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Individually and on behalf of all others similarly
situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Anna Delgado, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Food 4 Less of California, Inc.; Ralphs Grocery
Company; and Does 1-20, inclusive,

Defendants.

CASE NO.: 22STCV23722

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

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Timely Pay All Wages;
- (4) Failure to Pay Reporting Time Pay;
- (5) Failure to Provide Meal Periods;
- (6) Failure to Permit Rest Breaks;
- (7) Failure to Provide Accurate and Itemized Wage Statements;
- (8) Failure to Reimburse All Business Expenses;
- (9) Failure to Provide All Wages Due Upon Separation of Employment;
- (10) Violation of Business and Professions § 17200, *et seq.*;
- (11) Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles
07/26/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Concepcion Deputy

1 Plaintiff Anna Delgado, individually and on behalf of all others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Anna Delgado (“Plaintiff”) brings this putative class and representative
5 action against Food 4 Less of California, Inc., Ralphs Grocery Company, and Does 1-20
6 (“Defendants”), on behalf of herself individually and a putative class of non-exempt employees
7 employed by Defendants.

8 2. Defendants operate grocery store shopping centers throughout California.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to pay for all hours worked, including minimum and overtime wages;
- 16 (b) Failing to timely pay all wages;
- 17 (c) Failing to pay reporting time pay;
- 18 (d) Failing to provide meal periods or compensation in lieu thereof;
- 19 (e) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- 20 (f) Failing to provide accurate itemized wage statements;
- 21 (g) Failing to reimburse for all business expenses;
- 22 (h) Failing to timely pay all wages due upon separation of employment.

23 5. Defendants maintained and enforced against the class the following unlawful
24 practices and policies, in violation of California state wage and hour laws:

- 25 (a) Defendants failed to maintain a policy that compensates Plaintiff and class
26 members for all hours worked, including minimum and overtime wages, by
27 requiring Plaintiff and class members to perform COVID-19 health screenings
28 before their shifts, among other things. Defendants did not compensate for time

1 spent on health screenings despite being in control of its employees. Additionally,
2 Defendants failed to pay Plaintiff and class members overtime and doubletime
3 compensation for the hours they worked. Further, Defendants failed to pay
4 Plaintiff and class members all overtime and double-time wages earned at the
5 correct regular rate because failed to include shift premiums and other
6 remunerations pay in the regular rate of pay.

7 (b) Defendants subjected Plaintiff and other class members to a uniform policy and
8 practice of unlawful time rounding and manipulation. Defendants rounded the
9 hours worked of Plaintiff and other class members to the nearest tenth of an hour,
10 or otherwise manipulated the reported hours, which over time, unlawfully favored
11 Defendant and resulted in time loss to the employees, including Plaintiff and other
12 class members. This rounding policy was not neutral on its face or in application
13 and resulted in cumulative loss of time to the employees.

14 (c) Defendants failed to pay all Reporting Time Pay to Plaintiff and class members in
15 violation of Section 5 of the applicable Wage Order. Defendants required Plaintiff
16 and class members to report to work on the day of their scheduled shift or be on
17 call and did not put them to work or furnished less than half of their usual day's
18 work and did not pay them their required Reporting Time Pay between two (2) and
19 four (4) hours at the employee's regular rate of pay.

20 (d) Defendants failed to provide meal and rest breaks in violation of California law.
21 Plaintiff and class members regularly worked in excess of five (5) hours a day
22 without being provided at least half-hour meal periods in which they were relieved
23 of all duties. Furthermore, Defendants failed to provide a second meal period for
24 shifts of more than ten (10) hours. Moreover, based on lack of proper coverage
25 and the scheduling of meal periods, Plaintiff and class members were not able to
26 take off-duty meal and rest periods during their shifts. When Plaintiff and class
27 members suffered meal and rest period violations, Defendants failed to pay an
28 additional hour of pay at the regular rate of pay to class members.

1 (e) Defendants failed to reimburse Plaintiff and class members for all necessary
2 business expenses, including but not limited to, the purchase of masks, gloves, and
3 other Personal Protective Equipment (“PPE”), and for use of their personal cellular
4 phones for work-related purposes.

5 (f) Defendants failed to provide Plaintiff and class members with accurate wage
6 statements that identified the correct gross and net wages earned, total hours
7 worked, all meal and rest periods premiums, the correct calculation of overtime
8 wages, and the proper employer and employer’s address.

9 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
10 of herself and all others similarly situated in California to recover, among other things, unpaid
11 wages and benefits, interest, attorneys’ fees, costs, expenses, and penalties pursuant to Labor
12 Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2698, 2800, and
13 2802.

14 7. Plaintiff, on behalf of herself and all class members, pursuant to Business and
15 Professions Code sections 17200, *et seq*, also seeks injunctive relief and restitution for the unfair,
16 unlawful, or fraudulent practices alleged in this Complaint.

17 **JURISDICTION AND VENUE**

18 8. This is a class action, pursuant to California Code of Civil Procedure § 382. The
19 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
20 of the Superior Court and will be established according to proof at trial.

21 9. This Court has jurisdiction over this action pursuant to the California
22 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
23 except those given by statutes to other courts. The statutes under which this action is brought
24 do not specify any other basis for jurisdiction.

25 10. This Court has jurisdiction over all Defendants because, upon information and
26 belief, they are citizens of California, have sufficient minimum contacts in California or
27 otherwise intentionally avail themselves of the California market so as to render the exercise of
28 jurisdiction over them by the California courts consistent with traditional notions of fair play

1 and substantial justice.

2 11. Venue is proper in this Court because, upon information and belief, Defendants
3 reside, transact business, or have offices in this county and the acts and omissions alleged herein
4 took place in this county.

5 **THE PARTIES**

6 12. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
7 the relevant time period in California from approximately August of 2018 to July of 2021.
8 Details regarding Plaintiff's precise hours, pay, and revenue generated for Defendants are
9 available by reference to Defendants' records.

10 13. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
11 times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code
12 and IWC Wage Orders, whose employees were and are engaged throughout this county and the
13 State of California.

14 14. The true names and capacities, whether individual, corporate, associate, or
15 otherwise, of the Defendants sued herein as Does 1 to 20, inclusive, are currently unknown to
16 Plaintiff, who therefore sues said Defendants by such fictitious names under California Code of
17 Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each
18 of the Defendants designated herein as a Doe is legally responsible in some manner for the
19 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
20 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
21 such identities become known.

22 15. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted
23 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendants
25 are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted
26 as the employer and/or joint employer of Plaintiff and the class members.

27 16. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or

Does 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

17. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

18. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

20. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

21. Plaintiff's proposed Class consists of and is defined as follows:

Class

All current and former non-exempt employees who worked for Defendants in the State of California from four years and 178 days preceding the filing of the original complaint filed on March 30, 2022 to the date of trial.¹

Plaintiff also seeks to certify the following Subclass of employees:

Waiting Time Subclass

All current and former non-exempt employees who worked for Defendants in the State of California from three years and 178 days

¹ The statute of limitations for this matter was tolled for 178 days from April 6, 2020 to October 1, 2020 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

preceding the filing of the original complaint filed on March 30, 2022 to the date of trial.

22. Members of the Class and Subclass described above will be collectively referred to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- (a) Whether Defendants paid Plaintiff and class members all wages, including minimum and overtime wage compensation;
- (b) Whether Defendants failed to timely pay all wages earned;
- (c) Whether Defendants paid reporting time pay;
- (d) Whether Defendants deprived Plaintiff and class members of compliant meal periods;
- (e) Whether Defendants deprived Plaintiff and class members of compliant rest breaks;
- (f) Whether Defendants failed to furnish Plaintiff and class members with accurate, itemized wage statements;
- (g) Whether Defendants failed to reimburse Plaintiff and class members for business expenses;
- (h) Whether Defendants failed to pay all wages due upon separation of employment;
- (i) Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in this litigation and the Class is readily ascertainable:

1 (a) Numerosity: The members of the Class are so numerous that joinder of
2 all members is impractical. Although the members of the Class are
3 unknown to Plaintiff at this time, on information and belief, the Class is
4 estimated to be greater than 100 individuals. The identity of the class
5 members are readily ascertainable by inspection of Defendants'
6 employment and payroll records.

7 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
8 claims (or defenses, if any) of the Class because Defendants' failure to
9 comply with the provisions of California wage and hour laws entitled
10 each class member to similar pay, benefits and other relief. The injuries
11 sustained by Plaintiff are also typical of the injuries sustained by the Class
12 because they arise out of and are caused by Defendants' common course
13 of conduct as alleged herein.

14 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately
15 represent and protect the interests of all members of the Class because it
16 is in her best interest to prosecute the claims alleged herein to obtain full
17 compensation and penalties due to her and the Class. Plaintiff's
18 attorneys, as proposed class counsel, are competent and experienced in
19 litigating large employment class actions and are versed in the rules
20 governing class action discovery, certification, and settlement. Plaintiff
21 has incurred and, throughout the duration of this action, will continue to
22 incur attorneys' fees and costs that have been and will be necessarily
23 expended for the prosecution of this action for the substantial benefit of
24 each class member.

25 (d) Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve
27 economies of time, effort, and expense as compared with separate
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for each class
2 member. If appropriate this Court can, and is empowered to, fashion
3 methods to efficiently manage this case as a class action.

4 (e) Public Policy Considerations: Employers in the State of California and
5 other states violate employment and labor laws every day. Current
6 employees are often afraid to assert their rights out of fear of direct or
7 indirect retaliation. Former employees are fearful of bringing actions
8 because they believe their former employers might damage their future
9 endeavors through negative references and/or other means. Class actions
10 provide the class members who are not named in the complaint with a
11 type of anonymity that allows for the vindication of their rights while at
12 the same time as affording them privacy protections.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3))**

16 25. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 26. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
19 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
20 wage than the minimum so fixed is unlawful.

21 27. During the relevant time period, Defendants paid Plaintiff and class members less
22 than minimum wages when, for example, Defendants required Plaintiff and class members to
23 work off-the-clock at the beginning of their shifts by performing COVID-19 health screenings
24 before clocking in. To the extent these hours do not qualify for the payment of overtime or
25 doubletime, Plaintiff and class members were not being paid at least minimum wage for their
26 work.

27 28. In addition, Defendants unlawfully rounded and manipulated hours worked of
28 Plaintiff and class members, which over time, unlawfully favored Defendants and resulted in

1 time loss to employees. To the extent these hours do not qualify for the payment of overtime or
2 doubletime, Plaintiff and class members were not being paid at least minimum wage for their
3 work.

4 29. During the relevant time period, Defendants regularly failed to pay at least
5 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
6 §§ 1194 and 1197.

7 30. Defendants' failure to pay Plaintiff and class members the minimum wage as
8 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
9 members are entitled to recover the unpaid balance of their minimum wage compensation as
10 well as interest, costs, and attorneys' fees.

11 31. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
12 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
13 thereon.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

16 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

17 32. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 33. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
20 unlawful to employ persons without compensating them at a rate of pay either one and one-half
21 or two times the person's regular rate of pay, depending on the number of hours worked by the
22 person on a daily or weekly basis.

23 34. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
24 period, Defendants were required to compensate Plaintiff and class members for all overtime
25 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
26 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
27 hours of the seventh consecutive work day, with doubletime after eight (8) hours on the seventh
28 day of any work week, or after twelve (12) hours in any work day.

1 35. In addition, Defendants failed to properly calculate the regular rate of pay for
2 Plaintiff and aggrieved employees. For example, Defendants failed to pay Plaintiff and other
3 aggrieved employees the proper overtime and doubletime rate by failing to include bonuses,
4 shift differentials, other incentive payments in the regular rate of pay.

5 36. Plaintiff and class members were non-exempt employees entitled to the
6 protections of California Labor Code §§ 510 and 1194.

7 37. In violation of state law, Defendants has knowingly and willfully refused to
8 perform their obligations and compensate Plaintiff and class members for all wages earned as
9 alleged above.

10 38. Defendant's failure to pay Plaintiff and class members the unpaid balance of
11 overtime and doubletime compensation, as required by California law, violates the provisions
12 of Labor Code §§ 510 and 1198, and is therefore unlawful.

13 39. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
14 recover their unpaid overtime and doubletime compensation as well as interest, costs, and
15 attorneys' fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

18 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

19 40. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 41. Labor Code § 204 provides that all wages earned by an employee are due and
22 payable twice during each calendar month.

23 42. Defendants failed to timely pay Plaintiff and class members all of their earned
24 wages as required by Labor Code Section 204.

25 43. Plaintiff and class members have been deprived of their rightfully earned wages
26 as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and
27 class members are entitled to recover such amounts, plus interest thereon, attorney's fees, and
28 costs.

1 44. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
2 Code § 210 as follows: (1) for Defendant's initial violation, \$100 for each failure to pay each
3 class member; and (2) for each of Defendant's subsequent violations, or any willful or intentional
4 violation, \$200 for each failure to pay each class member, plus 25 percent of the amount
5 unlawfully held.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY REPORTING TIME PAY**

8 **(Violation of Labor Code § 1198; Violation of IWC Wage Order)**

9 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 46. Cal Labor Code § 1198 prohibits employers from violating the IWC Wage Orders.

12 47. Section 5 of the applicable IWC Wage Order requires that on each workday that an
13 employee reports for work as scheduled but is not put to work or is furnished less than half of the
14 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
15 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at
16 the employee's regular rate of pay, which shall not be less than the minimum wage. Section 5 of
17 the applicable Wage Order denominates this as "Reporting Time Pay."

18 48. During the relevant time period, Plaintiff and class members were required to report
19 to work but were not put to work and would be sent home early. Accordingly, for those times that
20 Plaintiff and class members were required to report to work but were not put to work or were
21 furnished with less than half of their usual scheduled day's work, Plaintiff and class members are
22 entitled to recover from Defendants compensation for half a day's work, plus interest thereon,
23 together with their reasonable attorneys' fees and costs.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

27 49. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 50. Labor Code § 226.7 provides that no employer shall require an employee to work
2 during any meal period mandated by the IWC Wage Orders.

3 51. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than
5 30 minutes, except that when a work period of not more than six (6) hours will complete the
6 day’s work, the meal period may be waived by mutual consent of the employer and the
7 employee.”

8 52. Labor Code § 512(a) provides that an employer may not require, cause, or permit
9 an employee to work for a period of more than five (5) hours per day without providing the
10 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
11 the total work period per day of the employee is not more than six (6) hours, the meal period may
12 be waived by mutual consent of both the employer and the employee.

13 53. Labor Code § 512(a) also provides that an employer may not employ an employee
14 for a work period of more than ten (10) hours per day without providing the employee with a
15 second meal period of not less than thirty (30) minutes, except that if the total hours worked is
16 no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
17 employer and the employee only if the first meal period was not waived.

18 54. During the relevant time period, Plaintiff and class members did not receive
19 compliant meal periods for each five hours worked per day or a second meal period for every ten
20 hours worked. Specifically, Plaintiff and class members were regularly required to consistently
21 work through their meal periods, regularly had their meal periods interrupted, were provided
22 with meal periods that were often less than thirty minutes, and/or were regularly provided with
23 meal periods after the end of the fifth hour of their shifts.

24 55. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
25 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
26 compensation for each work day that a meal period is not provided.

27 56. At all relevant times, Defendants failed to pay Plaintiff and class members all
28 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and

1 section 11 of the applicable IWC Wage Order.

2 57. As a result of Defendants' failure to pay Plaintiff and class members an additional
3 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered
4 and continue to suffer a loss of wages and compensation.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PERMIT REST BREAKS**

7 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

8 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
9 though fully set forth herein.

10 59. Labor Code § 226.7(a) provides that no employer shall require an employee to
11 work during any rest period mandated by the IWC Wage Orders.

12 60. Section 12 of the applicable IWC Wage Order states "every employer shall
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
14 the middle of each work period" and the "authorized rest period time shall be based on the total
15 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
16 thereof" unless the total daily work time is less than three and one-half (3½) hours.

17 61. During the relevant time period, Plaintiff and class members did not receive a ten
18 (10) minute rest period for every four (4) hours or major fraction thereof worked.

19 62. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
20 an employer to pay an employee one additional hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided.

22 63. At all relevant times, Defendants failed to pay Plaintiff and class members all rest
23 period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section
24 12 of the applicable IWC Wage Order.

25 64. As a result of Defendants' failure to pay Plaintiff and class members an additional
26 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered
27 and continue to suffer a loss of wages and compensation.

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

4 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 66. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including: (1) gross
8 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
9 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
10 provided that all deductions made on written orders of the employee may be aggregated and
11 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
12 employee is paid, (7) the name of the employee and the last four digits of his or her social
13 security number or an employee identification number other than a social security number, (8)
14 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
15 in effect during the pay period and the corresponding number of hours worked at each hourly
16 rate by the employee.

17 67. During the relevant time period, Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
19 and class members.

20 68. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
21 and class members have suffered injury and damage to their statutorily protected rights.
22 Specifically, Plaintiff and class members have been injured by Defendants' intentional violation
23 of California Labor Code § 226(a) because they were denied both their legal right to receive,
24 and their protected interest in receiving, accurate itemized wage statements under California
25 Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
26 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff
27 would not have had to engage in these efforts and incur these costs had Defendants provided the
28 accurate wages earned. This has also delayed Plaintiff's ability to demand and recover the

1 underpayment of wages from Defendants.

2 69. California Labor Code § 226(a) requires an employer to pay the greater of all
3 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
4 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
5 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
6 comply with California Labor Code § 226(a).

7 70. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
8 class members from knowing, understanding, and disputing the wages paid to them, and resulted
9 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
10 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
11 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
12 be shown according to proof at trial.

13 71. Plaintiff and class members are also entitled to injunctive relief under California
14 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
15 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(Violation of Labor Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9)**

19 72. Plaintiff re-alleges and incorporates by this reference each and every allegation
20 set forth in all previous paragraphs of the Complaint.

21 73. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
22 indemnify his employee for losses caused by the employer's want of ordinary care."

23 74. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
24 his or her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties..."

26 75. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
27 term 'necessary expenditures or losses' shall include all reasonable costs, including but not
28 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

1 76. The Applicable IWC Wage Order § 9 provides that: “When tools or equipment
2 are required by the employer or are necessary to the performance of a job, such tools and
3 equipment shall be provided and maintained by the employer . . .”

4 77. California Labor Code section 2804 mandates that this statutory right cannot be
5 waived.

6 78. During the relevant time period, Defendants were required to indemnify and
7 reimburse Plaintiff and class members for all expenditures or losses caused by the employer’s
8 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but
9 failed to indemnify and reimburse Plaintiff and class members, including for masks, gloves,
10 goggles and other PPE, and also for use of their personal cellular phone for work-related
11 purposes.

12 79. As a direct and proximate result, Plaintiff and class members have suffered, and
13 continue to suffer, substantial losses, related to the use and enjoyment of such monies to be
14 reimbursed, lost interest on such monies, and expenses and attorney’s fees in seeking to compel
15 Defendants to fully perform their obligations under California law, all to their damage in
16 amounts according to proof at the time of trial.

17 80. Accordingly, Plaintiff and class members are entitled to recover, and hereby seek,
18 an amount equal to incurred necessary expenditures, pre- and post-judgment interest, applicable
19 penalties, attorneys’ fees and costs, and any further equitable relief this Court may deem just
20 and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ. Proc. Code § 1021.5.

21 81. Plaintiff, on behalf of herself and class members, requests relief as described
22 below.

23 **NINTH CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT**

25 **(Violations of Labor Code §§ 201, 202, 203 and 210; Violation of IWC Wage Order)**

26 82. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs,
27 as though fully set forth herein.

28 83. California Labor Code §§ 201 and 202 provide that if an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
3 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
4 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in
5 which case the employee is entitled to his or her wages at the time of quitting.

6 84. During the relevant time period, Defendants willfully failed to pay Plaintiff and
7 other Waiting Time Subclass members all of their earned wages upon termination including, but
8 not limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours
9 of their leaving Defendants' employ.

10 85. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all of
11 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
12 Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

13 86. California Labor Code § 203 provides that if an employer willfully fails to pay
14 wages owed promptly upon discharge or resignation as required under California Labor Code
15 §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date,
16 and at the same rate until paid or until an action is commenced; but the wages shall not continue
17 for more than thirty (30) days.

18 87. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members
19 all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily
20 wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day
21 maximum pursuant to California Labor Code § 203 all in an amount to be shown according to
22 proof at trial.

23 88. Based on these violations, Plaintiff and the Waiting Time Subclass she seeks to
24 represent request relief as described herein and below.

25 **TENTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

27 89. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 90. Defendants' conduct, as alleged herein, has been and continues to be unfair,
2 unlawful, and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
3 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 91. Defendants' activities, as alleged herein, violate California law and constitute
5 unlawful business acts or practices in violation of California Business and Professions Code §§
6 17200, *et seq.*

7 92. A violation of Business and Professions Code §§ 17200, *et seq.* may be
8 predicated on the violation of any state or federal law.

9 93. Defendants' policies and practices have violated state law in at least the following
10 respects:

11 (a) Failing to pay all minimum wages owed to Plaintiff and class members in
12 violation of Labor Code §§ 1194.2, and 1197;

13 (b) Failing to pay all overtime and doubletime wages at the proper rate to Plaintiff
14 and class members in violation of Labor Code §§ 510, 1194 and 1198;

15 (c) Failing to timely pay all earned wages in violation of Labor Code §§ 204 and
16 210;

17 (d) Failing to pay reporting time pay in violation of Labor Code § 1198;

18 (e) Failing to provide timely meal periods without paying Plaintiff and class
19 members premium wages for every day said meal periods were not provided in violation of
20 Labor Code §§ 226.7 and 512;

21 (f) Failing to authorize or permit rest breaks without paying Plaintiff and class
22 members premium wages for every day said rest breaks were not authorized or permitted in
23 violation of Labor Code § 226.7;

24 (g) Failing to provide Plaintiff and class members with accurate itemized wage
25 statements in violation of Labor Code § 226; and

26 (h) Failing to reimburse necessary business expenses in violation of Labor Code §
27 2800 and 2802.

28 94. Defendants intentionally avoided paying Plaintiff and class members' wages and

monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

95. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years (plus 178 days tolling time) prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE § 2698, ET SEQ.

96. Plaintiff hereby re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

97. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

98. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

(a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558, 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages, and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

(b) Violation of Labor Code § 1198 and Section 5 of the applicable IWC Wage Order for failure to pay reporting time pay to Plaintiff and other aggrieved employees;

(c) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

1 (d) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
2 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
3 alleged;

4 (e) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
5 and necessary business expenses of Plaintiff and other aggrieved employees as herein alleged;

6 (f) Violation of Labor Code § 226 for failing to provide accurate, itemized wage
7 statements;

8 99. Plaintiff is an “aggrieved employee” because she was employed by the alleged
9 violator and had one or more of the alleged violations committed against her, and therefore is
10 properly suited to represent the interests of all other aggrieved employees.

11 100. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
12 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all
13 other aggrieved employees under PAGA.

14 101. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
15 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
16 aggrieved employee per pay period for each subsequent violation.

17 102. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
18 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
19 cited above.

20 103. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
21 herein.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief
24 and judgment against Defendants, jointly and severally, as follows:

25 1. For certification of this action as a class action, including certifying the Class and
26 Subclass alleged by Plaintiff;

27 2. For appointment of Anna Delgado as the class representative;

28 3. For appointment of Lebe Law, APLC as class counsel for all purposes;

1 4. For compensatory damages in an amount according to proof with interest
2 thereon;

3 5. For economic and/or special damages in an amount according to proof with
4 interest thereon;

5 6. To pay all minimum, regular, and/or overtime wages for all hours worked as
6 required by law in an amount according to proof;

7 7. To pay all reporting time pay as required by law, in an amount according to proof;

8 8. To pay all meal period premiums for failure to provide off-duty meal periods as
9 required by law, in an amount according to proof;

10 9. To pay all rest period premiums for failure to provide paid 10-minute rest periods
11 as required by law, in an amount according to proof;

12 10. For reimbursement of unpaid business expenses, in accordance with Labor Code
13 section 2802;

14 11. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
15 by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and
16 1194;

17 12. For statutory penalties to the extent permitted by law, including those pursuant
18 to the Labor Code and IWC Wage Orders;

19 13. For liquidated damages in an amount equal to the wages unlawfully unpaid and
20 interest thereon pursuant to Labor Code § 1194.2;

21 14. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

22 15. For an order requiring Defendants to restore and disgorge all funds to each
23 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
24 or fraudulent and, therefore, constituting unfair competition under Business and Professions
25 Code §§ 17200, *et seq.*;

26 16. For an award of damages in the amount of unpaid compensation including, but
27 not limited to, unpaid wages, benefits, and penalties, including interest thereon;

28 17. For pre-judgment interest;

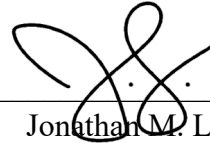
1 18. For civil penalties; and

2 19. For such other relief as the Court deems just and proper.

3 DATED: July 15, 2022

Lebe Law, APLC

4
5 By: _____



Jonathan M. Lebe

Yuri A. Chornobil

Nicolas W. Tomas

Attorneys for Plaintiff Anna Delgado,
Individually and on behalf of all others
similarly situated

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

12 DATED: July 15, 2022

Lebe Law, APLC

13
14 By: _____



Jonathan M. Lebe

Yuri A. Chornobil

Nicolas W. Tomas

Attorneys for Plaintiff Anna Delgado,
Individually and on behalf of all others
similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age of
3 eighteen years and not a party to the within entitled action; my business address is 777 S.
4 Alameda Street, Second Floor, Los Angeles, CA 90021.

5 On July 26, 2022, I served the foregoing, **FIRST AMENDED CLASS AND**
6 **REPRESENTATIVE ACTION COMPLAINT**, on the interested parties, by placing a true
7 copy thereof, by the method of service specified below:

8 Tritia M. Murata
9 TMurata@mofo.com
10 Maya Harel
11 MHarel@mofo.com
12 Morrison & Foerster LLP
13 707 Wilshire Boulevard, Suite 6000
14 Los Angeles, CA 90017

Jinny Sun Hwang
JHwang@mofo.com
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

15 Attorneys for Defendant
16 Food 4 Less of California, Inc. and Ralphs Grocery
17 Company

18 ☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to
19 accept service by electronic transmission, I caused the documents to be sent to the persons
20 at the electronic notification addresses listed above. I did not receive, within a reasonable
21 time after the transmission, any electronic message or other indication that the transmission
22 was unsuccessful.

23 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
24 the above is true and correct.

25 Dated: July 26, 2022

26 Nicolas Tomas
27 Nicolas W. Tomas
28