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7 Attorneys for MONICA COLEMAN,
on behalf of herself, the State of California, and others similarly
situated and aggrieved
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 MONICA COLEMAN, on behalf of herself,
the State of California, and others similarly
situated and aggrieved,
12

13 Plaintiff,

14 vs.

15
16 WHOLE FOODS MARKET
CALIFORNIA, INC., a California
Corporation; WHOLE FOODS MARKET,
17 INC., a Texas Corporation; and DOES 1 to
100, inclusive,
18

19 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

12/03/2021 at 10:22:04 AM

By: Xian-xii Bowie, Deputy Clerk

Case No.: **21CV003502**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, et
seq.**

20 Plaintiff MONICA COLEMAN ("PLAINTIFF" or "PLAINTIFF COLEMAN"), an
21 individual on behalf of herself, the State of California, and all other Aggrieved Employees, hereby
22 files this Complaint against Defendants WHOLE FOODS MARKET CALIFORNIA, INC., a
23

1 California Corporation; WHOLE FOODS MARKET, INC., a Texas Corporation; and DOES 1 to
2 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
3 believes, and on the basis of that information and belief, alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF COLEMAN on behalf of herself, other
6 similarly Aggrieved Employees, and the State of California against DEFENDANTS, pursuant to
7 California’s Private Attorney General Act, Labor Code section 2698 *et. seq.*, to recover civil
8 penalties (75% payable to the Labor and Workforce Development Agency and 25% payable to
9 aggrieved employees) for DEFENDANTS’ violations of the California Labor Code as alleged
10 below.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
13 California statutes, including but not limited to the Private Attorneys General Act, and decisional
14 law and regulations.

15 3. Venue is proper in this judicial district and the County of Alameda pursuant to
16 California Code of Civil Procedure section 395.5 because Defendant WHOLE FOODS MARKET
17 CALIFORNIA, INC., maintains its principal place of business in Emeryville, California, in the
18 county of Alameda. Moreover, DEFENDANTS conduct business in Alameda County and some of
19 the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this judicial district. *See*
20 *also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
21 PAGA action is proper in any county where the defendants committed Labor Code violations against
22 some of its employees).

23 **THE PARTIES**

3. Defendant WHOLE FOODS MARKET CALIFORNIA, INC., is a California
corporation that, at all relevant times, was authorized to do business within the State of California

1 and is doing business in the State of California.

2 4. Defendant WHOLE FOODS MARKET, INC., is a Texas corporation that, at all
3 relevant times, was authorized to do business within the State of California and is doing business in
4 the State of California.

5 5. DEFENDANTS and their managing agents, own, operate, or otherwise manage
6 companies that operate a multi-national supermarket chain that sells natural and organic foods in
7 over 500 stores in North America, Canada and the UK. DEFENDANTS operate at least 90 locations
8 in California alone.

9 6. PLAINTIFF COLEMAN is, and at all relevant times was, an individual domiciled
10 in the State of California and a citizen of the State of California who worked as a full-time non-
11 exempt employee for DEFENDANTS in the State of California.

12 7. PLAINTIFF COLEMAN worked for DEFENDANTS from in or about April 2021
13 through in or about September 2021. PLAINTIFF worked as a cashier at DEFENDANTS' location
14 in Laguna Niguel, California.

15 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
16 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
17 Defendants by said fictitious names. Each of the Defendants designated herein as a DOE is legally
18 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
19 Complaint to reflect the true names and capacities of the DOE Defendants when such identities
20 become known.

21 9. PLAINTIFF is further informed and believes that, at all relevant times, each
22 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
23 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all

1 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
2 Complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
3 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
4 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
5 controlled, aided and abetted the conduct of all other Defendants.

6 10. At all relevant times, DEFENDANTS were and are legally responsible for all
7 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
8 DEFENDANTS are responsible for each of the unlawful acts or omissions complained of herein
9 under the doctrine of respondent superior. The conduct of DEFENDANTS' managers and
10 supervisors was at all relevant times undertaken as employees of DEFENDANTS, acting within the
11 scope of their employment or authority in all of the unlawful activities described herein.

12 **JOINT LIABILITY**

13 11. Under California law, the definition of the term "to employ" is broadly construed
14 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
15 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
16 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
17 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
18 was to reach situations in which multiple entities control different aspects of the employment
19 relationship. Supervision of the work, in the specific sense of exercising control over how services
20 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
21 wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker,
22 and the other entity supervises the work. *Id.*

23 12. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF and the
Aggrieved Employees were jointly employed by these DEFENDANTS for purposes of the Wage
Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court

1 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
2 hours and working conditions of PLAINTIFF and the Aggrieved Employees (defined below); (2)
3 suffered or permitted PLAINTIFF and the Aggrieved Employees to work for them; and (3) engaged
4 PLAINTIFF and the Aggrieved Employees to work for them.

5 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
6 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
7 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful
8 policies and practices across all of their locations/facilities and subjected all of the Aggrieved
9 Employees to these same policies and practices regardless of the location(s) or facilities where they
10 worked.

11 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
12 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
13 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
14 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
15 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
16 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
17 Employees. Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS
18 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
19 overtime pay, time-keeping practices, meal and rest periods, provision or lack thereof of suitable
20 seating, and other working conditions that were distributed to, and/or applied to PLAINTIFF and
21 the Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
22 the wages of PLAINTIFF and the Aggrieved Employees in a uniform manner. DEFENDANTS
23 collectively represented to PLAINTIFF and the Aggrieved Employees that each was an "at-will"
employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate
PLAINTIFF and the Aggrieved Employees' employment with or without cause. Upon information

1 and belief, DEFENDANTS further collectively represented to PLAINTIFF and the Aggrieved
2 Employees in writing the details of their compensation, and the manner in which they were to take
3 meal and rest periods, the procedures required by DEFENDANTS collectively for recordation of
4 hours worked and the policies applicable to PLAINTIFF and the Aggrieved Employees by which
5 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and the Aggrieved
6 Employees.

7 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
8 and working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
9 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
10 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
11 PLAINTIFF seeks relief in this Complaint.

12 **PAGA ALLEGATIONS**

13 16. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
14 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
15 California and Aggrieved Employees, regarding violations of the California Labor Code and the
16 applicable Industrial Welfare Commission ("IWC") Wage Order as set forth herein as to all
17 Aggrieved Employees. Said "Aggrieved Employees" include:

18 All current and former non-exempt employees that worked for
19 DEFENDANTS in California at any time from one year plus 65 days
20 from the filing of the initial Complaint through the present ("PAGA
21 Period").

22 17. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
23 section 2699(c), as she was employed by DEFENDANTS during the applicable statute of limitations
period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved

1 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
2 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
3 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
4 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
5 745, 757, a PAGA plaintiff has authority to seek penalties for all known violations committed by
6 the employer – regardless of whether plaintiff experienced all violations personally. *Id.* at 760-761.

7 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENT**

8 18. On September 22, 2021, PLAINTIFF COLEMAN, through her counsel, gave written
9 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”)
10 informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
11 allegations set forth in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and
12 correct copy of the PAGA Letter also sent to DEFENDANTS at the offices of their Agents for
Service of process via certified mail.

13 19. The PAGA Letter outlined PLAINTIFF COLEMAN’s claims for violations of the
14 California Labor Code and the applicable wage orders on behalf of herself, the State of California
15 and other Aggrieved Employees.

16 20. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
17 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
18 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
19 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
20 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit has duly accrued.

21 21. As such, PLAINTIFF seeks to recover the PAGA civil penalties through a
22 representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior*
23 *Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

FACTUAL ALLEGATIONS

1 22. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
2 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
3 at all times, exercised control over PLAINTIFF and the Aggrieved Employees, and suffered and/or
4 permitted them to work.

5 23. PLAINTIFF worked for DEFENDANTS as a cashier at Whole Foods Market in
6 Laguna Niguel, California. PLAINTIFF worked for DEFENDANTS as a full-time non-exempt
7 employee from in or about April 2021 through in or about September 2021.

8 24. **Failure to provide suitable seating:** During the PAGA Period, PLAINTIFF and
9 Aggrieved Employees were not provided suitable seating and when such employees were not
10 engaged in duties which required them to stand, no seating was placed in reasonable proximity to
11 their workstations. The nature of PLAINTIFF's and the Aggrieved Employees' work, which
12 included but was not limited to cashier duties, reasonably permitted the use of seats, but no such
13 seats were provided. Instead, PLAINTIFF was required to be on her feet all day even when
14 PLAINTIFF and the Aggrieved Employees were not engaged in duties which required them to stand.

15 25. The nature of the work reasonably permitted the use of seats for at least part of the
16 time that PLAINTIFF and Aggrieved Employees were working as cashiers or similar or related
17 positions. For example, tasks including but not limited to scanning merchandise, operating the point-
18 of-sale system, handing a receipt and change to customers, bagging merchandise, greeting
19 customers, providing customer service, and/or waiting for the next customer can all be performed
20 while seated. Moreover, the physical configuration of the workspace at a front-end check stand can
21 accommodate one or more seats, and such suitable seats exist. For example, a lean stool could fit
22 behind the front-end check stand and be safely used while checking out customers. Lastly, there
23 were periods of time when PLAINTIFF and the Aggrieved Employees were working as a cashier or
a similar or related position but were not engaged in active duties of their employment, yet there
were no suitable seats in reasonable proximity to the work area and use of seats would not interfere

1 with the performance of their duties.

2 26. As such, DEFENDANTS failed and continue to fail to provide PLAINTIFF and
3 Aggrieved Employees with suitable seating in accordance with the applicable IWC Wage Order,
4 including Wage Order 4-2001 section 14(A-B), and California law despite the fact that the nature
5 of their work reasonably permits the use of seats.

6 27. **Standard Conditions of Labor:** DEFENDANTS also violated Labor Code Section
7 1198 and 1199, which together, make it unlawful to employ individuals under conditions or labor
8 that are prohibited by the Wage Orders or any provision within Part 4, Chapter 1 of the Labor Code,
9 or order or ruling of the commission. DEFENDANTS' failure to provide suitable seating in violation
10 of the applicable Wage Order, including Wage Order 4, results in a separate violation of sections
11 1198 and 1199, which subjects DEFENDANTS to civil penalties under Labor Code section 2699.

12 28. PLAINTIFF is informed and believes that DEFENDANTS engaged in these same
13 herein described unlawful practices with regard to all of the Aggrieved Employees.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**

16 **2698, *ET SEQ.***

17 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**

18 **Defendants)**

19 29. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 **Failure to Provide Suitable Seating**

21 30. California law provides that employees shall be provided with suitable seats when
22 the nature of the work reasonably permits the use of seats and when they are not engaged in the
23 active work duties that would not permit them to be seated. DEFENDANTS' failure to provide
suitable seating to PLAINTIFF and the Aggrieved Employees constitutes a violation of Labor Code
section 1198-1199, and the applicable Wage Order, including Wage Order 4.

1 31. IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), Section 14(A-B)
2 provides:

3 (A) All working employees shall be provided with suitable seats when
4 the nature of the work reasonably permits the use of seats.

5 (B) When employees are not engaged in the active duties of their
6 employment and the nature of the work requires standing, an adequate
7 number of suitable seats shall be placed in reasonable proximity to
8 the work area and employees shall be permitted to use such seats
9 when it does not interfere with the performance of their duties.

10 32. Suitable seating is one of the worker protections covered by California's Wage
11 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
12 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

13 33. As alleged herein, PLAINTIFF and the other Aggrieved Employees worked as a
14 cashier or a similar or related position. The nature of PLAINTIFF's and other Aggrieved
15 Employees' work reasonably permitted the use of seats, but no such seats were provided.

16 34. DEFENDANTS violated and continue to violate Wage Order 4-2001 section 14(A)
17 by failing to provide suitable seats to PLAINTIFF and Aggrieved Employees. DEFENDANTS also
18 violated and continue to violate section 14(B) by failing to place an adequate number of suitable
19 seats in reasonable proximity to the work area to use when PLAINTIFF and Aggrieved Employees
20 were not engaged in active duties of their employment.

21 **Standard Conditions of Labor Violations:**

22 35. Together, Labor Code §§ 1198 and 1199 make unlawful any employment of any
23 employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including but not

1 limited to section 1198, or order or ruling of the commission. Therefore, DEFENDANTS' failure
2 to provide suitable seating in violation of section 14 (A-B) of the applicable Wage Order, including
3 Wage Order 4, results in a separate violation of sections 1198 and 1199, which subjects
4 DEFENDANTS to civil penalties under Labor Code section 2699.

5 36. Each of the above violations of each Labor Code section and Wage Order provision
6 results in a *separate* civil penalty, for each Aggrieved Employee for each pay period during which
7 the referenced statutes and Wage Order provisions were violated.¹

8 37. Under the provisions of PAGA and the above-mentioned Labor Code sections,
9 including but not limited to Labor Code sections 1198, 1199, 2699, and all applicable Wage Orders
10 as well as all interpretations of these laws by California Courts and administrative bodies, as well
11 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
12 penalties:

- 13 a. All statutorily specified penalties recoverable under PAGA as enumerated in the
14 relevant California Labor Code provisions listed herein only if permitted by the
15 PAGA statute, pursuant to Labor Code section 2699(a); and
- 16 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
17 violations without a civil penalty recoverable under the PAGA, all in the default
18 amounts provided by Labor Code section 2699(f).
- 19 c. The proper measure of penalties under PAGA is the number of violations,
20 whether those violations were committed as against PLAINTIFF or any
21 Aggrieved Employee, whether a party to this action or not.

22 ¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab.
23 Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
employee was underpaid”); IWC Wage Order 4-2001, §20 (establishing that “[i]n addition to any other civil penalties
provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be
violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay
period during which the employee was underpaid”).

1 38. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
2 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

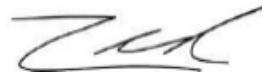
3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of herself,
5 the State of California, and the Aggrieved Employees:

- 6 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
7 25% payable to Aggrieved Employees);
- 8 2. For reasonable attorney's fees and costs of suit; and
- 9 3. For such other and further relief that the Court deems just and proper.

10 Dated: December 3, 2021

CROSNER LEGAL, P.C.

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12 _____
13 Zachary M. Crosner
14 Attorneys for Plaintiff,
15 MONICA COLEMAN
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EXHIBIT

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CROSNER LEGAL

Public Interest Rights

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September 20, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CT Corporation System,
Agent for Service of Process for
Whole Foods Market California, Inc.
330 N. Brand Blvd. Suite 700
Glendale, CA 91203

CT Corporation System,
Agent for Service of Process for
Whole Foods Market, Inc.
1999 Bryan St. Suite 900
Dallas, TX 75201

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency, Whole Foods Market
California, Inc. and Whole Foods Market, Inc.
Date: September 20, 2021
Subject: *Coleman v. Whole Foods Market California, Inc. and Whole Foods Market, Inc.*
Notice of Labor Law Violations, CA Labor Code § 2699.3(a)

Introduction

This office represents COMPLAINANT, Monica Coleman (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Whole Foods Market California, Inc. and Whole Foods Market, Inc. (hereinafter, these entities and managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all non-exempt current and former employees of EMPLOYER (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The

specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 1198, 1199, and Section 14 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

General Information

Whole Foods Market California, Inc. and Whole Foods Market, Inc. and its managing agents own, operate, or otherwise manage companies that operate a multi-national supermarket chain. While EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for Whole Foods Market California, Inc. and Whole Foods Market, Inc., from in or about April 2021 through in or about September 2021.

COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as cashiers. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were non-exempt employees.

Among other things, EMPLOYER failed to provide suitable seating for COMPLAINANT and similarly AGGRIEVED EMPLOYEES as explained below.

Labor Code Violations

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. If the nature of the work as a whole requires standing, subsection B applies.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

COMPLAINANT and the other AGGRIEVED EMPLOYEES worked as cashiers. The nature of COMPLAINANT's and the other AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats, and the nature of their work required they remain standing while performing their duties. However, EMPLOYER failed to provide suitable seating in reasonable proximity to COMPLAINANT and the other AGGRIEVED EMPLOYEES' work areas in violation of IWC Wage Order 4-2001 (and all applicable wage orders), section 14 (A-B) and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including but not limited to, Labor Code section 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to suitable seating for COMPLAINANT and other AGGRIEVED EMPLOYEES result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1199 and 2699.

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

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