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11 Ralphs Grocery Company

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 HENRY EPHRIAM, ALISIA RAMIREZ,
15 GLORIA MAPP-PARKER, and YOLANDA
16 PETTY, RANDAL ODUMS, SERGIO
17 BALLON, RICARDO RAMIREZ,
18 CRESCENCIO PERERA, individually and on
19 behalf of others similarly situated,

20 Plaintiffs,

21 vs.

22 RALPHS GROCERY COMPANY, an Ohio
23 corporation; and FOOD 4 LESS OF
24 CALIFORNIA, INC., a California corporation;
25 and DOES 1 through 25, inclusive,

26 Defendants.

CASE NO: 20STCV25845

Assigned For All Purposes:

Judge Carolyn B. Kuhl

Dept.: 12

**DEFENDANT RALPHS GROCERY
COMPANY'S OPPOSITION TO
PLAINTIFFS' EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Juan Manuel Vivanco and
Monique Deguia Jones; and Evidentiary
Objections Filed and Served Concurrently
Herewith]

Hearing:

Date: July 22, 2020

Time: 8:30 a.m.

Dept.: 12

Complaint Filed: July 14, 2020

Trial Date: *None Set.*

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3
4 Ralphs Grocery Company’s (“Ralphs”) Compton warehouse is the distribution center of
5 perishable food products to over 400 Southern California Ralphs grocery stores. Nearly 800 people work
6 there, and each of the 400 stores it feeds has approximately 100 employees of its own. The Compton
7 warehouse has provided essential services during the COVID-19 pandemic and is a critical component
8 of the food supply chain for the community. Despite following *all CDC guidelines and*
9 *recommendations*, despite the absence of any grievances or complaints from its Union, despite the fact
10 that no governmental agency or health department has so much as warned Ralphs about the warehouse
11 working conditions, Plaintiffs want this Court to shut the warehouse down with a mandatory injunction
12 unless Ralphs complies with a laundry list of amorphous demands and draconian requirements.

13
14 The relief Plaintiffs seek is extraordinarily overbroad and unjustified. Plaintiffs’
15 evidence, which includes a detailed six-page letter from Ralphs responding to each of their pre-litigation
16 claims, does not establish the likelihood of success needed to prevail on its request for mandatory
17 injunctive relief, which is only granted in the rarest of circumstances. As shown more fully below,
18 Plaintiffs’ Application for a TRO should be denied, and no hearing for a preliminary injunction should
19 be set at all.

20 **II. STATEMENT OF FACTS**

21
22 **A. Ralphs Has Not Received Any Grievance From Its Union Or Any Notice of**
23 **Violation From Any Entity Or Governing Agency With Jurisdiction Over The Health Of Ralphs’**
24 **Employees.**

25 The Compton warehouse is a warehouse and distribution center for perishable goods that
26 serves approximately 150 different Ralphs stores *each day*. (See Declaration of Juan Manuel Vivanco
27 (“Vivanco Dec.”) ¶ 4, p. 2, lines 20-27.) The Compton warehouse receives, stores, processes and
28 distributes high demand perishable inventory including dairy, deli, frozen foods, meat, and produce

1 (fruit and vegetables). Indeed, the Compton warehouse is the primary distribution center in Southern
2 California for Ralphs for these product types. The products that Compton warehouse handles are high
3 demand items in all Ralphs stores. These products, and the Compton warehouse in general, are
4 fundamental to Ralphs’ ability to service the Southern California community. The Compton warehouse
5 undoubtedly provides an essential service during the COVID-19 pandemic. (Vivanco Dec. ¶ 4, p. 2,
6 lines 20-27.)

7
8 The Compton warehouse receives food from all across the United States seven days a
9 week. With nearly 800 employees, it receives all of that product, inventories it, and then, on a daily
10 basis, it processes the groceries and delivers them to Ralphs stores throughout Southern California based
11 on consumer demand. (Vivanco Dec. ¶ 5, p. 3, lines 1-4.)

12
13 Throughout the COVID-19 pandemic, Ralphs has remained in close contact with the
14 Centers for Disease Control, and its own medical professionals, to receive current guidance as the
15 COVID-19 has developed. Ralphs has also stayed in regular contact with its Unions and all signatory
16 to the collective bargaining agreements governing wages, hours and working conditions at the Compton
17 warehouse. (See Declaration of Monique Deguia-Jones (“Deguia-Jones Dec.”) ¶¶ 7, (see also Exhibit
18 B to Declaration of Joshua Boxer filed by Plaintiffs.)

19
20 To date, no grievance has been filed claiming unsafe working conditions at the Compton
21 warehouse. (Deguia-Jones Dec. ¶ 5.) Moreover, Ralphs has not received any warnings, notices of
22 violation, or other citation from CAL-OSHA, the Los Angeles County Health Department or any other
23 entity or governmental agency whose jurisdiction includes the monitoring of the health and working
24 conditions of the employees working at the Compton warehouse. (Deguia-Jones Dec. ¶ 6.)

1 **B. The Evidence Is Contested And Does Not Support The Extreme Relief**
2 **Sought By Plaintiffs.**

3 Ralphs thoroughly investigated Plaintiffs’ allegations and provided their counsel with the
4 detailed results of that investigation, before Plaintiffs filed this Application. In the July 7, 2020 letter
5 signed by Ralphs’ Vice President of Legal Services, Steve Prough, Ralphs contested and provided a
6 detailed response to each of Plaintiffs’ allegations. That letter, and the additional evidence now before
7 the Court, more than call into question Plaintiffs’ ability of establishing a likelihood of success on the
8 merits of any of their claims.

9
10 Plaintiffs claim that Ralphs “failed to provide sufficient gloves, masks, or basic
11 sanitization supplies.” To the contrary, the Compton warehouse has always provided work (woven)
12 gloves and, since the beginning of the COVID-19 pandemic, Ralphs has provided disposable gloves and
13 reminders that employees should frequently and thoroughly wash their hands per CDC
14 recommendations. Ralphs has also established sanitizer stations and placed hand sanitizer at various
15 locations around the warehouse. Ralphs has also supplied sanitizing wipes, spray and disposable towels.
16 (Deguia-Jones Dec. ¶ 8, p. 3, lines 12-17.)

17
18 Plaintiffs claim that Ralphs “failed to implement effective distancing protocols.” To the
19 contrary, Ralphs posted reminders about social distancing as soon as the CDC recommended it. All of
20 Ralphs’ postings have evolved and followed CDC guidelines and recommendations. Ralphs has taken
21 measures to prevent close contact among associates. Warehouse aisles are fairly large and, when wearing
22 a mask, passing by a co-worker falls into low risk behavior per CDC guidelines. Ralphs also removed
23 tables and chairs from break areas, and later taped off sections of tables and added plexiglass to reduce
24 risk. Ralphs also set up outside tables for break areas to promote further social distance practices.
25 (Deguia-Jones Dec. ¶ 8, p. 3, lines 18-25.)

26
27 Plaintiffs claim that Ralphs “failed to provide training that adequately informs employees
28 of their risks of COVID-19 exposure.” To the contrary, there are posts and notices throughout the

1 Compton warehouse, which were also sent to the Union, which are consistent with CDC guidelines.
2 (Deguia-Jones Dec. ¶ 8, p. 4, lines 1-3.)

3
4 Plaintiffs claim that Ralphs “failed to train employees regarding the available leaves.”
5 To the contrary, Ralphs has an entire department dedicated to leaves of absence, and they are thorough
6 in providing legal entitlement for associate leaves of absence. During the pandemic, the HR department
7 took the role of first and continuous contact with those testing and those positive. (Deguia-Jones Dec. ¶
8 8, p. 4, lines 4-7.)

9
10 Regarding Plaintiffs’ complaint that “all receivers need to use the same terminals”,
11 Ralphs has provided sanitizer and wipes, and there are posts and reminders of CDC guidance for
12 frequent handwashing and sanitizing of work areas. Ralphs increased its sanitation throughout the
13 building and has used ServPro more than once to do deep cleanings of the warehouse. (Deguia-Jones
14 Dec. ¶ 8, p. 4, lines 8-11.)

15
16 Regarding Plaintiffs’ complaint of a “continuing failure to provide adequate
17 sanitizers...”, Ralphs replaces and provides items when anything is reported empty. Moreover, there are
18 boxes of masks, sanitizers, wipes and paper towels for associates to use at every station. (Deguia-Jones
19 Dec. ¶ 8, p. 4, lines 12-14.)

20
21 Plaintiffs’ contention that Ralphs does not “encourage[e] sick employees to stay home”
22 is simply false. In accordance with CDC guidelines, signs are posted throughout the warehouse, and
23 copies have been provided to the Union. Signs at the warehouse entrance specifically state “STOP: if
24 you do not feel well, go home and call HR!” (Deguia-Jones Dec. ¶ 8, p. 4, lines 15-18.)

25
26 Plaintiffs’ contention that Ralphs does not conduct temperature checks is false. Ralphs
27 actually began requiring temperature checks before they were mandated. Ralphs began using scanning
28 cameras that can scan up to 30 people at one time. (Deguia-Jones Dec. ¶ 8, p. 4, lines 19-21.) Moreover,

1 Plaintiffs’ contention that Ralphs does not “contact trace” is false. Ralphs does contact tracing in
2 accordance with CDC recommendations. Any and all potentially infected employees are immediately
3 sent home, and testing is arranged. (Deguia-Jones Dec. ¶ 8, p. 5, lines 1-3.)
4

5 **C. The Evidence Shows That Plaintiffs’ Careless Behavior Contributed To The**
6 **Spread Of COVID-19 At The Compton Warehouse.**
7

8 There is significant evidence that Plaintiff Henry Ephriam may have been the contact
9 source for many of the Compton COVID-19 cases. Ephriam was the third Compton warehouse
10 employee to test positive for COVID-19. The first case worked in a different section of the warehouse
11 than Ephriam and went out on April 21, 2020. The second case worked in Ephriam’s department, and
12 his last day of work was May 6, 2020. He did not inform Ralphs of his diagnosis until May 11, 2020,
13 the same day that Ephriam informed Ralphs that he had tested positive as well. Ralphs did not conceal
14 any information about coworkers with COVID-19 from Ephriam. (Deguia-Jones Dec. ¶ 9, p. 5, lines 4-
15 5.)
16

17 Ephriam advised the Company he did not wear his mask as directed and did not maintain
18 adequate social distance as he worked or took his break, despite numerous postings and notifications of
19 the CDC and company Company guidelines. Ephriam hugged one of his co-workers in violation of
20 CDC and Company guidelines, and that associate was identified by Ephriam and later tested positive
21 for COVID-19. Ephriam hugged another Plaintiff for Mother’s Day, which she accepted in violation of
22 CDC and Company guidelines. Neither Plaintiff informed Ralphs of the violation when it occurred.
23 Plaintiffs also engaged in a “coffee break group” that admitted they regularly met and had coffee break
24 together without masks and within six feet of each other in violation of CDC and Company guidelines.
25 (Boxer Dec. Exhibit B.)
26

27 Contrary to Ephriam’s Declaration, Ralphs did not “ask [Ephriam] to get tested again
28 upon returning to work” because the guidance Ralphs had received instructed that Ralphs could not

1 require that test, due in part to the difficulty in finding a testing site that would test non-symptomatic
2 patients. In addition, negative tests were taking 7-14 days to come back, so Ralphs would have had to
3 hold Ephriam out for two to three more weeks, without pay, if Ralphs had insisted on a negative test
4 result from Ephriam. (Deguia-Jones Dec. ¶ 9, p. 5, lines 12-16.)

5
6 Ephriam did not provide a “list of about twenty coworkers”. He gave Ralphs seven
7 names, and the Human Resources department contacted each of them and arranged for testing. As days
8 passed, Ralphs received calls from other associates stating that Ephriam had told them to call.

9
10 **D. The Cost Of Shutting Down The Compton Warehouse Would Be**
11 **Astronomically High, Both To Ralphs And To The Community At Large.**

12 Plaintiffs’ application to enjoin Ralphs from operating the Compton warehouse would
13 cause catastrophic harm to Ralphs, and the Southern California community. To begin to understand the
14 harm that such an order would cause, one can look to a few metrics. First, the volume of essential food
15 products that the Compton warehouse handles is enormous. Approximately \$4.6 million worth of
16 product leaves the Compton warehouse to be delivered to Ralphs stores each and every day. In addition,
17 nearly 800 people are employed at the Compton warehouse. That translates to over \$225,000 per day
18 in compensation paid to employees every day. As for the community, if the Compton warehouse were
19 to be shut down, Ralphs would have no ability to stock its stores with perishable products. This would
20 devastate Ralphs and the community. If Plaintiffs’ requested relief were granted, not only would these
21 employees be affected, but so too would the employees at the hundreds of Ralphs’ stores, as well as the
22 communities they serve. (Vivanco Dec. ¶ 6, p. 3, lines 6-15.)

23
24
25 In addition to the immediate economic losses, there would certainly be irreparable loss
26 to the overall brand that are difficult to quantify. Just from an immediate economic standpoint, the
27 financial hardship to Ralphs if the Compton warehouse was shut down for just a week, the losses would
28 exceed \$30 million — *per week*. That sum does not even address the hardship that would befall the

1 hundreds of Compton warehouse employees, thousands of vendors, and tens of thousands of Ralphs
2 customers. (Vivanco Dec. ¶ 7, p. 4, lines 17-23.)

3
4 **III. ARGUMENT**

5 **A. The Court Does Not Have Jurisdiction To Issue Injunctive Relief Because**
6 **Ralphs Has Not Been Served.**

7 As a matter of law, an injunction cannot be granted when the court lacks personal
8 jurisdiction over the party sought to be enjoined by the injunction. *Rothschild v. Erda* (1968) 258
9 Cal.App.2d 750, 753–756. Because Ralphs has not yet been served with the Summons and Complaint,
10 the Court cannot enter injunctive relief, and the Application should be denied.¹ *Borsuk v. Appellate*
11 *Division of Superior Court* (2015) 242 Cal.App.4th 607, 612 (“Personal jurisdiction is conferred by
12 service on the [defendant] of the . . . summons and complaint.”) (citing *Engbretson & Co. v.*
13 *Harrison* (1981) 125 Cal.App.3d 436, 44 [“ ‘[S]ervice of summons is not effective and the court does
14 not acquire jurisdiction of the party unless the statutory requirements for service of summons are met.’
15 ”]).

16 **B. This Is Not The Extremely Rare Case Requiring A Mandatory Injunction.**

17 “[A]n injunction is prohibitory if it requires a person to refrain from a particular act and
18 mandatory if it compels performance of an affirmative act that changes the position of the parties.”
19 *Davenport v. Blue Cross of Calif.* (1997) 52 Cal.App.4th 435, 446-448, (emphasis added) (rejecting
20 “preservation of status quo” as test for prohibitory injunction); see *Oiye v. Fox* (2012) 211 Cal.App.4th
21 1036, 1048. The relief Plaintiffs seek is absolutely a mandatory injunction – shut down the Compton
22 warehouse unless Ralphs complies with all eleven of their demands.
23

24
25
26
27 ¹ By statute, defendant's appearance to oppose an ex parte application for a provisional remedy (e.g., an
28 application for a TRO), “is not a general appearance and does not constitute a waiver of the right” to
challenge personal jurisdiction. Code Civ. Proc. § 418.11; *Canaan Taiwanese Christian Church v. All*
World Mission Ministries, (2012) 211 Cal.App.4th 1115, 1127.

1 “The judicial resistance to injunctive relief *increases* when the attempt is made to compel
2 the doing of affirmative acts. A preliminary mandatory injunction is rarely granted and is subject to
3 stricter review on appeal.” *Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295
4 (emphasis added). Indeed, the “granting of a mandatory injunction pending trial is not permitted except
5 in **extreme cases** where the right thereto is clearly established.” *Teachers Ins. & Annuity Ass'n v. Furlotti*
6 (1999) 70 Cal.App.4th 1487, 1493 (emphasis added); *Integrated Dynamic Solutions, Inc. v. VitaVet*
7 *Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184; *Brown v. Pacifica Found., Inc.* (2019) 34 Cal.App.5th 915,
8 925.

9
10 “A superior court must evaluate two interrelated factors when ruling on a request for a
11 preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial and (2) the
12 interim harm that the plaintiff would be likely to sustain if the injunction were denied as compared to
13 the harm the defendant would be likely to suffer if the preliminary injunction were issued.” *Smith v.*
14 *Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749; see *Brown v. Pacifica Found., Inc.*
15 (2019) 34 Cal.App.5th 915, 925.

16
17 This is **not** one of the extremely rare cases warranting mandatory injunctive relief
18 because Plaintiffs have not established a likelihood that they will prevail on the merits of their claims.
19 To the contrary, the evidence shows that Ralphs has diligently sought and recommended compliance
20 with all current CDC guidelines to prevent the spread of COVID-19. Ralphs made masks available to
21 employees when the wearing of masks was voluntary, and when masks became mandatory for essential
22 service businesses, Ralphs provided masks and instructions on how to safely wear them. (Deguia-Jones
23 Dec. ¶¶ 7-8; see Boxer Dec. Exhibit B.) Similarly, Ralphs made disposable gloves available to all
24 employees and installed numerous additional hand sanitizer stations, sanitizing wipes, sanitizing spray
25 and paper towels. (Deguia-Jones Dec. ¶¶ 7-8; see Boxer Dec. Exhibit B.) Ralphs has followed CDC
26 guidelines at all times and provided best practices for safety at work as it pertains to COVID-19.
27
28

1 Ralphs' sanitizing and sanitation practices are also consistent with best practices and
2 medical guidelines and are handled in-house per the current collective bargaining agreement with
3 Plaintiffs' Union. In response to the COVID-19 pandemic, Ralphs implemented a schedule of regular
4 sanitation of high touch areas throughout the facility. Ralphs also provides antibacterial wipes,
5 sanitizing cleaner and paper towels, and hand sanitizer throughout the facility with postings and
6 directions to the employees associates as to how they can help keep themselves and others safe by
7 utilizing wipes and sanitizing spray, washing their hands frequently, and other current best practices for
8 sanitation. Ralphs has also utilized ServPro, a proactive viral pathogen cleaning company that adheres
9 to the cleaning and decontamination standards set by the CDC, for high traffic areas. (Deguia-Jones
10 Dec. ¶¶ 7-8; see Boxer Dec. Exhibit B.) The Union is aware of Ralphs' efforts. No grievances have been
11 filed by the union's signatory to these collective bargaining agreements except as pertained to having
12 non-Teamster employees performing this work. (Deguia-Jones Dec. ¶¶ 7-8; see Boxer Dec. Exhibit B.)
13

14 Ralphs has provided information to its associates and management team regarding the
15 signs and symptoms of COVID-19, both published by the CDC as well as by the Company. The
16 information is posted throughout the Compton warehouse in a variety of formats, and the same
17 information regarding these same signs and symptoms and published same on our news monitors. The
18 Union has seen this information, and no grievance has been filed. (Deguia-Jones Dec. ¶¶ 7-8; see Boxer
19 Dec. Exhibit B.)
20

21 Ralphs already has implemented effective and efficient contact tracing procedures.
22 Contact tracing continues for any positive case, as well as for those reporting signs or symptoms.
23 (Deguia-Jones Dec. ¶¶ 7-8; see Boxer Dec. Exhibit B.)
24

25 The evidence establishes that Ralphs is following recommended CDC-guidance
26 regarding best practices for dealing with the COVID-19 pandemic. Ralphs is in communication with
27 local health officials, and Plaintiffs' Union is informed of Ralphs' efforts. The Union has not grieved
28 the working conditions or the alleged lack of protective measures. The County health officials have not

1 charged Ralphs with any violations. Plaintiffs have not established a likelihood of success, and the
2 Application should be denied.

3
4 **C. The Relief Plaintiffs Seek Is Too Vague To Be Enforced By The Court.**

5 Moreover, a mandatory injunction must be narrowly drawn. Because of “free speech”
6 considerations, among other things, temporary restraining orders or preliminary injunctions “must be
7 couched in the narrowest terms that will accomplish the pin-pointed objective permitted by
8 constitutional mandate and the essential needs of the public order.” *United Farm Workers of America,*
9 *AFL-CIO v. Sup.Ct. (Calif. Retail Liquor Dealers Institute)* (1976) 16 Cal.3d 499, 504.

10
11 To be enforceable by contempt, the preliminary injunction must contain a reasonably
12 adequate description of the conduct which is prohibited, in language giving fair notice to the defendant
13 of the consequences of disobedience. *In re Berry* (1968) 68 Cal.2d 137, 155; and *Watsonville Canning*
14 *& Frozen Food Co., Inc. v. Sup.Ct. (Local 912, Int'l Broth. of Teamsters)* (1986) 178 Cal.App.3d 1242,
15 1246. Where First Amendment rights are involved, the order must “be tailored as precisely as possible
16 to the exact needs of the case ... [and] must be sufficiently precise to provide a person of ordinary
17 intelligence fair notice that his contemplated conduct is forbidden.” *Parisi v. Mazzaferro* (2016) 5
18 Cal.App.5th 1219, 1231.

19
20 The requested relief demanded by Plaintiffs does not contain a reasonably adequate
21 description of the conduct which is prohibited (or required) of Ralphs. None of the eleven items in
22 Plaintiffs’ list of demands are sufficiently described such that compliance can be easily achieved. Indeed,
23 even the CDC guidance regarding proper protocols to control the spread of the pandemic are evolving.

24
25 **D. The TRO Plaintiffs Seek Is Against The Public Interest.**

26 An injunction cannot be granted when its issuance would be contrary to public policy
27 and the public interest. *Loma Portal Civic Club v. American Airlines, Inc.* (1964) 61 Cal. 2d 582, 588–
28

1 591; *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 144–145. Plaintiffs’
2 requested TRO demands compliance with a list of amorphous specifications and constantly moving
3 targets, or else the Compton facility will be shut down.

4 The Compton warehouse provides employment to thousands of Southern California
5 residents and is a vital part of the food supply chain. A TRO that threatens to shut it down unless
6 draconian (and amorphous) requirements are met is against the public interest and would disrupt the
7 lives of thousands of people. In this case, the potential benefit to Plaintiffs of the relief they seek is vastly
8 outweighed by the potentially disastrous impact that this relief will shut down a critical cog in the
9 California food supply chain.

10
11 **E. The Requested Injunction Should Also Be Denied Because Of Plaintiffs’**
12 **Unclean Hands.**

13 A party seeking the interposition of a court of equity must come into court with clean
14 hands. When the plaintiff’s conduct shows that he or she has unclean hands, a preliminary injunction
15 will be denied. *London v. Marco* (1951) 103 Cal.App.2d 450, 453.

16
17
18 There is substantial evidence that Ephriam, and possibly other Plaintiffs, were significant
19 contributors in the spread of COVID-19 among the Compton warehouse workforce. Despite clear
20 instructions and guidance from Ralphs, including the presence of signage throughout the warehouse,
21 Ephriam was observed on warehouse camera footage not wearing his mask while walking through
22 others’ work areas, just before his positive test. He hugged a co-worker for Mother’s Day, despite Ralphs
23 providing CDC guidance. He later hugged Dunklin, who also tested positive for COVID-19. (Deguia-
24 Jones Dec. ¶ 9, p. 5, lines 20-23.) None of them reported the social-distance-breaking conduct to Ralphs.
25 Similarly, Plaintiff Ramirez wanted to return to work before receiving the results of her COVID-19 test,
26 and then learned on the day that she returned to work that she was positive. (Deguia-Jones Dec. ¶ 9, p.
27 6, lines 4-11.)

1 Ephriam was also lax in assisting Ralphs with its contact-tracing, only providing a few
2 names of employees with whom he had been in contact during the critical period. Contrary to his
3 allegations, Ephriam did not provide a “list of about twenty coworkers”. He gave Ralphs seven names,
4 and the Human Resources department contacted each of them and arranged for testing. As days passed,
5 Ralphs received calls from other associates stating that Ephriam had told them to call. (Deguia-Jones
6 Dec. ¶ 9, p. 5, lines 17-19.)

7
8
9 **III. CONCLUSION**

10 The evidence before the Court proves that Plaintiffs cannot meet their burden of
11 establishing a likelihood of success, nor can they establish that the perceived benefits of their requested
12 relief would outweigh the catastrophic consequences of shutting down the Compton warehouse. For all
13 of the foregoing reasons, the Court should deny Plaintiffs’ Application for a TRO without setting a
14 hearing for a preliminary injunction. ²

15
16
17 Dated: July 22, 2020

BURKHALTER KESSLER CLEMENT & GEORGE LLP

18 By: /s/Michael Oberbeck

19 Daniel J. Kessler, Esq.

20 Michael Oberbeck, Esq.

21 Attorneys for Specially Appearing Defendant Ralphs Grocery
22 Company

23
24
25
26
27 ² In the event that the Court is inclined to set a hearing for a preliminary injunction, Defendant requests
28 that the Court allow further briefing so that Defendant may respond more substantively given the short
notice provided for this ex parte application.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am employed in the County of Orange, State of California. I am over the age of 18 years
4 and not a party to the within action; my business address is 2020 Main Street, Suite 600, Irvine, California
5 92614.

6 On **July 22, 2020** I caused the foregoing document described as **DEFENDANT**
7 **RALPHS GROCERY COMPANY’S OPPOSITION TO PLAINTIFFS’ EX PARTE**
8 **APPLICATION FOR A TEMPORARY RESTRAINING ORDER; MEMORANDUM OF**
9 **POINTS AND AUTHORITIES IN SUPPORT THEREOF** to be served on the interested parties in
this action by placing the original a true copy thereof enclosed in a sealed envelope
addressed as stated on the attached service list.

10 **BY ELECTRONIC TRANSMISSION**

11 I sent via electronic transmission on this date a copy of the above-referenced
12 document to the addressee stated on the attached Service List.

13 **(State)** I declare under penalty of perjury under the laws of the State of California that the
14 above is true and correct.

15 **(Federal)** I declare that I am employed in the office of a member of the bar of this court at
16 whose direction the service was made.

17 Executed on **July 22, 2020** at **Irvine, California**.

18 /s/Francine Villeta
19 FRANCINE VILLETA

SERVICE LIST

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