

MAY 01 2025

Clerk of the Superior Court

By

DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

TRADER JOE'S WAGE AND HOUR CASES

Coordination Proceeding Special Title

(California Rules of Court, Rule 3.550)

Judicial Council Coordination Proceedings
No. 5196

Assigned for All Purposes to
Hon. Susan L. Greenberg, Dept. 3

**FINAL STATEMENT OF DECISION AND
ORDER AFTER SEATING CLAIMS
TRIAL**

(Code of Civil Procedure § 632, Cal. Rules of
Court 3.1590(f))

The following constitutes the Court's Final Statement of Decision and Order After Seating
Claims Trial.

The seating claims were bifurcated from the rest of the contested matters by order of this Court on
February 2, 2024. The above entitled matter came on for Court Trial on the matter of the seating claims
on July 22, July 23, July 24, July 26, July 29, July 30, August 2, August 9, August 28, and August 30,
2024, in Department 3 of the above entitled court. The Plaintiff (one of many in this JCCP) is Kathryn A.
Silicani (hereinafter "Silicani"), who was represented by her attorneys, Matthew Righetti, Esq. and Robin
G. Workman, Esq. Plaintiffs Randy Meirose and Antonio Arzate testified as lay witnesses, though their
attorneys were not present in this trial. Defendant is Trader Joe's Company (hereinafter "Trader Joe's"),
who was represented by its attorneys Susannah K. Howard, Esq. and Dawn Sestito, Esq.

The first complaint in Silicani's case, San Mateo County Superior Court Case No. 20-CIV-0668,

1 was filed on January 31, 2020. Subsequently, the operative complaint, the First Amended Complaint, was
2 filed on June 25, 2021.

3 The oral and documentary evidence was completed on August 30, 2024. Counsel and this Court
4 agreed that the ruling would be issued via Statement of Decision. Closing arguments occurred on August
5 30, 2024, and both parties agreed to submit Proposed Statements of Decision briefs on October 14, 2024.
6 Both parties submitted their objections to the other party's Proposed Statement of Decision on October
7 31, 2024.

8 The Court filed and served its Proposed Statement of Decision and Tentative Order After Seating
9 Claims Trial, pursuant to California Rule of Court, Rule 3.1590 *et seq.*, on January 8, 2025. The Court
10 has considered the oral and documentary evidence presented, the pleadings on file, and the arguments of
11 both parties. On January 27, 2025 Defendant filed Defendant Trader Joe's Company's Objections to
12 Proposed Statement of Decision and Tentative Order after Seating Claims Trial. On February 27, 2025,
13 Plaintiffs filed Plaintiffs' Response to Defendant's Objections to Proposed Statement of Decision and
14 Tentative Order after Seating Claims Trial. On March 3, 2025, Defendant filed Defendant Trader Joe's
15 Company's Reply to Plaintiffs' Response to Defendant's Objections to Proposed Statement of Decision
16 and Tentative Order after Seating Claims Trial.

17 On March 7, 2025, the Court entertained additional arguments of counsel regarding the Court's
18 Proposed Statement of Decision and Tentative Order after Seating Claims Trial. Attorney Robin G.
19 Workman, Esq. argued on behalf of Plaintiffs. Attorney Dawn Sestito, Esq. argued on behalf of
20 Defendants.

21 The Clerk is instructed to serve on all counsel a copy of this Final Statement of Decision
22 and Order after Seating Claims Trial. The Court has reviewed and considered all of the pleadings filed,
23 the testimony of the witnesses at trial, documents and evidence admitted during the course of the trial,
24 and the arguments of counsel. The undersigned judge, sitting without a jury, hereby renders its Final
25 Statement of Decision and Order after Seating Claims Trial as follows:
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FINDINGS

A. Witness Testimony Findings

The Court makes the following findings as to the testimony presented:

- (1) The Court finds that Ms. Stephanie Mesa-Wise's (hereinafter "Mesa-Wise") testimony is credible.
- (2) The Court finds that Ms. Laurie Mead's (hereinafter "Mead") testimony is credible.
- (3) The Court finds the Mr. Robert Newman's (hereinafter "Newman") testimony is credible.
- (4) The Court finds that Mr. Todd Rinella's (hereinafter "Rinella") testimony is credible.
- (5) The Court finds that Mr. Randy Meirose's (hereinafter "Meirose") testimony is credible.
- (6) The Court finds that Mr. Micah Solomon's (hereinafter "Solomon") testimony is credible. This Court finds that since Solomon visited twenty-one (21) Trader Joe's stores across the state, reviewed Trader Joe's internal documents, and reviewed a summary of the Walmart cashier seat study among other literature, that Solomon's basis for his opinions is solid, but could be stronger.
- (7) The Court finds that Ms. Cherisse Lezama-Wagner's (hereinafter "Lezama-Wagner") testimony is credible.
- (8) The Court finds that Mr. Antonio Arzate's (hereinafter "Arzate") testimony is credible.
- (9) The Court finds that Mr. Keaton Young's (hereinafter "Young") testimony is credible. This Court finds that Young's calculations were performed with the discovery responses that Trader Joe's provided, but also notes that Trader Joe's successfully objected to the production of the register log on/off transactional data for the cashiers and the crew member daily logs, arguing that a representative sample was already produced in February of 2024 to zero objection. During the trial, Mead testified that these documents were the best evidence of when crew members actually performed duties, *cf.* TT 299:18–300:5, 301:7–19, 302:8–303:3. However, upon Young's cross-examination, Trader Joe's counsel noted that these calculations could not consider the transactional data that was successfully withheld from evidence. Accordingly, this Court considers that though the damages calculation might have been performed with the transactional data with greater specificity, per the insistence of Trader Joe's, the discovery responses produced from Trader Joe's and the calculations derived from those responses should be credited as reliable and founded on admissible evidence.

1 (10) The Court finds that Ms. Martha Parker's (hereinafter "Parker") testimony is credible. This Court
2 finds that since Parker visited five (5) Trader Joe's stores, reviewed security footage from Trader
3 Joe's stores, Dr. Iyer's recorded video clips of cashiers performing work at Trader Joe's
4 checkstands and Dr. Iyer's report, Trader Joe's internal documents, and the configurations of
5 Trader Joe's checkstands, that Parker's basis for her opinions are sound.

6 (11) The Court finds that Dr. Anand Subrananian Iyer's (hereinafter "Dr. Iyer") testimony is credible,
7 but some of his opinions were not as well supported as others. This Court finds that since Dr. Iyer
8 reviewed videos of cashiers performing work at Trader Joe's checkstands and a wide variety of
9 literature, that Dr. Iyer's basis for his opinions are sound. However, this Court finds that since Dr.
10 Iyer was aware of some literature specific to grocery cashiers but chose not to include that
11 literature in his report, it weakens the basis for his opinions. This Court also notes that Dr. Iyer did
12 not perform a video analysis of the demo stations the same way he conducted an analysis of the
13 checkstands, and accordingly considers the basis for his opinions regarding demo stations to be
14 weaker compared to the basis for his opinions regarding checkstands.

15 (12) The Court finds that Ms. Kathryn Silicani's (hereinafter "Silicani") testimony is credible.

16 **B. Findings of Fact**

17 The Court makes the following findings of fact:

18 1. Trader Joe's organization, employee job functions, and stores

19 Trader Joe's Company ("Trader Joe's") is a national chain of neighborhood grocery stores, cf. Ex.
20 188 at TJS-0006369, that operates at least 190 stores in California. Undisputed Fact ("UF") No. 2.
21 Trader Joe's employs employees called "Crew Members," divided into the titles of "Crew, Merchants,
22 Mates, and Captains" in its stores. Trial Exhibit ("TE") 23; Trial Transcript ("TT") at 322:25-323:21.
23 Except for Captains, all other employees, i.e., Crew, Merchants, and Mates, are classified as nonexempt
24 employees, and each employee's duties encompass the running of the store. UF Nos. 3-4; TE 23. For
25 example, within a single shift, an employee's duties can include working cash registers, receiving and
26 unloading deliveries, stocking shelves, building displays, cleaning the floor, and answering questions
27 about products. TEs 16, 23; TT at 1240:3-9. Each Trader Joe's has their own policy regarding how long
28 employees are to work at the checkstand per shift. TE 188 at TJS-0006369; TT at 555:8-17. Some stores

1 require employees to work at checkstands for one or two hours per shift, *cf.* TT at 1069:23–24, and other
2 stores require employees to work at checkstands for two hours per shift, *cf.* TT at 780:14–19. While
3 working at a checkstand, employees are required to unload customer’s grocery carts and baskets. TE 15
4 at SILICANI-0000083; TT at 267:11–16, 295:4–12, 329:12–13, 590:19–25, 591:21–23, 626:7–17,
5 762:5–12, 785:12–14, 1072:10–11, 1074:7–11, 1099:13–20, 1100:5–22, 1223:14–20, 1346:14–20,
6 1643:6–10, 1808:5–7.

7 Trader Joe’s cashiers are responsible for the following tasks: (1) engaging the customer
8 throughout the transaction; (2) relieving customers of shopping carts and/or hand baskets; (3) unloading
9 products from shopping carts and hand baskets (with some products weighing ten pounds or more); (4)
10 scanning groceries; (5) using the keypad to type in codes for certain groceries; (6) moving groceries from
11 one end of the checkstand to the other and organizing them for prepare for bagging; (7) processing
12 payment, including cash transactions; (8) bagging groceries with care; (9) moving customer carts through
13 the checkstand area; and (10) loading carts with bagged groceries (with some bags weighing ten or more
14 pounds). TE 15 at SILICANI-0000083; TE 16; TT at 119:8–120:7, 626:16–23, 627:3–10, 627:19–628:1,
15 763:1–12.

16 In addition, Trader Joe’s also operates demonstration stations (i.e., “demo stations” or “demo”) in
17 which assigned employees prepare coffee and food for customers to sample, as well as educate customers
18 how to prepare food products. UF No. 18. Employees working at demo simultaneously function as prep
19 cooks, dishwashers, servers, entertainers, and product experts. TT at 368:4–10, 369:2–11, 1803:9–16. As
20 of January 31, 2019, Trader Joe’s stores used fixed-location demo stations and/or stands. UF No. 19.
21 From approximately March 12, 2020 to approximately September 30, 2022, Trader Joe’s suspended its
22 demo program for health and safety reasons arising out of the coronavirus pandemic. UF No. 20.
23 Beginning on approximately October 1, 2022, Trader Joe’s stores relaunched the demo station and began
24 using mobile demo carts in lieu of the fixed demo stations and/or stands. UF No. 21. These carts are set
25 up at various places throughout each store and are attended by an employee who hands samples to
26 customers and educates customers on the sample products. *Ibid.* At least since October 1, 2022, demo is
27 not open during all store hours, nor even regularly open. TT at 368:15–24, 605:9–23, 982:20–25. The
28 frequency and timing of demo varies by store and is at the discretion of each store’s Captain. TT at

1 605:9–23.

2 Trader Joe’s demo workers have always been responsible for the following tasks: (1) frequent
3 hand washing, changing gloves, and practicing good food safety hygiene standards; (2) cleaning and
4 sanitizing the station, emptying the trash, and washing dishes; (3) preparing food in small batches to
5 ensure freshness and proper temperature; (4) plating and replenishing samples; (5) engaging with
6 customers; (6) making and refilling coffee or tea, replenishing sugar and cream, and cleaning the coffee
7 station; (7) replenishing displays of featured products for customers to purchase; and (8) handing
8 customers samples. TE 35; TE 39; TE 41; TT at 369:1–11, 603:15–604:2, 662:23–663:20, 1717:17–24,
9 1796:18–20. Since the end of the coronavirus pandemic and the restarting of the demo program, the only
10 job duty that has been modified is that employees must often move between the kitchen and the demo
11 cart to prepare and serve samples. TT at 369:12–370:2, 606:6–607:6. Otherwise, employees will prepare
12 hot food on the sales floor. TE 646; TT at 606:6–607:6, 1408:11–18.

13 The physical store layout of the various Trader Joe’s grocery stores in California—including the
14 layout of the checkstand area—varies across Trader Joe’s stores. *Compare* TE 235 with TE 239; TE 240.
15 The most common iterations of Trader Joe’s checkstands are the three-foot checkstand, most commonly
16 used in urban stores, and five-foot checkstands, used in the vast majority of all other California stores.
17 TT at 537:4–10, 652:21–653:15, 684:8–20; TE 88. For each of these checkstands, Trader Joe’s has a left-
18 and right-oriented version so that checkstands can be placed back-to-back and Crew Members can switch
19 between the two versions for ergonomics purposes. TT at 346:3–5, 469:6–17. Checkstands in Trader
20 Joe’s California stores are not, and have never been, equipped with conveyer belts. UF No. 17. The
21 checkstands do require electricity for the computer point-of-sale system, computer, and credit card
22 machine, and the electricity gets to the checkstands from a Walkerdut installed in the floor or through
23 electric poles installed in the ceiling. TT at 491:11–24. Thus, if the checkstands were to move, Trader
24 Joe’s would also have to move the power source along with them. TT at 492:5–14.

25 Demo stations vary depending on the store configuration and location of the cart that day. TE
26 646; TT at 605:24–606:5, 608:9–11, 1439:14–1440:10. The mobile demo carts are placed anywhere on
27 the sales floor, including along the aisles or edges of the aisles, with limited space behind them. TT at
28 1409:16–25. The configuration of the mobile demo carts also varies across stores—some carts have basic

1 doors or shelves, some are open-ended, some are metallic carts, and some are box-type carts. TE 646; TT
2 at 1407:15–25. None of the mobile demo carts have knee or thigh clearance. TT at 1408:2–5.

3 2. Trader Joe's attempts (or lack thereof) to comply with statutory requirements

4 Trader Joe's called three current employees as percipient witnesses at trial in defense of its failure
5 to provide its crew members the opportunity to use seats when performing cashiering or demo duties.
6 Laurie Mead, its Senior Vice President of Human Resources, who has worked for Trader Joe's for 20
7 years in the Vice President of Human Resources position, *cf.* TT 170:4–9; Stephanie Mesa-Wise, Trader
8 Joe's Executive Vice President of Stores, who similarly has had a long tenure with Trader Joe's, *cf.* TT at
9 81:9–11; and, Robert Newman, Trader Joe's Senior Director of Purchasing, who has held the position,
10 albeit with a different title, for about 15 years, *cf.* TT 412:5–413:14. In its written discovery responses,
11 which were exhibits at trial, Trader Joe's only identified these three witnesses as persons with knowledge
12 on questions pertaining to why Trader Joe's does not allow crew members the opportunity to use seats
13 when performing cashiering and or demo duties. TEs 204 (Response No. 32); 200 (Responses Nos. 12,
14 16, 20, 24, 28); 205 (Responses Nos. 12–16, 20, 24, 28); 212 (Responses Nos. 20, 24, 28); TT at 412:5–
15 413:14, 181:14–19, 141:19–143:16, 146:19–147:13.

16 Mesa-Wise, whose duties include compliance with laws and safety issues, *cf.* TT at 81:22–24,
17 103:20–22, 136:18–20, testified that, until the trial, she had no idea about section 14(A) of the IWC
18 Wage Order No. 7-2001 (*see infra* for description), and still does not know what it is. TT at 104:2–11.
19 Mesa-Wise clarified her testimony stating she did not understand section 14(A) in detail because she was
20 not an attorney. TT at 172:3–10. Mesa-Wise is not aware of anyone ever evaluating whether cashiers or
21 workers at demo stations can perform their jobs while seated. TT at 137:11–21. She never consulted
22 with anyone on the store layout team to see if allowing cashiers to use seats would cause any problems,
23 never asked anyone performing cashiering duties if they could perform all or part of their duties while
24 seated, and never had any discussions with anyone at yearly captains' meetings, which she attended,
25 regarding complying with section 14 and providing seats to crew members. TT at 106:12–25, 714:13–
26 715:12.

27 Mead testified that, as of the trial, she was not familiar with section 14(A). TT at 172:8–10. She
28 never spoke to West Coast Fixtures (“WCF”), the manufacturer of Trader Joe's checkstands and demo

1 stations in California, or any other vendor, regarding the feasibility of crew members using chairs or
2 seats when working at checkstands. TT at 183:6–10. Mead also never spoke to anyone in the Safety
3 Department, the group at Trader Joe’s responsible for workplace safety and OSHA compliance,
4 regarding whether to provide cashiers or demo workers with seats. TT at 338:3–7, 406:11–16. Mead
5 never had any discussions with anyone regarding providing seats for crew members when working demo.
6 TT at 284:22–285:1. Mead testified that Trader Joe’s never asked anyone to analyze the demo stations to
7 see if the configuration would allow the use of seats. TT at 285:2–5.

8 Newman, whose duties include the purchasing of all the fixtures and equipment for Trader Joe’s,
9 including checkstands and demo stations, and who was involved in the 2016 redesign of the checkstands,
10 cf. TT at 413:24–414:4; 436:7–9, testified that during his entire employment at Trader Joe’s he never had
11 any discussion with anyone on the topic of cashiers using seats, including during the 2016 redesign, and
12 does not know why Trader Joe’s does not provide its cashiers with seats. TT at 432:3–9, 429:17–20.
13 Newman likewise testified that Trader Joe’s never explored using any checkstand configurations that
14 would allow crew members to sit when performing cashiering duties. TT at 429:21–23; 430:3–431:16.
15 Newman never had any discussions with anyone regarding the potential for crew members to use seats
16 when working in demo. TT at 441:1–4.

17 Todd Rinella, the President and CEO of WCF, cf. TT 507:5–10, who has manufactured
18 checkstands and demo stations exclusively for Trader Joe’s since 2016, cf. TT 513:10–21, testified that
19 no one at WCF has had any discussion with anyone at Trader Joe’s regarding the requirements of the
20 Wage Order to provide employees seating. TT at 523:19–22. Rinella also made clear that no one at WCF
21 has had any discussion with anyone at Trader Joe’s regarding the potential for allowing crew members to
22 use seats when cashiering. TT at 523:4–7. Rinella testified that the question of the use of seats by crew
23 members when cashiering has never come up in connection with the manufacture of any checkstand for
24 Trader Joe’s. TT at 523:9–13. Rinella also testified that no one at WCF ever had any discussion with
25 anyone at Trader Joe’s regarding the potential for allowing crew members to use seats when working at
26 the demo stations. TT at 523:14–18.

27 3. Whether cashiering work reasonably permits the use of seats

28 Both parties presented ergonomic experts at trial, whom both parties conceded were qualified to

1 testify as to ergonomic issues. Both experts testified extensively regarding the nature of the work of
2 cashiers, the regulatory bodies that have addressed the work performed by grocery cashiers, and peer-
3 reviewed literature on the subject of cashiers and their use of seats. Trader Joe's expert Dr. Iyer agreed
4 with *Kilby's* holding that evidence that seats are used to perform similar tasks under similar workspace
5 conditions may be relevant to the inquiry of whether the nature of the work reasonably permits the use of
6 seats. He specifically testified he was not opining that the nature of the work of cashiering never permits
7 the use of seats. TT at 1420:8–11, 1452:18–24. On the contrary, Dr. Iyer testified that grocery cashiers in
8 Europe have used seats when performing their cashiering duties for at least twenty years. TT at 1441:11–
9 1442:1. He agreed that the nature of the work of grocery cashiers in Europe, and those working at Aldi's
10 grocery stores, reasonably permits the use of seats. TT at 1442:2–1443:1, 1443:20–1444:12. Dr. Iyer
11 added that he had not done an evaluation of those checkstands and assumed someone had designed them
12 to incorporate a seat after an evaluation of the work performed. TT at 1442:13–1443:7, 1444:1–7. Trader
13 Joe's expert also testified that both Walmart and WinCo allow their grocery cashiers to use seats when
14 performing their duties. TT at 1448:18–1449:8, 1690:6–9, 1691:23–1692:22, 1450:12–16. He agreed that
15 the tasks performed by Aldi's, Walmart, and WinCo cashiers include scanning items, processing
16 transactions, putting items into carts, and sometimes bagging the items, the same type of tasks Trader
17 Joe's cashiers perform. TT at 1443:11–19, 1446:25–1447:10, 1689:6–16, 1450:8–11. Plaintiffs' expert
18 also testified that grocery cashiers in Europe, Africa, and Indonesia, and those at Aldi's, Target, Walmart,
19 WinCo, and Safeway, all use seats when performing their cashiering duties. TT at 1215:9–1217:16,
20 1230:16–21.

21 Both experts cited to publications issued by various regulatory bodies. There was also testimony
22 regarding OSHA's 2004 *Guidelines for Retail Grocery Stores* (OSHA 3192-05N 2004), which a crew
23 member sent to a Trader Joe's manager in 2018. (TE 75) Both experts testified that the guidelines issued
24 by OSHA that are contained in TE 75 apply to *all grocery stores*, and that Trader Joe's is a grocery store.
25 TT at 1465:21–2, 1466:20–22, 1468:2–9, 1481:3–14, 1187:11–17. In the guidelines, at page 17, when
26 outlining ergonomic solutions for the front-end checkout positions, OSHA recommends that grocers
27 “consider using checkstands designed with an adjustable sit/stand or lumbar support against which
28 cashiers can lean.” TE 75 at 17. Dr. Iyer testified that he understood that the “sit/stand stool”

1 recommendation, which was based on OSHA's review of all the scientific information available, and
2 issued only after OSHA conducted site visits and looked at a wide range of grocery stores, has been
3 recommended by OSHA for grocery cashiers since 2004. TT at 1473:7–1474:13; 1482:5–122. He also
4 testified that this recommendation is “a good thing.” TT at 1485:3–14. Both experts concurred that the
5 purpose of the recommendation to allow cashiers to use a sit/stand stool was to avoid injuries and
6 Musculoskeletal Disorders (“MSDs”). TT at 1485:15–18, 1193:24–1194:10. Both ergonomic experts
7 also concurred that checkstands have been, and are, designed to incorporate the use of adjustable sit/stand
8 seats and other seating configurations. Plaintiffs' expert testified that such checkstand designs have been
9 around since the 1990s. TT at 1193:10–23. Trader Joe's expert agreed, testifying that checkstand designs
10 exist that allow cashiers to perform their duties while seated, and that checkstand designers can and do
11 design checkstands to allow cashiers to alternate between sitting and standing when performing
12 cashiering duties. TT at 1422:24–1423:6, 1423:19–1424:5.

13 Both experts also testified regarding a National Institute for Occupational Safety and Health
14 (“NIOSH”) publication titled *Elements of Ergonomics Programs—General Workstation Design*
15 *Principles*, Publication No. 97-117, March 1997. TE 245; TT at 1488:3–6. NIOSH is the research wing
16 of the Centers for Disease Control and Prevention (“CDC”), whose purpose is to conduct studies and
17 come up with recommendations regarding workplace safety. Once NIOSH makes its recommendations, it
18 is then OSHA's job to implement the NIOSH recommendations. TT at 1486:12–20, 1194:14–24. Trader
19 Joe's expert testified that he understood that NIOSH, like OSHA, recommends that the best configuration
20 for a cashier is to have a chair or stool to use that allows the cashier to alternate between sitting and
21 standing when performing their tasks. TT at 1519:17–1520:9.

22 Dr. Iyer also cited to a publication by the California Department of Industrial Relations (“DIR”).
23 TE 234; TT at 1521:3–9; 1521:23–1522:1. He understood that the California DIR's goal is to make
24 workplaces as safe as possible for employees and that the California DIR issues recommendations to
25 employers on ergonomic issues to achieve this goal. TT at 1521:10–22. Although Dr. Iyer cited to
26 California DIR publications, he did not consider a publication issued by the California DIR in 2006
27 which specifically addresses grocery cashiers. TT at 1531:4–12; 1532:25–1533:3. Dr. Iyer testified that
28 he understood that the 2006 California DIR publication, at page 3, like the OSHA and NIOSH

1 publications, also recommends that employers provide adjustable sit/stands or lumbar supports for
2 cashiers to lean against when performing their duties. TT at 1534:6–12.

3 Both parties' ergonomic experts agreed that the "ideal" ergonomic checkstand configuration is
4 one that allows cashiers the opportunity to alternate between sitting and standing when performing their
5 cashiering functions. TT at 1421:11–1422:3, 1534:6–16. The peer-reviewed literature, to which both
6 parties' experts cited, also reflects that cashiers in Europe have always used seats when performing their
7 cashiering functions, and uniformly advocates for a workspace configuration that allows employees to
8 alternate between sitting and standing. TT at 1215:19–1216:4, 1256:16–1257:19, 1545:15–1546:25,
9 1547:1–5, 1548:17–24, 1555:13–20.

10 The Court acknowledges that Plaintiff Silicani testified that she "agreed that it would be better to
11 stand when removing items from a shopping cart, bagging items, and moving the cart through the
12 checkstand area." TT at 1809:9–21. However, the reasonableness inquiry whether all tasks have to be
13 performed only from a standing position or only from a seated position, but rather whether some of the
14 tasks can be performed while seated, and that the addition of a seat would not interfere with the tasks to
15 be performed.

16 4. Trader Joe's defenses against providing cashiers with seats

17 Dr. Iyer specified that his opinion was not that the nature of the work of cashiering never permits
18 the use of seats. TT at 1420:8–11. Rather, Dr. Iyer limits his opinions to a preference that cashiers stand
19 given the configuration of Trader Joe's checkstand. TT at 1421:6–10. Trader Joe's takes the position that
20 it has the unfettered ability to both use a model of checkstand it prefers, i.e., one it contends does not
21 allow for the use of seats, and also require its cashiers to perform their cashiering duties while standing.
22 However, as previously mentioned, Dr. Iyer testified that he understood that the "sit/stand stool"
23 recommendation, which was based on OSHA's review of all the scientific information available, and
24 issued only after OSHA conducted site visits and looked at a wide range of grocery stores, has been
25 recommended by OSHA for grocery cashiers since 2004. TT at 1473:7–1474:13; 1482:5–122. He also
26 testified that this recommendation is "a good thing." TT at 1485:3–14. Both experts concurred that the
27 purpose of the recommendation to allow cashiers to use a sit/stand stool was to avoid injuries and
28 Musculoskeletal Disorders ("MSDs"). TT at 1485:15–18, 1193:24–1194:10. This raises into question

1 what rationale or factual basis underlies Trader Joe's business judgments and whether the checkstands
2 can or ought to be reconfigured to provide seating.

3 *a. Trader Joe's business judgment-based assertions*

4 In its discovery responses, Trader Joe's set forth a myriad of reasons that it asserted supports its
5 decision to not allow crew members the opportunity to use a seat when cashiering. Trader Joe's
6 contended that providing crew members with an opportunity to use a seat when cashiering would cause it
7 to lose revenue, would cause customers to shop less frequently at its stores, spend less money per
8 transaction, and purchase fewer items/services. Trader Joe's also asserted that it would not be able to
9 stock as much merchandise on its sales floor, that price increases would be required, and it would also be
10 required to close registers. TEs 192, 200, 205, 212, Responses Nos. 10, 14, 18, 22, 26.

11 Plaintiffs asked Trader Joe's to state the amount of revenue it would lose if it allowed crew
12 members to use seats when performing cashiering functions, how much less often customers would shop,
13 how much less money customers would spend, how many fewer items customers would purchase, how
14 much less merchandise it would be able to stock, the amount of any price increases that it would be
15 required to implement, and the number of registers it would be unable to keep open. Trader Joe's
16 uniformly responded to the discovery that it could not answer the questions as to do so "would require
17 Defendant to speculate." TE 214, Response Nos. 40–53. Mead verified all of Trader Joe's discovery
18 responses. Mead testified that Trader Joe's provided this type of answer, refusing to answer the
19 questions, even though Trader Joe's understood that Plaintiffs sought actual evidence, i.e., numbers, to
20 support Trader Joe's assertions. TT at 187:22–188:11, 188:15–189:11, 189:18–190:23, 191:7–192:3,
21 192:4–13, 192:19–193:19, 194:9–195:1, 195:2–197:6, 197:9–198:19, 199:20–200:10, 200:25–201:12.

22 In its discovery responses, Trader Joe's also identified the three percipient witnesses that it called
23 at trial as the persons having knowledge of the bases for its policy requiring crew members to stand when
24 working as cashiers or in demo. TE 200, Response Nos. 12, 16, 20, 24, and 28; TE 205, Response Nos.
25 12, 16, 20, 24, 28; TE 212, Response Nos. 20, 24, 28. Mead was not aware of any documents supporting
26 the notion that customers would shop less at Trader Joe's if crew members used seats at the checkstand.
27 TT at 183:11–17. Mead similarly was not aware of any documents reflecting that Trader Joe's would lose
28 any money if the crew members were provided an opportunity to use a seat when cashiering and

1 confirmed that Trader Joe's has not conducted any studies to determine if Trader Joe's would lose any
2 money if crew members were allowed to sit when performing their cashier/checkout duties. TT at
3 178:22-179:1, 179:8-12.

4 Mesa-Wise likewise was not aware of any evidence to support the contention that Trader Joe's
5 would not be able to stock as much product on the sales floor if it allowed crew members the opportunity
6 to use seats when cashiering. TT at 148:23-150:2. She had no idea how much more space would be
7 required at the checkstands if crew members were allowed to use a seat at checkstands. TT at 151:2-18.
8 She similarly had neither conducted, nor was aware of, any studies that sought to determine how much
9 more space would be required if crew members were provided an opportunity to use a chair at the
10 checkstands. TT at 151:19-152:2.

11 Mesa-Wise also did not know if customers would purchase fewer items if Trader Joe's allowed
12 non-exempt employees the opportunity to use seats when cashiering. TT at 152:19-153:3. She did not
13 know if customers would spend less money per transaction if Trader Joe's allowed crew members to use
14 seats at checkstands, *cf.* TT at 154:3-7, and had not seen any studies on the topic of whether customers
15 would spend less money if Trader Joe's allowed employees to use a seat at checkstands. TT at 154:8-12.
16 Mesa-Wise confirmed that no documents exist to support the notion that customers would spend less
17 money if Trader Joe's allowed employees to use a seat at checkstands. TT at 153:4-7. She likewise was
18 unaware of any documents supporting either the proposition that customers would shop less frequently,
19 or that Trader Joe's would lose revenue, if Trader Joe's allowed employees to use a seat at the
20 checkstands. TT at 154:21-25, 155:25-156:12. Mesa-Wise was not aware of any surveys or other
21 evidence that discuss or support an assertion that employee morale would suffer if employees used a seat
22 at the checkstands. TT at 158:18-22, 681:20-24. She likewise did not know how much more space, if
23 any, would be needed to add a chair at the checkout area at Trader Joe's stores. TT at 681:16-19.

24 With respect to the assertion that crew members might be less efficient if Trader Joe's allowed
25 them the opportunity to use a seat when cashiering, Mead and Mesa-Wise were clear that Trader Joe's
26 does not track the speed of the crew members performing checkout functions. Both confirm that speed is
27 not a factor on which Trader Joe's evaluates employees working at checkout, and this factor is not
28 considered in Trader Joe's assessments of its customers' experience. TT at 394:3-14, 716:6-8. Mesa-

1 Wise has not seen any studies comparing the efficiency of cashiers who are seated versus the efficiency
2 of cashiers who are standing, *cf.* TT at 157:6–9, and agreed that no objective evidence exists to support
3 the notion that allowing a crew member to use a seat when cashiering would have any impact on
4 efficiency. TT at 716:9–14. Trader Joe’s has not conducted any studies to see if crew members using a
5 seat at checkout would have any impact on efficiency. TT at 716:18–21.

6 Trader Joe’s also asserted at trial that allowing cashiers to sit would negatively impact the
7 customer service experience. Mead testified that Trader Joe’s has not conducted any customer service
8 evaluations or surveys on the topic of crew members using a seat when cashiering. TT at 181:23–182:5.
9 Indeed, Mead was emphatic that “in the twenty years” that she has been at Trader Joe’s, she was not
10 aware of any customer satisfaction surveys, studies, or analyses on any topic, stating “we don’t conduct
11 any customer surveys at all.” TT at 182:6–10, 182:17–24, 252:4–8, 254:10–255:6, 255:11–18. She also
12 was not aware of any correspondence from customers indicating that they would be happier if crew
13 members stood as opposed to using a seat when performing their checkout duties. TT at 182:11–16.

14 Mesa-Wise likewise testified that no documents exist discussing or addressing whether customer
15 service would be impacted in any way if Trader Joe’s allowed crew members the opportunity to use a
16 seat when cashiering. TT at 157:16–21. Like Mead, Mesa-Wise confirmed that Trader Joe’s never
17 conducted any customer service surveys, and certainly none on the topic of customer preference for crew
18 members sitting versus standing when performing their checkout duties. TT at 157:22–25, 158:1–7.
19 Mesa-Wise confirmed that no objective evidence exists to support the assertion that the use of a seat
20 would have an impact on customer experience. TT at 596:6–8, 716:22–717:7.

21 The only objective evidence presented at trial on the question of whether allowing crew members
22 to use seats when performing cashiering functions would have any impact on either actual customer
23 service or Trader Joe’s customers’ perceptions of customer service, was offered by Plaintiffs through
24 their customer service expert, Micah Solomon. Before reaching his opinions in this case, Solomon visited
25 twenty-one Trader Joe’s stores and reviewed Trader Joe’s documents, so that he could understand Trader
26 Joe’s approach to customer service. TT at 902:18–23; 903:11–19. Solomon testified that allowing crew
27 members to use seats to perform cashiering functions would have no negative impact on customer
28 service. TT at 916:23–917:17. Solomon testified that, if anything, allowing crew members to use seats

1 when performing cashiering functions could actually have a positive impact on customer service, as crew
2 members would be happier and customers also would have a positive impression of Trader Joe's for
3 taking care of its employees. TT at 918:10-919:2, 921:23-922:8.

4 In connection with his work on this case, Solomon also reviewed a survey conducted by Walmart,
5 titled "Walmart Cashier Stand Chair In-store Research Survey." TT at 904:12-16, 987:6-14, 989:3-9.
6 Lezama-Wagner, who has worked as a market researcher for twenty-five years and worked as a Senior
7 Consumer Strategy and Insights Manager at Walmart, was in charge of the preparation of the survey.
8 During her tenure at Walmart, Lezama-Wagner received an assignment from store operations to perform
9 a study seeking to understand, among other things, if allowing Walmart employees to use seats at the
10 checkstands or other locations in the stores would have any impact on customer perception of Walmart.
11 The "Walmart Cashier Stand Chair In-Store Research Survey" reflects the results of the survey. TT at
12 804:18-805:10, 828:2-5, 1020:10-1021:16. In permitting testimony from experts regarding the Walmart
13 Survey, the court considered Lezama-Wagner's experience and preparation of said survey, as well as the
14 California Supreme Court's ruling in *People v. Veamatahua*, 9 Cal. 5th 16.

15 As both Solomon and Lezama-Wagner testified, one of the key findings of the survey was that
16 few, only 2%, of the Walmart customers who participated in the survey even noticed if the cashier or
17 other employees used a stool. TT at 990:15-991:4, 1031:25-1032:17. Another key finding was that usage
18 of the stool did not have any negative impact on either checkout speed or customers' perception of either
19 Walmart or its employees. TT at 991:24-992:10, 1032:18-1033:11. Importantly, 99% of the customers
20 who participated in the survey stated that they intended to continue to shop at Walmart. TT at 997:17-
21 998:13, 1036:18-1037:8.

22 Solomon testified that the conclusions in the Walmart study coincide with his opinions. Solomon
23 also testified that if it had any questions in this regard, Trader Joe's could have conducted a survey of its
24 customers to determine if customers had any issues with employees using seats when performing their
25 duties. TT at 986:9-987:3. As stated, Trader Joe's conducted no such surveys and presented no such
26 evidence at trial. Although Trader Joe's designated a rebuttal expert in the field of customer service to
27 counter Solomon's testimony, this witness did not testify at trial. As such, Solomon's testimony is the
28 only evidence provided on this matter at trial.

1 In addition, there was testimony at trial about the use of seating by comparable retailers in both
2 Europe and the United States. This Court has taken the similarities and dissimilarities of those retailers
3 into consideration when making its decision, accounting for both variances and similarities in job duty
4 expectations, customer service expectations, and workstation design.

5 *b. Trader Joe's checkstand configuration*

6 Both ergonomic experts testified that grocery checkstands that have been, and are, designed for
7 sit/stand seats and other seating configurations, are widely available. TT at 1193:10–23, 1422:24–1423:6,
8 1423:19–1424:5. This testimony, the regulatory bodies' publication, and the peer-reviewed literature,
9 make clear that checkstands currently exist, and existed during the entire pertinent time period, that allow
10 cashiers the opportunity to use seats. The “motive” presented by Trader Joe's, in support of its decision
11 to use a checkstand that was not configured for sitting or sitting/standing, was its policy to deliver a
12 “Wow” experience to customers.

13 When questioned about *Kilby's* statement regarding unreasonable workspace designs, Dr. Iyer
14 agreed that an “unreasonable workspace design” is one that places employees in awkward positions. TT
15 at 1509:24–1510:7. He also testified that the checkstand design that Trader Joe's currently uses requires
16 cashiers to routinely be placed in awkward positions. TT at 1523:3–16. Indeed, Dr. Iyer's video analysis
17 revealed that Trader Joe's preference of checkstand and checkstand processes puts cashiers in awkward
18 positions hundreds of times in the fifteen-minute video segments he analyzed. TT at 1561:8–19. Mesa-
19 Wise, who understands that, from an injury prevention perspective, awkward positions are to be avoided,
20 *cf.* TT at 94:20–22, also admitted that Trader Joe's preferences, including that of checkstand design, puts
21 crew members in awkward positions when they are cashiering. TT at 113:24–114:2.

22 Rinella testified that Trader Joe's hired WCF to “standardize the production of store fixtures
23 across” Trader Joe's stores and that this standardization includes checkstands and demo stations. TT at
24 511:20–512:3. Pursuant to this standardization, all of Trader Joe's checkstands are uniform and are built
25 to a single design. TT at 512:4–513:13. Since 2016, most of the Trader Joe's stores in California have
26 used the five-foot long checkstand. TT 520:9–15, 521:12–18; TE 88 at 2306. Although Trader Joe's has a
27 three-foot checkstand model that it uses at what it calls its “urban” stores, eighty percent (80%) of the
28 checkstands purchased by Trader Joe's are the five-foot model. TT at 537:4–10; TE 88. Hence, even

1 though Trader Joe's expert raised the specter that the type of checkstands used by the stores varied, the
2 evidence presented at trial appears to bely this assertion.

3 Rinella testified that no one at WCF has had any discussion with anyone at Trader Joe's regarding
4 the seating obligations under the Wage Orders. WCF also had no discussions with anyone at Trader Joe's
5 regarding incorporating any ergonomic considerations into Trader Joe's checkstand design. TT at 516:5–
6 517:9. Rinella testified that no one at WCF has any training in the field of ergonomics, and that WCF
7 does not consider ergonomics in the manufacture of the products it makes for Trader Joe's. TT at
8 508:20–509:5. Rinella does not know if any ergonomic evaluation of the Trader Joe's checkstand was
9 performed, as ergonomic evaluation is not something WCF does. TT at 515:18–23. Rather, WCF
10 produces store fixtures, such as checkstands and demo stations, pursuant to Trader Joe's design,
11 including any changes that Trader Joe's prefers. TT at 512:8–12, 528:6–10.

12 Newman confirmed that WCF has built Trader Joe's checkstands in California for the last fifteen
13 years and was the only manufacturer involved in the 2016 redesign of the checkstands. TT at 415:17–21,
14 421:5–11, 422:2–14. Newman testified that WCF does not bring ergonomic expertise to the table and, to
15 his knowledge, none of the WCF employees have any ergonomic background. TT at 421:24–422:1,
16 432:10–13. Newman also confirmed that, to his knowledge, Trader Joe's does not employ any ergonomic
17 consultants. TT at 434:7–9. According to Newman, in 2016, Jon Basalone, Trader Joe's current
18 President, made the decision to modify the checkstands. TT at 425:23–426:6. Trader Joe's did not call
19 Basalone to testify at trial or provide any evidence as to why it chose the particular checkstand design
20 that it uses at all of its stores. Neither Mead nor Mesa-Wise knows who selected the design of the
21 checkstands. They were not involved in either determining the configuration of the checkstands, or
22 selecting the particular design, or choosing WCF as its manufacturer. TT at 105:22–106:11, 171:21–23.
23 Newman explained that the sole purpose of the redesign in 2016 was to shorten the checkstands to allow
24 more room for product, as at that time, the checkstands were in three sections and ten feet long. TT at
25 422:20–423:7. This redesign gave Trader Joe's five to six more feet of retail space on the sales floor. TT
26 at 424:11–425:8. Newman confirmed that as part of the redesign, there was no discussion on the topic of
27 crew members using seats while performing their cashier duties. TT at 429:17–20. Newman also testified
28 that the Safety Team was not involved in the 2016 redesign. TT at 432:14–433:2, 433:7–10. He

1 confirmed that the changes in 2016 applied to all checkstands nationwide. TT at 480:2–4.

2 Mead testified that Trader Joe’s has not performed any ergonomic evaluations or analyses of its
3 checkstands, even though Trader Joe’s documents routinely represent to crew members that it considers
4 ergonomics when thinking about their safety. TT at 202:18–20, 208:22–209:4, 218:13–16. Mead also
5 testified that Trader Joe’s took no action with respect to the OSHA recommendations for grocery cashiers
6 set forth in TE 75, including the recommendation that cashiers be given the opportunity to use a sit/stand
7 stool. TT at 404:21–405:16. Mesa-Wise likewise testified that she was not aware of Trader Joe’s
8 conducting any ergonomic study of any position, including work at the checkstand, and that she never
9 had any discussion with anyone on the topic of ergonomics. TT 137:1–7. She also had no discussion with
10 anyone regarding the use of a sit/stand stool by crew members performing cashier work. TT at 137:11–
11 14. Mesa-Wise understands that the purpose of the OSHA recommendations is to reduce injuries. TT at
12 709:6–9. However, Mesa-Wise confirmed that, to her knowledge, Trader Joe’s took no action with
13 respect to the OSHA recommendations set forth in TE 75, which she understood was instructing
14 employers on how to design checkstands to reduce ergonomic risk factors. Trader Joe’s Safety
15 Department did not make her aware of the recommendations set forth in TE 75, even though part of her
16 duties include reviewing OSHA recommendations such as TE 75. TT at 708:18–23, 712:12–18, 713:22–
17 714:11.

18 Trader Joe’s did not ask Dr. Iyer to conduct an ergonomic evaluation of its checkstands, even
19 though he routinely conducts such evaluations of workspaces. TT at 1425:13–20, 1427:7–9, 1684:25–
20 1685:3. Because he was not asked to do so, Trader Joe’s expert did not conduct any ergonomic
21 evaluation of Trader Joe’s checkstands, and testified at his deposition that he would offer no such
22 opinions at trial. TT at 1424:20–24, 1525:18–21, 1606:20–1607:5, 1684:22–24. Even though he was
23 aware of the literature on the subject, and that the “ideal” configuration for cashiers is one that allows the
24 sit/stand option, he made no recommendations to Trader Joe’s on how to make its checkstand
25 configuration better and had no discussions with Trader Joe’s regarding the “ideal” checkstand
26 configuration for cashiers. TT at 1424:14–17, 1482:15–18, 1525:22–25.

27 Mesa-Wise testified that the distances between checkstands varies between stores. TT at 632:2–
28 17. She also stated that checkstands can be moved and placed anywhere in the stores that Trader Joe’s

1 desires. TT at 691:19–692:3. Mesa-Wise testified that Trader Joe’s can stagger checkstands if it wants,
2 and already staggers checkstands at some of its stores. TT at 692:14–19–693:10. Mesa-Wise also
3 explained that in some stores, Trader Joe’s left open space for future checkstands, decided to put in just
4 six checkstands, or decided to put in ten checkstands. Mesa-Wise also stated the space between
5 checkstands can reach up to seven feet and four inches. TT at 692:14–18, 693:13–22, 694:22–696:5,
6 696:12–22, 700:21–22, 701:10–702:4, 702:24–703:19, 706:14–19, 707:1–15, 707:24–708:5. Mesa-Wise
7 confirmed that during the coronavirus pandemic, Trader Joe’s removed checkstands and put a six-foot
8 distance between checkstands. TT at 752:11–15, 753:6–10.

9 Trader Joe’s expert testified that the number of checkstands in stores ranges from six (6) to fifteen
10 (15), solely depending on Trader Joe’s preference. TT at 1584:4–8, 1584:15–18, 1584:24–1585:8. He
11 also confirmed that Trader Joe’s decides, based on its preference, how much space to allow between
12 checkstands, which range between twenty (20) and fifty (50) inches. TT at 1585:9–18, 1698:19–24. Dr.
13 Iyer did not perform any calculations to determine how much additional space would be needed, if any,
14 to allow crew members the opportunity to use a seat when performing cashiering duties. TT at 1587:5–
15 1588:7. Mesa Wise likewise does not know how much more space, if any, would be needed to add a
16 chair at the checkout area, *cf.* TT 681:16–19, and confirmed that no studies or analyses exist to support
17 the notion that more space would be necessary if Trader Joe’s allowed crew members the opportunity to
18 use a seat when cashiering. TT at 681:20–24.

19 As outlined above, Newman explained that in the 2016 redesign of the checkstands, Trader Joe’s
20 shortened the checkstands to allow more room for product, as at that time, the checkstands were in three
21 sections and ten feet long. TT at 422:20–423:7. This redesign, which reduced the length of the
22 checkstands to five feet, gave Trader Joe’s approximately 5–6 more feet of retail space on the sales floor.
23 TT at 424:11–425:8. The photographs introduced at trial reflect that sufficient space exists that would
24 allow crew members to use seats when cashiering, to the extent that any additional space is needed
25 between registers or for staggering the registers. *See, e.g.,* TEs 235, 236. Indeed, Mesa-Wise, when
26 discussing TE 235, agreed that Trader Joe’s has enough space to stagger the checkstands if it prefers to
27 do so. TT at 721:13–20. With respect to TE 236, Mesa-Wise agreed that there is space to use a chair
28 when working at this checkstand. TT at 722:12–19.

1 The evidence at trial also established that, in addition to the five-foot checkstand that Trader Joe's
2 typically uses, Trader Joe's also uses a three-foot checkstand at what it calls its "urban" stores. TEs 88,
3 239, 240. As Trader Joe's ergonomic expert confirmed, the box length of the three-foot model is shorter
4 than the five-foot model. This logically results in less foot movements, less back flexion, less back twists,
5 and most importantly, allows crew members to stay within the fifteen-inch preferred work zone to which
6 all, including Plaintiffs' expert, agree is the best possible work zone. TT at 1516:16–1517:23, 1520:21–
7 1521:1, 1217:22–1218:18. Meza-Wise testified that the five-foot checkstand provides a larger workspace
8 for employees in processing and bagging the groceries. TT at 652:21–653:15, 684:8-20. Newman
9 testified he does not decide which size checkstands are placed in each store. TT at 465:20–23. Rather, the
10 Executive Vice President for the Real Estate Team, who did not testify at trial, makes this decision. TT at
11 475:1–4. Dr. Iyer testified that shorter checkstand length requires less foot movement and that the three-
12 foot checkstand model would require fewer back flexion and back twists. TT at 1516:18-25, 1517:3-23.
13 He further testified that the three-foot checkstand model allows employees to work in the preferred work
14 area – a work area that limits arm movements to fifteen inches or less, as recommended by NIOSH. TT
15 at 1520:10-1521:2.

16 5. Whether demo work reasonably permits the use of seats

17 During the time period this case covers, Trader Joe's used two methods to allow its customers to
18 sample its products. Prior to the coronavirus pandemic, Trader Joe's stores had fixed locations, called
19 demo, which were areas generally located in the back of the stores. TT at 1543:1–6. Non-exempt
20 employees were assigned to demo work in these areas to provide samples of Trader Joe's products to
21 customers. Due to the coronavirus pandemic, Trader Joe's suspended the demo program from
22 approximately March 12, 2020 to approximately September 30, 2022. TE 232 at ¶ 5. When Trader Joe's
23 relaunched the demo program on approximately October 1, 2022, it began using mobile demo carts.
24 From that time forward, Trader Joe's set the mobile demo carts up throughout the stores and assigned
25 crew members to the mobile demo carts to serve samples to customers. TE 232 at ¶ 6. Employees
26 assigned to demo, either at the fixed demo locations or the mobile demo carts, are not to leave the demo
27 area/cart unattended. TT at 1607:12–15, 1724:4–8.

28 Dr. Iyer testified that some of the demo duties can be performed while seated, *cf.* TT at 1436:19–

1 1437:4, 1607:9–11, and recognized that Silicani performed demo tasks while seated. TT at 1433:7–10,
2 1437:5–10. Mesa-Wise also testified that some demo duties can be performed while using a seat, a
3 sentiment with which Plaintiffs’ ergonomic expert concurred. TT at 127:19–128:13, 717:25–718:21,
4 727:5–25, 1220:14–22. Dr. Iyer further testified that, even though Silicani was provided a seat pursuant
5 to an accommodation request, she still had to perform the essential functions of the job. TT at 1433:12–
6 14. He stated that Silicani was in a better position than he was to testify as to the duties for those working
7 in demo, given her tenure in the position. TT at 1434:3–24. Silicani worked in demo at two Trader Joe’s
8 stores for a combined total of approximately fourteen (14) years. TT at 1719:1–5, 1719:25–1720:3,
9 1721:5–10; TE 4.

10 Both before and after Silicani began using a seat when performing her demo duties, she routinely
11 received rave reviews from a myriad of different supervisors about both her knowledge of Trader Joe’s
12 requirements for demo and her performance of those duties. For example, in a 2010 review, where Ms.
13 Silicani received a 4.38 score in the area of customer service, which was measured on a scale of 1 to 5,
14 Ms. Silicani’s supervisor wrote: “[Y]ou continue to set the bar for customer service. I’ve received
15 several compliments regarding your efforts in demo. You’re just the type of person we need to provide a
16 world-class demo.” TE 36; TT at 1726:20–1727:7. In a 2014 review, where Silicani again met all
17 expectations, her supervisor wrote: “You embody the essence of customer experience, as you put them
18 first no matter what, so much so that customers frequent the ship just to see you and engage in
19 conversation. You are one of the top performers in this regard and set a great example.... You are one of
20 the leaders on the demo team and it shows.” TE 45; TT at 1734:7–1735:5. These are but two of the many
21 performance reviews that Silicani received with positive feedback for her work in demo entered into
22 evidence. *See also* TEs 37–39, 43, 46–47.

23 Following a diagnosis of rheumatoid arthritis in 2016, Silicani began using a seat when
24 performing her demo duties. TT at 1741:20–1742:14. As Silicani explained, after she made the coffee,
25 and prepared the items for the customers to sample, she used a chair as she waited for customers to come
26 and try the products. TT at 1742:15–20. Silicani used the chair for most of the time in 2016 and 2017,
27 and again when she returned from leave in 2019. TT at 1744:5–9, 1755:11–14. Silicani testified that she
28 could use the chair as there were often lulls between customers, in which no customers came to the demo

1 station. TT at 1742:21–1743:12. Silicani’s testimony regarding lulls between customers was not
2 contested by Trader Joe’s.

3 As with the cashiering duties, Trader Joe’s asserts that allowing crew members to use a seat when
4 working demo could cause customer service to suffer. However, this assertion is contraindicated by
5 Silicani’s performance evaluations between 2016 and 2018, which do not indicate that her use of the
6 chair had any impact on the performance of her duties or on her ability to give the type of customer
7 service that Trader Joe’s expected. For example, in a July 2016 review, in which Silicani met
8 expectations in all categories, her manager wrote: “[Y]ou are the prime example of excellent customer
9 service. Many of our customers know you by name and come in specifically to see you. You are always
10 smiling and willing to assist our customers.” TE 48; TT at 1747:24–1748:15.

11 Silicani’s manager, who ultimately refused to allow Silicani to use a seat in 2017, never told
12 Silicani that she was not performing any of her duties in demo because she was using a seat. TT at
13 1748:4–8, 1748:16–19. Rather, Silicani was also told: “[Y]ou are well-respected by the crew, and you
14 hold high standards.” TT at 1748:20–1749:1. No one told Silicani that her using a seat had any negative
15 impact on crew morale. TT at 1749:2–6. In August 2017, in another review in which Silicani met all
16 expectations, her manager wrote: “[Y]ou continue to show us and our customers that you are one of the
17 leaders in demo.... We appreciate how much WOW customer experience you deliver every morning to
18 our customers.... Thank you for always being kind and helpful to your fellow crew members and
19 customers.” TE 50; TT at 1750:9–1751:7. This viewpoint is consistent with the other performance
20 reviews Silicani received prior to entering medical leave in 2018. *See* TEs 49, 51.

21 From 2016 through 2019, none of Silicani’s managers told her that she was not performing her
22 demo duties because she was using a seat. TT at 1749:24–1750:3, 1751:8–11, 1752:21–24. Similarly, no
23 one told Silicani that crew members made any complaints about her using a seat in demo, or that crew
24 morale suffered in any way because she used a seat when working demo. TT at 1750:4–8, 1751:12–16,
25 1752:25–1753:3. Rather, when Silicani was told that she could no longer use a seat in 2017, the reason
26 given for this action was “they don’t want to open up a can of worms.” TT at 1745:14–1746:12. When
27 Silicani asked why she could no longer use a seat in 2019, she was again told it had nothing to do with
28 her performance. Rather, she was told that directive came from Dan Bane, who was then Trader Joe’s

1 CEO. TT at 1757:14–19. Like Silicani, Meirose and Arzate, who both also worked in demo during their
2 employment, testified that crew members could use a seat when working demo. TT at 768:10–16, 770:9–
3 11, 1088:15–17.

4 Mead was aware that Silicani used a seat when working in demo. TT at 312:24–313:15. Mead
5 testified that there is no evidence that allowing Silicani to use a seat when she worked in demo caused
6 crew morale to suffer, caused Trader Joe's to lose any money, caused customers to stop shopping at
7 Trader Joe's, or caused Trader Joe's to be unable to stock as much product on the sales floor. TT at
8 313:16–314:6. Indeed, Mead had no basis to think that Silicani using a seat when working in demo
9 caused any detriment to Trader Joe's. TT at 314:7–11. Furthermore, despite its general policy against
10 allowing crew members to use seats when working in demo, Mead testified that Trader Joe's also
11 allowed several other crew members to use a seat when working in demo. TT at 262:23–263:2. Some of
12 the circumstances in which Trader Joe's allowed various crew members to use a seat when assigned to
13 demo are set forth in TEs 61, 62, 65, 67, 69, 73, 74, 76, 80, and 81. TT at 271:6–282:2. Mead testified
14 there is no evidence that the crew members who used a seat when working in demo did not perform all of
15 their expected demo duties while using a seat. TT at 283:6–12. She also testified that there is no evidence
16 that allowing the crew members to use a seat when working in demo caused Trader Joe's to lose any
17 money, sell less product, or be unable to stock as much product on the sales floor. TT at 283:6–284:7.
18 Mead confirmed there is no evidence that the use of the seat in demo by any crew members had any
19 negative impact on crew member morale. TT at 283:21–24. Mead also confirmed that Trader Joe's has
20 not performed any studies to determine if it would lose any money if those working in demo were
21 allowed to sit when performing their demo duties. TT at 179:8–12.

22 6. Trader Joe's defenses against providing demo workers with seats

23 In its discovery responses, Trader Joe's set forth the same reasons, that it asserted supported its
24 decision to not allow crew members the opportunity to use a seat when cashiering, to support its decision
25 not to allow crew members the opportunity to use a seat when working in demo. Trader Joe's contended
26 that to do so would cause it to lose revenue, and would cause customers would shop less frequently at its
27 stores, spend less money per transaction, and purchase fewer items/services. Trader Joe's also asserted
28 that it would not be able to stock as much merchandise on its sales floor, and that price increases would

1 be required. TEs 192, 200, 205, 212, Responses Nos. 10, 14, 18, 22, 26.

2 Plaintiffs specifically asked Trader Joe's to state the amount of revenue it would lose if it allowed
3 crew members to use seats when performing demo functions, how much less often customers would
4 shop, how much less money customers would spend, how many fewer items customers would purchase,
5 how much less merchandise it would be able to stock, and the amount of any price increases that it would
6 be required to implement. Without exception, Trader Joe's either failed to provide any evidence to
7 support its assertions, or withdrew the assertions. Trader Joe's uniformly responded that it could not
8 answer the questions as to do so "would require Defendant to speculate." TE 214, Responses Nos. 41, 43,
9 45, 47, 49, 51, 53.

10 Mesa-Wise testified that she was not aware of any evidence to support the contention that Trader
11 Joe's would not be able to stock as much product on the sales floor if it allowed crew members to use
12 seats when working in demo. TT at 148:23–150:2. She also has not conducted, and is not aware of, any
13 studies on the question of how much more space would be required, if any, if Trader Joe's allowed crew
14 members to use a seat when working in demo. TT at 151:19–152:2. Furthermore, Mesa-Wise did not
15 know if customers would purchase fewer items if Trader Joe's allowed crew members to use seats when
16 working in demo. TT at 152:19–153:3. She did not know if customers would spend less money per
17 transaction if Trader Joe's allowed crew members working in demo to use seats, *cf.* TT at 154:3–7, and
18 has not seen any studies on the topic of whether customers would spend less money if Trader Joe's
19 allowed crew members working in demo to use a seat. TT at 154:8–12. Mesa-Wise confirmed that no
20 documents exist to support the notion that customers would spend less money if Trader Joe's allowed
21 crew members working in demo to use a seat. TT 153:4–7. She likewise was unaware of any documents
22 that stand for the proposition that customers would shop less frequently and/or Trader Joe's would lose
23 revenue if Trader Joe's allowed crew members working in demo to use a seat. TT at 154:21–25, 155:25–
24 156:12. To the contrary, Mesa-Wise testified she does not believe customers would shop less frequently
25 at Trader Joe's if it allowed crew members to use seats when working in demo. TT at 155:10–15. Mesa-
26 Wise also was not aware of any surveys or other evidence that discuss or support an assertion that crew
27 member morale would suffer if crew members used a seat when working in demo. TT at 158:14–17.
28 With respect to the specific individuals who used a seat when working in demo, Mesa-Wise did not know

1 if customers purchased fewer items, spent less money, or if Trader Joe's lost any revenue because of the
2 crew members using a seat. TT at 156:13–158:5.

3 With respect to demo, Trader Joe's focused its defense on the assertion that customer service
4 would suffer if it allowed crew members to use a seat when working in demo. However, Trader Joe's
5 again presented no objective evidence to support this assertion. Mead testified that, to her knowledge, no
6 customer satisfaction surveys exist on the topic of crew members using a seat when working in demo. TT
7 at 182:6–10. Again, Mead testified: "we don't conduct any customer surveys at all." TT at 182:17–24.
8 Mesa-Wise likewise testified that no documents exist discussing or addressing whether customer service
9 would be impacted in any way if Trader Joe's allowed crew members to use a seat when working in
10 demo. TT at 157:16–21. Like Mead, Mesa-Wise confirmed that Trader Joe's never conducted any
11 customer service surveys, and certainly none on the topic of customer preference for crew members
12 working in demo sitting versus standing when performing their duties. TT at 157:22–25, 158:1–7. Mesa-
13 Wise confirmed that no objective evidence exists to support the assertion that the use of a seat would
14 have an impact on customer experience. TT at 596:6–8, 716:22–717:7.

15 As with cashiering, the only objective evidence presented at trial on the question of whether
16 allowing crew members to use seats when working in demo was offered by Plaintiffs through their
17 customer service expert. Said expert, Micah Solomon, testified that he "saw absolutely no way that
18 allowing employees to sit" either when cashiering or working in demo, "would be deleterious to
19 customer service." TT at 916:23–917:17. Rather, he believes that allowing crew members to use a seat
20 would actually have a positive impact on customer's opinions about Trader Joe's. TT at 918:10–919:2,
21 921:23–922:8.

22 Although, as Solomon explained, Trader Joe's could have conducted a survey of its customers to
23 determine if they had any issues with employees using seats when performing their duties, *cf.* TT at
24 986:9–987:3, Trader Joe's conducted no such surveys and presented no such evidence at trial. Although
25 Trader Joe's designated a rebuttal expert in the field of customer service to counter Solomon's testimony,
26 this witness did not testify at trial. As such, Solomon's testimony is the only evidence provided on this
27 matter at trial.

28 This Court is mindful of the business judgments made by Trader Joe's regarding the "Wow"

customer experience that Trader Joe's seeks to deliver. This court has considered those factors in making its decision.

LEGAL ANALYSIS

A. Governing Law

The California Industrial Wage Commission ("IWC") has issued a number of wage orders, which are to be construed liberally in order to protect and benefit employees. *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 840. IWC wage orders are given the effect of statutes. *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1027. Wage Order No. 7, which the parties do not dispute apply to Trader Joe's and the employees working at checkstands and demo stations, requires, in relevant part, the following: "(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [¶] (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties." Cal. Code Regs. tit. 8, §§ 11070, subds. 14(A)–(B) ("Wage Order No. 7-2001"). "When a wage order's validity and application are conceded and the question is only one of interpretation, the usual rules of statutory interpretation apply." *Mendiola, supra*, 60 Cal.4th at 840.

The seminal case interpreting subdivision 14(A) of Wage Order No. 7-2001, *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, provides this Court with the necessary framework to analyze this case. This state's high court made two key holdings: (1) "The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed," and "[i]f the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for"; and (2) "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Kilby, supra*, 63 Cal.4th at 8.

1 In arriving at the first holding regarding how courts are to evaluate the “nature of the work,” the
2 Supreme Court stated that “courts must examine subsets of an employee’s total tasks and duties by
3 location, such as those performed at a cash register or a teller window, and consider whether it is feasible
4 for an employee to perform each set of location-specific tasks while seated.” *Kilby v. CVS Pharmacy,*
5 *Inc.* (2016) 63 Cal.4th 1, 18. Furthermore, “[c]ourts should look to the actual tasks performed or
6 reasonably expected to be performed, not to abstract characterizations, job titles, or descriptions that may
7 or may not reflect the actual work performed.” *Ibid.* Therefore, “[a]n employee may be entitled to a seat
8 to perform tasks at a particular location even if his job duties include other standing tasks, so long as
9 provision of a seat would not interfere with performance of standing tasks.” *Ibid.*

10 Then, in arriving at the second holding regarding how courts are to evaluate whether the work
11 reasonably permits sitting, the Supreme Court stated that “[w]hether an employee is entitled to a seat
12 under section 14(A) depends on the totality of the circumstances. Analysis begins with an examination of
13 the relevant tasks ... and whether the tasks can be performed while seated or require standing. This task-
14 based assessment of whether providing a seat would unduly interfere with other standing tasks, whether
15 the frequency of transition from sitting to standing may interfere with the work, or whether seated work
16 would impact the quality and effectiveness of overall job performance. This inquiry is not a rigid
17 quantitative analysis based merely upon the counting of tasks or amount of time spent performing them.
18 Instead, it requires a qualitative assessment of all relevant factors.” *Kilby v. CVS Pharmacy, Inc.* (2016)
19 63 Cal.4th 1, 19–20.

20 Since the opinion came by way of certified questions from the Ninth Circuit, the Supreme Court
21 addressed three factors in particular: (1) business judgment; (2) physical layout; and (3) physical
22 differences between employees. While an employer can define an employee’s job duties, such as
23 providing a certain level of customer service, that customer service expectation “is an objective function
24 comprised of different tasks, e.g., assisting customers with purchases, answering questions, locating
25 inventory, creating a welcoming environment, etc.” *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 21.
26 However, “business judgment” does not extend to include “an employer’s mere preference that particular
27 tasks be performed while standing. The standard is an objective one. An employer’s evaluation of the
28 quality and effectiveness of overall job performance is among the factors that can be objectively

1 considered in light of the overall aims of the regulatory scheme, which has always been employee
2 protection.” *Ibid.* Therefore, this Court’s objective analysis should consider “an employer’s reasonable
3 expectations regarding customer service and ... an employer’s role in setting job duties,” but also
4 consider “any evidence submitted by the parties bearing on an employer’s view that an objective job duty
5 is best accomplished standing.” *Id.* at 21–22.

6 As for the second factor, physical layout, the high court concluded that it is a factor that this
7 Court may consider in making its inquiry. *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 22. This
8 Court may consider a workspace’s physical layout in terms of defining an employer’s expectations and
9 employee’s job duties. *Ibid.* However, “an employer may not unreasonably design a workspace to further
10 a preference for standing or to deny a seat that might otherwise be reasonably suited for the contemplated
11 tasks.” *Ibid.* As the seating requirement is “a workplace condition aimed at the welfare of employees
12 performing work and not an engineering or technically-based standard, ... [e]vidence that seats are used
13 to perform similar tasks under other, similar workspace conditions may be relevant to the inquiry, and to
14 whether the physical layout may reasonably be changed to accommodate a seat.” *Ibid.* Finally, as for the
15 third factor, physical differences between employees, the high court states that this Court should not
16 consider whether the nature of the worker requires a seat, but rather whether the nature of the work
17 requires a seat. *Id.* at 23. Finally, if an employee has met its burden of showing that they are entitled to a
18 seat, the burden of proof then shifts back to the employer to show that no suitable seating exists. *Id.* at 24.

19 **B. Interpretation**

20 **1. Application of section 14(A) to checkstands**

21 This Court acknowledges that Trader Joe’s has set forth the job duties of a cashier, which it
22 requires its non-exempt employees to perform in one- to two-hour shifts per pay period at either a three-
23 or five-foot checkstand, though the specific amount of time worked at checkstand per pay period and
24 configuration between three- and five-foot checkstand varies between stores. The job duties are set forth
25 *supra* in the “Findings” portion of this Statement of Decision, at section B.1. In rendering this factual
26 finding, this Court necessarily rejects Plaintiffs’ argument that Trader Joe’s cannot require that its
27 cashiers unload customers’ carts. As noted in *Kilby v. CVS Pharmacy* (2016) 63 Cal.App.4th 1, an
28 opinion that Plaintiffs cite to extensively during trial, it is the employer who generally gets to determine

1 both the nature and specific duties of an employee's work. *Id.* at 16. Nothing in *Kilby* suggests that this
2 Court has the power to determine what tasks cashiers ought to or not perform as a function of the
3 "totality of the circumstances" analysis that underlies whether Trader Joe's owes its employees seating
4 while they are working at the checkstand.

5 *a. Checkstand configuration*

6 First, the parties disagree on how this Court should take into consideration Trader Joe's current
7 checkstand configuration. Plaintiffs contend that Trader Joe's did not consider ergonomics and best
8 practice literature, especially those issued by various governmental authorities, that strongly indicates
9 that a checkstand design that allows for a combination of sitting, standing, or leaning positions to be
10 accommodated. This, according to Plaintiffs, resulted in a checkstand design that is only ergonomically
11 suitable for standing, which violates section 14(A). This is further supported by the fact that Defendants
12 contend that all of the best practice literature are not mandatory, and are merely recommendations.
13 Defendants contend that the checkstand design is something this Court ought to take as a given when
14 considering the "totality of the circumstances" analysis, and thus seating should only be considered so
15 long as it does not disturb the current checkstand configuration. Plaintiffs disagree, noting that *Kilby*
16 allows this Court to consider that the "totality of the circumstances" analysis is not "an engineering or
17 technically-based standard," and further enables this Court to consider whether similar job duties can be
18 performed seated. To support their assertion that the checkstand configuration is improper, Plaintiffs
19 submit numerous examples of checkstand configurations in both the United States as well as abroad in
20 various countries in Europe and Africa to show that the job duties of a cashier can be performed seated.
21 Trader Joe's argues that that is because the checkstand in those grocery stores have been configured for
22 seating, and cashiers in those stores do not have to unload customers' grocery carts like those in Trader
23 Joe's do.

24 This Court agrees with Plaintiffs' position that Trader Joe's was under the obligation in 2016,
25 when it redesigned its checkstands, to consider that its California stores would be subject to IWC Wage
26 Order No. 7-2001. This means that Trader Joe's, when it redesigned its checkstands, should have
27 considered all the factors for and against providing seats to its cashiers. In making the decision that it did,
28 Trader Joe's should have weighed the risk that a court would consider that the job duties reasonably

1 permit the use of seats, and that the checkstand configuration was designed in a manner that did not
2 comport with this requirement. This Court does not suggest that Trader Joe's business judgment is
3 negligible or irrelevant, but the fact remains that Trader Joe's has not proffered any explanation from the
4 responsible decisionmaker(s) for why the checkstand is configured as it is. A business judgment
5 necessarily includes the word "judgment," therefor there must be a factual basis or rationale underlying a
6 decision. In the absence of this explanation, this Court can only consider Trader Joe's ex post facto
7 rationalizations, which are not backed by a wealth of evidence. Trader Joe's can argue that its assertions
8 are a form of evidence unto itself. However, Plaintiffs have amassed significant contradictory evidence
9 that call into question the rationality of those assertions.

10 This Court disagrees with the majority of Trader Joe's position—while current checkstand
11 configuration is something this Court can consider in rendering its decision, it is not something that this
12 Court must give deference to. As Trader Joe's understood when it spaced out its checkstands six feet
13 apart during the coronavirus pandemic, situational and/or legal factors outside of Trader Joe's control
14 may result in a necessary change to the store configuration. These legal factors include the potential for
15 any court's determination that the checkstand design violates California law. Trader Joe's also argues
16 that the checkstand design amounts to a business judgment regarding appropriate customer service.
17 When asked as to what evidence formed the basis of those assertions, Trader Joe's was unable to provide
18 any at discovery or at trial.

19 To be fair, this is not a trial about the checkstand design, but rather whether Trader Joe's has
20 configured the physical layout of its cashiers' workplace so unreasonably that it interferes with section
21 14(A). In the absence of any well-reasoned judgment underlying the checkstand design, this Court cannot
22 consider that it is necessary for the checkstand to be configured in such a manner that Trader Joe's expert
23 witness, Dr. Iyer, would reasonably conclude that only standing positions would be ergonomically suited
24 to such a checkstand. This Court gives strong weight to Plaintiffs' evidence, as well as Trader Joe's own
25 argument, that checkstands can be, and have frequently been, configured to allow for cashiers' seated
26 positions. This Court also gives strong weight to the fact that checkstand configurations that allow for
27 cashiers to be seated existed when Trader Joe's was redesigning its checkstands in 2016, and that these
28 should have been considered more seriously in light of Trader Joe's statutory obligations as an employer

1 in California at the time. This Court also gives strong weight to the evidence that Trader Joe's can change
2 its checkstand configurations to suit ongoing business needs, such as those required by the coronavirus
3 pandemic.

4 *b. Analysis of sitting vs. standing tasks*

5 The parties do not appear to dispute that the scanning of items, keying of items in the register, and
6 managing payment and the cash register, among other tasks that do not require serially lifting or placing
7 items on or off the register, can be performed seated. Instead, the focus of the dispute appears to be on
8 Trader Joe's requirements that cashiers unload customers' carts, place groceries in bags if a customer
9 does not take the initiative to do so themselves, and place those bagged groceries back in the cart if a
10 customer does not take the initiative to do so themselves. Trader Joe's argues that these tasks require
11 standing, as to do otherwise would be medically inadvisable as doing so would contribute to the
12 development of musculoskeletal disorders ("MSDs"). However, the scope of that particular expert
13 witness's opinion was limited to that of the current checkstand configuration. It was not stated by any
14 witness or evidence that the duty could absolutely not be performed while seated.

15 In fact, the evidence adduced from Dr. Iyer on cross-examination indicated that repeated
16 stretching, especially in repetitive positions, is what causes MSDs to develop. Accordingly, this Court
17 considers that regardless of whether a cashier is sitting or standing, the job duty requires repetitive
18 movements of lifting and twisting regardless of which position they are already in. Furthermore, Dr.
19 Iyer's opinion that standing reduced the development of MSDs was limited to the scope of Trader Joe's
20 current checkstand configuration, not all checkstand configurations. In other words, the job duty of
21 unloading groceries is not fundamentally inconsistent with being seated the same way as a job duty that
22 requires walking would be, and the evidence that standing would ameliorate the risk of MSD
23 development was only testified to with respect to the current checkstand configuration. In fact, this
24 Court finds that it is reasonable to conclude that the job duty of unloading groceries may be done from a
25 seated position. This Court reaches similar conclusions with respect to the other job duties that require
26 twisting, lifting, and/or placement of groceries.

27 On the whole, Trader Joe's argues that its customer service model requires that these tasks be
28 performed standing. While *Kilby* does state that "customer service is an objective job duty that an

1 employer may reasonably expect,” the Supreme Court qualified that statement by defining “customer
2 service” as “an objective job function comprised of different tasks, e.g., assisting customers with
3 purchases, answering questions, locating inventory, creating a welcoming environment, etc.” *Kilby v.*
4 *CVS Pharmacy* (2016) 63 Cal.App.4th 1, 21. This is to say, Trader Joe’s may require that certain tasks be
5 performed as part of providing customer service, but may not have complete control over how those tasks
6 are performed. After all, to do so would to impede on the policy goal and regulatory scheme of employee
7 protection. *Id.* at 22. This Court takes into consideration Trader Joe’s assertions that better customer
8 service is provided by cashiers standing up, but weighs that against the contradictory evidence, including
9 Solomon’s testimony and the results of the Walmart survey, that suggests that whether a cashier is sitting
10 or standing has little, if any, impact on overall customer service.

11 Finally, Trader Joe’s has provided little or no evidence that spacing out its checkstands to
12 properly provide its cashiers with seats is impossible or unreasonable. The evidence adduced shows that
13 Trader Joe’s, in 2016, changed the design of their checkstands to provide for further space, which
14 incidentally contributes to Trader Joe’s ability to stagger its checkstands if needed. Trader Joe’s has
15 previously changed its checkstand configuration during the coronavirus pandemic to meet the six-foot
16 distancing guidelines. Furthermore, as explained above, checkstands are frequently configured to enable
17 cashiers to perform most or all of their tasks from a seated position. Given all the evidence, this Court
18 concludes that it is not unreasonable for the majority of a Trader Joe’s cashier’s tasks to be performed
19 from a seated position, and accordingly concludes that Plaintiffs have met their burden of proof to show
20 that cashiers are entitled to seats under section 14(A).

21 *c. Trader Joe’s burden of proof*

22 Trader Joe’s raised several concerns about the implementation of seats into their checkstand area,
23 which this Court addresses. As a preliminary matter, not all checkstand configurations in the stores are
24 subject to the criticism that placing a seat would interfere with the space in which carts are supposed to
25 travel. This Court notes that photographs of stores whose checkstand configurations were entered into
26 evidence have configurations in which placing a seat would not disturb the flow of any customer traffic.
27 *See, e.g.,* TEs 239, 240. It does not appear that placing seats in those stores would require any sort of
28 checkstand movement.

1 First, Dr. Iyer testified that he reviewed approximately 1,800 seating options in a database and did
2 not believe any of them to be ergonomically configured with Trader Joe's existing checkstand. This
3 statement does not indicate that it is impossible for seats to be placed at checkstands, but rather, that
4 Trader Joe's checkstand design is ill-configured to be used while the cashier is in any seated position.
5 This, the Court believes, is something that is the responsibility of Trader Joe's to remedy, as Trader Joe's
6 checkstand never should have been designed in such a fashion that made it impossible to comply with
7 IWC Wage Order No. 7-2001's seating requirement.

8 Second, Trader Joe's argues that placing seats in the cashier's area would interfere with cart
9 movement. This is a function of the distance that exists between checkstands, and checkstand
10 configurations in stores where cashiers work back to back. This is a problem that can be remedied by
11 spacing the checkstands further apart, which Trader Joe's, as noted above, has previously done to
12 accommodate distancing guidelines during the pandemic. Trader Joe's has not provided this Court with
13 any evidence that spacing the checkstands further apart would have any adverse impact upon their
14 business aside from their unsupported assertions that it would. Third, Trader Joe's argues that placing
15 seats on top of the antifatigue mats located at each cash register would create a tripping hazard. Given
16 that Trader Joe's designs much of its own furniture, and given that market options already exist, this
17 Court finds it reasonable that Trader Joe's should find a solution that matches both their aesthetic vision
18 while meeting statutory requirements and properly attending to employees' welfare.

19 2. Application of section 14(A) to demo stations

20 *a. Analysis of sitting vs. standing tasks*

21 Demo workers perform their duties in two discrete locations: the kitchen, and the demo cart.
22 Plaintiffs are arguing that the job duties that are performed solely at the demo cart, i.e., engaging with
23 customers, and handing customers samples, can be performed while seated. Prior to the coronavirus
24 pandemic, demo workers had sat down at the demo station while performing these duties, as Silicani
25 testified to doing so herself. After the pandemic and recommencement of the demo program, these job
26 duties are often performed at mobile carts where, Trader Joe's asserts, there are sometimes antifatigue
27 mats but never seats available. Trader Joe's argues that these tasks should be performed standing to
28 provide optimal customer service. Plaintiffs argue that this is clearly not the case, since Silicani had been

1 so highly rated by her managers in 2016 and 2017 despite using a chair while working at demo for most
2 of that period. Plaintiffs also contend that Trader Joe's requirement that these tasks be performed
3 standing amount to a mere preference, not a business judgment.

4 Trader Joe's assertions that sitting down would impact the effectiveness of the demo program are
5 not supported by the evidence, and in fact, are contradicted by Silicani's performance reviews. This
6 Court finds that the demo station workers' tasks at the carts appear to be relatively stationary and do not
7 involve much in the way of physical exertion or movement. This is further supported by multiple expert
8 witnesses, including Trader Joe's ergonomics expert Dr. Iyer, testifying that the tasks performed at the
9 demo station can be done while sitting. This Court also strongly considers the facts that multiple people
10 at Trader Joe's, including managers and executives such as Mead, knew about Silicani using a seat while
11 working the demo station for months on end before ultimately being told that she could not use a seat
12 while working demo. This Court also gives strong weight to the fact that Silicani using a seat in demo did
13 not appear to have impacted any of Trader Joe's business metrics such as revenue. The evidence
14 indicates that a demo station employee's use of seats has minimal or nonexistent impact upon customer
15 service. Finally, this Court considers that in its current iteration, demo station workers must stand at said
16 demo station which are currently inconsistently equipped with antifatigue mats and never equipped with
17 seats. As Silicani's career shows, employees can eventually specialize in demo and therefore spend a
18 majority of their time working at a demo station. This Court considers the length of time that demo
19 station workers will potentially work, i.e., hours lasting up to a majority of their shift at the mobile carts,
20 as a factor in its analysis.

21 *b. Trader Joe's burden of proof*

22 Trader Joe's raised safety concerns about the implementation of seats into the demo cart area,
23 which this Court addresses. Trader Joe's argues that the inclusion of a seat at the demo station would
24 create a tripping hazard. While this Court acknowledges the truism that adding a seat creates a nonzero
25 chance that someone will trip over that seat, the same can be said for a wide variety of objects inside a
26 grocery store, including but not limited to boxes of products for sale, grocery displays, and customers'
27 carts and bags. Furthermore, Trader Joe's does not provide any evidence besides its assertions to support
28 its viewpoint. Silicani performed demo work without once tripping over her chair in the months she

1 worked while using her chair. With regard to this factor, this Court considers that the addition of a seat to
2 the demo station is not such a safety hazard that it alone provides Trader Joe's with a viable defense
3 against providing demo station workers with seats pursuant to section 14(A).

4 3. Application of section 14(B) to demo stations

5 Relatively little attention was given to this topic at trial, considering that the discussion of this
6 matter was largely subsumed by the question of whether demo workers could use seats while actively
7 performing their job duties at the demo station/cart. With that being said, Silicani did testify that there
8 were lulls between customers at the demo station. In addition, Silicani, Meirose, and Arzate all stated that
9 demo workers were not to leave the station unattended without a coworker to cover the absence. Trader
10 Joe's has not provided any evidence that an employee sitting down during these lulls affects customer
11 service or an employee's ability to engage with customers. As previously mentioned, this Court also
12 takes into consideration the fact that employees may be asked to man the demo stations for hours upon
13 end, which is a rather lengthy amount of time to be standing in a single location, especially without
14 antifatigue mats. This Court therefore concludes that the weight of the evidence shows that demo station
15 workers are entitled to seats during lulls between customers.

16 As a defense to providing demo workers with seats during lulls, Trader Joe's again raised safety
17 concerns about the implementation of seats into the demo cart area. Trader Joe's argues that the inclusion
18 of a seat at the demo station would create a tripping hazard. While this Court acknowledges the truism
19 that adding a seat creates a nonzero chance that someone will trip over that seat, the same can be said for
20 a wide variety of objects inside a grocery store, including but not limited to boxes of products for sale,
21 grocery displays, and customers' carts and bags. Furthermore, Trader Joe's does not provide any
22 evidence besides its assertions to support its viewpoint. After all, Silicani performed demo work without
23 once tripping over her chair in the months she worked while using her chair, which necessarily included
24 sitting down during lulls between customers. With regards to this factor, this Court considers that the
25 addition of a seat to the demo station is not such a safety hazard that it alone provides Trader Joe's with a
26 viable defense against providing demo station workers with seats pursuant to section 14(B).

27 **C. Civil Penalties**

28 The Labor Code provides that the employment of any employee under conditions of labor

1 prohibited by statute or wage order is unlawful and therefore can give rise to civil penalties. Lab. Code §
2 1198; *see also Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472, 1476; *Home Depot U.S.A., Inc. v.*
3 *Sup. Ct.* (2010) 191 Cal.App.4th 210, 221–222. The iteration of Labor Code § 2699(f) applicable to this
4 case states that there is a penalty of \$100 for each aggrieved employee per pay period for initial
5 violations and a penalty of \$200 for each aggrieved employee per pay period for each subsequent
6 violation. These penalties are mandatory, not discretionary; a court may in its discretion reduce penalties
7 but not eliminate them entirely. *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1213.

8 This Court must now consider what Private Attorney General Act (“PAGA”) civil penalties to
9 impose upon Trader Joe’s for the violation of IWC Wage Order No. 7-2001. As noted above in the
10 “Findings” section of this Statement of Decision, there was a discovery dispute right before the trial, in
11 which Plaintiff brought a motion to compel the production of the transactional data that would indicate
12 the lengths of time employees spent at checkstands and demo stations, respectively. This Court
13 considered it unreasonable for Trader Joe’s to produce the data while its counsel was actively engaged in
14 trial in order for Young to extrapolate usable conclusions from that data in that same trial. To put it
15 bluntly, this Court did not find it prudent to force parties to engage in important discovery while a trial on
16 the very same matter was going on, especially as Trader Joe’s had represented to this Court that a
17 representative sample of data had already been produced in February of 2024.

18 PAGA provides that this Court “may award a lesser amount than the maximum civil penalty
19 amount specified by [statute] if, based on the facts and circumstances of the particular case, to do
20 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
21 2699(e)(2). During trial, Trader Joe’s offered no evidence showing that to award Plaintiff’s requested
22 penalties would result in an award that is “unjust, arbitrary, oppressive, or confiscatory.” When Plaintiffs
23 sought to introduce evidence regarding Trader Joe’s fiscal condition, as it bore on the penalty issue,
24 Trader Joe’s objected to the questions and the introduction of any evidence of its fiscal condition that
25 would bear on the question of any potential basis for a reduction in any available penalties. In
26 conjunction with the objections, Trader Joe’s represented that it would not argue that it could not pay the
27 penalties awarded. TT at 732:3–736:17. In addition to making this representation, Trader Joe’s offered no
28 evidence on the question of the number of pay periods that it believes are at issue, offered no counter-

1 expert testimony as to either the number of pay periods at issue or the amount of penalties at issue, and
2 presented no evidence on the question of whether the penalties Plaintiffs seek are “unjust, arbitrary and
3 oppressive, or confiscatory” or any “facts” and/or “circumstances” that would warrant a reduction in the
4 penalties Plaintiffs seek.

5 To compute the penalties available under section 2699(f), Plaintiffs asked Trader Joe’s to provide
6 the number of pay periods in which crew members performed cashiering and/or demo duties. TE 192,
7 No. 4; TE 211, Nos. 38 and 39. Trader Joe’s identified 43,479 crew members who worked for Trader
8 Joe’s during the pertinent time period and whose duties included performing cashiering and/or demo
9 duties. TE 212, Supp. Resp. No. 3. Trader Joe’s stated that these crew members worked 2,543,299 pay
10 periods. TE 212, Supp. Resp. No. 4. To the extent that further information was necessary, Plaintiffs also
11 asked Trader Joe’s to provide the specific pay periods that crew members spent processing transactions at
12 the cash register, and the specific pay periods that crew members spent working at demo stations. Trader
13 Joe’s refused to produce this more specific information, instead referring Plaintiffs to its response that
14 reflected the 2,543,299 pay periods. TE 211. Plaintiffs also served a notice to appear and produce, again
15 asking Trader Joe’s to produce the more specific data, to the extent any more specificity was necessary.
16 Trader Joe’s again refused to produce the data, referring Plaintiffs to the discovery response that reflected
17 the 2,543,299 pay periods.

18 Based on the pay periods provided by Trader Joe’s, Young calculated the potential penalties
19 available as follows: \$254,329,900 (2,543,299 x \$100) for the pay periods that crew members worked
20 either cashiering or at demo. Plaintiffs’ expert also conducted a separate calculation applicable to just
21 demo. This calculation multiplied the number of pay periods demo operated during the pertinent time
22 period, based on the representation in Mesa-Wise’s declaration, *cf.* TE 232, and multiplied that amount
23 by \$100 (1,271,650 x \$100) for total penalties of \$127,165,000. TT at 1132:7–1133:18; 1141:7–16.
24 Trader Joe’s contests the statistical relevancy of these calculations, and argues that more specific data
25 could provide a more accurate calculation of penalties. Plaintiff contends that Trader Joe’s had the
26 opportunity to turn over the data but refused to multiple times prior to trial.

27 Though this Court strongly wishes that the parties had conducted themselves more prudently and
28 efficiently prior to trial in order to produce better figures for ascertaining civil penalties, this Court need

1 not have received the entire transactional dataset into evidence to determine PAGA penalties. This Court
2 notes that Trader Joe's requires all non-exempt employees to work at the checkstand during their shifts,
3 as said employees are required to do "a little of everything." TT at 159:1–19, 160:24–161:2, 297:23–25,
4 380:14–19, 402:24–403:1. Accordingly, it is not unfair, from the evidence adduced at trial, to conclude
5 that every single pay period reflects an individual who has worked at the checkstand at least once that
6 period. Similarly, this Court considers that evaluating demo station penalties by the number of demo
7 stations that were said to be active is not an unfair manner of calculating PAGA penalties, as it is
8 assumed that for each day that the demo station is active, there is at least one employee manning that
9 station. However, this Court finds Young's assertion that there were 1,271,650 pay periods when demo
10 was active to be imprecise, as it is calculated based upon the total number of non-exempt employees. It is
11 far less probable that every employee reflected within those pay periods would have been assigned to
12 work at the demo station as opposed to checkstand, as it was not a job duty spread evenly across all
13 employees each shift like cashiering was. The evidence adduced at trial showed that certain employees
14 like Silicani worked at the demo station extensively while other employees like Meirose barely worked at
15 the demo station. However, this is considered against the evidence that all non-exempt employees' duties
16 included demo work. TE 192 & 205, Response No. 1.

17 Finally, this Court takes into consideration that Plaintiffs are requesting this Court to award over
18 \$250 million in PAGA penalties alone. In *Bernstein v. Virgin America, Inc.* (2019) 365 F.Supp.3d 980,
19 the Northern District of California awarded the Labor Workforce Development Agency ("LWDA") and
20 aggrieved employees \$33.3 million in penalties, subsequently reduced to a little under \$25,000,000, for
21 multiple violations of the Labor Code, including unpaid wage, overtime, and meal and rest period
22 violations. *Id.* at 984, 991–992. When the district court reduced its award of \$33.3 million to
23 approximately \$25 million, it considered the following factors: (1) proportion of penalties relative to
24 damages (\$45 million in that action); and (2) uncertainty regarding liability in this case. *Id.* at 992. As the
25 seating claims are the first matter to have been tried and the matter of class certification has not yet been
26 adjudicated, this Court is without basis to determine what the damages will be in any class or
27 representative action in this proceeding.

28 There is a sound claim for PAGA penalties for the statutory violations. However, \$254,329,900

1 is certainly an excessive figure given that, unlike the aggrieved employee class in *Bernstein* who suffered
2 multiple Labor Code violations resulting in wage losses, the aggrieved employees in this case suffered no
3 wage losses from the deprivation of seating.

4 This Court considers that each employee per pay period would have spent between one and two
5 hours cashiering and a similar amount of time at a demo station, and that these particular labor violations
6 did not result in the loss of wages. One hour of cashiering, or working at a demo station, out of an eight-
7 hour day is one eighth. One eighth of a pay period is 12.5%. 12.5% of \$254,329,900 amounts to a sum a
8 little over \$30 million. Accordingly, this Court elects to award PAGA penalties in the total amount of
9 \$30,000,000.00 for all violations of section 14(A) and 14(B) in which Trader Joe's failed to provide
10 cashiers and demo station employees with proper seating.

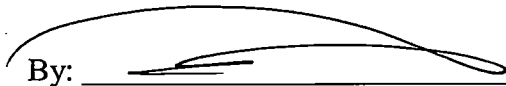
11 Therefore, the total amount of PAGA penalties that is to be awarded is \$30,000,000.00. Seventy-
12 five percent (75%) of that amount, or \$22,500,000.00, is to be paid to the LWDA. The remaining twenty-
13 five percent (25%), \$7,500,000.00 is to be paid to the aggrieved employees.

14 15 **ORDERS and JUDGMENT**

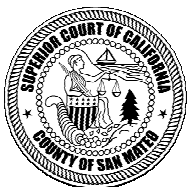
16 The Court Orders Judgment in favor of Plaintiffs Kathryn A. Silicani, Randy Meirose, and Antonio
17 Arzate and against Defendant Trader Joe's Company, as to the questions of: (1) whether failure to
18 provide seats at the checkstand violated section 14(A) of the IWC Wage Order No. 7-2001; and (2)
19 whether failure to provide seats at the demo station violated sections 14(A) and 14(B) of the IWC Wage
20 Order No. 7-2001.

21 IT IS SO ORDERED.

22
23 Dated: 5-1-25

By: 

SUSAN L. GREENBERG
JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF SAN MATEO COUNTY

Civil Department
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AFFIDAVIT OF SERVICE

Date: 5/1/2025

In the Matter of: TRADER JOE'S WAGE AND HOUR CASES

Case No.: JCCP 5196

Document(s):

Filed On:

Final Statement of Decision and Order After Seating Claims Trial

05/01/2025

Affidavit of Service

05/01/2025

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by electronic service to the parties or their counsel of record at the email addresses set forth below and shown by the records of this court, or, if a physical mailing address is present below, by placing the document(s) in an envelope for collection and mailing, following the Court's ordinary business practices for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Executed on: 5/1/2025

Chad L Peace, Court Executive Officer/Clerk

By: /s/ Alexandrina Ortega

Alexandrina Ortega, Deputy Clerk

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