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CALIFORNIA GROCERS ASSOCIATION

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 CALIFORNIA GROCERS ASSOCIATION,
a California non-profit organization,

17 Plaintiff,

18 v.

19 CITY OF DALY CITY, a general law city,

20 Defendant.
21
22

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

23
24 Plaintiff California Grocers Association (“Plaintiff” or “CGA”) brings this
25 action against Defendant City of Daly City (“Defendant” or “City”) and alleges as
26 follows in this Complaint for declaratory and injunctive relief:
27
28

INTRODUCTION

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

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

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

24 4. For worker safety, grocers have provided supplies to employees
25 including face masks and protective gear in addition to encouraging employees to
26 stay home if feeling ill and implementing paid leave policies. Plexiglas shields,
27 physical distancing measures, and contactless payment and delivery services have
28 been implemented to protect employees. Some of California’s largest grocers such

1 as Kroger and Albertsons joined the United Food and Commercial Workers
2 International Union just last year to urge federal and state governments to designate
3 grocery store employees as emergency first responders.

4 5. Yet on March 8, 2021, the City passed the “Hazard Pay for Grocery
5 Workers Ordinance” (“Ordinance”) which requires employers, starting ten (10)
6 days after the adoption of the Ordinance, to pay a \$5 per hour premium on whatever
7 the employee’s existing wage is at the time of enactment, regardless of any existing
8 bonus or incentive program that the employer may have in place.

9 6. The Ordinance unreasonably singles out specific grocers, while
10 ignoring employers or essential frontline workers outside the grocery industry.
11 Plaintiff seeks a declaration that the law is invalid and unconstitutional as applied to
12 CGA’s Members, and an injunction halting any action to enforce the Ordinance as
13 to CGA’s Members on the grounds that it (1) is preempted by federal law
14 regulating collective bargaining and unfair labor practices; (2) violates the equal
15 protection and contracts clauses of the U.S. and California constitutions.

16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction over the subject matter of this suit
18 pursuant to 28 U.S.C. §1331, as the Plaintiffs’ claims arise under federal laws;
19 namely, the National Labor Relations Act, 29 U.S.C. §141 *et seq.*; Article VI of the
20 U.S. Constitution which designates the Constitution and Laws of the United States
21 as the supreme law of the land; and the equal protection clause and contracts clause
22 of the U.S. Constitution.

23 8. This Court has supplemental jurisdiction over this subject matter
24 pursuant to 28 U.S.C. §1367(a), as the Plaintiffs’ claims arising under the
25 California Constitution are so closely related to the federal question claims that they
26 form part of the same case or controversy under Article III of the U.S. Constitution.

27 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), as
28 this Court is sited in the federal judicial district where the events giving rise to the

1 CGA’s claims have occurred, are now occurring, and will occur in the future if not
2 prevented through actions of this Court. CGA’s members are situated in this district
3 and are and will continue to be adversely affected by the irreparable harms sought
4 to be remedied and prevented by this Court’s action upon this Complaint.

5 **PARTIES**

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

13 11. Defendant, City of Daly City, is and at all relevant times has been a
14 public entity duly organized and existing under and by virtue of the laws of the
15 State of California as a general law city.

16 **FACTUAL BACKGROUND**

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

24 13. Several Members operate grocery stores in the City that employ
25 members of a specific labor union, United Food and Commercial Workers
26 International, Local 5 (“UFCW 5”), and those employees are parties to collective
27 bargaining agreements that govern the terms of their employment, including wage
28 scales. Other Members operate grocery stores that do not employ unionized

1 workers, but those employees are free to organize and select a collective bargaining
2 unit, should they choose to do so.

3 14. Members have suffered or will continue to suffer economic and
4 non-economic harm as a result of the enactment of the Ordinance, and its
5 foreseeable consequences on union organizing, ongoing collective bargaining, and
6 labor relations for both unionized and non-union grocery stores in the City of Daly
7 City. Members are required to alter the wage scales and other terms of their existing
8 collective bargaining agreements, regardless of any additional hero pay, bonuses, or
9 other non-monetary compensation provided to their employees to ease the burden
10 of the COVID-19 pandemic.

11 15. By design, the Ordinance picks winners and losers. It singles out
12 large grocery companies with unionized workforces (i.e., UFCW 5's members)
13 without providing any reasonable justification for the exclusion of other employers
14 or frontline retail workers. The Ordinance arbitrarily and improperly targets certain
15 grocery store businesses in Daly City for disparate treatment while not requiring the
16 same commitments from similarly situated businesses, or conferring *any* benefits
17 on similarly situated employees. There is no support for any of the City's
18 statements that the Hazard Pay will protect public health, address economic
19 insecurity, and promote job retention.

20 **THE ORDINANCE**

21 16. The Hazard Pay for Grocery Workers Ordinance codified in
22 Chapter 5.106 in the Daly City Municipal Code is attached hereto as **Exhibit A**. It
23 applies only to grocery stores who employ 500 or more employees nationwide,
24 regardless of where those employees are employed. Section 5.C. Grocery store is
25 defined as "a retail or wholesale store that is at least 12,000 square feet in size that
26 is located within the geographic limits of the City, and that sells primarily
27 household food stuffs. Section 5.J.

28 17. Grocery stores meeting this minimum threshold of employees are

1 required to provide each employee with hazard pay consisting of an additional five
2 dollars (\$5.00) per hour for each hour worked. Section 5.K. The Ordinance
3 requires hazard pay to be paid for 120 days from the effective date of the
4 Ordinance. Section 14.

5 18. The Ordinance takes effect ten (10) days after its adoption, March
6 8, 2021, and prohibits reducing a grocery employee’s compensation or limiting a
7 grocery employee’s earning capacity for exercising any rights protected under the
8 Ordinance. Section 8.

9 19. Grocery stores are required to provide a notice of rights established
10 by the Ordinance. Section 9.

11 **FIRST CAUSE OF ACTION**

12 **Declaratory and Injunctive Relief**

13 **(NLRA Preemption)**

14 20. CGA incorporates herein by this reference the allegations contained
15 in Paragraphs 1 through 19, inclusive.

16 21. Enacted in 1935, the National Labor Relations Act (“NLRA”), as
17 amended, 29 U.S.C. § 151, *et seq.*, creates a uniform federal body of law governing
18 union organizing, collective bargaining, and labor-management relations applicable
19 to employers engaged in interstate commerce. It established various rules
20 concerning collective bargaining and defined a series of banned unfair labor
21 practices, including bans on interference with the formation or organization of labor
22 unions by employers. The NLRA does not apply to certain workers, including
23 supervisors, managerial employees and confidential employees – all categories
24 specifically excluded from the Ordinance.

25 22. The NLRA prohibits state and local regulation of conduct that
26 Congress intended to be left to be controlled by the free-play of economic forces.
27 Legislation that interferes with the “balanced state of collective bargaining” is
28 preempted by the NLRA. *See Machinists v. Wisconsin Employment Relations*

1 *Comm 'n*, 427 U.S. 132 (1976).

2 23. In particular, the NLRA preempts any and all state and local
3 enactments that, by design or consequence, regulate or interfere with the then-
4 existing balance of economic power between labor and management with respect to
5 zones of activity that, under federal labor law, are intended to be left to the free play
6 of economic forces. Laws subject to NLRA preemption include laws that interfere
7 with or attempt to regulate the economic tools available to labor or management
8 during the course of collective bargaining or that otherwise interfere with the
9 collective bargaining process, such as those that alter the parties' rights and
10 economic alternatives during collective bargaining, or the processes and procedures
11 utilized for union organizing.

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

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

27 26. The Ordinance is preempted by the NLRA as it regulates zones of
28 activity that Congress intentionally left to be controlled by the free play of

1 economic forces.

2 27. The City's application and enforcement of the Ordinance will cause
3 CGA's Members to suffer irreparable harm for which they have no adequate
4 remedy at law, even if the Ordinance is later declared by this Court to be void and
5 unenforceable. This claim is also brought pursuant to 42 U.S.C. §1983 and
6 §1988(b).

7 28. CGA is entitled to judgment declaring the Ordinance to be void and
8 unenforceable under the Supremacy Clause of the U.S. Constitution and equitable
9 and injunctive relief to prevent Daly City or any other private enforcer from
10 attempting to enforce or give effect to the Ordinance.

11 **SECOND CAUSE OF ACTION**

12 **Declaratory and Injunctive Relief**

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

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

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

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

26 32. The Ordinance improperly singles out certain grocery store
27 businesses in Daly City for disparate treatment while not requiring the same
28 treatment of similarly situated businesses. More importantly, the ordinance

1 implicates the Members' fundamental right to be free from unreasonable
2 governmental interference with their contracts, specifically their collective
3 bargaining agreements and other employment agreements.

4 33. The stated purpose of the Ordinance, namely, to protect public
5 health, address economic insecurity, and promote job retention during the COVID-
6 19 emergency by requiring grocery stores to provide premium pay is not rationally
7 related to the discriminatory treatment of CGA's Members. No significant and
8 legitimate public purpose exists for the Ordinance. The City's stated objectives are
9 merely an attempt to impose a public policy rationale on interest-group driven
10 legislation for labor unions and, in particular, for UFCW 5.

11 34. By virtue of the foregoing, application of the Ordinance to the
12 CGA's Members within the City violates the equal protection guarantees of the
13 U.S. Constitution.

14 35. The City's application and enforcement of the Ordinance will cause
15 Plaintiff's members to suffer irreparable harm for which they have no adequate
16 remedy at law, even if the Ordinance is later declared by this Court to be void and
17 unenforceable.

18 **THIRD CAUSE OF ACTION**

19 **Declaratory and Injunctive Relief**

20 **(Equal Protection Clause of the California Constitution)**

21 36. CGA incorporates herein by this reference the allegations contained
22 in Paragraphs 1 through 35, inclusive.

23 37. CGA hereby seeks declaratory, equitable and injunctive relief to
24 prevent the City from depriving CGA's members of the protections afforded to
25 them under the Equal Protection Clause of the California Constitution, which like
26 the U.S. Constitution, guarantees each and all of them equal protection of the laws.
27 (Cal. Const., Art. I § 7.)

28 38. For the same reasons set forth in Paragraphs 29 through 35 above,

1 the Ordinance violates the Equal Protection Clause of the California. Such
2 application will cause CGA’s Members to suffer irreparable harm for which they
3 have no adequate remedy at law.

4 **FOURTH CAUSE OF ACTION**

5 **For Declaratory and Injunctive Relief**

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

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

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

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

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

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

5 **FIFTH CAUSE OF ACTION**

6 **Declaratory and Injunctive Relief**

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

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

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for the following relief:

25 1. On the first cause of action, a judgment declaring that the
26 Ordinance, as well as any act taken in furtherance of the Ordinance by any person,
27 is preempted by the National Labor Relations Act, and its implementing regulations
28 and guidance, and are therefore void and unenforceable, and entering a preliminary

1 and permanent injunction enjoining the City from enforcing or taking any action
2 under the Ordinance;

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

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

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

16 5. For such other and further relief as the Court may deem just and
17 proper.

18
19 Dated: March 12, 2021

MORRISON & FOERSTER LLP

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21
22 By: /s/ William F. Tarantino
William F. Tarantino

23 Attorneys for Plaintiff
24 CALIFORNIA GROCERS
25 ASSOCIATION
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