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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

TESSA FRANKE, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

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

Case No.: **CGC-20-586827**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LAB. CODE § 226(a);
(2) VIOLATION OF LAB. CODE §§ 2698 ET
SEQ.**

DEMAND OVER \$25,000.00

**ENDORSED
FILED**
San Francisco County Superior Court

SEP 28 2020

CLERK OF THE COURT
BY: **NEYL WEBB**
Deputy Clerk

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Tessa Franke, submits this Class and Representative
3 Action Complaint against Defendant, Whole Foods Market California, Inc., and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who work for Defendants. The
8 Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 226(a).¹

9 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
10 intentionally and with deliberate indifference and conscious disregard to the rights of employees.
11 Defendants routinely fail to provide a complete and accurate itemized wage statement in writing to
12 Plaintiff and other non-exempt employees. Specifically, whenever shift differential wages are paid to
13 Plaintiff and other non-exempt employees, Defendants issue wage statements that fail to accurately
14 itemize total hours worked. Moreover, when the hours shown on the wage statements are added up, the
15 sum also does not equal the total hours worked. Defendants thus violate Section 226(a) and owe
16 applicable penalties to Plaintiff and other employees.

17 3. Plaintiff is informed and believes that Defendants have engaged in, among other things,
18 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
19 customs that knowingly deny its employees the above stated rights and benefits.

20 JURISDICTION AND VENUE

21 4. The Complaint seeks more than \$25,000.00 in relief. The Court has jurisdiction of
22 Defendants’ violations of Section 226(a).

23 5. Venue is proper. Plaintiff works for Defendants in San Francisco, California.

24 PARTIES

25 6. Plaintiff began working for Defendants in or about September of 2019. Throughout her
26 employment as a dishwasher, Plaintiff has been paid on an hourly basis as a non-exempt employee.
27 Whenever shift differential wages are paid to Plaintiff, Defendants consistently issue Plaintiff wage
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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 statements that fail to itemize the accurate total hours worked. Moreover, when the hours shown on the
2 wage statements are added up, the sum also does not equal the total hours worked. Plaintiff thus is a
3 victim of the policies, practices, and customs of Defendants complained of in this action in ways that
4 have deprived her of the rights guaranteed by the Labor Code.

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

10 8. Plaintiff does not know the true names or capacities of the defendants sued as Does 1
11 through 50, whether individual, partner, or corporate, and thus sues them under such fictitious names.
12 Plaintiff prays for leave to amend this Complaint when the true names and capacities are known.
13 Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way
14 for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and
15 injuries complained of herein.

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

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

26 11. Plaintiff is informed and believes that at all times material hereto each of the Defendants
27 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
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1 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
2 pursuance of, a joint venture, partnership, or common enterprise.

3 CLASS ACTION ALLEGATIONS

4 12. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
5 certification of all current and former non-exempt employees of Defendants in the State of California
6 who were paid shift differential wages at any time since April 6, 2019 (the “Class”).

7 13. **Numerosity and Ascertainability:** The members of the Class are so numerous that
8 joinder of all members would be impractical, if not impossible. The identities of the members of the
9 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
10 informed and believes that whenever non-exempt employees in California are paid shift differential
11 wages Defendants violate Section 226(a) by failing to provide complete and accurate itemized wage
12 statements that show the actual total hours worked.

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

18 15. **Common Question of Law and Fact:** There are predominant common questions of law
19 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
20 informed and believes that Defendants uniformly administer a corporate policy and practice of
21 routinely failing to provide complete and accurate itemized wage statements that show the actual total
22 hours worked whenever non-exempt employees in California are paid shift differential wages.

23 16. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
24 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
25 Class suffered. As with other members of the Class, Plaintiff is paid on an hourly basis. Whenever shift
26 differential wages have been paid during her employment, Defendants have consistently issued Plaintiff
27 wage statements that neither itemize the accurate total hours worked nor show hours that, when added
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up, equal the actual total hours worked. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

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

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

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

20. 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 Plaintiff and the Class under Section 226, the applicable IWC Wage Order, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

1 **FIRST CAUSE OF ACTION**

2 **Violation of Labor Code § 226(a)**

3 **(By Plaintiff and the Class Against All Defendants)**

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

5 22. Section 226(a) requires employers to provide itemized wage statements to its employees
6 that show accurate information, including without limitation, the total hours worked. Whenever
7 Defendants pay shift differential wages to Plaintiff and the Class, Defendants fail to provide complete and
8 accurate itemized wage statements, in violation of Section 226(a).

9 23. As a matter of policy and practice, Defendants routinely fail to provide complete and
10 accurate itemized wage statements to Plaintiff and the Class. Specifically, whenever shift differential
11 wages are paid, Defendants issue wage statements to Plaintiff and the Class that fail to itemize the
12 accurate total hours worked and show hours that, when added up, do not equal the actual total hours
13 worked. Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiff and other
14 employees.

15 24. Such a pattern, practice, and uniform administration of corporate policy is unlawful
16 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
17 and costs of suit.

18 **SECOND CAUSE OF ACTION**

19 **Violation of Labor Code §§ 2698 *Et Seq.***

20 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

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

22 26. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
23 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
24 capacity, Plaintiff seeks penalties for Defendants' violations of Section 226(a) committed since April 6,
25 2019, against all aggrieved employees.

26 27. As stated herein, whenever non-exempt employees in California are paid shift differential
27 wages, Defendants violate Section 226(a) by routinely issuing wage statements that fail to itemize the
28 accurate total hours worked and show hours that, when added up, do not equal the actual total hours

1 worked. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged
2 violations was committed against Plaintiff as an employee of Defendants.

3 28. On or about September 22, 2020, Plaintiff sent written notice to the Labor & Workforce
4 Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Section
5 226(a). Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of
6 the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to
7 investigate the allegations in the written notice.

8 29. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
9 penalties for Defendants’ violations of Section 226(a) against all aggrieved employees for the alleged
10 period.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit
13 is brought against Defendants, jointly and severally, as follows:

- 14 1. For an order certifying the proposed Class;
- 15 2. For an order appointing Plaintiff as the representative of the Class;
- 16 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 17 4. Upon the First Cause of Action for penalties pursuant to Section 226, and for costs and
18 attorneys’ fees;
- 19 5. Upon the Second Cause of Action for penalties according to proof pursuant to Sections
20 226.3 and 2698 *et seq.*, and for costs and attorneys’ fees;
- 21 6. Upon each cause of action for attorneys’ fees and costs as provided by Sections 226 and
22 2699, and Code of Civil Procedure section 1021.5; and
- 23 7. For such other and further relief that the Court may deem just and proper.

24 DATED: September 25, 2020

DIVERSITY LAW GROUP, P.C.

25 By: 

26 Larry W. Lee
27 Simon L. Yang
28 Attorneys for Plaintiff