

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GEETA UMADAT, on behalf of herself and
all other persons similarly situated,

Plaintiff,

COMPLAINT

-against-

COSTCO WHOLESALE CORPORATION,

Class Action Complaint

Defendant.
-----X

Plaintiff, GEETA UMADAT (“Plaintiff”), on behalf of herself and all other persons similarly situated, by and through her attorneys, the Law Office of Peter A. Romero PLLC, complaining of the Defendant, COSTCO WHOLESALE CORPORATION (“Defendant”), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and similarly situated current and former employees of Defendant who were employed Defendant as hourly-paid manual workers in the State of New York pursuant to Rule 23 of the Federal Rules of Civil Procedure to recover statutory damages for violation of New York Labor Law § 191.

2. Defendant operates approximately 19 warehouses and stores located throughout New York State including warehouses located in Commack; Holbrook, Lawrence, Melville, Nesconset, Riverhead, Westbury, Oceanside, Rego Park, Long Island City, Brooklyn, Manhattan, Nanuet, New Rochelle, Port Chester, Rochester, Staten Island, Syracuse, and Yonkers.

3. Defendant employs non-exempt hourly-paid manual workers at its warehouse locations including, but not limited to, cashiers, cashier assistants, stockers, food service

assistants, bakery wrappers, service deli assistants, bakers, cake decorators, forklift drivers, meat cutters, receiving clerks, tire installers, sanitation assistants and maintenance workers.

4. Defendant's hourly-paid employees who work as cashiers, cashier assistants, stockers, food service assistants, bakery wrappers, service deli assistants, bakers, cake decorators, forklift drivers, meat cutters, receiving clerks, tire installers, sanitation assistants and maintenance workers are "manual workers" within the meaning of Labor Law § 190(4).

5. At all relevant times, Defendant failed to timely pay manual workers including Plaintiff their wages within seven calendar days after the end of the week in which their wages were earned, thereby resulting in an underpayment at the time such wages were due but not paid. Instead, Defendant has compensated Plaintiff and all other manual workers on a bi-weekly basis. In this regard, Defendant failed to provide timely wages to Plaintiff and all other similarly situated manual workers in violation of New York Labor Law § 191.

6. Plaintiff brings this action on behalf of herself and all other similarly situated current and former employees of Defendant who were employed as hourly-paid manual workers in the State of New York pursuant to Rule 23 of the Federal Rules of Civil Procedure to recover statutory damages for violation of New York Labor Law § 191.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1332(d), because the amount in controversy against the Defendant in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

8. The members of the proposed class are citizens of states different from that of Defendant.

9. There are over 100 members in the proposed class.

10. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district and Defendant conducts business in this district.

PARTIES

11. Plaintiff is a citizen of the State of New York.

12. At all times relevant, Plaintiff was an “employee” within the meaning of Labor Law § 190(2) and a “manual worker” within the meaning of Labor Law § 190(4).

13. Defendant is a foreign corporation organized and existing under the laws of State of Washington with corporate headquarters located in the state of Washington.

14. At all times relevant, Defendant was an “employer” within the meaning of Labor Law § 190(3).

FACTUAL ALLEGATIONS

15. Plaintiff was employed by Defendant as a non-exempt hourly-paid worker in the merchandising department from in or about 1999 to on or about July 12, 2021.

16. Plaintiff was generally responsible for sorting, folding, arranging and displaying merchandise. Thus, Plaintiff was a "manual worker" within the meaning of NYLL § 190(4).

17. During her employment, over twenty-five percent of Plaintiff’s duties required physical tasks, including but not limited to bending, lifting, folding, walking, carrying, and standing for long periods of time.

18. Defendant failed to pay Plaintiff and similarly situated manual workers employed in the State of New York “on a weekly basis and not later than seven calendar days after the end of the week in which the wages are earned.”

19. Defendant paid Plaintiff and similarly situated manual workers on a bi-weekly or semi-monthly basis pursuant to its payroll policy in violation of New York Labor Law § 191.

20. Defendant failed to timely pay Plaintiff and Class Members within seven days after the end of the workweek in which the wages were earned, thereby resulting in an underpayment at the time such wages were due but not paid.

21. Defendant employs and has employed hourly-paid stockers who are responsible for moving stock from the backroom to the sales floor; stocking and straightening merchandise for sale in the warehouse; clearing and cleaning aisles, backroom and receiving area; and assisting customers and/or members. Over twenty-five percent of the stocker's duties require physical tasks, including but not limited to bending, lifting, walking, carrying, and standing for long periods of time.

22. Defendant employs and has employed hourly-paid cashier assistants who pack customer member's orders into boxes and transfer items to a separate cart for cashiers, perform cleanup, cart retrieval, merchandise restocking and runs for items. Over twenty-five percent of the cashier assistant's duties require physical tasks, including but not limited to, bending, lifting, carrying, pushing, pulling, walking; and standing for long periods of time.

23. Defendant employs and has employed hourly-paid cashiers who process customer member orders; collect payment; perform clean up and department set-up and closing procedures. Over twenty-five percent of the cashier's duties require physical tasks, including but not limited to, bending, lifting, carrying, pushing, pulling, walking; and standing for long periods of time.

24. Defendant employs and has employed hourly-paid meat cutters who cut, trim, and prepare raw meat for sale using saws, knives, grinders and tenderizers; operate and clean the meat grinder; and clean the food preparation area. Over twenty-five percent of the meat cutter's duties

require physical tasks, including but not limited to, cutting, sawing, grinding, bending, lifting, carrying, pushing, pulling, walking; and standing for long periods of time.

25. Defendant employs and has employed hourly-paid food service assistants who prepare food, pull and stock supplies and ingredients, clean the kitchen and eating area, and serve customer members food and beverages. Over twenty-five percent of the food service assistant's duties require physical tasks, including but not limited to, bending, lifting, carrying, pushing, pulling, walking; and standing for long periods of time.

26. Defendant employs and has employed hourly-paid cake decorators who cut, fill and ice cakes, decorate cakes using pastry bags and tips, package cakes, and clean equipment and the bakery area. Over twenty-five percent of the cake decorator's duties require physical tasks, including but not limited to, bending, lifting, packaging, cleaning, carrying, pushing, pulling, walking; and standing for long periods of time.

27. Defendant employs and has employed hourly-paid bakery wrappers who weigh, wrap, label and merchandise bakery products. Over twenty-five percent of the bakery wrapper's duties require physical tasks, including but not limited to, bending, lifting, wrapping, labeling, carrying, pushing, pulling, walking; and standing for long periods of time.

28. Defendant employs and has employed hourly-paid service deli assistants who prepare, package, and label meals, entrees, salads, party trays, rotisserie chicken, ribs, sushi, and sliced meats and cheeses. Over twenty-five percent of the deli assistant's duties require physical tasks, including but not limited to, bending, lifting, wrapping, packaging, labeling, carrying, pushing, pulling, walking; and standing for long periods of time.

29. Defendant employs and has employed hourly-paid tire installers who balance, install, and rotate tires; repair tires; stock tires; and clean the automotive bay and surrounding

area. Over twenty-five percent of the tire installer's duties require manual tasks including but not limited to, bending, lifting, carrying, pushing, pulling, walking; and standing for long periods of time.

30. Defendant employs and has employed hourly-paid maintenance workers who maintain the warehouse. Over twenty-five percent of the maintenance worker's duties require physical tasks, including but not limited to, bending, lifting, carrying, pushing, pulling, climbing, walking; and standing for long periods of time.

RULE 23 CLASS ACTION ALLEGATIONS
NEW YORK STATE LABOR LAW

31. Plaintiff brings New York Labor Law claims on behalf of herself and a class of persons under F.R.C.P. Rule 23 consisting of all persons who are currently, or have been, employed by the Defendant as non-exempt hourly-paid manual workers including, but not limited to cashiers, cashier assistants, stockers, food service assistants, bakery wrappers, service deli assistants, bakers, cake decorators, forklift drivers, meat cutters, receiving clerks, tire installers, sanitation assistants and maintenance workers in the State of New York at any time during the six (6) years prior to the filing of this Complaint (hereinafter referred to as the "Class" or the "Class Members").

32. The Class Members are readily ascertainable. The number and identity of the Class Members are determinable from the records of Defendant. The hours assigned and worked, the position held, and rates of pay and dates of employment for each Class Member may also be determinable from Defendant's records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under F.R.C.P. Rule 23.

33. The proposed Class is numerous such that a joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown because the facts on which the calculation of that number rests presently within the sole control of Defendant, upon information and belief there are over one hundred (100) individuals who are currently, or have been, employed by the Defendants as hourly-paid manual workers at any time during the six (6) years prior to the filing of this Complaint.

34. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including, but not limited to, whether Defendant paid Plaintiff and Class Members on a bi-weekly or semi-monthly basis in violation of Labor Law section 191 and the nature and extent of the Class-wide injury and the appropriate measure of damages for the class.

35. Plaintiff's claims are typical of the claims of the Class that she seeks to represent. Defendant failed to pay Plaintiff "on a weekly basis and not later than seven calendar days after the end of the week in which the wages are earned." Plaintiff's claims are typical of those claims that could be alleged by any member of the Class, and the relief sought is typical of the relief that would be sought by each member of the Class in separate actions. All the Class Members were subject to the same corporate practices of Defendant. Defendant's corporate-wide policies and practices affected all Class Members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class Member. Plaintiff and other Class Members sustained similar losses, injuries and damages arising from the same unlawful policies, practices, and procedures.

36. Plaintiff is able to fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in class actions, wage and hour litigation, and employment litigation.

37. A class action is superior to other available methods for the fair and efficient adjudication of litigation, particularly in the context of wage and hour litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in court against a corporate defendant.

38. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant savings of these costs.

39. The members of the Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that may result in inconsistent judgments about Defendant's practices.

40. Furthermore, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class

actions provide Class Members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing those risks.

FIRST CLAIM FOR RELIEF
New York Labor Law - Frequency of Pay Violation
Failure to Pay Timely Wages in Violation of Section 191

41. Plaintiff alleges and incorporates by reference all allegations in all preceding paragraphs.

42. Plaintiff and Class Members are manual workers within the meaning of the New York Labor Law.

43. Defendant paid Plaintiff and Class Members bi-weekly or semi-monthly.

44. Defendant was required to pay Plaintiff and Class Members on a weekly basis, and no later than seven days after the end of the workweek in which the wages were earned.

45. Defendant failed to timely pay Plaintiff and Class Members within seven days after the end of the workweek in which the wages were earned, thereby resulting in an underpayment at the time such wages were due but not paid.

46. Plaintiff and Class Members are entitled to damages equal to the total of the delayed wages and reasonable attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons, prays for the following relief:

- (i.) Certification of a Class Action pursuant to F.R.C.P. 23;
- (ii.) Designation of Plaintiff as representative of the Class and counsel of record as Class Counsel;
- (iii.) Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under the New York Labor Law;

- (iv.) Liquidated damages pursuant to NYLL § 198 (1-a);
- (v.) Reasonable attorneys' fees and the costs incurred in prosecuting these claims;
- (vi.) Pre-judgment and post-judgment interest as permitted by law; and
- (vii.) Such other relief as this Court deems just and proper.

Dated: Hauppauge, New York
August 26, 2021

LAW OFFICE OF PETER A. ROMERO PLLC

By: */s Peter A. Romero*

Peter A. Romero, Esq.
490 Wheeler Road, Suite 250
Hauppauge, New York 11788
Tel. (631) 257-5588
promero@romerolawny.com

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
GEETA UMADAT, on behalf of herself and all other persons similarly situated
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Office of Peter A. Romero PLLC 490 Wheeler Road, Suite 250 Hauppauge, NY 11788 (631) 257-5588

DEFENDANTS
COSTCO WHOLESALE CORPORATION
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)
Brief description of cause: Violation of New York Labor Law

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 8/26/21 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, PETER A. ROMERO, counsel for PLAINTIFF, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

GEETA UMADAT, on behalf of herself and
all other persons similarly situated,

Plaintiff(s)

v.

COSTCO WHOLESALE CORPORATION,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
COSTCO WHOLESALE CORPORATION
999 Lake Drive
Issaquah, WA 98027

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Peter A. Romero, Esq.
Law Office of Peter A. Romero PLLC
490 Wheeler Road, Suite 250
Hauppauge, New York 11788

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: