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Attorneys for Mario Tejada, on behalf of himself
and all others similarly situated and aggrieved**SUPERIOR COURT OF CALIFORNIA****COUNTY OF LOSE ANGELES**MARIO TEJADA, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiff,

v.

RALPHS GROCERY COMPANY, an Ohio
Corporation; THE KROGER CO., an Ohio
Corporation; and DOES 1 Through 10,
Inclusive,

Defendants.

Case No. 22STCV33463

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
and JURY DEMAND****1. FAILURE TO REIMBURSE BUSINESS-
RELATED EXPENSES (Labor Code §§
2802, 2804)****2. VIOLATION OF THE UNFAIR
COMPETITION LAW
(Bus. & Prof. Code §§ 17200, *et seq.*)****3. CIVIL PENALTIES FOR FAILURE TO
REIMBURSE BUSINESS-RELATED
EXPENSES (Labor Code §§ 2698, *et seq.*)****DEMAND FOR JURY TRIAL****FILED**
Superior Court of California
County of Los Angeles**11/22/2022**

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

NATURE OF CLAIM

1. Plaintiff Mario Tejada (“Plaintiff”) brings this action on behalf of himself and a proposed Class of all California truck drivers employed by Ralphs Grocery Company (“Ralphs”), The Kroger Co., and DOES 1 through 10 (collectively, “Defendants”) during the Class Period for failing to reimburse business-related expenses and thereby violating Business and Professions Code sections 17200 *et seq.* The Class Period is any time four years prior to the filing of this lawsuit through the date trial commences. Plaintiff seeks unreimbursed business-related expenses, interest, attorneys’ fees, and costs.

2. Plaintiff gave written notice of these claims to Ralphs and to the California Labor and Workforce Development Agency (“LWDA”) on September 15, 2022 per Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of his notice. Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and has standing as an aggrieved employee. Plaintiff seeks to represent all current and former Ralphs California truck drivers who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

3. Plaintiff is a Los Angeles County resident who has worked as a truck driver for Defendants since September 28, 2021. Plaintiff worked out of a warehouse in Compton, California until March 1, 2022, when he transferred to his current warehouse in Paramount, California. As a truck driver, Plaintiff is responsible for delivering groceries to, and unloading groceries at, Ralphs and Food 4 Less stores; transporting salvage—including pallets, cardboard boxes, and plastic trash—from Ralphs and Food 4 Less stores to warehouses; and transporting groceries between warehouses.

4. Defendant Ralphs Grocery Company is an Ohio Corporation, founded in 1873, which currently operates 190 supermarkets from its division headquarters in Los Angeles. Ralphs Grocery Company is a subsidiary of Defendant The Kroger Co., an Ohio Corporation based in Cincinnati, Ohio, which is one of the nation’s largest food retailers.

6. Plaintiff alleges each Defendant, including the Doe defendants, acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices, and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

7. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

8. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. Defendants conduct business in Los Angeles County and each Defendant is within this Court's jurisdiction for service of process. The unlawful acts alleged directly affect Plaintiff and similarly-situated employees within Los Angeles County and California. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues are based solely on California law, including the Labor Code, Business and Professions Code, and the Code of Civil Procedure. Further, the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply. Based on his rate of pay, Plaintiff's individual claims do not meet the amount in controversy to implicate traditional diversity jurisdiction.

9. This Court has jurisdiction over Plaintiff's and other aggrieved employees' claims because Defendants regularly conduct business in California and are alleged to have violated the law in California. Plaintiff's claims raise no federal question and PAGA civil penalty actions are not subject to federal jurisdiction.

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CLASS ACTION ALLEGATIONS

10. Plaintiff seeks to represent a Class defined as:

All California truck drivers employed by Defendants during the Class Period.

11. Plaintiff seeks to certify a subclass of employees defined as:

Expense Reimbursement Subclass

All Class Members who incurred business-related expenses in the discharge of their duties for Defendants which Defendants did not reimburse during the Class Period, including, but not limited to, expenses for cell phones, hooks, gloves, non-slip shoes, flashlights, insulated jackets, and rain coats.

12. Plaintiff seeks to certify a subclass of employees defined as:

UCL Subclass

All Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

13. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

14. **Commonality**: This action may be maintained as a class action because there is a well-defined common interest of many persons and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

15. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

16. **Numerosity**: The potential members of the Class are so numerous, joinder of all members would be impractical. The disposition of their claims through a class action will benefit the parties and this Court. The number of Class members is unknown to Plaintiff, but estimated to be more than 100 individuals, which can be readily ascertained using Defendants' records.

17. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

18. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses, will fairly protect the interests of the Class and Subclass Members and has no interests antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,

1 skilled, and experienced in litigating large employment law class actions.

2 19. **Superiority**: A class action is superior to other available means for the fair and
3 efficient adjudication of this controversy. Individual joinder of all Class Members is not
4 practicable, and questions of law and fact common to the Class predominate over questions
5 affecting only individual Class Members. A Class action will allow those similarly situated to
6 litigate their claims in the most efficient and economical manner for the parties and the judicial
7 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this
8 action that precludes its maintenance as a class action.

9 20. The predominating common questions of law and fact include:

- 10 a. Whether Defendants have no written policy addressing expense
11 reimbursements to Class and Expense Reimbursement Subclass Members;
12 b. Whether Defendants have a policy or practice of failing to reimburse Class
13 and Expense Reimbursement Subclass Members for expenses incurred in the
14 discharge of their duties for Defendants, including, but not limited to,
15 expenses for cell phones, hooks, gloves, non-slip shoes, flashlights, insulated
16 jackets, and rain coats.
17 c. Whether Defendants violated Sections 17200, *et seq.* of the Business and
18 Professions Code; and
19 d. Whether the Class and Expense Reimbursement Subclass are entitled to
20 equitable relief pursuant to Business and Professions Code, sections 17200,
21 *et seq.*

22 **FACTUAL ALLEGATIONS**

23 21. During the Class and PAGA Periods, Plaintiff, Class Members, and aggrieved
24 employees (collectively “truck drivers”) were employed by Defendants in California, and
25 Defendants conducted business in California.

26 22. During the Class and PAGA Periods, Defendants required truck drivers to use
27 their personal cell phones in myriad ways, including to: send pictures of any truck damage they
28 identified during required daily pre-trip and post-trip truck inspections; call stores upon arrival

1 to ask them to open their often-locked back doors for deliveries; call dispatch when stores did
2 not answer their phones to inform dispatch of the delay and to ask dispatch to try calling the
3 stores; call dispatch or a manager when products were damaged in transport and send pictures
4 via text of the damaged products; call dispatch or a manager when equipment, like a ramp or
5 electrical jack, malfunctioned or was damaged, and send pictures of the damage or malfunction
6 via text; and to call dispatch whenever they were involved in an accident or incident and to send
7 pictures of any damage sustained in the accident or incident. For instance, Plaintiff has been
8 involved in two road incidents in which he was the only party involved. In both instances,
9 Plaintiff called dispatch and was told to take and send pictures via text of his truck, which he did.

10 23. During the Class and PAGA Periods, despite being aware of truck drivers using,
11 and practically requiring truck drivers to use, personal cell phones in the discharge of their work
12 duties, Defendants had no policy to reimburse truck drivers for work-related cell phone expenses.
13 Neither did Defendants provide truck drivers with company cell phones to perform their duties.

14 24. During the Class and PAGA Periods, truck drivers were required to purchase
15 certain items to perform their jobs, including hooks, gloves, non-slip shoes, flashlights, insulated
16 jackets, and rain coats. Further, Defendants were aware that these items were necessary for truck
17 drivers to perform their jobs. Despite this, Defendants had no policy to, and did not, reimburse
18 truck drivers for the cost of these items. Neither did Defendants provide truck drivers with these
19 items. When Plaintiff has requested that Defendants provide these items, his requests have been
20 denied.

21 25. Each item listed was essential to truck drivers' ability to complete their work
22 duties for Defendants. Hooks, two to three feet in length, were essential because they were used
23 to safely disconnect trailers from their tractors. Without a hook, truck drivers would be required
24 to stick their hand between the trailer and its tires, risking serious and perhaps fatal injury if their
25 hand became stuck. Plaintiff is aware of such injuries occurring. Plaintiff was told he needed to
26 purchase a hook by a dispatcher when he started as a truck driver with Defendants, and he did.
27 Truck drivers are also required to purchase gloves—to avoid injuring their fingers when gripping
28 pallets or getting grease or oil on their hands causing them to drop pallets—and non-slip shoes—

1 to avoid slipping and falling while unloading their trucks. Because trailers have no lights in them,
2 truck drivers are also required to purchase flashlights to see inside their trailers when delivering
3 at night. Without a flashlight, Plaintiff could barely see his hands, let alone the pallets he was
4 required to unload. Further, truck drivers are required to purchase insulated jackets to shield them
5 from sub-zero freezer temperatures when they unload frozen products and rain jackets to shield
6 them from rain while unloading product.

7 26. Plaintiff, on behalf of himself and Class Members, seeks injunctive relief,
8 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
9 alleged. Business and Professions Code §§ 17200, *et seq.*

10 **FIRST CAUSE OF ACTION**

11 **Failure to Reimburse Business-Related Expenses, Labor Code §§ 2802, 2804**
12 **(By Plaintiff and each Expense Reimbursement Subclass Member)**

13 27. Plaintiff incorporates the preceding paragraphs of this Complaint.

14 28. Under California law, “[a]n employer shall indemnify his or her employee for all
15 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
16 of his or her duties” Cal. Lab. Code § 2802(a). “The purpose of this statute is to prevent
17 employers from passing their operating expenses on to their employees.” *Cochran v. Schwan's*
18 *Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 (internal quotation marks and citation
19 omitted). The duty to reimburse is triggered if the employer knew or had reason to know the
20 employee has incurred an expense. *Stuart v. Radioshack Corp.* (N.D. Cal. April 30, 2009) 641
21 F.Supp.2d 901, 904. “Once the employer has such knowledge, then it has the duty to exercise
22 due diligence and take any and all reasonable steps to ensure that the employee is paid for the
23 expense.” *Id.*

24 29. Labor Code section 2802(c) provides, in pertinent part: “...the term ‘necessary
25 expenditures or losses shall include all reasonable costs, including but not limited to, attorney’s
26 fees incurred by the employee enforcing the rights granted by this section.”

27 30. Labor Code section 2804 mandates that this statutory right cannot be waived.

28 31. By failing to reimburse Plaintiff and Class Members for reasonable business-
related expenses they incurred in the discharge of their duties, of which Defendants were aware,

Defendants violated Labor Code section 2802.

32. Defendants' unlawful acts deprived the Class of expense reimbursements in amounts to be determined at trial, and they are entitled to recover them, along with interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

**Violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*
(By Plaintiff and each UCL Subclass Member)**

33. Plaintiff incorporates the preceding paragraphs of this Complaint.

34. Unfair competition includes any "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

35. Defendants' conduct was unlawful because Defendants violated Labor Code section 2802 and was unfair because their denial of lawfully earned expense reimbursements outweighed the utility of such practices.

36. As a result of Defendants' unlawful and unfair conduct, Plaintiff and Class Members suffered injury in fact.

37. Plaintiff and Class Members seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

38. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

39. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4)-year period before the filing of this Complaint, and as the primary remedy during the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

THIRD CAUSE OF ACTION

**Civil Penalties for Failure to Reimburse Business-Related Expenses
Labor Code §§ 2698 *et seq.*
(By Plaintiff and Aggrieved Employees)**

40. Plaintiff incorporates the preceding paragraphs of this Complaint.

41. By failing to reimburse Plaintiff and aggrieved employees for reasonable business-related expenses they incurred in the discharge of their duties, of which Defendants

1 were aware, Defendants violated Labor Code section 2802.

2 42. Plaintiff will seek civil penalties of \$100 for each initial violation and \$200 for
3 each subsequent violation. Labor Code § 2699(f)(2).

4 **PRAYER FOR RELIEF**

5 Plaintiff prays for the following relief on behalf of himself and the Class:

6 1. Certification of this action as a class action and appointment of Plaintiff and
7 Plaintiff's counsel to represent the Class;

8 2. Provision of class notice to Class Members as defined above;

9 3. A declaratory judgment that Defendants knowingly and intentionally violated
10 Labor Code section 2802 and Business and Professions Code sections 17200, *et seq.* by failing
11 to reimburse business-related expenses.

12 4. That Defendants be permanently enjoined from engaging in the unlawful or unfair
13 acts and practices alleged;

14 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff
15 and Class Members, in an amount according to proof, pursuant to California Business and
16 Professions Code section 17203;

17 6. Compensatory damages according to proof;

18 7. Statutory damages under the Labor Code;

19 8. Pre-judgment interest on all sums collected;

20 9. That this action be maintained as a Representative Action under the PAGA, and
21 Plaintiff and his counsel be provided with all enforcement capability as if the action were brought
22 by the California Division of Labor Standards Enforcement;

23 10. Civil penalties for as permitted by Labor Code section 2699(f)(2), for failing to
24 reimburse all necessary business-related expenses incurred, pursuant to Labor Code section
25 2802;

26 11. Reasonable attorneys' fees and costs, pursuant to California Code of Civil
27 Procedure section 1021.5, and the California Labor Code, or other applicable law;

28 12. Costs of suit; and

13. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
MESRIANI LAW GROUP, APLC

Dated: November 22, 2022

By: 
Michael D. Singer, Esq.
Isam C. Khoury, Esq.
Rosemary C. Khoury, Esq.
Attorneys for Plaintiff Mario Tejada, on
behalf of himself and all others similarly situated
and aggrieved

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

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