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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

KARLOS WHITE-VALDEZ, on behalf of the
State of California and Aggrieved Employees,

Plaintiff,

vs.

THE KROGER CO. and RALPH'S
GROCERY, and DOES 1 through 50,
inclusive,

Defendant.

Case No. **CVRI2100447**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a)
and (f) OF THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT**

Plaintiff Karlos Whute-Valdez ("Plaintiff"), on behalf of the State of California and
Aggrieved Employees, and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this Labor Code Private Attorneys General Act ("PAGA")
enforcement action behalf of the State of California to collect statutory penalties as a result of

1 defendants The Kroger Co. and Ralph's Grocery ("Defendants")¹ systematic violations of
2 California labor law with respect to Defendant's current and former non-exempt hourly workers
3 in the State of California ("Aggrieved Employees").

4 2. This PAGA action against Defendants challenges their policies and practices of
5 (1) failing to compensate employees for all hours worked; (2) failing to pay employees overtime
6 wages as required by California law; (3) failing to provide employees accurate, itemized wage
7 statements; and (4) failing to timely pay employees wages owed upon the termination of
8 employment.

9 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 employees who have worked for either or both Defendants as cashiers, order pickers, baggers,
11 and other non-managerial service workers paid on an hourly basis. Kroger is the largest
12 supermarket chain in the United States, with locations across 35 states including California.
13 Defendants employ non-managerial workers in the State of California and uniformly classifies
14 them as non-exempt from overtime compensation under California law. On information and
15 belief, Defendants employ over 3,200 such workers in the State of California.

16 4. Plaintiff worked as a non-exempt order picker at the Kroger distribution center in
17 Riverside County from approximately July 2020 to September 2020. Mr. White-Valdez's hourly
18 rate of pay was \$19.88 per hour. While his shifts varied in length, Mr. White-Valdez typically
19 worked approximately 12 hours per shift and 5 days per week. On average, Mr. White-Valdez
20 worked 60 hours per week.

21 5. Pursuant to a uniform, companywide policy and practice, Defendants deny Mr.
22 White-Valdez and the Aggrieved Employees proper compensation for all hours worked,
23 including minimum wage, overtime, and double time pay. Mr. White-Valdez was regularly
24 directed by Kroger to spend between three and six minutes before the beginning and at the end
25 of every shift performing services for Kroger's benefit while off-the-clock. As a matter of
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28 ¹ As discussed herein, Ralph's is a subsidiary of Kroger that operates similar stores under substantially identical policies as its parent, Kroger, but under its own brand name.

1 company policy and/or practice, Kroger requires all workers, including Plaintiff and Aggrieved
2 Employees, to arrive before their shifts and go through a health check line where the worker has
3 to show their badge and Kroger checks their temperature before allowing the workers to enter
4 Kroger's facilities. This process takes approximately one minute, and sometimes upwards of two
5 to three minutes if the line is long, and is performed prior to Aggrieved Employees clocking in
6 for their shifts.

7 6. Defendants also maintain as a matter of company policy and/or practice a security
8 check for all non-managerial workers, including Plaintiff and Aggrieved Employees, that takes
9 place after the workers clock out for their shifts. During this security check process, a supervisor
10 looks through the workers' personal items such as a backpack, purse, or lunch pail, to check for
11 stolen or other prohibited items. This security check process lasts more than three minutes and
12 occurs after the workers clock out for their shifts.

13 7. Additionally, approximately twice per week, Defendants randomly select
14 employees to undergo a car search after their shift, purportedly to ensure that the selected
15 employee had not stolen any items from the store location where they work. This car search
16 likewise occurs off-the-clock and lasts between two and five minutes, in addition to the other
17 security check processes.

18 8. All of this time goes uncompensated.

19 9. Plaintiff, on behalf of the State of California, seeks to recover penalties and
20 reasonable attorneys' fees for these violations pursuant to Sections 2699(a).
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22 **PARTIES**

23 10. Plaintiff and Aggrieved Employees are current and former non-exempt employees
24 working in supermarket chains and distribution centers throughout the State of California.

25 11. Plaintiff is an individual over the age of eighteen, and at all times mentioned in
26 this Complaint was a resident of the State of California.
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12. Plaintiff was employed by Kroger from approximately July 2020 until September 2020. Plaintiff worked for Defendant as an order picker in the County of Riverside.

13. Defendant The Kroger Co. (“Kroger”) is an Ohio corporation with its headquarters located in Cincinnati, and is registered to do business in California.

14. Defendant Ralph's Grocery ("Ralph's") is subsidiary of Kroger, is an Ohio corporation with its headquarters in Cincinnati, Ohio, and is registered to do business in California.

15. Defendants do business in the State of California, including but not limited to their reliance on California's labor market to secure the services of hourly workers. Plaintiff is informed, believes, and thereon alleges that Defendants employ non-exempt workers as order pickers, cashiers, stockers, baggers, and other non-managerial positions throughout California including in Riverside County.

16. Defendants employ Plaintiff and the Aggrieved Employees.

17. At all relevant times, Defendants have done business under the laws of California, and have employed Aggrieved Employees in this judicial district. Defendants are each a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is used in the Labor Code, and IWC Wage Orders.

JURISDICTION AND VENUE

18. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). On information and belief, Defendant does not reside in the State of California.

19. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is a corporation authorized to do business in the State of California, and because Defendant in fact does do business and employ workers in the State of California.

1 **FACTUAL ALLEGATIONS**

2 20. Defendants own and operate supermarket chains and distribution centers
3 throughout the United States and California, including the Kroger Distribution Center, which is
4 located in Riverside County, California. Defendants employ hundreds of hourly non-exempt
5 works similarly situated to Plaintiff across these facilities.

6 21. Plaintiff worked as a non-exempt order picker at the Kroger distribution center in
7 Riverside County from approximately July 2020 to September 2020. His duties included selecting
8 orders for customers, operating equipment needed to stack pallets, as well as staging and loading
9 customer orders so they can be delivered without damages or errors.

10 22. Plaintiff worked more than 40 hours in a week on at least one workweek during
11 the three years before this Complaint was filed.

12 23. Defendants employ non-managerial employees in the State of California and
13 uniformly classifies them as non-exempt from overtime compensation under the California law.

14 24. Non-exempt, hourly workers employed by Defendants have a variety of
15 responsibilities. Some employees must accurately tally customer purchases using the store system
16 and help customers locate items throughout the store, others bag groceries, restock merchandise,
17 return products to the correct area. For order pickers such as Plaintiff, employees must pull
18 warehouse items from the shelves, ensure that orders are accurate, stages items correctly for
19 delivery, and operate handling equipment.

20 25. Pursuant to a uniform, companywide policy and practice, Defendants fail to
21 accurately track and compensate Plaintiff and Aggrieved Employees for all hours worked,
22 including minimum wage, overtime, and double time pay. Plaintiff was regularly directed by
23 Kroger to spend between three and six minutes before the beginning and at the end of every shift
24 performing services for Defendants' benefit while off-the-clock. As a matter of company policy
25 and/or practice, Defendant requires all workers, including Plaintiff and Aggrieved Employees, to
26 arrive before their shifts and go through a health check line where the worker has to show their
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1 badge. Additionally, Defendants check employees' temperature before allowing them to enter
2 Defendants' facilities. This process takes approximately one minute, and sometimes more than
3 two or three minutes if the line is long, and is performed prior to Aggrieved Employees clocking
4 in for their shifts.

5 26. Further, approximately twice per week, Defendant randomly selects employees to
6 undergo a car search after their shift, purportedly to ensure that the selected employee had not
7 stolen any items from the store location where they work. This car search likewise occurs off-the-
8 clock and lasts between two and five minutes, in addition to the other security check processes.

9 27. All of this time goes uncompensated.

10 28. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not
11 adequately compensated for all hours worked at their regular rate or at the applicable overtime
12 rates.

13 29. When Plaintiff and Aggrieved Employees work more than forty hours in a
14 workweek, Defendants fail to pay them one and one-half times their regular hourly rate for all
15 overtime hours worked in violation of California law. Defendants fail to account for "off-the-
16 clock" work in the total hours worked in a given work week.

17 30. Similarly, Plaintiff and Aggrieved Employees are often denied overtime for all
18 work performed in excess of eight hours per day or 40 hours per week in violation of California
19 law.

20 31. As a result of these policies and/or practices, Defendants deny Plaintiff and
21 Aggrieved Employees overtime premiums resulting from the additional off-the-clock work
22 performed for Defendants' benefit.

23 32. Plaintiff is informed, believes, and thereon alleges that the same security check
24 system and timekeeping system are used across all Defendants' facilities.

25 33. Defendants' failure to record all hours worked also results in a failure to provide
26 Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by
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1 California law. The wage statements are inaccurate because they do not include premium pay for
2 overtime.

3 34. Further, Defendants do not provide Aggrieved Employees, including Plaintiff,
4 whose employment has ended, with full payment of all wages owed at the end of their
5 employment. As these workers are owed for off-the-clock work, unpaid overtime, and premium
6 pay when their employment ends, and these amounts remain unpaid under Defendants' policies
7 and practices, Defendants fail to pay all wages due upon termination. As a consequence,
8 Defendants are subject to waiting time penalties.

9 35. Defendants have employed hundreds of people similarly situated to Plaintiff
10 during the four-year period prior to the filing of this Complaint.

11 36. Defendants' method of paying Plaintiff and Aggrieved Employees was willful and
12 was not based on a good faith and reasonable belief that their conduct complied with California
13 law.

14 37. Defendants' conduct was willful, carried out in bad faith, and caused significant
15 damages to non-exempt hourly employees in an amount to be determined at trial.

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17 **FIRST CAUSE OF ACTION**
18 **Penalties Pursuant to § 2699(a) of the Private Attorneys General Act**

19 38. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
20 forth herein.

21 39. Labor Code § 2699(a) provides:

22 Notwithstanding any other provision of law, any provision of this code that
23 provides for a civil penalty to be assessed and collected by the Labor and
24 Workforce Development Agency or any of its departments, divisions,
25 commissions, boards, agencies or employees, for a violation of this code,
26 may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or
28 former employees.

40. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages
earned and unpaid to an employee that is discharged, and to pay an employee who quits within

72 hours after he or she quits, at the latest.

41. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

42. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

43. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

44. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

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3 45. Labor Code § 226.3 provides:

4 Any employer who violates subdivision (a) of Section 226 shall be
5 subject to a civil penalty in the amount of two hundred fifty dollars
6 (\$250) per employee per violation in an initial citation and one thousand
7 dollars (\$1,000) per employee for each violation in a subsequent citation,
8 for which the employer fails to provide the employee a wage deduction
statement or fails to keep the records required in subdivision (a) of
Section 226. The civil penalties provided for in this section are in
addition to any other penalty provided by law.

9 46. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
10 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
11 in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to
12 Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

13 47. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
14 failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate,
15 itemized wage statement in compliance with Labor Code § 226(a).

16 48. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
17 violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days
18 of work in any order of the IWC.

19 49. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
20 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Forty-
21 eight calendar days have passed without notice from the LWDA. Plaintiff satisfied the
22 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

23 50. Plaintiff seeks the aforementioned penalties on behalf of the State, other
24 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

25 51. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California
26 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled
27 to an award of attorneys’ fees and costs as set forth below.
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52. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to § 2699(f) of the Private Attorneys General Act

53. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

54. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

55. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

56. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

57. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

58. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

59. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

60. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the

1 amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code §
2 2699(f) for Defendant's violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

3 61. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
4 with notice of his intention to file this claim. More than forty-eight calendar days have passed
5 without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence
6 this civil action in compliance with § 2699.3(a).

7 62. Plaintiff seeks the aforementioned penalties on behalf of the State, other
8 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

9 63. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of
10 California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also
11 entitled to an award of attorneys' fees and costs as set forth below.

12 64. Wherefore, Plaintiff requests relief as hereinafter provided.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for relief as follows:

- 15 1. For the Court to declare, adjudge, and decree that Defendants have violated the
16 California Labor Code as alleged herein;
- 17 2. For an order awarding the State of California, Plaintiff, and Aggrieved
18 Employees civil penalties provided under the PAGA;
- 19 3. For an award of reasonable attorneys' fees as provided by the California Labor
20 Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other
21 applicable law;
- 22 4. For interest on penalties awarded as provided by applicable law;
- 23 5. For all costs of suit; and
- 24 6. For such other and further relief as this Court deems just and proper.
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Dated: January 15, 2021

Respectfully submitted,



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