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FILED
Superior Court of California
County of Alameda

05/26/2022

Clad File, Executive Officer / Clerk of the Court

By: Cheryl Clark Deputy
C. C. Clark

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PATRICIA O'CONNOR and STEVEN
RODRIGUEZ, as individuals and on behalf of all
others similarly situated, and as private attorneys
general,

Plaintiffs,

vs.

WHOLE FOODS MARKET CALIFORNIA,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV008620

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a)); and
(2) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

1 On behalf of themselves and other similarly situated current and former employees, and as
2 proxies for the State of California, Plaintiffs Patricia O'Connor and Steven Rodriguez submit this First
3 Amended Class and Representative Action Complaint (the "Complaint") against Defendant, Whole
4 Foods Market California, Inc., and Does 1 through 50 (collectively, "Defendants").

5 INTRODUCTION

6 1. This class and representative action concerns systemic employment practices that violate
7 California Labor Code. The Complaint seeks penalties and other relief pursuant to, among other
8 provisions, Labor Code section 226, 226.3, and 2698 et seq.¹

9 2. Plaintiffs are informed and believe that Defendants have jointly and severally acted
10 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
11 failing to furnish accurate itemized wage statements.

12 3. As a result of several Labor Code violations, Defendants routinely fail to provide
13 accurate itemized wage statements to Plaintiffs and other non-exempt employees. For example,
14 Defendants routinely underpay sick pay wages. Specifically, Plaintiffs and other non-exempt employees
15 are paid base hourly rates but also earn nondiscretionary bonuses, incentives, or shift differentials.
16 Defendants fail to consider this additional remuneration when calculating the regular rate for purposes
17 of paying sick pay wages. Likewise, Defendants routinely fail to pay wages, including overtime wages,
18 for all hours worked, including, for example, the time that Plaintiffs and other non-exempt employees
19 spend undergoing temperature checks. Specifically, Defendants require Plaintiffs and other non-exempt
20 employees to wait for and undergo temperature checks before being allowed to clock in. Defendants do
21 not pay any wages for this time. In addition, Defendants routinely fail to authorize and permit Plaintiff
22 and other non-exempt employees to take duty-free 10-minute rest periods for every four hours worked,
23 or major fraction thereof, or a duty-free 30-minute meal period within the first five hours of work.
24 When not permitting duty-free rest periods and meal periods, Defendants also routinely failed to pay
25 Plaintiff and other non-exempt employees the requisite additional hour of regular rate wages by failing
26 to consider nondiscretionary bonuses, incentives, or shift differentials. Defendants thus underpay
27 various wages.

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¹ Except as otherwise noted, all "Section" references are to the Labor Code.

4. As a result of the above practices, Defendants fail to furnish Plaintiffs and other non-exempt employees with wage statements that accurately itemize and show all applicable hourly rates and the corresponding number of hours worked at each rate, the gross wages earned, the net wages earned, and the total hours worked. In addition, and independent of the above practices, whenever Defendants pay Plaintiffs and other non-exempt employees overnight wages, Defendants routinely fail to furnish wage statements that accurately itemize and show all applicable hourly rates.

5. Plaintiffs are informed and believe that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

JURISDICTION AND VENUE

6. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Section 226.

7. Venue is proper in the County of Alameda. Plaintiff Rodriguez worked for Defendants at its location in Richmond, California.

PARTIES

8. Until around November of 2021, Plaintiffs were employed by Defendants as non-exempt employees. Plaintiffs worked in California for Defendants for 30 or more days within a year. When Plaintiffs reported to work, Defendants required Plaintiffs to wait in line for and undergo a temperature check, before clocking in. Even though Plaintiffs were paid on an hourly basis, Defendants did not pay any wages for this time or, when Plaintiffs worked more than eight hours in a day or 40 hours in a week, any overtime wages for this time. Plaintiffs also accrued and actually used sick leave. While Plaintiffs were paid base hourly rates, they also earned nondiscretionary bonuses, incentives, or shift differentials. Defendants did not consider this additional remuneration when calculating the regular rate for purposes of paying sick pay wages or the additional hour of regular rate wages when rest periods or meal periods were not provided. Plaintiffs received wage statements that inaccurately showed all applicable hourly rates and the corresponding number of hours worked at each rate, the gross wages earned, the net wages earned, and the total hours worked. Plaintiffs thus are victims of the policies, practices, and customs of

1 Defendants complained of in this action in ways that have deprived them of the rights guaranteed by the
2 Labor Code.

3 9. Plaintiffs are informed and believe that Whole Foods Market California, Inc., was and is
4 a California corporation. Plaintiffs are informed and believe that at all times herein mentioned
5 Defendant and Does 1 through 50, are and were corporations, business entities, individuals, or
6 partnerships that were and are licensed to do business and actually doing business in the State of
7 California. The facts and circumstances of Defendants' business subject Defendants to Section 226.

8 10. Plaintiffs do not know the true names or capacities of the defendants sued herein as Does
9 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued
10 under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and
11 capacities are known. Plaintiffs are informed and believe that each of said fictitious defendants was
12 responsible in some way for the matters alleged herein and proximately caused the illegal employment
13 practices, wrongs, and injuries complained of herein.

14 11. At all times herein mentioned, each of said Defendants participated in the doing of the
15 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
16 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
17 scope of said agency and employment.

18 12. Plaintiffs are informed and believe that at all times material hereto, each of said
19 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
20 each of the other Defendants and was acting within the course and scope of such agency, employment,
21 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
22 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
23 omissions of the acting Defendants.

24 13. Plaintiffs are informed and believe that at all times material hereto each of the
25 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately
26 causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope
27 of, and in pursuance of, a joint venture, partnership, or common enterprise.
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CLASS ACTION ALLEGATIONS

14. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiffs seek class certification of the following class and sub-classes: (i) all current and former non-exempt employees of Defendants in the State of California since March 18, 2021 (the “Wage Statement Class”); (ii) all current and former non-exempt employees of Defendants in the State of California who were paid sick pay wages in a workweek since March 18, 2021, in which they earned nondiscretionary bonuses, incentives, or shift differentials (the “Sick Pay Sub-Class”); (iii) all current and former non-exempt employees of Defendants in the State of California who were paid an additional hour of wages for rest periods or meal periods in a workweek since March 18, 2021, in which they earned nondiscretionary bonuses, incentives, or shift differentials (the “Additional Hour Sub-Class”); and (iv) all current and former non-exempt employees of Defendants in the State of California who were paid overnight wages at any time since March 18, 2021 (the “Overnight Sub-Class”). The Wage Statement Class, Sick Pay Sub-Class, Additional Hour Sub-Class, and Overnight Sub-Class are collectively referred to as a the “Class.”

15. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs are informed and believe that Defendants violated Section 226 against Plaintiffs and the Class by failing to furnish accurate itemized wage statements.

16. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiffs’ attorneys are ready, willing, and fully and adequately able to represent Plaintiffs and the Class. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

17. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiffs and of the Class. Plaintiffs are informed and believe that Defendants uniformly administer a corporate policy and practice of routinely failing to furnish accurate itemized wage statements.

1 18. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class
2 in that Plaintiffs suffered the alleged harms in a similar and typical manner as other members of the
3 Class suffered. As with other members of the Class, Plaintiffs were non-exempt employee and paid on
4 an hourly basis, required to wait for and undergo mandatory temperature checks before clocking in,
5 earned nondiscretionary remuneration and accrued and used sick leave or additional hours of wages for
6 meal periods and rest periods, and received inaccurate wage statements. Plaintiffs thus are members of
7 the Class and have suffered the alleged violations of the Labor Code.

8 19. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
9 in establishing minimum working conditions and requirements in California. These labor standards
10 protect employees from onerous terms and conditions of employment or exploitation by employers who
11 have superior economic and bargaining power.

12 20. The nature of this action and the format of laws available to Plaintiffs and members of
13 the Class make the class action format a particularly efficient and appropriate procedure to redress the
14 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
15 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
16 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
17 legal resources. Requiring each member of the Class to pursue an individual remedy would also
18 discourage the assertion of lawful claims by employees who would be disinclined to file an action
19 against their former or current employer for real and justifiable fear of retaliation and permanent
20 damage to their careers at their current or subsequent employment.

21 21. The prosecution of separate actions by individual members of the Class, even if possible,
22 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
23 members of the Class that would establish potentially incompatible standards of conduct for
24 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
25 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
26 of other members of the Class not parties to the adjudications. Further, the claims of the individual
27 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
28 the concomitant costs and expenses.

22. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiffs and the Class under Section 226, applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

FIRST CAUSE OF ACTION

Inaccurate Itemized Wage Statements (Lab. Code § 226(a))

(By Plaintiffs and the Class Against All Defendants)

23. The preceding paragraphs are re-alleged and incorporated by this reference.

24. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates and the corresponding number of hours worked at each rate, the gross wages earned, the net wages earned, and the total hours worked.

25. As a result of Defendants' failure to pay all wages, including sick pay wages, additional hours of regular rate wages for meal periods or rest periods, and overtime wages, and as a matter of policy and practice, Defendants fail to provide accurate itemized wage statements to Plaintiffs and the Class. Specifically, Defendants furnish Plaintiffs and the Class with wage statements that fail to accurately show all applicable hourly rates and the corresponding number of hours worked at each rate, the gross wages earned, the net wages earned, and the total hours worked. Independent of the above practices, and as a matter of policy and practice, whenever Defendants pay overnight wages to Plaintiffs and the Overnight Sub-Class, Defendants routinely fail to furnish wage statements that accurately itemize and show all applicable hourly rates.

26. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiffs and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Violations of the Labor Code (Lab. Code §§ 2698 et seq.)

(By Plaintiffs as Proxies for the State Against All Defendants)

27. The preceding paragraphs are re-alleged and incorporated by this reference.

28. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”), Plaintiffs bring this cause of action as proxies for the State of California. In this capacity, Plaintiffs seek penalties for Defendants’ violations of Section 226 committed since February 22, 2021, against all aggrieved employees. Under Section 2699(c), Plaintiffs are “aggrieved employees,” as one or more of the alleged violations was committed against Plaintiffs as employees of Defendants.

29. As stated herein and as a result of Defendants' failure to pay all wages, including sick pay wages, additional hours of regular rate wages for meal periods or rest periods, and overtime wages, Defendants fail to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees. Specifically, Defendants furnish Plaintiffs and other aggrieved employees with wage statements that fail to accurately show all applicable hourly rates and the corresponding number of hours worked at each rate, the gross wages earned, the net wages earned, and the total hours worked. Independent of the above practices, whenever Defendants pay overnight wages to Plaintiffs and other aggrieved employees, Defendants routinely fail to furnish wage statements that accurately itemize and show all applicable hourly rates.

30. On or about February 18, 2022, and March 1 and 2, 2022, Plaintiffs sent written notices to the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations of Section 226. Plaintiffs simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

31. As such, Plaintiffs seek recovery of all applicable penalties pursuant to Section 2699(a), (f), and (g) for Defendants' violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiffs as the representatives of the Class;

- 1 3. For an order appointing Counsel for Plaintiffs as Class Counsel;
- 2 4. Upon the First Cause of Action for penalties and for costs and attorneys' fees;
- 3 5. Upon the Second Cause of Action for penalties and for costs and attorneys' fees;
- 4 6. Upon each cause of action for costs and attorneys' fees as provided by the Labor Code
- 5 and Code of Civil Procedure section 1021.5; and
- 6 7. For such other and further relief that the Court may deem just and proper.

7 DATED: May 26, 2022

DIVERSITY LAW GROUP, P.C.

8 By: 

9 Larry W. Lee

10 Simon L. Yang

11 Attorneys for Plaintiffs

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

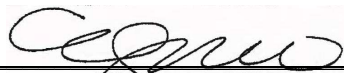
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On May 26, 2022, I served the following document(s) described as: **NOTICE OF RESCHEDULING** on the interested parties in this action as follows:

Derek R. Havel	<i>Attorney for Defendant Whole Foods Market</i>
Matthew A. Tobias	<i>California, Inc.</i>
David A. Alvarez	
Brett Young	dhavel@sheppardmullin.com
Ian Michalak	mtobias@sheppardmullin.com
Sheppard, Mullin, Richter & Hampton LLP	dalvarez@sheppardmullin.com
333 S. Hope Street, 43 rd Floor	BYoung@sheppardmullin.com
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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 26, 2022, at Los Angeles, California.



Erika Mejia