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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

Nadia Tuliau, an individual, on behalf of herself
and all others similarly situated and as a private
attorney general pursuant to the Private Attorneys
General Act,

Plaintiff,

vs.

The Kroger Co., Ralphs Grocery Company, and
Does 1 through 10,

Defendants.

Case No. RIC2002168
CLASS ACTION

Complaint for:

- 1. Failure to Pay Compensation Due**
- 2. Failure to Pay Wages Timely Upon Termination**
- 3. Wage Statement Violations**
- 4. Violation of Cal. Business & Professions Code Section 17203**
- 5. Recovery of Civil Penalties pursuant to the California Private Attorney General Act**

Demand for Jury Trial

Plaintiff Nadia Tuliau ("Plaintiff"), individually, on behalf of all other persons similarly
situated and as a private attorney general pursuant to the California Private Attorneys General Act,
alleges:

1. Plaintiff is a California resident and was employed in Riverside County by Defendants as a non-exempt employee.
2. Defendant The Kroger Co. ("Kroger") is an Ohio corporation with its principal place of business located at 1014 Vine Street, Cincinnati OH 45202. Kroger operates from locations throughout the United States, including Riverside and Los Angeles counties in California.
3. Defendant Ralphs Grocery Company ("Ralphs") is a California corporation with its entity address listed as 1426 Sunrise Court, Tracy, CA 95377.
4. Defendants acted as employers, co-employers and/or joint employers of Plaintiff and the class members and PAGA members.
5. Plaintiff does not presently know the true names and capacities of the defendants named as Does 1 through 10 and therefore sues such defendants by these fictitious names. Plaintiff believes that the Doe defendants are persons or entities who are involved in the acts set forth below, either as independent contractors, suppliers, agents, servants or employees of the known defendants, or through conspiring with the known Defendants to perform these acts for financial gain and profit in violation of Plaintiff's, class members', and PAGA members' rights. Plaintiff will request leave of Court to amend this Complaint to set forth their true names, identities and capacities when Plaintiff ascertains them.
6. Each of the Defendants has been or is the principal, officer, director, agent, employee, joint employer, representative and/or co-conspirator of each of the other defendants and in such capacity or capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an unknown time, some of the Defendants conspired with other Defendants to commit the wrongful acts described herein. These wrongful acts were committed in furtherance of such conspiracy. Defendants aided and abetted each other in committing the wrongful acts alleged herein. Each of the Defendants acted for personal gain or in furtherance of their own financial advantage in committing the acts alleged herein.

- 1 7. The named Defendants and the Doe defendants are hereinafter referred to collectively as
2 “Defendants.”
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4 **CLASS ACTION ALLEGATIONS**

- 5 8. Plaintiff brings the first four causes of action for herself and on behalf of the following classes:

6 **Unpaid Wages Class**

7 All non-exempt employees of any of the Defendants who worked in California within the
8 period beginning four years prior to the filing of this action through the date set by the
9 Court and were not paid for time spent waiting for and going through security processes
prior to or after their shifts or donning or doffing required personal protective equipment.

10 **Termination Pay Sub-Class**

11 All members of the Unpaid Wages Class whose employment terminated at any time
12 within the period beginning three years prior to the filing of this action through the date
set by the Court.

- 13 9. The term “class members” includes the Plaintiff and all class members.

- 14 10. During all or a portion of the class period, Plaintiff and class members were employed by
15 Defendants in California.

- 16 11. **Numerosity.** The number of class members is so numerous that joinder of all members is
17 impractical. The names and addresses of the class members are identifiable through documents
18 maintained by the Defendants, and the class members may be notified of the pendency of this
19 action by published and/or mailed notice. There are believed to be more than 50 class members.

- 20 12. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of
21 law and fact exist as to all class members. These questions predominate over the questions
22 affecting only individual members. These common legal and factual questions include, among
23 other things:

- 24 a. Whether Defendants are employers or joint employers of the class members.
25 b. Whether Defendants paid class members for all hours worked as required by California
26 law for time spent waiting for and going through security processes prior to or after their
27 shifts or donning or doffing required personal protective equipment.
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- 4 c. Whether Defendants willfully failed to timely pay all wages due to Plaintiff and class
- 5 members upon the termination of their employment;
- 6 d. Whether Defendants violated Labor Code Section 226 by failing to timely furnish
- 7 Plaintiff and class members accurate wage statements; and
- 8 e. Whether Defendants engaged in unfair competition in violation of California Business &
- 9 Professions Code Section 17200, *et seq.*

10 13. **Typicality.** Plaintiff's class claims are typical of the class members' claims. Plaintiff and all

11 class members sustained injuries and damages arising out of Defendants' common course of

12 conduct in violation of the law as alleged herein. Plaintiff is entitled to the same relief under the

13 class action causes of action as the class members.

14 14. **Adequacy.** Plaintiff will adequately and fairly protect the interests of the class members.

15 Defendants employed Plaintiff during the class period, and Plaintiff is an adequate representative

16 for the class members because Plaintiff has no interest adverse to the interests of the class

17 members and Plaintiff has retained legal counsel with substantial experience in civil litigation,

18 employment law and class action litigation. Plaintiff and Plaintiff's counsel will fairly and

19 adequately protect the class members' interests.

20 15. **Superiority.** A class action is superior to other available means of fair and efficient adjudication

21 of the class members' claims. Joinder of all class members is impractical. Class action treatment

22 will allow numerous similarly situated persons to prosecute their common claims in a single

23 forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense

24 that numerous individual actions would cause to such plaintiffs or to the court system. Further,

25 the damages of many class members may be relatively small and the burden and expenses of

26 individual litigation would make it difficult or impossible for individual class members to seek

27 and obtain relief, while a class action will serve an important public interest. Furthermore,

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1 questions of law and fact common to the class members predominate over questions affecting
2 only individual members, and a class action is superior to other available methods for fair and
3 efficient adjudication of the controversy. Individual litigation would present the potential for
4 inconsistent or contradictory judgments. By contrast, the class action device will result in
5 substantial benefits to the litigants and the Court by allowing the Court to resolve numerous
6 individual claims based upon a single set of proof in one case.

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8 **First Cause of Action**
9 **Failure to Pay Wages for Hours Worked**
10 **(Against All Defendants)**

11 16. Plaintiff realleges all the preceding paragraphs.

12 17. Labor Code Section 1197 in relevant part provides:

13 The minimum wage for employees fixed by the commission is the minimum wage to be
14 paid to employees, and the payment of a less wage than the minimum so fixed is
15 unlawful.

16 18. Paragraph 4 of the applicable Wage Order provides in relevant part:

17 (B) Every employer shall pay to each employee, on the established payday for the period
18 involved, not less than the applicable minimum wage for all hours worked in the payroll
19 period, whether the remuneration is measured by time, piece, commission, or otherwise.

20 19. The following allegations as to Plaintiff are believed to apply to all class members.

21 20. Before being allowed to drive to the warehouse, Plaintiff was required to stop at a guard post
22 where a guard would inspect Plaintiff's employee badge or otherwise verify her identity before
23 allowing her to enter. On occasion, there was a line of cars waiting to undergo this security check
24 and the wait could be over 10 minutes. Once Plaintiff arrived at the warehouse parking lot,
25 Plaintiff would walk to the warehouse. Plaintiff would have to arrive at the parking lot at least 30
26 minutes before Plaintiff's start time so Plaintiff could walk to the warehouse.

27 21. Once Plaintiff arrived at the warehouse, Plaintiff would have to use Plaintiff's security badge to
28 swipe in and then walk through security bars. After passing through the bars, Plaintiff was
required to show her security badge to a security guard. If an employee did not have a badge, the
security guard would stop the employee and make the employee sign in on a clipboard. There

1 were lines of employees that Plaintiff was required to wait in to go through this security process,
2 and sometimes the lines were long.

- 3 22. Lockers were in the bathroom, which was inside the main breakroom. Because inventory
4 employees worked in the refrigerator section, they were required to put on a bib, freezer jacket,
5 steel toe boots, gloves and other protective wear. Employees were required to change into
6 protective clothing in the bathroom before their shifts and before clocking in.
- 7 23. After changing into protective clothing, Plaintiff walked to the clock-in station, which took two
8 to three minutes, and clocked in.
- 9 24. After the clocking out at the end of the day, there was a process that could take 30 minutes or so
10 of taking off all the protective gear and changing into clothes and walking through the warehouse
11 to the security desk where security personnel checked to see if you had protective wear/freezer
12 gear on. Sometimes employees were rushing after clocking out and they would forget to take
13 their protective wear off. Defendants claimed that they had caught people stealing merchandise
14 and other items from the warehouse by hiding it in their protective gear, so, every day they
15 would do a visual security check of the employees' clothes and any bags being carried (but not
16 purses). Employees were required to open and show their bags to the security guards. On
17 occasion, all bags had to be set down on a table and opened one bag a time, which could take two
18 to three minutes. When there were lines for this security bag check, it could take four to five
19 minutes or so to check Plaintiff's bags.
- 20 25. Before being allowed to drive out of the parking lot, Plaintiff would have to pass the security
21 guard gate at the entrance of the parking lot. Plaintiff was required to stop at a guard gate where
22 a guard would inspect Plaintiff's employee badge or otherwise verify her identity. Sometimes
23 there was a line of cars that were waiting for this security check. The check-out process at the
24 security guard gate would take between three to eight minutes or so. Defendants had a policy of
25 conducting random security checks at the security guard gate. At least once a week, and once
26 four times in a week, Plaintiff was selected for a random vehicle inspection. If an employee was
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1 selected, the security guard would waive the employee over to the side and out of the line, then
2 they would make the employee wait until the entire line of cars had exited, which could take
3 between three and eight minutes. The security guard would then close the gate to the parking lot,
4 go into the security guard shack to gather the vehicle inspection paperwork and then walk to the
5 employee's car. Once at the employee's vehicle, the security guard would take the employee's
6 information including the department the employee worked in, the employee's name and badge
7 number, and other shift-related information. The employee would then be asked to open the
8 trunk so the security guard could inspect the vehicle. Once the security guard had finished the
9 security check and closed the vehicle trunk, the security guard would open the gate and the
10 employee was allowed to exit the parking lot. The inspection process could take five or more
11 minutes or so.

12 26. Plaintiff and class members were entitled to be paid for all hours worked, including waiting for
13 and passing through the various security procedures, donning and doffing protective clothing,
14 traveling between the various security procedures, and walking to and from the time clocks.

15 27. Defendants did not compensate Plaintiff and other class members for such hours worked and, to
16 the extent such hours worked exceeded eight hours in a day or 40 hours in a week, Defendants
17 did not compensate Plaintiff and other class members at the correct overtime rate.

18 28. Labor Code Section 1194.2 in relevant part provides:

19 In any action under Section 1193.6 or Section 1194 to recover wages because of the
20 payment of a wage less than the minimum wage fixed by an order of the commission, an
21 employee shall be entitled to recover liquidated damages in an amount equal to the wages
22 unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to
authorize the recovery of liquidated damages for failure to pay overtime compensation.

23 29. Plaintiff and class members are entitled to liquidated damages pursuant to Labor Code Section
24 1194.2.

25 30. Plaintiff has incurred and is entitled to attorneys' fees, costs and interest.
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Second Cause of Action
Failure to Pay Waiting Time Wages Pursuant to Labor Code Section 203
(Against All Defendants)

31. Plaintiff realleges all the preceding paragraphs.

32. Labor Code Section 201 in relevant part provides:

(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. . . .

33. Labor Code Section 202 in relevant part provides:

(a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting...

34. Labor Code Section 203 provides in relevant part:

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. . . .

(b) Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

35. The employment of Plaintiff and Termination Pay Subclass members with Defendants terminated.

36. When the employment of Plaintiff and Termination Pay Subclass members terminated, Defendants violated Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid that were due them within the time required by Sections 201 or 202.

37. Labor Code Section 218.5 provides in relevant part:

(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. . . .

38. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.

**Third Cause of Action
Wage Statement and Record-Keeping Violations
(Against All Defendants)**

39. Plaintiff realleges all the preceding paragraphs.
40. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to maintain and furnish Plaintiff and class members with accurate and complete wage statements reflecting all the information required under Section 226(a) and/or 1174.
41. Defendants violated Section 226(a)(1) as to Plaintiff and other class members by failing to provide them statements of wages that accurately showed gross wages actually earned.
42. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and other class members statements of wages that accurately showed the total hours actually worked by Plaintiff and other class members.
43. Defendants violated Section 226(a)(5) by failing to provide Plaintiff and other class members with statements of wages that accurately showed net wages actually earned.
44. Defendants violated Section 226(a)(8) by failing to provide Plaintiff and other class members with statements of wages that accurately showed the name and address of the legal entity that is the employer. For example, to the extent Ralphs was the employer, wage statements provided to Plaintiff and class members did not reflect the name of Ralphs, but “Kroger.”
45. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and other class members with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing accurately to show the actual number of hours worked at the applicable hourly rate at which they were to be paid.
46. Plaintiff and class members are deemed to have suffered injury as a result of Defendants’ violations. Moreover, Defendants’ failure to furnish Plaintiff and class members with complete and accurate itemized wage statements resulted in actual injury because such failures led to,

among other things, the non-payment of all the wages due them and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

47. Plaintiff and the other class members are entitled to damages and/or penalties pursuant to Labor Code Section 226.

**Fourth Cause of Action
Violation of California Business and Professions Code Section 17200, *et seq.*
(Against All Defendants)**

48. Plaintiff realleges all the preceding paragraphs.

49. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any ***unlawful, unfair*** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

50. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

51. Business & Professions Code Section 17203 provides:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

52. Defendants have been unjustly enriched because of Defendants' unlawful and/or unfair business acts and/or practices.

53. Plaintiff and the class members are entitled to restitution of the money and/or property by which Defendants were unjustly enriched.

54. Plaintiff and the class members are further entitled to and seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive relief restraining Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

- 1 55. Plaintiff and the class members have no plain, speedy, and/or adequate remedy at law to redress
2 the injuries that they have suffered because of Defendants' unfair, unlawful and/or fraudulent
3 business practices.
- 4 56. If Defendants are not enjoined from the conduct alleged herein, they will continue to violate their
5 legal obligations.
- 6 57. Plaintiff is entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure
7 Section 1021.5.

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9 **Fifth Cause of Action**
10 **For Recovery of Civil Penalties under the California Private Attorney General Act,**
11 **Labor Code Section 2698, *et seq.***
12 **(Against All Defendants)**

- 11 58. Plaintiff realleges all the preceding paragraphs.
- 12 59. One or more of the alleged violations set forth below was committed against Plaintiff, and
13 Plaintiff is therefore an "aggrieved employee" under Labor Code Section 2699(c)
- 14 60. Pursuant to Labor Code Sections 2698, *et seq.*, the Private Attorneys General Act of 2004
15 ("PAGA"), Plaintiff is entitled to recover civil penalties on behalf of persons who are or were
16 employed by the alleged violator and against whom one or more of the alleged violations was
17 committed ("PAGA members"). Plaintiff is pursuing civil penalties for violations of the Labor
18 Code sections alleged herein.
- 19 61. Defendants, as alleged above, have committed Labor Code violations against Plaintiff and other
20 of Defendants' employees.
- 21 62. Plaintiff seeks to recover all civil penalties recoverable under PAGA against Defendants,
22 including without limitation penalties pursuant to Labor Code Sections 210, 226.3, 256, 558,
23 1174.5, 1197.1, and 2699(f).
- 24 63. Plaintiff's attorney gave written notice to the Labor and Workforce Development Agency
25 ("LWDA") and to the Defendants by certified mail identifying violations set forth in this
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1 complaint. Once 65 days have passed from the date of the mailing of the notice, Plaintiff will
2 amend this complaint to allege such fact.

3 64. Labor Code Section 2699(g) provides that any “employee who prevails in any action shall be
4 entitled to an award of reasonable attorney’s fees and costs.” Plaintiff has incurred attorney’s
5 fees and costs in pursuing this claim.

6 WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against all
7 Defendants as follows:

- 8 1. Certification of this action as a class action and the appointment of Plaintiff as the representative
9 of the classes and Plaintiff’s counsel as lead counsel for the classes;
- 10 2. Damages for unpaid wages;
- 11 3. Liquidated damages;
- 12 4. Compensatory damages according to proof;
- 13 5. Waiting time penalties due pursuant to Labor Code Section 203;
- 14 6. Statutory penalties pursuant to Labor Code Section 226(e);
- 15 7. Restitution pursuant to Business & Professions Code Sections 17200, *et seq.*;
- 16 8. Penalties recoverable under the PAGA;
- 17 9. Prejudgment interest;
- 18 10. Reasonable attorneys’ fees;
- 19 11. Costs as allowed by law;
- 20 12. A declaratory judgment that the practices complained of herein are unlawful under the Labor
21 Code and/or the Unfair Competition Law and injunctive relief requiring termination or
22 modification of the unlawful practices alleged;
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1 13. Such other relief as this Court shall deem just and proper.

2 Dated: April 17, 2020

THE DION-KINDEM LAW FIRM

3
4 BY:



PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorney for Plaintiff Nadia Tuliau

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8 **Demand for Jury Trial**

9 Plaintiff demands a jury trial.

10 Dated: April 17, 2020

THE DION-KINDEM LAW FIRM

11
12
13 BY:



PETER R. DION-KINDEM, P.C.

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