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ENDORSED
FILED
ALAMEDA COUNTY
SEP 24 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BEN WA, an individual, on behalf of himself
and all others similarly situated;

Plaintiffs,

vs.

SAFEWAY INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.

RG20075295

CLASS ACTION

COMPLAINT

1. **FAILURE TO REIMBURSE
EMPLOYEE EXPENSES [LAB.
CODE § 2802]**
2. **UNFAIR COMPETITION [BUS. &
PROF. CODE § 17200, *et seq.*]**

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 410.10, because Plaintiff Ben Wa is a resident of the State of California, and Defendant Safeway Inc. and DOES 1 through 100 (collectively "Defendants") are qualified to do business in California and regularly conduct business in California.

2. Venue is proper in this judicial district pursuant to Code of Civil Procedure sections 395 and 395.5, because Defendants reside and maintain their principal place of business in the County of Alameda, and because Defendants' unlawful policies and practices that are the subject of this action were applied, at least in part, to Plaintiffs and other persons similarly situated, in the County of Alameda.

1 **PLAINTIFFS**

2 3. Plaintiff seeks to represent a class consisting of all persons employed in any
3 of Defendants' retail stores in California at any time on or after September 24, 2016 (the
4 "Class").

5 4. More than two thirds of the members of the Class are citizens of California.

6 5. At all relevant times herein mentioned, Plaintiff Ben Wa:

7 a. Was employed by Defendants from approximately 2012 through
8 August of 2018 as a Second Assistant Manager and Third Person in Defendants' stores in
9 the California cities of Tracy, Manteca, Modesto, and Turlock; and

10 b. Was a member of the Class.

11 **CLASS ALLEGATIONS**

12 6. The persons who comprise the Class are so numerous that joinder with all
13 such persons is impracticable and the disposition of his claims will benefit the parties and
14 the Court. The claims of Plaintiff are typical of the claims of the Class. Plaintiff will fairly
15 and adequately protect the interests of the Class. Plaintiff does not have any interests that
16 are antagonistic to the Class. Counsel for Plaintiff are experienced, qualified, and generally
17 able to conduct complex class action litigation.

18 7. This Court should permit this action to be maintained as a class action
19 pursuant to Code of Civil Procedure section 382 for the following reasons:

20 a. The questions of law and fact common to the Class predominate over
21 any question affecting only individual members;

22 b. A class action is superior to any other available method for the fair
23 and efficient adjudication of the claims of the members of the Class;

24 c. The members of the Class are so numerous that it is impractical to
25 bring all members of the Class before the Court;

26 d. Plaintiff and the other members of the Class will not be able to obtain
27 effective and economic legal redress unless the action is maintained as a class action;

28 e. There is a community of interest in obtaining appropriate legal and

1 equitable relief for the common law and statutory violations and other improprieties alleged
2 herein, as well as in obtaining adequate compensation for the damages and injuries for
3 which Defendants are responsible in an amount sufficient to adequately compensate the
4 members of the Class for the injuries sustained;

5 f. Without class certification, the prosecution of separate actions by
6 individual members of the Class would create a substantial risk of the following:

7 i. Inconsistent or varying adjudications with respect to individual
8 members of the Class that would establish incompatible standards of conduct for
9 Defendants, and/or

10 ii. Adjudications with respect to the individual members that
11 would, as a practical matter, be dispositive of the interests of other members not parties to
12 the adjudications, or would substantially impair or impede their ability to protect their
13 interests, including but not limited to the potential for exhausting the funds available from
14 those parties who are, or may be, responsible Defendants; and

15 g. Defendants have acted, or refused to act, on grounds that are generally
16 applicable to the Class, thereby making final injunctive relief appropriate with respect to
17 the Class as a whole.

18 **DEFENDANTS**

19 8. Plaintiff is informed and believes, and based on that information and belief
20 alleges, that Defendant Safeway Inc. is, and at all relevant times herein mentioned:

21 a. Was a duly organized Delaware corporation;

22 b. Was duly qualified to conduct business, and was conducting business,
23 in the State of California, including the County of Alameda; and

24 c. Had its principal place of business in Pleasanton, California.

25 9. The true names and capacities, whether individual, corporate, partnership,
26 associate, or otherwise, of Defendants Does 1 through 100, inclusive ("Doe Defendants"),
27 are unknown to Plaintiff who therefore sues these Doe Defendants by such fictitious names
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1 pursuant to Code of Civil Procedure section 474. Plaintiff will seek leave to amend this
2 complaint to allege their true names and capacities when they are ascertained.

3 10. Plaintiff is informed and believes, and based on that information and belief
4 alleges, that each of the Defendants named in this complaint, including each of the Doe
5 Defendants, is responsible in some manner for one or more of the events and happenings,
6 and proximately caused the injuries and damages, hereinafter alleged.

7 11. Plaintiff is informed and believes, and based on that information and belief
8 allege, that each of the Defendants named in this complaint, including each of the Doe
9 Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or
10 employee of each of the other Defendants, and that each Defendant was acting within the
11 course and scope of his, her, or its authority as the agent, servant, and/or employee of each
12 of the other Defendants. Consequently, each Defendant is jointly and severally liable to
13 Plaintiff and the other members of the Class for the damages sustained as a proximate
14 result of their conduct.

15 **BACKGROUND ALLEGATIONS**

16 12. Defendants are a supermarket chain that owned and operated several hundred
17 grocery stores in California throughout the Class Period.

18 13. At all relevant times herein mentioned, Plaintiff and the other members of the
19 Class were subjected to an established policy that required them to use their personal cell
20 phones to be available to receive, and to actually receive, work related communications via
21 voice calls and text messages. This policy was part of an effort by Defendants to minimize
22 operating expenses and maximize profits by using technology to communicate in the work
23 place without paying for the technology, thereby reaping an illicit windfall by unlawfully
24 passing operating expenses on to employees.

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FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE EMPLOYEE EXPENSES

[Labor Code § 2802]
(Against all Defendants)

14. Plaintiff realleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 13, inclusive, of this Complaint.

15. Pursuant to California Labor Code section 2802, Defendants are required to reimburse Plaintiff and the other members of the Class for expenses incurred by them in the performance of their job duties (which may include but are not limited to the following expenses: vehicle usage and mileage and cell phone usage).

16. At all time relevant herein mentioned, Defendants had a policy and procedure whereby Plaintiff and the other members of the Class were required personally to incur and pay for said expenses during the performance of their employment duties, all without reimbursement from Defendants. Accordingly, Defendants failed to reimburse Plaintiff and the other members of the Class for business expenses incurred as a condition of and in the performance of their job duties, as described above.

17. As a proximate result of the aforementioned violations, Plaintiff and the other members of the Class have suffered damages in amounts presently unknown to them but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

18. Pursuant to Labor Code section 2802, Plaintiff and the other members of the Class are further entitled to recover from Defendants, in addition to the full amount of the expenses they incurred in the course of their job duties, interest thereon and reasonable attorney's fees and costs.

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SECOND CAUSE OF ACTION
FOR UNFAIR COMPETITION

[Business & Professions Code § 17200, *et seq.*]

(Against all Defendants)

19. Plaintiff realleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 18, inclusive, of this Complaint.

20. Defendants fall within the definition of “person” under Business and Professions Code section 17021.

21. By and through the conduct described herein, Defendants engaged in unfair, unlawful, and fraudulent practices, in violation of Business and Professions Code sections 17200, *et seq.*, and thereby deprived Plaintiff and the other members of the Class of fundamental rights and privileges guaranteed to all California employees under the Labor Code.

22. By and through their unfair, unlawful, and fraudulent business practices described herein, Defendants obtained valuable property, money, and services from Plaintiff and the other members of the Class and thereby deprived them of valuable rights and benefits guaranteed by law, all to their detriment.

23. All of the acts described herein as violations of, among other things, the Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of public policy. Said acts are in addition immoral, unethical, oppressive, and unscrupulous, constituting unfair, unlawful, and fraudulent business practices in violation of Business and Professions Code sections 17200, *et seq.*

24. Plaintiff and the other members of the Class are entitled to, and do seek, such relief as may be necessary to restore to them the money and property that Defendants have unfairly, unlawfully, and fraudulently acquired from them by means of the above-described business practices.

25. Plaintiff and the other members of the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair, unlawful, and

1 fraudulent and that injunctive relief should issue restraining Defendants from engaging in
2 any of the above-described unfair, unlawful, or fraudulent business practices in the future.

3 26. Plaintiff and the other members of the Class have no plain, speedy, or
4 otherwise adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of the unfair, unlawful, and fraudulent business practices of Defendants. As a
6 result of the unfair, unlawful, and fraudulent business practices described herein, Plaintiff
7 and the other members of the Class have suffered and will continue to suffer irreparable
8 harm unless Defendants are restrained from continuing to engage in these unfair, unlawful,
9 and fraudulent business practices. In addition, Defendants should be required to pay
10 restitution of the unpaid wages to Plaintiff and the other members of the Class.

11 **PRAYER**

12 **WHEREFORE**, Plaintiff and the other members of the Class pray for judgment as
13 follows:

14 1. **On the First Cause of Action:**

- 15 a. For damages; and
16 b. For all applicable penalties.

17 2. **On the Second Cause of Action:**

- 18 a. For restitution; and
19 b. For injunctive relief.

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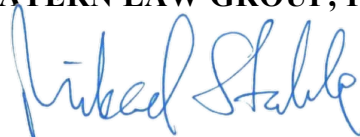
1 3. **On All Causes of Action:**

- 2 a. For prejudgment interest;
- 3 b. For reasonable attorney's fees, costs, and expenses; and
- 4 c. For such other and further relief as this Court deems just and proper.
- 5

6 Dated: September 24, 2020

MATERN LAW GROUP, PC

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8 By: 

9 MATTHEW J. MATERN
 MIKAEL H. STAHLE

10 Attorneys for Plaintiff

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs and the other members of the Class hereby demand a trial by jury on all
3 claims so triable.

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5 Dated: September 24, 2020

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6
7 By: 

MATTHEW J. MATERN
MIKAEL H. STAHLE

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9 Attorneys for Plaintiff
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