

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiffs

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

02/16/2021

Clerk of the Court

BY: KALENE APOLONIO
Deputy Clerk

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

9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

CGC-21-589761

11 GREGORY BARTLETT and
12 CASSANDRA VAGLIENTY, on behalf
of the State of California, as private
attorney generals,

14 Plaintiffs,

15 vs.

16 TRADER JOE'S COMPANY, a California
17 Corporation; and Does 1 through 50,
Inclusive;

18 Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiffs Gregory Bartlett and Cassandra Vaglienty (“PLAINTIFFS”), on behalf of the
2 people of the State of California and as “aggrieved employees” acting as private attorney
3 generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFFS bring this action against Defendant TRADER JOE’S COMPANY
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS
10 do **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFFS do not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals to bring an action on
15 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole nature of this action.

17 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Trader Joe’s Company (“DEFENDANT”) is California Corporation
24 that at all relevant times mentioned herein conducted and continues to conduct substantial and
25 regular business throughout California.

26 5. DEFENDANT operates a chain of unique grocery stores that have been described
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1 as equal parts discount warehouse club, natural foods store, specialty grocer, and neighborhood
2 store.

3 6. Plaintiff Bartlett has been employed by DEFENDANT as a non-exempt employee
4 entitled to overtime pay and meal and rest periods since March of 2020. Plaintiff Bartlett has
5 been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
6 employee paid in whole or in part on an hourly basis and receives additional compensation from
7 DEFENDANT in the form of non-discretionary incentive wages.

8 7. Plaintiff Vaglienty was employed by DEFENDANT in California as a non-exempt
9 employee entitled to overtime pay and meal and rest periods from February of 2016 until
10 October of 2020. Plaintiff Vaglienty was at all times relevant mentioned herein classified by
11 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
12 received additional compensation from DEFENDANT in the form of non-discretionary
13 incentive wages.

14 8. PLAINTIFFS, and such persons that may be added from time to time who satisfy
15 the requirements and exhaust the administrative procedures under the Private Attorney General
16 Act, bring this Representative Action on behalf of the State of California with respect to
17 themselves and all individuals who are or previously were employed by DEFENDANT in
18 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
19 the time period of December 3, 2019 until a date as determined by the Court (the "PAGA
20 PERIOD").

21 9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
22 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
23 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
24 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
25 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
26 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
27 Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved
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1 employees within the meaning of Labor Code § 2699, *et seq.*

2 10. The true names and capacities, whether individual, corporate, subsidiary,
3 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
4 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
5 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
6 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
7 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
8 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
9 inclusive, are responsible in some manner for one or more of the events and happenings that
10 proximately caused the injuries and damages hereinafter alleged.

11 11. The agents, servants and/or employees of the Defendants and each of them acting
12 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
16 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
17 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
18 agents, servants and/or employees.

19 20 **THE CONDUCT**

21 12. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
22 accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for their
23 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
24 calculate minimum and overtime wages for time worked by PLAINTIFFS and other
25 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
26 compensation. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited
27 wages due them for working without compensation at the correct minimum wage and overtime
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1 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
2 correct compensation for all time worked in accordance with applicable law is evidenced by
3 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
4 purposefully avoid the payment of the correct compensation as required by California law which
5 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
6 complied with the law.

7 13. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
8 PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual amount of time these
9 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all
11 time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required these employees to work off the clock without paying them for all the
14 time they were under DEFENDANT's control. Specifically, DEFENDANT required
15 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
16 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments.
17 Indeed there were days where PLAINTIFFS did not even receive a partial lunch. As a result,
18 PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
19 compensation by working without their time being accurately recorded and without
20 compensation at the applicable minimum wage and overtime rates. To the extent that the time
21 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
22 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
23 1197, and 1197.1. Further, PLAINTIFFS and other AGGRIEVED EMPLOYEES from time to
24 time were not paid wages for all time worked, including overtime wages, such that in the
25 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice
26 of unevenly rounding time worked by its employees.

27 14. State and federal law provides that employees must be paid overtime at one-and-
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1 one-half times their “regular rate of pay.” PLAINTIFFS and other AGGRIEVED
2 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
3 elements of an employee’s performance.

4 15. The second component of PLAINTIFFS’ and other AGGRIEVED EMPLOYEES’
5 compensation was DEFENDANT’s non-discretionary incentive program that paid
6 PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their
7 performance for DEFENDANT. The non-discretionary incentive program provided all
8 employees paid on an hourly basis with incentive compensation when the employees met the
9 various performance goals set by DEFENDANT. However, when calculating the regular rate
10 of pay in order to pay overtime to PLAINTIFFS and other AGGRIEVED EMPLOYEES,
11 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
12 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
13 the incentive program to potential and new employees as part of the compensation package. As
14 a matter of law, the incentive compensation received by PLAINTIFFS and other AGGRIEVED
15 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted
16 in a underpayment of overtime compensation to PLAINTIFFS and other AGGRIEVED
17 EMPLOYEES by DEFENDANT.

18 16. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
20 intentionally and knowingly failed to compensate PLAINTIFFS and the other AGGRIEVED
21 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
22 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
23 compensation as required by California law which allowed DEFENDANT to illegally profit and
24 gain an unfair advantage over competitors who complied with the law. To the extent equitable
25 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
26 PAGA PERIOD should be adjusted accordingly.

27 17. As a result of their rigorous work schedules, PLAINTIFFS and other
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1 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
2 were not fully relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED
3 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
4 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
5 DEFENDANT failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second
6 off-duty meal period from time to time in which these employees were required by
7 DEFENDANT to work ten (10) hours of work. PLAINTIFFS and the other AGGRIEVED
8 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
9 accordance with DEFENDANT's corporate policy and practice.

10 18. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
11 EMPLOYEES were from time to time also required to work in excess of four (4) hours without
12 being provided ten (10) minute rest periods. Further, these employees were denied their first
13 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
14 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
15 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
16 minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and
17 other AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof.
18 As a result of their rigorous work schedules, PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES were periodically denied their proper rest periods by DEFENDANT and
20 DEFENDANT's managers. Additionally, the applicable California Wage Order requires
21 employers to provide employees with off-duty rest periods, which the California Supreme Court
22 defined as time during which an employee is relieved from all work related duties and free from
23 employer control. In so doing, the Court held that the requirement under California law that
24 employers authorize and permit all employees to take rest period means that employers must
25 relieve employees of all duties and relinquish control over how employees spend their time
26 which includes control over the locations where employees may take their rest period.
27 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
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1 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and
2 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
3 Defendant's rule which stated PLAINTIFFS and other AGGRIEVED EMPLOYEES could not
4 leave the work premises during their rest period.

5 19. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
9 failed to provide to PLAINTIFFS and the AGGRIEVED EMPLOYEES wage statements that
10 identify the correct gross and net wages earned, the applicable number of hours worked and
11 rates of pay. PLAINTIFFS and AGGRIEVED EMPLOYEES were paid on an hourly basis.
12 As such, the wage statements should reflect all applicable hourly rates during the pay period and
13 the total hours worked, and the applicable pay period in which the wages were earned pursuant
14 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
15 PLAINTIFFS and other AGGRIEVED EMPLOYEES failed to identify such information. More
16 specifically, the wage statements failed to identify the accurate total hours worked each pay
17 period. When the hours shown on the wage statements were added up, they did not equal the
18 actual total hours worked during the pay period. Aside, from the violations listed above in this
19 paragraph, DEFENDANT failed to issue to PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES an itemized wage statement that lists all the requirements under California Labor
21 Code 226 *et seq.*

22 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
24 incurred by the PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence
25 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
26 2802, employers are required to indemnify employees for all expenses incurred in the course
27 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
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1 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
2 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
3 directions of the employer, even though unlawful, unless the employee, at the time of obeying
4 the directions, believed them to be unlawful."

5 21. In the course of their employment PLAINTIFFS and other AGGRIEVED
6 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
7 cellular phones as a result of and in furtherance of their job duties as employees for
8 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
9 associated with the use of their personal cellular phones for DEFENDANT's benefit.
10 Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by
11 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
12 the course of their employment with DEFENDANT, PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
14 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
15 of DEFENDANT.

16 22. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
17 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
18 to accurately calculate and record the correct overtime rate for the overtime worked by
19 PLAINTIFFS and other AGGRIEVED EMPLOYEES. The proper calculation of these
20 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
21 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
22 calculate and/or pay all required overtime compensation for work performed by the
23 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
24 promulgated thereunder as herein alleged.

25 23. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
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1 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
2 AJDAR 12157 (Certified for Publication 12/19/18).

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4 **JURISDICTION AND VENUE**

5 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10.

7 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
8 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
9 maintained offices and facilities in this County and/or conducts substantial business in this
10 County, and (ii) committed the wrongful conduct herein alleged in this County against
11 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

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13 **FIRST CAUSE OF ACTION**

14 **For Violation of the Private Attorneys General Act**

15 **[Cal. Lab. Code §§ 2698, *et seq.*]**

16 **(By PLAINTIFFS and Against All Defendants)**

17 26. PLAINTIFFS incorporate by reference, as though fully set forth herein, the
18 prior paragraphs of this Complaint.

19 27. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
21 the state's labor law enforcement agencies. An action to recover civil penalties under
22 PAGA is fundamentally a law enforcement action designed to protect the public and not to
23 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
24 but to create a means of "deputizing" citizens as private attorneys general to enforce the
25 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
26 public interest to allow aggrieved employees, acting as private attorneys general to recover
27 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
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1 claims cannot be subject to arbitration.

2 28. PLAINTIFFS, and such persons that may be added from time to time who
3 satisfy the requirements and exhaust the administrative procedures under the Private
4 Attorney General Act, bring this Representative Action on behalf of the State of California
5 with respect to themselves and all individuals who are or previously were employed by
6 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
7 EMPLOYEES") during the time period of December 3, 2019 until a date as determined by
8 the Court (the "PAGA PERIOD").

9 29. On December 3, 2020, PLAINTIFFS gave written notice by electronic mail to
10 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
11 employer of the specific provisions of this code alleged to have been violated as required by
12 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these
13 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
14 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
15 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
16 EMPLOYEES as herein defined.

17 30. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
19 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
20 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
21 wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
22 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
23 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
24 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
25 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
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1 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek
2 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General
3 Act of 2004 as the representatives of the State of California for the illegal conduct
4 perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

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6 **PRAYER FOR RELIEF**

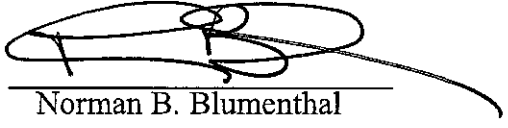
7 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: February 11, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
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18 By: 

19 Norman B. Blumenthal

20 Attorneys for Plaintiffs
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).