



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156



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December 2, 2021

Whole Foods Market, Inc.  
550 Bowie Street  
Austin, TX 78703-4644

Re: WHOLE FOODS MARKETS, INC.  
Case 01-CA-263079

Dear Sir or Madam:

Enclosed is a copy of the first amended charge that has been filed in this case.

**Investigator:** This charge is being investigated by Attorney MATT PETERSON whose telephone number is (628)221-8868. If the agent is not available, you may contact Supervisory Attorney JENNIFER BENESIS whose telephone number is (628)221-8846.

**Presentation of Your Evidence:** As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

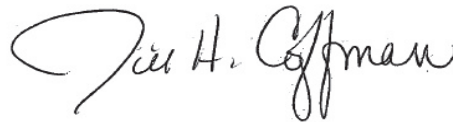
**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its

determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" and last name "Coffman" clearly distinguishable.

JILL H. COFFMAN  
Regional Director

Enclosure: Copy of first amended charge

cc: Jeremy M. Brown, Esquire  
Epstein, Becker & Green P.C.  
One Gateway Center  
Newark, NJ 07102-5310

RyAnn McKay Hooper, Atty.  
Epstein Becker Green  
875 Third Avenue  
New York, NY 10022

Adam S. Forman, Esq.  
Epstein, Becker & Green P.C.  
2000 Town Center, Suite 1900  
Southfield, MI 48075



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December 2, 2021

(b) (6), (b) (7)(C)

Re: WHOLE FOODS MARKETS, INC.  
Case 01-CA-263079

Dear (b) (6), (b) (7)(C):

We have docketed the first amended charge that you filed in this case.

**Investigator:** This charge is being investigated by Attorney MATT PETERSON whose telephone number is (628)221-8868. If the agent is not available, you may contact Supervisory Attorney JENNIFER BENESIS whose telephone number is (628)221-8846.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

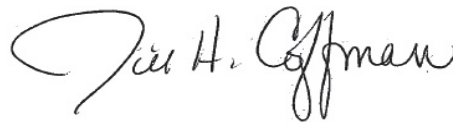
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If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" and last name "Coffman" clearly distinguishable.

JILL H. COFFMAN  
Regional Director

cc: Shannon Liss-Riordan, ESQ.  
Lichten & Liss-Riordan, P.C.  
729 Boylston St Ste 2000  
Boston, MA 02116

Anastasia Doherty, Esquire  
Lichten & Liss-Riordan, P.C.  
729 Boylston Street, Suite 2000  
Boston, MA 02116

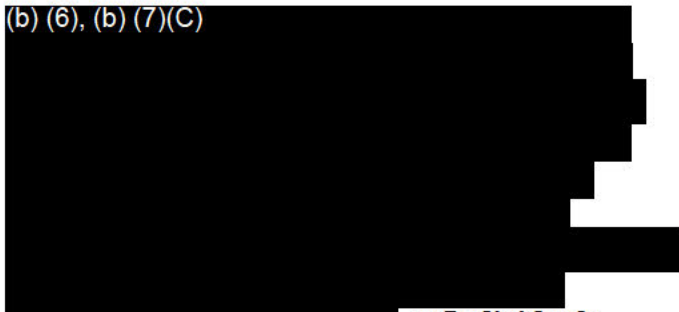
Matthew Patton, Esq.  
Lichten & Liss-Riordan, P.C.  
729 Boylston Street, Suite 2000  
Boston, MA 02116

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**WHOLE FOODS MARKET SERVICES, INC.**

**and**

(b) (6), (b) (7)(C)



**as Individuals**

**Cases 01-CA-263079; 01-CA-263108;  
01-CA-264917; 01-CA-265183;  
01-CA-266440; 01-CA-273840;  
04-CA-262738; 04-CA-263142;  
04-CA-264240; 04-CA-264841;  
05-CA-264906; 05-CA-266403;  
10-CA-264875; 19-CA-263263;  
20-CA-264834; 25-CA-264904;  
32-CA-263226; 32-CA-266442**

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charges filed by (b) (6), (b) (7)(C) in Cases 01-CA-263079 and 01-CA-266440, (b) (6), (b) (7)(C) in Case 01-CA-263108, (b) (6), (b) (7)(C) in Case 01-CA-264917, (b) (6), (b) (7)(C) in Case 01-CA-265183, (b) (6), (b) (7)(C) in Case 01-CA-273840, (b) (6), (b) (7)(C) in Case 04-CA-262738, (b) (6), (b) (7)(C) in Case 04-CA-263142, (b) (6), (b) (7)(C) in Case 04-CA-264240, (b) (6), (b) (7)(C) in Case 04-CA-264841, (b) (6), (b) (7)(C) in Case 05-CA-264906, (b) (6), (b) (7)(C) in Case 05-CA-266403, (b) (6), (b) (7)(C) in Case 10-CA-264875, (b) (6), (b) (7)(C) in Case 19-CA-263263, (b) (6), (b) (7)(C) in Case 20-CA-264834, (b) (6), (b) (7)(C) in Case 25-CA-264904, (b) (6), (b) (7)(C) in Case 32-CA-263226, and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) in Case 32-CA-266442 against Whole Foods Market, Inc., herein referred to by its correct name, Whole Foods Market Services, Inc. (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.

(b) The first-amended charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.

(c) The charge in Case 01-CA-263108 was filed by (b) (6), (b) (7) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.

(d) The first-amended charge in Case 01-CA-263108 was filed by (b) (6), (b) (7) on October 28, 2021, and a copy was served by regular mail on Respondent on November 1, 2021, as corrected on November 5, 2021.

(e) The charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(f) The first-amended charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.

(g) The charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on August 24,

2020, and a copy was served by regular mail on Respondent on August 26, 2020.

(h) The first-amended charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.

(i) The charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on September 22, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.

(j) The first-amended charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.

(k) The charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on March 9, 2021, and a copy was served by regular mail on Respondent on March 10, 2021.

(l) The first-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on May 20, 2021, and a copy was served by regular mail on Respondent on May 24, 2021.

(m) The second-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

(n) The charge in Case 04-CA-262738 was filed by (b) (6), (b) (7)(C) on July 8, 2020, and a copy was served by regular mail on Respondent on July 9, 2020.

(o) The charge in Case 04-CA-263142 was filed by (b) (6), (b) (7)(C) on July 16, 2020, and a copy was served by regular mail on Respondent on July 17, 2020.

(p) The first-amended charge in Case 04-CA-263142 was filed by (b) (6), (b) (7)(C) on December 2, 2021, and a copy was served by regular mail on Respondent on December 2,



2021.

(q) The charge in Case 04-CA-264240 was filed by [REDACTED] on August 6, 2020, and a copy was served by regular mail on Respondent on August 7, 2020.

(r) The charge in Case 04-CA-264841 was filed by [REDACTED] on August 19, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(s) The first-amended charge in Case 04-CA-264841 was filed by [REDACTED] on September 8, 2020, and a copy was served by regular mail on Respondent on September 8, 2020.

(t) The second-amended charge in Case 04-CA-264841 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(u) The charge in Case 05-CA-264906 was filed by [REDACTED] on August 12, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(v) The first-amended charge in Case 05-CA-264906 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.

(w) The charge in Case 05-CA-266403 was filed by [REDACTED] on September 21, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.

(x) The first-amended charge in 05-CA-266403 was filed by [REDACTED] on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.

(y) The charge in Case 10-CA-264875 was filed by [REDACTED] on August 18,



2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(z) The first-amended charge in Case 10-CA-264875 was filed by (b) (6), (b) (7)(C) on November 1, 2021, and a copy was served by regular mail on Respondent on November 1, 2021.

(aa) The charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 21, 2020.

(bb) The first-amended charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(cc) The charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.

(dd) The first-amended charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.

(ee) The charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.

(ff) The first-amended charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on November 8, 2021, and a copy was served by regular mail on Respondent on November 9, 2021.

(gg) The charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 20, 2020.

(hh) The first-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on June 11, 2021, and a copy was served by regular mail on Respondent on June 11, 2021.

(ii) The second-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

(jj) The charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on September 21, 2020, and a copy was served by regular mail on Respondent on September 21, 2020.

(kk) The first-amended charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.

2. (a) At all material times, Respondent, a corporation with its headquarters located at 550 Bowie Street in Austin, Texas, has been engaged in the business of operating retail grocery stores at locations throughout the United States, including in Berkeley, California.

(b) During the calendar year ending December 31, 2020, in conducting its business operations described above in subparagraph 2(a), Respondent, derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 2(b), in conducting its business operations described above in subparagraph 2(a), Respondent purchased and received at its Berkeley, California store goods valued in excess of \$5,000 directly from outside the State of California.

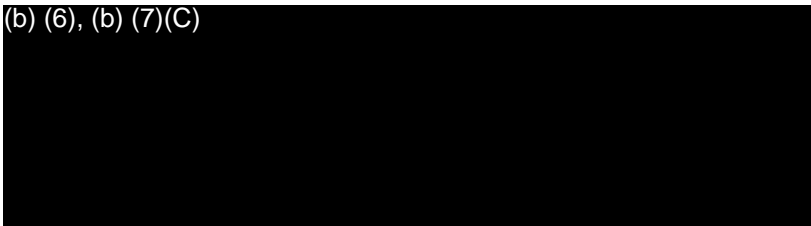
3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

4. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of

Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.


**At Respondent's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):**

(b) (6), (b) (7)(C)

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**At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):**

(b) (6), (b) (7)(C)

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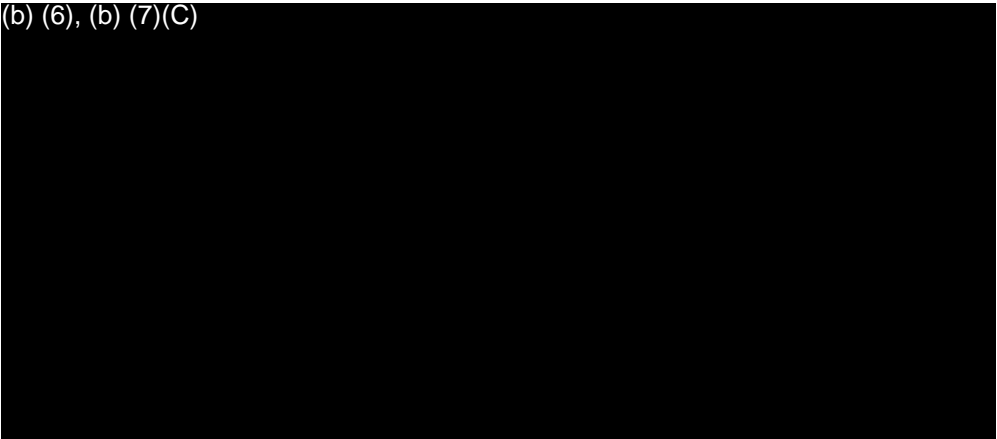
**At Respondent's Cambridge, Massachusetts store located store located in Fresh Pond (Case 01-CA-265183):**

(b) (6), (b) (7)(C)

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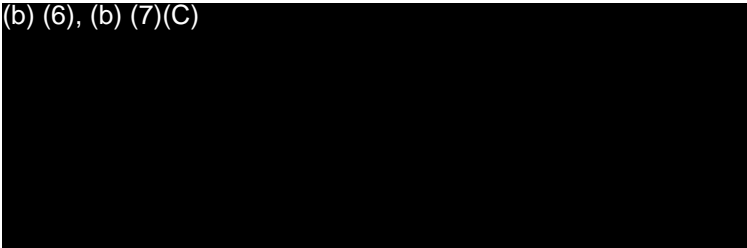
**At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):**

(b) (6), (b) (7)(C)

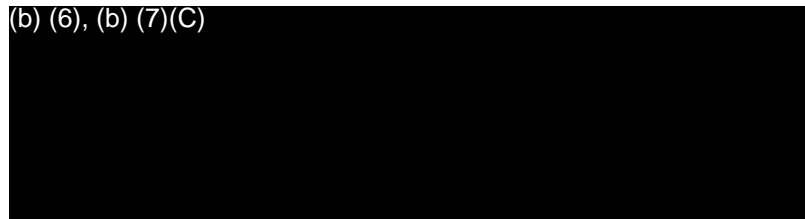
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**At Respondent's Marlton, New Jersey store (Case 04-CA-264841):**

(b) (6), (b) (7)(C)

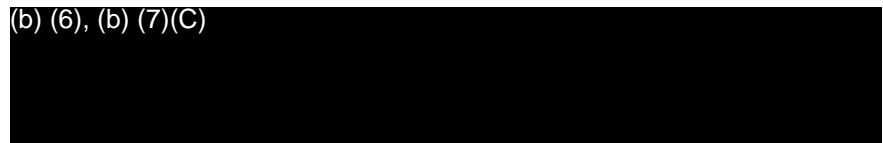
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(b) (6), (b) (7)(C)

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**At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):**

(b) (6), (b) (7)(C)

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**At Respondent's Columbia, Maryland store (Case 05-CA-266403):**

(b) (6), (b) (7)(C)

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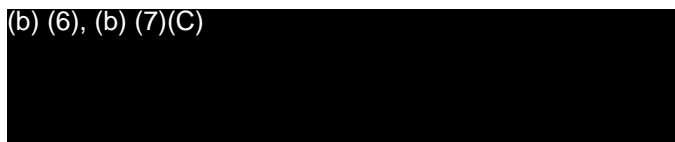
**At Respondent's Atlanta, Georgia store (Case 10-CA-264875):**

(b) (6), (b) (7)(C)

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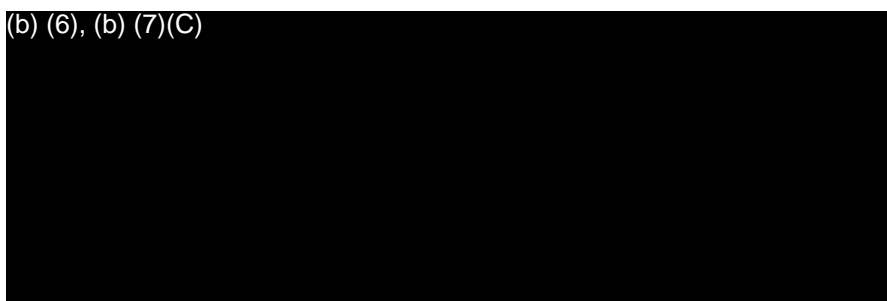
**At Respondent's Seattle, Washington store (Case 19-CA-2632630):**

(b) (6), (b) (7)(C)

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**At Respondent's Petaluma, California store (Case 20-CA-264834):**

(b) (6), (b) (7)(C)

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**At Respondent's Mishawaka, Indiana store (Case 25-CA-264904):**

(b) (6), (b) (7)(C)


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**At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):**

(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)



5. On various occasions since about June 2020, employees of Respondent, at its stores located throughout the United States, engaged in concerted activities for the purposes of mutual aid and protection by raising concerns about working conditions, including by wearing Black Lives Matter messaging at work.

6. (a) Since at least the dates listed below, Respondent has maintained and enforced the following appearance rules at its stores located throughout the United States (collectively, the Appearance Rules).

(i) Since at least April 2020, the Face Mask Standard Operating Procedure (Face Mask SOP), which provides, in relevant part:

“[H]omemade or reusable cloth masks must adhere to [Respondent’s] dress code as outlined in the GIG; any mask or protective equipment must be without any visible slogan, message, logo or advertising;”

(ii) Since at least May 2020, the dress code policy in Respondent’s National General Information Guide (GIG Dress Code Policy), which provides, in relevant part:

. . . .

Following are the basic, minimum guidelines for all Whole Foods Market retail stores. The Regional Policies section of this guide may contain additional guidelines. You should also refer to your store or team’s individual guidelines for additional requirements. Team Members who work in Whole Foods Market support facilities or offices should consult their location’s specific guidelines.

. . .

- You must wear Whole Foods Market shirts/tops (or those from the Whole Foods Market family, for example Allegro Coffee; vendors/suppliers; or industry related

organizations with which we are affiliated) or shirts/tops without any visible slogan, message, logo or advertising on them. Where required, only store hats may be worn. Hats from other companies, including Whole Foods Market vendors, are not permitted. Aprons will be provided to Team Members working in a department that requires an apron to be worn.

- No visible offensive tattoos.

Please refer to your region or location for additional requirements, including guidelines for shorts, jewelry/piercings, and team-specific requirements. Your local Health Department may have additional dress code requirements for Team Members working in food preparation; your Team Leader will let you know of any such requirements. Remember, the final determination on the acceptability of your appearance at work is up to the leadership of the location where you work;

...

(iii) Since at least November 7, 2020, Respondent's update to the Dress Code policy in its Look Book (Updated Dress Code), provides, in relevant part:

"This policy applies to "apparel", [sic] which is defined as anything worn by or decorating Team Members, including all clothing, shoes, gloves, accessories (including eyewear), jewelry, piercings, belts, hats, and head coverings or other items worn in the hair. Except for Company-provided [Employer] uniforms, Company Logo Shirts, and the Exceptions and Variations identified below, apparel worn by Team Members must be without any visible symbol, flag, slogan, message, logo or advertising.

...

Nothing in this Dress Code policy shall prohibit a Team Member who works on the sales floor or when encountering customers during their working time from wearing a union-affiliated pin, button, or insignia for the purpose of supporting or opposing a labor organization or otherwise legally protected activity, provided that it is no larger than the [Employer-]provided name badge, non-distracting and otherwise adheres to the Dress Code."

(b) At all material times since their promulgation, Respondent has maintained and enforced the Appearance Rules described above in subparagraph 6(a) at its stores located throughout the United States to restrict employees from engaging in concerted activities for their mutual aid and protection, including to prohibit them from wearing Black Lives Matter messaging.

(c) Respondent promulgated the November 7, 2020 Updated Dress Code described above in subparagraph 6(a)(iii) in response to its employees' protected concerted activities, including their Black Lives Matter messaging, and to discourage its employees from engaging in protected concerted activities.

7. On various occasions since June 2020, at stores located throughout the United States, by various supervisors and managers, Respondent enforced the Appearance Rules described above in subparagraph 6(a) to restrict employees from engaging in concerted activities for their mutual aid and protection by wearing Black Lives Matter messaging in the workplace, including, but not limited to, the incidents described below:

**(a) At Respondent's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):**

(i) On various occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(iii) About (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks.

(iv) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.



(v) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) Charging Party (b) (6), (b) (7)(C) Charging Party (b) (6), (b) (7) and other employees for refusing to remove their Black Lives Matter masks.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.

(vii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7) and other employees for refusing to remove their Black Lives Matter masks.

(viii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7) and other employees for refusing to remove their Black Lives Matter masks.

(ix) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7) and other employees for refusing to remove their Black Lives Matter masks.

(x) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a final written warning and Charging Party (b) (6), (b) (7) a verbal warning due in part to their refusal to remove their Black Lives Matter masks and sent them home for refusing to remove their Black Lives Matter masks.

(xi) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7) a verbal warning due in part to (b) (6), (b) (7) refusal to remove (b) (6), (b) (7) Black Lives Matter mask and sent (b) (6), (b) (7) home for refusing to remove (b) (6), (b) (7) Black Lives Matter mask.

(xii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7) refusal to remove (b) (6), (b) (7) Black Lives Matter mask.

(xiii) On several occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, Respondent

issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter Mask.

(xiv) About (b) (6), (b) (7)(C) 2020, issued Charging Party (b) (6), (b) (7)(C) a final written warning due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**(b) At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):**

(i) On several occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), and other supervisors or managers instructed employees to remove Black Lives Matter masks, henna tattoos, and other messaging.

(ii) On an unknown date in about (b) (6), (b) (7)(C) 2020, Respondent sent home employee (b) (6), (b) (7)(C) and Charging Party (b) (6), (b) (7)(C) for refusing to remove Black Lives Matter masks and messaging.

**(c) At Respondent's Cambridge, Massachusetts store located in Fresh Pond (Case 01-CA-265183):**

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were not permitted to wear Black Lives Matter masks and would be sent home if they refused to remove them.

(ii) About (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove Black Lives Matter masks.

**(d) At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):**

(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks, pins, necklaces, or buttons, and threatened to take unspecified reprisals against employees if they refused.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a verbal warning for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

**(e) At Respondent's Marlton, New Jersey store (Case 04-CA-264841):**

(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

instructed employees to remove their Black Lives Matter masks and informed them that they would be sent home and subject to termination if they failed to do so.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**(f) At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):**

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to comply.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**(g) At Respondent's Columbia, Maryland store (Case 05-CA-266403):**

(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed

employees that they were prohibited from wearing Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C), 2020, Respondent constructively discharged

Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

**(h) At Respondent's Atlanta, Georgia store (Case 10-CA-264875):**

(i) About (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks, shirts, and other apparel.

(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter shirt.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent constructively discharged

Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

**(i) At Respondent's Seattle, Washington store (Case 19-CA-263263):**

(i) About (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to remove them.

(ii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party

(b) (6), (b) (7)(C) and employees (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and others for refusing to remove their Black Lives Matter masks.

(iii) About (b) (6), (b) (7)(C) Respondent issued a verbal counseling to Charging Party (b) (6), (b) (7)(C), due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iv) About (b) (6), (b) (7)(C) 2020, Respondent issued a written warning to Charging Party (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(v) About (b) (6), (b) (7)(C) 2020, Respondent issued a final written warning to Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vii) In the alternative, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

**(j) At Respondent's Petaluma, California store (Case 20-CA-264834):**

(i) On various occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a number of disciplinary actions for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(k) At Respondent's Mishawaka, Indiana store (Case 25-CA-264904), about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed employees that they were required to remove their Black Lives Matter masks.

(l) At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):

(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

(ii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iii) About (b) (6), (b) (7)(C), 2020, Respondent fired Charging Party (b) (6), (b) (7)(C)

due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

(iv) In the alternative to subparagraph 7(l)(iii) above, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.

(v) About (b) (6), (b) (7)(C) 2020, Respondent issued discipline to Charging Party (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vi) About (b) (6), (b) (7)(C) 2020, Respondent issued a final written warning to Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

(vii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**(m) At Respondent's various facilities nationwide (all Cases),** on dates unknown to Counsel for the General Counsel, Respondent's supervisors and agents sent home, disciplined, and fired other employees (whose identities are unknown to Counsel for General Counsel but are known to Respondent) because those employees engaged in the conduct described above in paragraph 5.

8. Respondent engaged in the conduct described above in subparagraphs 7(a) through 7(m) because employees engaged in the conduct described above in paragraph 5 and to discourage employees from engaging in this and other concerted activity.

9. By the conduct described above in paragraphs 7 and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act



10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **REMEDIES**

WHEREFORE, as the unfair labor practice violations alleged above occurred in various states and regions throughout the United States and involve rules that apply at all of Respondent's stores, and as it is highly likely that other employees who are presently unknown to the General Counsel but known to Respondent have been similarly harmed by the unfair labor practices alleged above and are entitled to a remedy, the General Counsel seeks an Order requiring Respondent to: (1) make all employees whole for all losses incurred as a result of Respondent's unlawful conduct, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct; (2) rescind the rules found to be unlawful; (3) post in all of its Whole Foods stores throughout the United States any Notice to Employees that may issue in this proceeding; and (4) electronically post the Notice to Employees at all of its Whole Foods stores throughout the United States if it customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before December 17, 2021.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the NLRB Case Number,

and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on March 1, 2022, at 9 a.m. in the Natalie P. Allen Courtroom (4<sup>th</sup> Floor), 901 Market Street, Suite 400, San Francisco, California, or by any method or means as ordered by the administrative law judge, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the

right to appear and present testimony regarding the allegations in this consolidated complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form  
NLRB-4338.

Dated: December 3, 2021



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JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 01-CA-263079

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

**in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.




**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**WHOLE FOODS MARKET SERVICES, INC.<sup>1</sup>**

**And**

(b) (6), (b) (7)(C)



<b>Cases 01-CA-263079;</b>	<b>01-CA-263108;</b>
<b>01-CA-264917;</b>	<b>01-CA-265183;</b>
<b>01-CA-266440;</b>	<b>01-CA-273840;</b>
<b>04-CA-262738;</b>	<b>04-CA-263142;</b>
<b>04-CA-264240;</b>	<b>04-CA-264841;</b>
<b>05-CA-264906;</b>	<b>05-CA-266403;</b>
<b>10-CA-264875;</b>	<b>19-CA-263263;</b>
<b>20-CA-264834;</b>	<b>25-CA-264904;</b>
<b>32-CA-263226;</b>	<b>32-CA-266442</b>

(b) (6), (b) (7)(C)

**as Individuals**

**RESPONDENT WHOLE FOODS MARKET’S ANSWER TO ORDER  
CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF  
HEARING, AND ADDITIONAL AND AFFIRMATIVE DEFENSES**

Respondent Whole Foods Market (“WFM”), as herein defined, in response to the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the “Complaint”) issued by the Regional Director, Region 20 of the National Labor Relations Board (“Counsel for the General Counsel”), pursuant to Rules 102.20 and 102.21 of the National Labor Relations Board’s Rules and Regulations, hereby answers the Complaint as follows.

**GENERAL DENIAL**

Except as otherwise expressly admitted herein, and without limitation, WFM denies each and every allegation contained in the Complaint and specifically denies that it violated the National Labor Relations Act, as amended (the “NLRA” or the “Act”), as alleged in the

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<sup>1</sup> As described herein, the Complaint erroneously names Whole Foods Market Services, Inc. as the Respondent. The Charging Parties and all Team Members working in Whole Foods Market brand stores in the United States were and are employed by various subsidiaries of Whole Foods Market, Inc., which itself is a corporate holding company with no employees. Whole Foods Market Services, Inc. is another subsidiary of Whole Foods Market, Inc. that has not itself employed any of the alleged discriminatees who worked or are working in Whole Foods Market brand stores.

Complaint. Pursuant to Section 102.23 of the Board's Rules and Regulations, WFM reserves the right to amend its Answer.

**“ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND  
NOTICE OF HEARING”**

*Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charges filed by (b) (6), (b) (7)(C) in Cases 01-CA-263079 and 01-CA-266440, (b) (6), (b) (7)(C) in Case 01-CA-263108, (b) (6), (b) (7)(C) in Case 01-CA-264917, (b) (6), (b) (7)(C) in Case 01-CA-265183, (b) (6), (b) (7)(C) in Case 01-CA-273840, (b) (6), (b) (7)(C) in Case 04-CA-262738, (b) (6), (b) (7)(C) in Case 04-CA-263142, (b) (6), (b) (7)(C) in Case 04-CA-264240, (b) (6), (b) (7)(C) in Case 04-CA-264841, (b) (6), (b) (7)(C) in Case 05-CA-264906, (b) (6), (b) (7)(C) in Case 05-CA-266403, (b) (6), (b) (7)(C) in Case 10-CA-264875, (b) (6), (b) (7)(C) in Case 19-CA-263263, (b) (6), (b) (7)(C) in Case 20-CA-264834, (b) (6), (b) (7)(C) in Case 25-CA-264904, (b) (6), (b) (7)(C) in Case 32-CA-263226, and (b) (6), (b) (7)(C) in Case 32-CA-266442 against Whole Foods Market, Inc., herein referred to by its correct name, Whole Foods Market Services, Inc. (Respondent), are consolidated.*

*This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.*

**Answer:** WFM denies that Whole Foods Market Services, Inc. is the correct name of either Respondent or Whole Foods Market, Inc. Whole Foods Market Services, Inc. has not employed any of the alleged discriminatees who worked or are working at any Whole Foods Market brand store in the United States. Whole Foods Market Services, Inc. is a subsidiary of Whole Foods Market, Inc., which itself is a corporate holding company employing no one. Team Members working in Whole Foods Market brand stores throughout the United States (including the alleged discriminatees named in the Complaint) were and/or are employed by various operating subsidiaries of Whole Foods Market, Inc., which are collectively referred to herein as “Whole Foods Market,” “WFM,” or “Respondent.” Stating further, the Whole Foods Market brand stores named in the Complaint are operated by the respective Whole Foods Market, Inc. subsidiaries shown below:

WFM Entity	WFM Store	Case Number
Whole Foods Market Group Inc	River Street, MA	01-CA-263079, 01-CA-263108, 01-CA-266440, 01-CA-273840
Whole Foods Market Group Inc	Bedford, NH	01-CA-264917
Whole Foods Market Group Inc	Fresh Pond, MA	01-CA-265183
Whole Foods Market Group Inc	South Street, PA	04-CA-262738, 04-CA-263142, 04-CA-264240
Whole Foods Market Group Inc	Marlton, NJ	04-CA-264841
Whole Foods Market Group Inc	Glenn Allen, VA	05-CA-264906
Whole Foods Market Group Inc	Columbia, MD	05-CA-266403
Whole Foods Market Group Inc	Atlanta, GA	10-CA-264875
Whole Foods Market Pacific Northwest Inc	Seattle, WA	19-CA-263263
Whole Foods Market California, Inc	Petaluma, CA	20-CA-264834
Whole Foods Market Group Inc	Mishawaka, IN	25-CA-264904
Whole Foods Market California, Inc	Berkeley, CA	32-CA-263226, 32-CA-266442

### ANSWERS TO COMPLAINT ALLEGATIONS

*1.(a) The charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(b) The first-amended charge in Case 01-CA-263079 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(c) The charge in Case 01-CA-263108 was filed by (b) (6), (b) (7) on July 15, 2020, and a copy was served by regular mail on Respondent on July 16, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(d) The first-amended charge in Case 01-CA-263108 was filed by (b) (6), (b) (7) on October 28, 2021, and a copy was served by regular mail on Respondent on November 1, 2021, as corrected on November 5, 2021.*

**Answer:** WFM denies that the first-amended charge in Case 01-CA-263108 was filed by (b) (6), (b) (7) on October 28, 2021, where the charge was “corrected” and thereby amended between November 1 and 5, 2021, and where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(e) The charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(f) The first-amended charge in Case 01-CA-264917 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(g) The charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on August 24, 2020, and a copy was served by regular mail on Respondent on August 26, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(h) The first-amended charge in Case 01-CA-265183 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 2, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(i) The charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on September 22, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(j) The first-amended charge in Case 01-CA-266440 was filed by (b) (6), (b) (7)(C) on November 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on November 2, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(k) The charge in Case 01-CA-273840 was filed by (b) (6), (b) (7) on March 9, 2021, and a copy was served by regular mail on Respondent on March 10, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(l) The first-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7) on May 20, 2021, and a copy was served by regular mail on Respondent on May 24, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(m) The second-amended charge in Case 01-CA-273840 was filed by (b) (6), (b) (7) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.*

**Answer:** WFM denies that [REDACTED] filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(n) The charge in Case 04-CA-262738 was filed by [REDACTED] on July 8, 2020, and a copy was served by regular mail on Respondent on July 9, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(o) The charge in Case 04-CA-263142 was filed by [REDACTED] on July 16, 2020, and a copy was served by regular mail on Respondent on July 17, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(p) The first-amended charge in Case 04-CA-263142 was filed by [REDACTED] on December 2, 2021, and a copy was served by regular mail on Respondent on December 2, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(q) The charge in Case 04-CA-264240 was filed by [REDACTED] on August 6, 2020, and a copy was served by regular mail on Respondent on August 7, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(r) The charge in Case 04-CA-264841 was filed by [REDACTED] on August 19, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.



*(s) The first-amended charge in Case 04-CA-264841 was filed by (b) (6), (b) (7)(C) on September 8, 2020, and a copy was served by regular mail on Respondent on September 8, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(t) The second-amended charge in Case 04-CA-264841 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(u) The charge in Case 05-CA-264906 was filed by (b) (6), (b) (7)(C) on August 12, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(v) The first-amended charge in Case 05-CA-264906 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(w) The charge in Case 05-CA-266403 was filed by (b) (6), (b) (7)(C) on September 21, 2020, and a copy was served by regular mail on Respondent on September 22, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.



*(x) The first-amended charge in 05-CA-266403 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 5, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(y) The charge in Case 10-CA-264875 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(z) The first-amended charge in Case 10-CA-264875 was filed by (b) (6), (b) (7)(C) on November 1, 2021, and a copy was served by regular mail on Respondent on November 1, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on November 1, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(aa) The charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 21, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(bb) The first-amended charge in Case 19-CA-263263 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without

sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(cc) The charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 19, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(dd) The first-amended charge in Case 20-CA-264834 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on October 29, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(ee) The charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on August 18, 2020, and a copy was served by regular mail on Respondent on August 20, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(ff) The first-amended charge in Case 25-CA-264904 was filed by (b) (6), (b) (7)(C) on November 8, 2021, and a copy was served by regular mail on Respondent on November 9, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on November 8, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(gg) The charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on July 17, 2020, and a copy was served by regular mail on Respondent on July 20, 2020.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(hh) The first-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on June 11, 2021, and a copy was served by regular mail on Respondent on June 11, 2021.*

**Answer:** WFM is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

*(ii) The second-amended charge in Case 32-CA-263226 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(jj) The charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on September 21, 2020, and a copy was served by regular mail on Respondent on September 21, 2020.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the charge on September 21, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*(kk) The first-amended charge in Case 32-CA-266442 was filed by (b) (6), (b) (7)(C) on October 28, 2021, and a copy was served by regular mail on Respondent on November 3, 2021.*

**Answer:** WFM denies that (b) (6), (b) (7)(C) filed the first-amended charge on October 28, 2021, where the signature and the typed name of the listed Charging Party are different. Further, WFM is without sufficient knowledge or information so as to form a belief as to the date of service and on that basis denies the same.

*2. (a) At all material times, Respondent, a corporation with its headquarters located at 550 Bowie Street in Austin, Texas, has been engaged in the business of operating retail grocery stores at locations throughout the United States, including in Berkeley, California.*

**Answer:** WFM admits the address of Whole Foods Market, Inc. is 550 Bowie Street, Austin, Texas, and that together through Whole Foods Market, Inc.'s subsidiary Whole Foods Market California, Inc. the Respondent operates the Whole Foods Market brand store in Berkeley, California.

*(b) During the calendar year ending December 31, 2020, in conducting its business operations described above in subparagraph 2(a), Respondent, derived gross revenues in excess of \$500,000.*

**Answer:** Admit.

*(c) During the period of time described above in subparagraph 2(b), in conducting its business operations described above in subparagraph 2(a), Respondent purchased and received at its Berkeley, California store goods valued in excess of \$5,000 directly from outside the State of California.*

**Answer:** Admit.

*3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.*

**Answer:** Admit.

*4. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.*

*At Respondent's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):*  
(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840), WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Upon information and belief, WFM believes that (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C). WFM admits

that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of 2(11) or an agent of WFM within the meaning of 2(13) of the Act. WFM denies the remaining allegations in Paragraph 4 with respect to the River Street, Cambridge, Massachusetts store.

***At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Bedford, New Hampshire store (Case 01-CA-264917), WFM admits that at all material times (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. Further, at all material times, (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Bedford, New Hampshire store.

***At Respondent's Cambridge, Massachusetts store located store located in Fresh Pond (Case 01-CA-265183):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Cambridge, Massachusetts store located on Fresh Pond (Case 01-CA-265183), upon information and belief, (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C). WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. At all material times, (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM also admits that at all

material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of 2(11) or an agent of WFM within the meaning of 2(13) of the Act. WFM denies the remaining allegations in Paragraph 4 with respect to the Fresh Pond, Cambridge, Massachusetts store.

***At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240), WFM admits that, at all material times, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the South Street store.

***At Respondent's Marlton, New Jersey store (Case 04-CA-264841):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Marlton, New Jersey store (Case 04-CA-264841), WFM admits that, at all material times, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). At all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies that at all material times (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were supervisors within the meaning of 2(11) or agents of WFM within the meaning of 2(13) of the Act. WFM denies the remaining allegations in Paragraph 4 with respect to the Marlton, New Jersey store.

***At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's (b) (6), (b) (7)(C) store (Case 05-CA-264906), WFM admits that, at all material times, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. WFM also admits that at all material times (b) (6), (b) (7)(C) position as (b) (6), (b) (7)(C). Further, at all material times, (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Glenn Allen, Virginia store.

***At Respondent's Columbia, Maryland store (Case 05-CA-266403):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Columbia, Maryland store (Case 05-CA-266403), WFM admits that at all material times (b) (6), (b) (7)(C) was a

supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Columbia, Maryland store.

***At Respondent's Atlanta, Georgia store (Case 10-CA-264875):***  
(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Atlanta, Georgia store (Case 10-CA-264875), WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). At all material times, (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of 2(11) or an agent of WFM within the meaning of 2(13) of the Act. WFM denies the remaining allegations in Paragraph 4 with respect to the Atlanta, Georgia store.

***At Respondent's Seattle, Washington store (Case 19-CA-263263):***  
(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Seattle, Washington store (Case 19-CA-263263), WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Upon information and belief, (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C). WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Seattle, Washington store.



***At Respondent's Petaluma, California store (Case 20-CA-264834):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Petaluma, California store (Case 20-CA-264834), WFM admits that at all material times (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. WFM also admits that at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). Further, upon information and belief, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) refers to (b) (6), (b) (7)(C). At all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of 2(11) and an agent within the meaning of 2(13) of the Act. WFM denies the remaining allegations in Paragraph 4 with respect to the Petaluma, California store.

***At Respondent's Mishawaka, Indiana store (Case 25-CA-264904):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Mishawaka, Indiana store (Case 25-CA-264904), WFM admits that at all material times (b) (6), (b) (7)(C) was a supervisor within the meaning of Section 2(11) and an agent within the meaning of Section 2(13) of the Act. Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Mishawaka, Indiana store.

***At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):***

(b) (6), (b) (7)(C)

**Answer:** With respect to the allegations in Paragraph 4 pertaining to WFM's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442), WFM admits that at all material times (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) were supervisors within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act. WFM also admits that at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). Further, at all material times (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) position was (b) (6), (b) (7)(C). WFM denies the remaining allegations in Paragraph 4 with respect to the Berkley, California store.

*5. On various occasions since about June 2020, employees of Respondent, at its stores located throughout the United States, engaged in concerted activities for the purposes of mutual aid and protection by raising concerns about working conditions, including by wearing Black Lives Matter messaging at work.*

**Answer:** Deny.

*6. (a) Since at least the dates listed below, Respondent has maintained and enforced the following appearance rules at its stores located throughout the United States (collectively, the Appearance Rules).*

*(i) Since at least April 2020, the Face Mask Standard Operating Procedure (Face Mask SOP), which provides, in relevant part:*

*“[h]omemade or reusable cloth masks must adhere to [Respondent’s] dress code as outlined in the GIG; any mask or protective equipment must be without any visible slogan, message, logo or advertising;”*

**Answer:** WFM admits the allegations in Paragraph 6(a)(i).

*(ii) Since at least May 2020, the dress code policy in Respondent’s National General Information Guide (GIG Dress Code Policy), which provides, in relevant part:*

*...  
Following are the basic, minimum guidelines for all Whole Foods Market retail stores. The Regional Policies section of this guide may contain additional guidelines. You should also refer to your store or team’s individual guidelines for additional requirements. Team Members who work in Whole Foods Market support facilities or offices should consult their location’s specific guidelines.  
...*

*You must wear Whole Foods Market shirts/tops (or those from the Whole Foods Market family, for example Allegro Coffee; vendors/suppliers; or industry related organizations with which we are affiliated) or shirts/tops without any visible slogan, message, logo or advertising on them. Where required, only store hats may be worn. Hats from other companies, including Whole Foods Market vendors, are not permitted. Aprons will be provided to Team Members working in a department that requires an apron to be worn.*

*No visible offensive tattoos.*

*Please refer to your region or location for additional requirements, including guidelines for shorts, jewelry/piercings, and team-specific requirements. Your local Health Department may have additional dress code requirements for Team Members working in food preparation; your Team Leader will let you know of any such requirements. Remember, the final determination on the acceptability of your appearance at work is up to the leadership of the location where you work;*

...

**Answer:** With respect to the allegations in Paragraph 6(a)(ii), WFM admits that its National General Information Guide (GIG Dress Code Policy) was maintained and enforced since at least May 2020 through November 2, 2020. WFM denies the remaining allegations in Paragraph 6(a)(ii).

*(iii) Since at least November 7, 2020, Respondent's update to the Dress Code policy in its Look Book (Updated Dress Code), provides, in relevant part:*

*"This policy applies to "apparel", [sic] which is defined as anything worn by or decorating Team Members, including all clothing, shoes, gloves, accessories (including eyewear), jewelry, piercings, belts, hats, and head coverings or other items worn in the hair. Except for Company-provided [Employer] uniforms, Company Logo Shirts, and the Exceptions and Variations identified below, apparel worn by Team Members must be without any visible symbol, flag, slogan, message, logo or advertising.*

...

*Nothing in this Dress Code policy shall prohibit a Team Member who works on the sales floor or when encountering customers during their working time from wearing a union-affiliated pin, button, or insignia for the purpose of supporting or opposing a labor organization or otherwise legally protected activity, provided that*

*it is no larger than the [Employer-] provided name badge, non-distracting and otherwise adheres to the Dress Code.”*

**Answer:** WFM admits the allegations in Paragraph 6(a)(iii).

*(b) At all material times since their promulgation, Respondent has maintained and enforced the Appearance Rules described above in subparagraph 6(a) at its stores located throughout the United States to restrict employees from engaging in concerted activities for their mutual aid and protection, including to prohibit them from wearing Black Lives Matter messaging.*

**Answer:** WFM denies the allegations in Paragraph 6(b).

*(c) Respondent promulgated the November 7, 2020 Updated Dress Code described above in subparagraph 6(a)(iii) in Answer to its employees’ protected concerted activities, including their Black Lives Matter messaging, and to discourage its employees from engaging in protected concerted activities.*

**Answer:** WFM denies the allegations in Paragraph 6(c).

*7. On various occasions since June 2020, at stores located throughout the United States, by various supervisors and managers, Respondent enforced the Appearance Rules described above in subparagraph 6(a) to restrict employees from engaging in concerted activities for their mutual aid and protection by wearing Black Lives Matter messaging in the workplace, including, but not limited to, the incidents described below:*

**Answer:** WFM denies the allegations in Paragraph 7. Further, WFM objects to the allegation that “[o]n various occasions since June 2020, at stores located throughout the United States by various supervisors and managers” on the grounds that it is improperly vague so as to not provide WFM with sufficient notice to prepare its defense. WFM also objects to the allegation “including, but not limited to, the incidents described below” as an improper attempt to incorporate by vague and conclusory reference unidentified allegations of purported additional incidents not specifically pled in any of the charges consolidated into the Complaint.

*(a) At Respondent’s Cambridge, Massachusetts store located on River Street (Cases 01-CA-263079, 01-CA-263108, 20-CA-266440, and 01-CA-273840):*

*(i) On various occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)*

**(b) (6), (b) (7)(C)** instructed employees to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(i).

(ii) About **(b) (6), (b) (7)(C)**, 2020, Respondent sent home Charging Party **(b) (6), (b) (7)(C)** Charging Party **(b) (6), (b) (7)(C)** and other employees for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(ii).

(iii) About **(b) (6), (b) (7)(C)** 2020, **(b) (6), (b) (7)(C)** and **(b) (6), (b) (7)(C)** **(b) (6), (b) (7)(C)** instructed employees to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(iii).

(iv) About **(b) (6), (b) (7)(C)** 2020, Respondent sent home Charging Party **(b) (6), (b) (7)(C)** Charging Party **(b) (6), (b) (7)(C)** and other employees for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(iv).

(v) About **(b) (6), (b) (7)(C)** 2020, Respondent sent home Charging Party **(b) (6), (b) (7)(C)** Charging Party **(b) (6), (b) (7)(C)** Charging Party **(b) (6), (b) (7)(C)** and other employees for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(v).

(vi) About **(b) (6), (b) (7)(C)** 2020, Respondent sent home Charging Party **(b) (6), (b) (7)(C)** and other employees for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(vi).

(vii) About **(b) (6), (b) (7)(C)**, 2020, Respondent sent home Charging Party **(b) (6), (b) (7)(C)** and other employees for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(a)(vii).

*(viii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(viii).

*(ix) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove their Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(ix).

*(x) About (b) (6), (b) (7)(C), 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a final written warning and Charging Party (b) (6), (b) (7)(C) a verbal warning due in part to their refusal to remove their Black Lives Matter masks and sent them home for refusing to remove their Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(x).

*(xi) About (b) (6), (b) (7)(C), 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a verbal warning due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask and sent (b) (6), (b) (7)(C) home for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(xi).

*(xii) About (b) (6), (b) (7)(C), 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(xii).

*(xiii) On several occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter Mask.*

**Answer:** WFM denies the allegations in Paragraph 7(a)(xiii).

*(xiv) About (b) (6), (b) (7)(C), 2020, issued Charging Party (b) (6), (b) (7)(C) a final written warning due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*



**Answer:** WFM denies the allegations in Paragraph 7(a)(xiv).

***(b) At Respondent's Bedford, New Hampshire store (Case 01-CA-264917):***

*(i) On several occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and other supervisors or managers instructed employees to remove Black Lives Matter masks, henna tattoos, and other messaging.*

**Answer:** WFM denies the allegations in Paragraph 7(b)(i).

*(ii) On an unknown date in about (b) (6), (b) (7)(C) 2020, Respondent sent home employee (b) (6), (b) (7)(C) and Charging Party (b) (6), (b) (7)(C) for refusing to remove Black Lives Matter masks and messaging.*

**Answer:** WFM denies the allegations in Paragraph 7(b)(ii).

***(c) At Respondent's Cambridge, Massachusetts store located in Fresh Pond (Case 01-CA-265183):***

*(i) About (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were not permitted to wear Black Lives Matter masks and would be sent home if they refused to remove them.*

**Answer:** WFM denies the allegations in Paragraph 7(c)(i).

*(ii) About (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and other employees for refusing to remove Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(c)(ii).

***(d) At Respondent's Philadelphia, Pennsylvania store located on South Street (Cases 04-CA-262738, 04-CA-263142, and 04-CA-264240):***

*(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter*

*masks, pins, necklaces, or buttons, and threatened to take unspecified reprisals against employees if they refused.*

**Answer:** WFM denies the allegations in Paragraph 7(d)(i).

*(ii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a verbal warning for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.*

**Answer:** WFM denies the allegations in Paragraph 7(d)(ii).

*(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) verbal and written warnings for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.*

**Answer:** WFM denies the allegations in Paragraph 7(d)(iii).

**(e) At Respondent's Marlton, New Jersey store (Case 04-CA-264841):**

*(i) On various occasions in about (b) (6), (b) (7)(C) 2020 and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)*

*(b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks and informed them that they would be sent home and subject to termination if they failed to do so.*

**Answer:** WFM denies the allegations in Paragraph 7(e)(i).

*(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(e)(ii).

*(iii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(e)(iii).

**(f) At Respondent's Glenn Allen, Virginia store (Case 05-CA-264906):**

*(i) On various occasions in about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to comply.*



**Answer:** WFM denies the allegations in Paragraph 7(f)(i).

*(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(f)(ii).

**(g) At Respondent's Columbia, Maryland store (Case 05-CA-266403):**

*(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(g)(i).

*(ii) About (b) (6), (b) (7)(C) 2020, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.*

**Answer:** WFM denies the allegations in Paragraph 7(g)(ii).

**(h) At Respondent's Atlanta, Georgia store (Case 10-CA-264875):**

*(i) About (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) instructed employees to remove their Black Lives Matter masks, shirts, and other apparel.*

**Answer:** WFM denies the allegations in Paragraph 7(h)(i).

*(ii) About (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter shirt.*

**Answer:** WFM denies the allegations in Paragraph 7(h)(ii).

*(iii) About (b) (6), (b) (7)(C) 2020, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.*

**Answer:** WFM denies the allegations in Paragraph 7(h)(i).

**(i) At Respondent's Seattle, Washington store (Case 19-CA-263263):**

*(i) About (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home if they refused to remove them.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(i).

*(ii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) and employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and others for refusing to remove their Black Lives Matter masks.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(ii).

*(iii) About (b) (6), (b) (7)(C), Respondent issued a verbal counseling to Charging Party (b) (6), (b) (7)(C), due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(iii).

*(iv) About (b) (6), (b) (7)(C), 2020, Respondent issued a written warning to Charging Party (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(iv).

*(v) About (b) (6), (b) (7)(C), 2020, Respondent issued a final written warning to Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(v).

*(vi) About (b) (6), (b) (7)(C), 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(vi).

*(vii) In the alternative, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.*

**Answer:** WFM denies the allegations in Paragraph 7(i)(vii).

**(j) At Respondent's Petaluma, California store (Case 20-CA-264834):**

*(i) On various occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)*

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(j)(i).

(ii) About (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**Answer:** WFM denies the allegations in Paragraph 7(j)(ii).

(iii) About (b) (6), (b) (7)(C) 2020, Respondent issued Charging Party (b) (6), (b) (7)(C) a number of disciplinary actions for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.

**Answer:** WFM denies the allegations in Paragraph 7(j)(iii).

(k) At Respondent's Mishawaka, Indiana store (Case 25-CA-264904), about (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) informed employees that they were required to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(k).

(l) At Respondent's Berkeley, California store (Cases 32-CA-263226 and 32-CA-266442):

(i) On various occasions in about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed employees that they were prohibited from wearing Black Lives Matter masks and would be sent home and face discipline for refusing to remove their Black Lives Matter masks.

**Answer:** WFM denies the allegations in Paragraph 7(l)(i).

(ii) About (b) (6), (b) (7)(C), 2020, Respondent sent home Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

**Answer:** WFM denies the allegations in Paragraph 7(l)(ii).

(iii) About (b) (6), (b) (7)(C), 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) due in part to (b) (6), (b) (7)(C) refusal to remove (b) (6), (b) (7)(C) Black Lives Matter pin.

**Answer:** WFM denies the allegations in Paragraph 7(l)(iii).

*(iv) In the alternative to subparagraph 7(1)(iii) above, Respondent constructively discharged Charging Party (b) (6), (b) (7)(C) by forcing (b) (6), (b) (7)(C) to choose between continued employment with Respondent and wearing Black Lives Matter messaging at work.*

**Answer:** WFM denies the allegations in Paragraph 7(1)(iv).

*(v) About (b) (6), (b) (7)(C), 2020, Respondent issued discipline to Charging Party (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(1)(v).

*(vi) About (b) (6), (b) (7)(C) 2020, Respondent issued a final written warning to Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(1)(vi).

*(vii) About (b) (6), (b) (7)(C) 2020, Respondent fired Charging Party (b) (6), (b) (7)(C) for refusing to remove (b) (6), (b) (7)(C) Black Lives Matter mask.*

**Answer:** WFM denies the allegations in Paragraph 7(1)(vi).

*(m) At Respondent's various facilities nationwide (all Cases), on dates unknown to Counsel for the General Counsel, Respondent's supervisors and agents sent home, disciplined, and fired other employees (whose identities are unknown to Counsel for General Counsel but are known to Respondent) because those employees in engaged in the conduct described above in paragraph 5.*

**Answer:** WFM denies the allegations in Paragraph 7(m). Further, WFM objects to the vagueness of this allegation that at "various facilities nationwide (all Cases), on dates unknown to Counsel for the General Counsel, Respondent's supervisors and agents sent home, disciplined, and fired other employees (whose identities are unknown to Counsel for General Counsel but are known to Respondent) because those employees engaged in conduct described above in paragraph 5," on the grounds that it is improperly vague so as to not provide WFM with sufficient notice to prepare its defense. WFM also objects to the allegation as an improper attempt to incorporate by vague and conclusory reference unidentified allegations of purported additional incidents not specifically pled in any of the charges consolidated into the Complaint.

*8. Respondent engaged in the conduct described above in subparagraphs 7(a) through 7(m) because employees engaged in the conduct described above in paragraph 5 and to discourage employees from engaging in this and other concerted activity.*

**Answer:** Deny.

*9. By the conduct described above in paragraphs 7 and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.*

**Answer:** Deny.

*10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.*

**Answer:** Deny.

### ***REMEDIES***

*WHEREFORE, as the unfair labor practice violations alleged above occurred in various states and regions throughout the United States and involve rules that apply at all of Respondent's stores, and as it is highly likely that other employees who are presently unknown to the General Counsel but known to Respondent have been similarly harmed by the unfair labor practices alleged above and are entitled to a remedy, the General Counsel seeks an Order requiring Respondent to: (1) make all employees whole for all losses incurred as a result of Respondent's unlawful conduct, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct; (2) rescind the rules found to be unlawful; (3) post in all of its Whole Foods stores throughout the United States any Notice to Employees that may issue in this proceeding; and (4) electronically post the Notice to Employees at all of its Whole Foods stores throughout the United States if it customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.*

**Answer:** WFM answers the unnumbered and unlettered paragraph below the "REMEDIES" subheading on page 19 of the Complaint by denying that the General Counsel, the Charging Parties, or any individual is entitled to any remedy or relief in this matter. Rather, WFM respectfully requests that the Administrative Law Judge dismiss this Complaint in its entirety.



### **ADDITIONAL AND AFFIRMATIVE DEFENSES**

WFM asserts that following additional and affirmative defenses in this action, without regard to whether WFM bears the burden of proof on said defenses:

1. The Complaint fails to state a claim upon which relief may be granted.
2. The General Counsel's claims are barred, in whole or in part, to the extent that they exceed the scope of or are inconsistent with the charges and amended charges consolidated into the Complaint and served on WFM.
3. The General Counsel's claims are barred to the extent the amended charges are defective as they were improperly attested to when filed. Pursuant to §§102.11 and 102.12 of the Board's Rules and Regulations, charges pled in paragraphs 1(d), 1(f), 1(h), 1(j), 1(m), 1(t), 1(v), 1(x), 1(z), 1(bb), 1(ff), 1(ii), 1(jj), 1(kk) and any other charges similarly attested to are defective on their face because the signature and the typed name on the charge do not match. Accordingly, the charges pled in paragraphs 1(d), 1(f), 1(h), 1(j), 1(m), 1(t), 1(v), 1(x), 1(z), 1(bb), 1(ff), 1(ii), 1(jj), 1(kk) and any other such defective charges are invalid and should be dismissed.
4. The General Counsel's delay in issuing the Complaint in this matter has deprived WFM of due process, as the unwarranted passage of time has caused memories to fade and witnesses to move on with their lives.
5. The General Counsel's theory is an effort to expand the protections of Section 7 of the Act beyond current NLRB and judicial interpretation of the Act, and, as such, the Complaint should be dismissed in its entirety.
6. To the extent the General Counsel's theory is based on a change in extant Board Law, retroactive application would be manifestly inappropriate and unfair.

7. The alleged discriminates and Charging Parties did not engage in activities protected by Section 7 of the Act.
8. Employees do not have a protected right under Section 7 of the Act to display the phrase “Black Lives Matter” or “BLM” in the workplace.
9. WFM maintains a neutral dress code that is lawful under extant Board law.
10. The National Dress Code Policy contained in the GIG was promulgated pursuant to a National Labor Relations Board Informal Settlement Agreement approved by the Regional Directors of Region 1 and 13, and therefore any allegation concerning the legality of the dress code is precluded.
11. All discipline issued to employees was solely for violations of WFM’s neutral dress code policy after employees were invited and given a reasonable amount of time to conform with the WFM’s neutral dress code.
12. WFM’s actions at all times were based on legitimate, non-discriminatory and non-retaliatory factors, were taken in good faith in reliance on extant Board law, and WFM would have taken the same actions regardless of a person’s protected activity, if any.
13. The phrases “Black Lives Matter,” “BLM,” the “Black Lives Matter movement,” and/or “blacklivesmatter.org” are not objectively understood to relate to workplace issues or improving workplace conditions at WFM’s retail grocery stores or terms and conditions of employment generally.
14. Employees’ wearing of “Black Lives Matter” and/or “BLM” in Whole Foods Market brand stores was an exercise in political and/or social justice speech through which the alleged discriminates and Charging Parties sought to support societal changes outside the workplace and

control of WFM and without a nexus to any term or condition of employment at Whole Foods Market brand stores.

15. The following alleged discriminates and Charging Parties voluntarily resigned their employment with WFM and/or one of its subsidiaries, and were not involuntarily discharged: (b) (6), (b) (7)

(b) (6), (b) (7)(C).

16. WFM's enforcement of its lawful policies did not violate the Act under the special circumstances doctrine.

17. The alleged discriminates and/or Charging Parties activities lost any protection of the Act because their conduct constituted an intermittent or partial strike.

18. By bringing the instant action, the General Counsel seeks to compel employer speech by WFM in violation of the WFM's rights under the First Amendment to the United States Constitution, and enforcement of any Order from the Board to compel such speech would violate the Constitution.

19. By singling out the phrase "Black Lives Matter" the General Counsel is impermissibly favoring, and requiring that WFM favor, certain expressions of political speech over others in its retail grocery stores.

20. WFM's uniforms and logos, and the colors thereof, are trademarks belonging to WFM; the unauthorized display of any political message in conjunction with those trademarks constitutes an impermissible dilution of such trademarks and is inconsistent with 15 U.S.C. §§ 1127, et seq.

21. By maintaining the instant action, the General Counsel is unlawfully infringing upon and/or diluting WFM's protected trademarks in direct violation of 15 U.S.C. §§ 1127, et seq., and thus the present action and the General Counsel's prosecution of same violate federal law.




WFM reserves the right to raise any additional defenses not asserted herein of which it may become aware through investigation.

WHEREFORE, having fully answered the Complaint, WFM respectfully requests that this action be dismissed in its entirety, that judgment be issued in favor of WFM, and that the Board grant WFM such other relief as is just and proper.

Dated: December 17, 2021

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