an order appointing Counsel for Plaintiff as class counsel;

22 3. Upon the First Cause of Action, for damages and/or penalties, as well as
23 attorneys' fees and costs, pursuant to statute as set forth in Labor Code §§ 201-203, and for costs
24 and attorneys' fees, including pursuant to Labor Code § 218.5 and California Code of Civil
25 Procedure § 1021.5;

26 4. Upon the Second Cause of Action, for civil penalties pursuant to California Labor
27 Code § 2698, *et seq.*, and for costs and attorneys' fees; and

28 //

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

2
3 DATED: February 14, 2020

DIVERSITY LAW GROUP, P.C.

4
5 By: 

6 Larry W. Lee
7 Max W. Gavron
8 Attorneys for Plaintiff and the Class
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28