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CALIFORNIA GROCERS ASSOCIATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14 CALIFORNIA GROCERS ASSOCIATION,
15 a California non-profit organization,
16 Plaintiff,
17 v.
18 CITY OF SANTA ANA, a charter municipality
19 Defendant.

Case No.
**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

21 Plaintiff California Grocers Association (“Plaintiff” or “CGA”) brings this
22 action against Defendant City of Santa Ana (“Defendant” of “City”) and alleges as
23 follows in this Complaint for declaratory and injunctive relief:

24 **INTRODUCTION**

25 1. At the onset of the COVID-19 pandemic, the State of California
26 and various counties, cities, and other regulatory bodies throughout the state issued
27 a series of emergency orders and regulations in an effort to stem the spread of the
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1 virus and protect the public health and welfare. These early efforts—aimed at
2 balancing the public’s basic economic and social needs with a desire to minimize
3 COVID morbidity and mortality—came at a steep price, especially for essential
4 businesses, and the millions of employees and members of the public who rely on
5 them.

6 2. California grocers have stayed open to serve their communities
7 since day one. They understand that defeating this pandemic requires extraordinary
8 measures and have eagerly committed themselves to the task. Since March of 2020,
9 California grocers of all sizes have established rigorous and science-driven safety
10 measures, often at great expense, to adapt to this new environment and ensure that
11 they operate in a safe and hygienic manner in order to help slow the spread of the
12 virus, and protect their workers and the public.

13 3. Grocers have implemented comprehensive safety measures for
14 customers and employees and compensated frontline grocery employees for their
15 extra efforts in a difficult environment. Grocers have provided “appreciation pay,”
16 “hero bonuses,” and “thank you pay” to reward their associates. Additionally, in
17 terms of employee support, grocers have offered COVID-19 testing to employees
18 and provided emergency leave and paid time off to those affected by the virus or
19 experiencing symptoms.

20 4. For worker safety, grocers have provided supplies to employees
21 including face masks and protective gear in addition to encouraging employees to
22 stay home if feeling ill and implementing paid leave policies. Plexiglas shields,
23 physical distancing measures, and contactless payment and delivery services have
24 been implemented to protect employees. Some of California’s largest grocers such
25 as Kroger and Albertsons joined the United Food and Commercial Workers
26 International union just last year to urge federal and state governments to designate
27 grocery store employees as emergency first responders.

1 **PARTIES**

2 10. Plaintiff California Grocers Association has served as the voice of
3 the state’s grocery community for over 120 years. As a nonprofit, statewide trade
4 association, CGA’s membership is comprised of over 300 retailers and
5 approximately 150 grocery supply companies. As part of its mission, CGA has
6 advocated on behalf of its member retailers on important policy issues.
7 Headquartered in Sacramento, California, CGA brings this action on behalf of its
8 members operating stores in the City of Santa Ana.

9 11. Defendant, City of Santa Ana, is and at all relevant times has been a
10 public entity duly organized and existing under and by virtue of the laws of the
11 State of California as a charter municipality.

12 **FACTUAL BACKGROUND**

13 12. California Grocers Association pursues this action on behalf of its
14 members who are grocery store employers (“Members”) because the employers
15 who operate grocery stores in Santa Ana will suffer a direct and adverse impact
16 from the application of the Ordinance, and thus would have standing to pursue
17 these claims in their own right. The policy and legal interest CGA seeks to protect
18 is at the core of Plaintiff’s mission, and the injunctive and declaratory relief sought
19 does not require the participation of individual members.

20 13. Several Members operate grocery stores in the City that employ
21 members of a specific labor union, United Commercial Food Workers International,
22 Local 324 (“UFCW 324”), and those employees are parties to collective bargaining
23 agreements that govern the terms of their employment, including wage scales.
24 Other Members operate grocery stores that do not employ unionized workers, but
25 those employees are free to organize and select a collective bargaining unit, should
26 they choose to do so.

27 14. Members have suffered or will continue to suffer economic and
28 non-economic harm as a result of the enactment of the Ordinance, and its

1 of economic forces. Laws subject to NLRA preemption include laws that interfere
2 with or attempt to regulate the economic tools available to labor or management
3 during the course of collective bargaining or that otherwise interfere with the
4 collective bargaining process, such as those that alter the parties' rights and
5 economic alternatives during collective bargaining, or the processes and procedures
6 utilized for union organizing.

7 24. Application of the Ordinance to the activities of the Santa Ana
8 Members unequivocally intrudes upon zones of activity in the areas of labor
9 relations, union organizing, and collective bargaining that is reserved under federal
10 labor law and policy to the free play of economic forces. The Ordinance establishes
11 premium pay standards that, by design or consequence, empower the UFCW or
12 other collective bargaining units to secure a wage rate they could not otherwise
13 have obtained from the employer at a unionized or non-union grocery store. This
14 undermines the collective bargaining process and disrupts the process of union
15 organizing.

16 25. While the City has the ability to enact ordinances to further the
17 health and safety of its citizens, the Ordinance here bears no relation to those goals.
18 Local minimum wage laws, for example, seek to lessen the burden on public
19 welfare services. This ordinance is not a minimum labor standard. It is a mandatory
20 hourly bonus for a specific group of workers, regardless of the wage negotiated in
21 the current collective bargaining agreements or other employment agreements.

22 26. The Ordinance is preempted by the NLRA as it regulates zones of
23 activity that Congress intentionally left to be controlled by the free play of
24 economic forces.

25 27. The City's application and enforcement of the Ordinance will cause
26 CGA's Members to suffer irreparable harm for which they have no adequate
27 remedy at law, even if the Ordinance is later declared by this Court to be void and
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1 unenforceable. This claim is also brought pursuant to 42 U.S.C. §1983 and
2 §1988(b).

3 28. CGA is entitled to judgment declaring the Ordinance to be void and
4 unenforceable under the Supremacy Clause of the U.S. Constitution and equitable
5 and injunctive relief to prevent the City of Santa Ana or any other private enforcer
6 from attempting to enforce or give effect to the Ordinance.

7 **SECOND CAUSE OF ACTION**

8 **Declaratory and Injunctive Relief**

9 **(Equal Protection Clause of the United States Constitution)**

10 29. CGA incorporates herein by this reference the allegations contained
11 in Paragraphs 1 through 28, inclusive.

12 30. CGA hereby seeks declaratory, equitable and injunctive relief to
13 prevent the City from depriving Plaintiff's members of the protections afforded to
14 them under the Equal Protection Clause of the U.S. Constitution, which guarantee
15 each and all of them equal protection of the laws. (U.S. Const., Amend. XIV, § 1).
16 This claim is also brought pursuant to 42 U.S.C. §1983 and §1988(b).

17 31. The Equal Protection Clause requires that persons who are similarly
18 situated receive like treatment under the law, and that statutes may single out a class
19 for distinction only if that classification bears a rational relationship to the purpose
20 of the statute. As such, the City may not irrationally single out one class of
21 individuals for discriminatory treatment.

22 32. The Ordinance improperly singles out certain grocery store
23 businesses in Santa Ana for disparate treatment while not requiring the same
24 treatment of similarly situated businesses. More importantly, the ordinance
25 implicates the Members' fundamental right to be free from unreasonable
26 governmental interference with their contracts, specifically their collective
27 bargaining agreements and other employment agreements.

1 **FOURTH CAUSE OF ACTION**

2 **For Declaratory and Injunctive Relief**

3 **(Contracts Clause of the U.S. Constitution)**

4 39. CGA incorporates herein by this reference the allegations contained
5 in Paragraphs 1 through 38, inclusive.

6 40. CGA hereby seeks declaratory, equitable and injunctive relief to
7 prevent the City from depriving CGA’s Members of the protections afforded to
8 them under the Contracts Clause of the U.S. Constitution, which provides in
9 pertinent part that: “No State shall . . . pass any . . . Law impairing the Obligation of
10 Contracts” (U.S. Const., Art. I, § 10, cl. 1). The Contract Clause imposes
11 limits upon the power of a State, and Municipalities operating under the color of
12 State law, to abridge existing contractual relationships, even in the exercise of its
13 otherwise legitimate police power.

14 41. The Ordinance substantially interferes with Members’ contracts,
15 including its collective bargaining agreements with its employees, without any
16 significant or legitimate public purpose. The City’s stated objectives are to protect
17 public health, address economic insecurity, and promote job retention. None of
18 these justifications support this measure, because the City’s stated objectives are
19 merely an attempt to impose a public policy rationale on interest-group driven
20 legislation for labor unions and, in particular, for UFCW.

21 42. Even if the City could show a significant and legitimate public
22 purpose behind the regulation, the substantial impairment to the Members’
23 contractual rights and obligations (i.e., the terms of the Members’ existing
24 collective bargaining agreements) are neither reasonable nor necessary to fulfill any
25 such public purpose.

26 43. By virtue of the foregoing, application of the Ordinance to CGA’s
27 members constitutes a substantial and unconstitutional impairment of those
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1 members existing contractual relationships that will cause them to suffer irreparable
2 harm for which they have no adequate remedy at law.

3 **FIFTH CAUSE OF ACTION**

4 **Declaratory and Injunctive Relief**

5 **(Contracts Clause of the California Constitution)**

6 44. CGA incorporate herein by this reference the allegations contained
7 in Paragraphs 1 through 43, inclusive. Plaintiffs hereby seek declaratory and
8 injunctive relief to prevent the City from violating, and continuing to violate, the
9 Contract Clause of the California Constitution, which provides in pertinent part
10 that: “A ... law impairing the obligation of contracts may not be passed.” (Cal.
11 Const., Art. I, § 9.)

12 45. Like the Federal Contracts Clause, the California Contracts Clause
13 also imposes limits upon the State of California, and its municipalities, to abridge
14 existing contractual relationships, even in the exercise of its otherwise legitimate
15 police power. For the same reasons set forth in Paragraphs 41 through 43 above,
16 application of the Ordinance to CGA’s members within the City constitutes a
17 substantial and unconstitutional impairment of those members existing contractual
18 relationship in violation of the California Contract Clause. Such application will
19 cause those members to suffer irreparable harm for which they have no adequate
20 remedy at law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for the following relief:

23 1. On the first cause of action, a judgment declaring that the
24 Ordinance, as well as any act taken in furtherance of the Ordinance by any person,
25 is preempted by the National Labor Relations Act, and its implementing regulations
26 and guidance, and are therefore void and unenforceable, and entering a preliminary
27 and permanent injunction enjoining the City from enforcing or taking any action
28 under the Ordinance;

1 2. On the second and third causes of action, enter a judgment declaring
2 that the Ordinance, as well as any act taken in furtherance of the Ordinance by any
3 person, violate state and federal equal protection guarantees, and are therefore void
4 and invalid, and entering a preliminary and permanent injunction enjoining the City
5 from enforcing or taking any action under the Ordinance;

6 3. On the fourth and fifth causes of action, enter a judgment declaring
7 that the Ordinance, as well as any act taken in furtherance of the Ordinance by any
8 person, violate the contracts clauses of the state and federal constitution, and are
9 therefore void and invalid, and entering a preliminary and permanent injunction
10 enjoining the City from enforcing or taking any action under the Ordinance;

11 4. For an award of attorneys' fees and costs of suit herein pursuant to
12 California Code of Civil Procedure § 1021.5, 42 U.S.C. §1988, or any other
13 applicable law; and

14 5. For such other and further relief as the Court may deem just and
15 proper.

16 Dated: March 16, 2021

MORRISON & FOERSTER LLP



18 By: _____
19 William F. Tarantino

20 Attorneys for Plaintiff
21 CALIFORNIA GROCERS
22 ASSOCIATION

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