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*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ASHLEY MUDRY, on behalf of herself and all  
other others similarly situated,

Plaintiffs,

v.

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.

**NOTICE OF REMOVAL**

Civil Action No.  
Removed From:  
Supreme Court  
State of New York, County of New York  
Index No. 159625/2020

**NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE THAT** Defendant The Stop & Shop Supermarket Company LLC (“Stop & Shop” or “Defendant”) hereby removes this case from the Supreme Court of the State of New York for the County of New York, to the United States District Court for the Southern District of New York. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) because this matter was brought as a class action, diversity of citizenship exists between one or more members of the putative class and Stop & Shop, the number of proposed class members exceeds 100 individuals, and the amount in controversy exceeds \$5 million in the aggregate.

**I. FACTUAL BACKGROUND**

1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of class actions. *See* 28 U.S.C. § 1453.

2. On or about November 9, 2020, Plaintiff Ashley Mudry (“Plaintiff”) commenced an action against Stop & Shop in the Supreme Court of the State of New York for the County of New York, captioned *Ashley Mudry, on behalf of herself and all other others similarly situated, against The Stop & Shop Supermarket Company LLC*, and was assigned State Court Index No. 159625/2020 (the “Complaint”). A true and correct copy of the Complaint, together with all process filed with the Supreme Court in the state court action, are attached hereto as Exhibits A through B.

3. Plaintiff purports to bring and maintain this action as a class action pursuant to Article 9 of the New York Civil Practices Law and Rules (“CPLR”). Complaint (Ex. A), ¶¶ 7-8. Plaintiff seeks to represent a class of allegedly “similarly situated nonexempt hourly paid employees of Defendant in the State of New York at any time during the period commencing six years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued.” *Id.* at ¶ 7.

4. Plaintiff’s Complaint seeks to recover unpaid uniform maintenance pay, attorneys’ fees and costs and interest, and “other and further relief as [] deem[ed] necessary and proper,” based on the alleged unlawful failure to pay uniform maintenance pay pursuant to Article 19 of the New York Labor Law and its supporting regulations. *Id.* at ¶¶ 33-41 and “Prayer for Relief.”

## **II. REMOVAL IS TIMELY**

5. Plaintiff’s Complaint is framed as a putative class action and seeks recovery for purported wage violations under New York law. Therefore, for the purposes of this Notice of

Removal, this matter is a class action as that term is defined pursuant to 28 U.S.C. §§ 1332(d)(1)(B) and 1453.<sup>1</sup>

6. Plaintiff's Summons and Complaint do not state an alleged amount of damages suffered by Plaintiff or the class, nor do they provide a basis from which to calculate the amount in controversy absent an investigation by Stop & Shop. Accordingly, while Stop & Shop is permitted to remove this action based upon its investigation and a subsequent determination that the action is removable, the time limits of 28 U.S.C. § 1446 have not been triggered. *Cutrone v. Mortgage Elec. Registration Sys., Inc.*, 749 F.3d 137 (2d Cir. 2014) ("Section 1446(b) imposes a time limit only in cases in which the plaintiff's initial pleading or subsequent document has explicitly demonstrated removability. Defendants are permitted to remove outside of these periods when the time limits of 28 U.S.C. § 1446(b) are not triggered."); *see also Moltner v. Starbucks Coffee Co.*, 624 F.3d 34 (2d Cir. 2010) (holding the removal clocks in 28 U.S.C. § 1446 "do[] not start to run until the plaintiff serves the defendant with a paper that explicitly specifies the amount of monetary damages sought.").

7. In any event, Stop & Shop's registered agent was first served by the Secretary of State of the State of New York with the Summons and Complaint on December 15, 2020. *See* Brendan Killeen Decl. ("Killeen Decl."), ¶ 3, Ex. A. Because this Notice of Removal is filed within thirty (30) days of service of the Summons and Complaint by the Secretary of State, it would have been timely under 28 U.S.C. §§ 1446(b) and 1453 even if the Summons and Complaint had started the removal clock. *See, e.g., Abdullah v. Erdner Bros.*, No. 14-CV-01742, 2015 WL 1190141 (D. Conn. Mar. 16, 2015).

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<sup>1</sup> Defendant does not concede, and specifically disputes, Plaintiff's allegations that individuals are similarly situated to Plaintiff and that this lawsuit may properly proceed as a class action.

8. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

**III. THIS COURT HAS JURISDICTION OVER THIS MATTER PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005.**

9. This Court has jurisdiction over this matter pursuant to CAFA. *See* 28 U.S.C. §§ 1332(d), 1453. Under CAFA, District Courts have original diversity jurisdiction over a class action whenever: (1) “any member of a [putative] class of plaintiffs is a citizen of a State different from any defendant,” (28 U.S.C. § 1332(d)(2)(A)); (2) “the number of members of all proposed plaintiff classes in the aggregate is” not less than 100 (28 U.S.C. § 1332(d)(5)(B)); and (3) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs” (28 U.S.C. § 1332(d)(2)).

10. All CAFA requirements are satisfied in this case. Further, no exception to the exercise of federal jurisdiction applies. *See, e.g.*, 28 U.S.C. § 1332(d)(4)(A)-(B). Therefore, removal of this case is proper pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

**A. Diversity of Citizenship Exists.**

11. To satisfy CAFA’s diversity requirement, a party seeking removal need only show that minimal diversity exists—that is, that one putative class member is a citizen of a state different from that of one defendant. 28 U.S.C. § 1332(d)(2); *Hines v. Overstock.com, Inc.*, No. 09-CV-991, 2013 WL 4495667, at \*5 (E.D.N.Y. Aug. 19, 2013).

**1. Plaintiff is a citizen of New York.**

12. An individual is a citizen of the state in which he or she is domiciled. *See Adrian Family Partners I, L.P. v. ExxonMobil Corp.*, 79 F. App’x 489, 491 (2d Cir. 2003). Citizenship is determined by the individual’s domicile at the time the lawsuit is filed in state court. *See Law*

*Offices of K.C. Okoli, P.C. v. BNB Bank, N.A.*, 481 F. App'x 622, 625 (2d Cir. 2012)

(“Jurisdictional facts such as the amount in controversy are evaluated on the basis of the pleadings viewed at the time when the defendant files the notice of removal.”) (internal citations and quotations omitted).

13. Plaintiff alleges that she is a citizen of New York. Complaint (Ex. A.), ¶ 1.

**2. *Stop & Shop is not a citizen of New York.***

14. Stop & Shop is a Delaware limited liability corporation, of which Ahold U.S.A. is the sole member. Stop & Shop’s principal place of business (where the majority of its executive and administrative functions are performed) is Quincy, Massachusetts. *See Duzer Realty Corp. v. U.S. Underwriters Ins. Co.*, No. 12-CV-926, 2012 WL 2872306, at \*1 (E.D.N.Y. July 12, 2012) (“The phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.”) (citing *Hertz v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 1186 (2010)). Ahold U.S.A. is, and was at the time of the inception of this civil action and at all times intervening, a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal place of business and headquarters in Quincy, Massachusetts. Accordingly, Defendant Stop & Shop is not now, and was not at the time of the filing of this action, a citizen and/or resident of the State of New York within the meaning of the Acts of Congress relating to the removal of class actions. *See Avon Prods., Inc. v. Edgewater Tech.-Ranzal, LLC*, No. 15-CV-4932, 2015 WL 4560960, at \*1 (S.D.N.Y. July 23, 2015).

15. Therefore, there is diversity of citizenship pursuant to CAFA because a member of the putative class “is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).

**B. The Proposed Classes Consists of at Least 100 Proposed Class Members.**

16. Removal under CAFA is appropriate where there are at least 100 members of all proposed plaintiff classes in the aggregate. *See* 28 U.S.C. § 1332(d)(5)(B).

17. The Complaint alleges claims on behalf of Plaintiff and a putative class of similarly situated individuals who allegedly work or have worked for Stop & Shop in New York. *See* Complaint (Ex. A), ¶ 8. Specifically, Plaintiff’s proposed class consists of “[a]ll current and former employees who worked for Defendant in the State of New York during the [six years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued] who were required as a condition of their employment to wear uniforms; were not offered or provided laundering services for the required uniforms; and were not provided uniform maintenance pay or reimbursement.” *Id.* at ¶¶ 7-8.

18. Throughout 2019 and 2020, at least 12,000 unionized employees were employed at Stop & Shop stores within New York State per work week, each of whom was required to wear certain Stop & Shop apparel. *See* Generoso del Rosario Decl. (“del Rosario Decl.”), ¶¶ 2-3.

19. As such, the second jurisdictional requirement under CAFA is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

**C. The Amount in Controversy Requirement Is Satisfied.<sup>2</sup>**

20. Pursuant to CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(6).

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<sup>2</sup> This Notice of Removal addresses the alleged nature and amount of damages placed at issue by Plaintiff’s Complaint. Stop & Shop’s reference to specific damages amounts and its citation to

21. As the Supreme Court has held, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owns*, 135 S. Ct. 547, 554 (2017).

22. Additionally, Congress intended for federal jurisdiction to attach under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” S. Rep. No. 109-14, *as reprinted in* 2005 WL 627977, at \*42-43 (1st Sess. 2005).

23. To satisfy the amount-in-controversy requirement under CAFA, the party seeking removal “must show that it appears to a ‘reasonable probability’ that the aggregate claims of the plaintiff class are in excess of \$5 million.” *Smith*, 944 F. Supp. 2d at 250 (citing *Blockbuster, Inc.*, 472 F.3d at 59). In determining whether the removing defendants have met this burden, courts look first to the complaint and then to the defendant’s petition for removal. *Id.* Where the pleadings are inconclusive of the amount in controversy, a court may consider evidence outside the pleadings. *Id.*; *DiPonzio v. Bank of Am. Corp.*, No. 11-CV-06192, 2011 WL 2693912, at \*3 (W.D.N.Y. July 11, 2011) (“Where, as here, the pleadings are silent as to the amount in controversy, federal courts may look outside those pleadings to other evidence in the record.”) (citations omitted).

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comparable cases are provided solely for the purpose of establishing that the amount in controversy is more likely than not in excess of the jurisdictional minimum. Stop & Shop maintains that Plaintiff’s claims are without merit and that Stop & Shop is not liable to Plaintiff or the putative class she purports to represent. Stop & Shop specifically denies that Plaintiff or any other alleged class member has suffered any damage as a result of any act or omission by Stop & Shop. No statement or reference contained herein shall constitute an admission of liability or a suggestion that Plaintiff will or could actually recover any damages amounts based upon the allegations contained in the Complaint or otherwise.

24. Once the party seeking removal has satisfied its burden of demonstrating that the amount in controversy has been met, the plaintiff can defeat jurisdiction only by demonstrating “to a legal certainty” that the amount recoverable does not meet the \$5,000,000 threshold. *See Scherer v. Equitable Life Assurance Soc’y of U.S.*, 347 F.3d 394, 397 (2d Cir. 2003). Under controlling Second Circuit precedent, this a “difficult burden to overcome.” *Hines*, 2013 WL 4495667, at \*6. Under the “legal certainty” standard, Plaintiff must demonstrate that “[t]he legal impossibility of recovery [is] so certain as virtually to negative the [their] good faith in asserting the claim.” *Scherer*, 347 F.3d at 397; *Hines*, 2013 WL 4495667, at \*6.

25. Further, CAFA’s legislative history makes clear that doubts regarding the maintenance of class actions in state or federal court should be resolved in favor of federal jurisdiction. *See, e.g.*, S. Rep. 109-14, reprinted in 2005 WL 627977, at \*43 (“Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.”).

26. While Stop & Shop denies Plaintiff’s factual allegations and denies that Plaintiff or any member of the putative classes that she purports to represent are entitled to the relief sought in the Complaint, or to any other form of relief, Stop & Shop has established to a “reasonable probability” that the amount in controversy of the putative classes as alleged in the Complaint exceeds \$5,000,000.

**1. Information Relevant to Amounts at Issue.**

27. Plaintiff’s Complaint defines the class to include Stop & Shop employees in New York who were required to wear uniforms at any time during the period six years prior to the filing of the Complaint and continuing until “such further date as the practices complained of are



discontinued.” *See* Complaint (Ex. A), ¶¶ 7-8. The statute of limitations for Plaintiff’s claims based on alleged violations of the New York Labor Law is six years.

28. Plaintiff filed the Complaint on or around November 9, 2020. Thus, for purposes of establishing federal jurisdiction under CAFA, the class period with respect to Plaintiff’s claims under the New York Labor Law is November 9, 2014 through the conclusion of this action (the “Class Period”).

**2. Calculation of Plaintiff’s Claimed Damages.**

29. In her Cause of Action, Plaintiff alleges that “Defendant required Plaintiff and the Class to wear a uniform consisting of a shirt and pants emblazoned with Defendant’s logo” and that “Defendant did not launder Plaintiff or the Class’s required uniforms, nor did Defendant offer to launder them.” *See* Complaint (Ex. A), ¶¶ 34-35.

30. Plaintiff further alleges that “Defendant never paid to Plaintiff or the Class any uniform maintenance pay or reimbursement for the cost of maintaining uniforms” to Plaintiff or the class and that “[t]he hourly rate paid by Defendant to Plaintiff and the Class was either the applicable minimum wage, or a rate that although above the minimum wage was effectively below the minimum wage when calculating the unpaid uniform maintenance pay.” *Id.*, ¶¶ 37, 39.

31. Plaintiff further alleges that Stop & Shop thus violated “Article 19 of the New York Labor Law and its supporting regulations, including the New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. Part 146, and/or the former New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. Part 137 and/or 12 N.Y.C.R.R. Part 142 the Minimum Wage Order for Miscellaneous Industries and Occupations.” *Id.*, ¶ 40.

32. As supermarket employees of a for-profit enterprise not subject to any specific wage order or equivalent regulation, Stop & Shop employees in New York State are covered by the Minimum Wage Order for Miscellaneous Industries and Occupations (the “Miscellaneous Wage Order”). 12 NYCRR ¶ 142-1.1 (“This Part shall apply to all employees...except: (a) employees who are covered by minimum wage standards in any other minimum wage order promulgated by the commissioner[.]”).

33. The Miscellaneous Wage Order sets forth uniform maintenance pay rates which vary depending on: (a) the location of the employer (New York City; Nassau / Suffolk / Westchester Counties; or the remainder of New York State); (b) the number of hours worked by employee per week (over 30 hours per week; more than 20 hours but less fewer than 30 hours per week; and 20 hours or fewer per week); (c) the year (increasing annually on December 31); and (d) in the case of New York City through December 31, 2019, whether the employer employed ten or fewer employees. 12 NYCRR ¶ 142-2.5(c).

34. For the period December 31, 2018 through December 30, 2019, the Miscellaneous Wage Order set the lowest applicable uniform maintenance pay rate (for employees working 20 or fewer hours per week in the remainder of New York State) at \$6.60 per hour. 12 NYCRR ¶ 142-2.5(c)(3).

35. For the period December 31, 2019 through December 30, 2020, the Miscellaneous Wage Order set the lowest applicable uniform maintenance pay rate (for employees working 20 or fewer hours per week in the remainder of New York State) at \$7.00 per hour. 12 NYCRR ¶ 142-2.5(c)(3).

36. Plaintiff alleges that she and members of the class are owed uniform maintenance pay. *See* Complaint (Ex. A), ¶¶ 33-40.

37. Assuming the lowest applicable uniform maintenance pay rate and the minimum number of class members per work week, the amount in controversy based on the allegations in the Complaint would exceed the jurisdictional threshold of \$5,000,000 even when limited solely to the time period September 8, 2019 through the filing of the Complaint:

- a. \$1,267,200 for 16 weeks of unpaid uniform maintenance pay to the at least 12,000 average weekly employees in New York State in 2019 from September 8, 2019 through the end of the year, at \$6.60 per employee per week; and
- b. \$3,780,000 for 45 weeks of unpaid uniform maintenance pay to the at least 12,000 average weekly employees in New York State in 2020 through November 7, 2020 (the work week immediately preceding the filing of the Complaint), at \$7.00 per employee per week.

**3. *Summary of Account in Controversy.***

38. Thus, although Stop & Shop expressly denies Plaintiff's allegations, and expressly denies that she or the putative class that she purports to represent are entitled to any of the requested relief, the amount in controversy associated with Plaintiff's claims for just the period September 8, 2019 through the filing of the Complaint clearly exceeds the \$5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2). This amount does not take into consideration any claimed interest, attorney's fees, or potential damages for the remainder of the class period. *See* Complaint (Ex. A), at pp. 6-7.

39. As such, the third jurisdictional requirement under CAFA is satisfied. *See* 28 U.S.C. § 1332(d)(2).

**IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED.**

40. As set forth above, the Summons and Complaint do not explicitly specify the amount of monetary damages sought, and in any event this Notice of Removal is filed within thirty (30) days of Stop & Shop's receipt of the Complaint. *See* 28 U.S.C. § 1446(b).

41. As Plaintiff originally filed this action in the Supreme Court of the State of New York for the County of New York, removal to the United States District Court, Southern District of New York, is proper under 28 U.S.C. §1441(a).

42. As required by 28 U.S.C. § 1446(d), Stop & Shop will provide notice of this removal to Plaintiff through her attorneys of record.

43. As required by 28 U.S.C. § 1446(d), a copy of this Notice will be filed with the Clerk of Court for the Supreme Court of the State of New York, County of New York.

44. Stop & Shop has sought no similar relief.

45. If any questions arise as to the propriety of the removal of this action, Stop & Shop requests the opportunity to present a brief in support of its position that this case is removable and that CAFA's limited exceptions to federal jurisdiction are inapplicable.

WHEREFORE, Stop & Shop, desiring to remove this case to the United States District Court for the Southern District of New York, prays that the filing of this Notice of Removal shall effect the removal of this action to this Court.

Respectfully submitted,

Dated: January 4, 2021  
New York, New York

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Brendan T. Killeen

Brendan T. Killeen

Jason D. Burns

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby affirm that I caused to be served a true and correct copy of Defendants' Notice of Removal by e-mail and Federal Express, this 4th day of January, 2021, on:

Mark Gaylord, Esq.  
Bouklas Gaylord LLP  
357 Veterans Memorial Highway  
Commack, New York 11725

*Attorneys for Plaintiff*

I affirm that the foregoing is true under penalties of perjury.

/s/ Brendan T. Killeen  
Brendan T. Killeen

# **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ASHLEY MUDRY, on behalf of herself  
and all others similarly situated,

Index No.: \_\_\_\_\_

Plaintiff,

**COMPLAINT**

-against-

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.

-----X

Plaintiff ASHLEY MUDRY (“Plaintiff”), on behalf of herself and all others similarly situated, brings this action for damages and other legal and equitable relief against Defendant THE STOP & SHOP SUPERMARKET COMPANY LLC (“Defendant”), upon personal knowledge as to herself and upon information and belief as to others, for violations of the New York State Labor Law (“NYLL”), the New York Code of Rules and Regulations (“NYCRR”), The New York Wage Theft Prevention Act, and any other causes of action that can be inferred from the facts set forth herein:

**PARTIES**

1. Plaintiff is a citizen of New York State.
2. Plaintiff was throughout her entire employment with Defendant, a covered, non-exempt employee within the meaning of the NYLL. As such, Plaintiff was, and is, entitled to be paid in full for all hours worked.
3. Upon information and belief, Defendant is a foreign corporation organized pursuant to the laws of the State of Delaware.



4. Defendant is considered a large employer, having at least 11 or more employees during the duration of Plaintiff’s employment.

5. Defendant maintained control, oversight, and direction over Plaintiff in regards to timekeeping, payroll, and other employment practices, and functioned as an employer pursuant to the NYLL.

6. Defendant, by virtue of its ownership, management, and control over the wages and work of Plaintiff, is considered an employer under the NYLL §190(3).

**CLASS ALLEGATIONS**

7. Plaintiff brings this action on behalf of herself and all other similarly situated non-exempt hourly paid employees of Defendant in the State of New York at any time during the period commencing six years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued (the “Class Period”).

8. This action is properly maintainable as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules. Plaintiff brings this action on her own behalf and as a class consisting of:

All current and former employees who worked for Defendant in the State of New York during the Class Period who were required as a condition of their employment to wear uniforms; were not offered or provided laundering services for the required uniforms; and were not provided uniform maintenance pay or reimbursement;

9. Hereinafter, the class will be referred to as “Class,” and members of the Class as “Class Plaintiffs”

10. The Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is presently unknown to the Plaintiff, and calculation of such number would require facts in the sole control of Defendant, upon information and belief the size

of the Class is believed to be in excess of 1,000 individuals. In addition, the names of all potential members of the Class are not known.

11. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

12. There is no conflict between Plaintiff and any other member of the Class.

13. The questions of law and fact common to the Class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to, the following:

- a. Whether Class Plaintiffs were required to wear uniforms;
- b. Whether Defendant failed to reimburse Class Plaintiffs for business expenses borne for the benefit and convenience of the Defendant including the laundering of said uniforms; and
- c. Whether Defendant laundered or offered to launder the required uniforms;

14. The claims of Plaintiff are typical to the claims of the Class because they are all current or former employees of Defendant who sustained damages, including underpayment of wages as a result of Defendant’s common compensation policies and practices. The defenses that Defendant is likely to assert against the Plaintiff’s claims are typical of the defenses that Defendant is likely to assert against the Class.

15. Plaintiff and her counsel will fairly and adequately protect the interests of the Class. The Plaintiff has retained counsel experienced in complex wage and hour class action litigation.

16. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiff and the Class members lack the financial resources to

adequately prosecute separate lawsuits against Defendant. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendant’s policies.

**FACTS**

17. All of the below factual allegations are, upon information and belief, consistent among Plaintiff and all members of the Class.

18. Plaintiff was employed by Defendant from approximately May 2014 through January 25, 2020.

19. Plaintiff’s duties were to perform labor in furtherance of Defendant’s business.

20. Plaintiff had no authority to hire employees, fire employees, suspend employees, discipline employees, and/or discretion or independent judgment regarding matters of significance.

21. Plaintiff’s rate of pay was always at or below the applicable minimum wage for an employer on Long Island on a weekly basis accounting for all compensation owed, including uniform maintenance pay.

22. Plaintiff was required to wear a uniform at all times while employed by Defendant. The uniform consisted of a shirt, apron, and hat, all emblazoned with Defendant’s logo.

23. Plaintiff was not allowed to select the uniform and no variation was permitted by Defendant.

24. Plaintiff was required by Defendant to wear this uniform every shift.

25. Plaintiff did, in fact, wear the uniform every shift.

26. Defendant did not launder Plaintiff’s required uniforms, nor did Defendant offer to launder the required uniforms.

27. Plaintiff's uniform was issued by Defendant to her for the express benefit of Defendant and it was a condition of her employment to wear it in a clean condition during each shift.

28. Defendant never paid any uniform maintenance pay or reimbursement for the cost of maintaining the uniform.

29. Plaintiff was entitled to additional pay for time spent off the clock and money spent in laundering and maintaining Defendant's uniform.

30. Because of Defendant's improper compensation policies, Plaintiff was deprived of pay, in direct violation of the NYLL

31. This pattern of conduct was continuous throughout Plaintiff's employment

32. Defendant's unlawful conduct has been widespread, repeated, and consistent.

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF  
OF PLAINTIFF AND THE CLASS  
For Violation of the New York Labor Law**

33. Plaintiff alleges and re-alleges all of the other paragraphs contained herein.

34. Defendant required Plaintiff and the Class to wear a uniform consisting of a shirt and pants emblazoned with Defendant's logo.

35. Defendant did not launder Plaintiff or the Class's required uniforms, nor did Defendant offer to launder them.

36. Plaintiff and the Class's uniforms were issued by Defendant for the express benefit of Defendant and it was a condition of their employment to wear them during each shift.

37. Defendant never paid to Plaintiff or the Class any uniform maintenance pay or reimbursement for the cost of maintaining uniforms.

38. Plaintiff and the Class routinely spent time off-the-clock and money to clean and maintain their uniforms consistent with the uniform appearance standards Defendant required.

39. The hourly rate paid by Defendant to Plaintiff and the Class was either the applicable minimum wage, or a rate that although above the minimum wage was effectively below the minimum wage when calculating the unpaid uniform maintenance pay.

40. Defendant’s conduct is in violation of Article 19 of the New York Labor Law and its supporting regulations, including the New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. Part 146, and/or the former New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. Part 137 and/or 12 N.Y.C.R.R. Part 142 the Minimum Wage Order for Miscellaneous Industries and Occupations.

41. All liquidated and punitive damages are hereby waived.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all Class Plaintiffs, demands judgment against Defendant as follows:

- 1. Certification as a class as described herein pursuant to CPLR Article 9 and appointing Plaintiff as representative of the Class and Plaintiff’s counsel as lead counsel for the class;
- 2. A jury trial on these issues to determine liability and damages;
- 3. A judgment declaring that the practices complained herein are unlawful and in violation of New York Labor Law § 230 et seq.; NYC Admin. Code § 6-109; and any other applicable state or federal statute or regulation;
- 4. All damages which Plaintiff and Class Plaintiffs have sustained as a result of Defendant’s conduct and waiving all liquidated and punitive damages.

5. Awarding Plaintiff and the Class their costs and disbursements incurred in connection with this action including reasonable attorneys' fees, and other costs, where such are permitted under CPLR 901, and specifically waiving all punitive and liquidated damages;
6. Pre-judgment and post-judgment interest, as provided by law; and
7. Granting such other and further relief as this Court deems necessary and proper.

Dated: Commack, New York  
November 9, 2020



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Mark Gaylord, Esq.  
Bouklas Gaylord LLP  
*Attorneys for Plaintiffs*  
357 Veterans Memorial Highway  
Commack, New York 11725  
Phone: (516) 742-4949

# **EXHIBIT B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ASHLEY MUDRY, on behalf of herself  
and all others similarly situated,

Plaintiff,

-against-

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.  
-----X

Index No.: \_\_\_\_\_

Date Summons Filed: \_\_\_\_\_

**SUMMONS**

Plaintiffs designates New York  
County as the place of trial.

*To the Above-Named Defendants:*

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Commack, New York  
November 9, 2020



\_\_\_\_\_  
Mark Gaylord, Esq.  
Bouklas Gaylord LLP  
*Attorneys for Plaintiff*  
357 Veterans Memorial Highway  
Commack, New York 11725  
Phone: (516) 742-4949



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*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ASHLEY MUDRY, on behalf of herself and all  
other others similarly situated,

Plaintiffs,

v.

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.

Civil Action No.

**DECLARATION OF BRENDAN T. KILLEEN**

I, Brendan T. Killeen, declare as follows:

1. I am over the age of 18, and I am competent to attest to the facts set forth herein. I am making this declaration based on my personal knowledge and, if sworn as a witness, I could and would testify competently to the facts contained herein.

2. I am an attorney with the law firm of Morgan, Lewis, & Bockius, LLP, counsel for Defendant The Stop & Shop Supermarket Company LLC (“Stop & Shop”).

3. Attached hereto as Exhibit A is a true and correct copy of the Notice of Service of Process provided to Stop & Shop by its registered agent.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of January, 2021 at Ridgewood, New Jersey.

*/s/ Brendan T. Killeen*

BRENDAN T. KILLEEN

# **EXHIBIT A**



## Notice of Service of Process

Transmittal Number: 22438109  
Date Processed: 12/16/2020

**Primary Contact:** Nykema Alexander ( Ahold USA)  
Delhaize America  
2110 Executive Dr  
Salisbury, NC 28147-9007

**Electronic copy provided to:** Susan DiPietro  
Sandy Carter (Ahold USA)  
Wendy Higdon (Ahold USA)

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**Entity:** The Stop & Shop Supermarket Company LLC  
Entity ID Number 2114714

**Entity Served:** The Stop & Shop Supermarket Company LLC

**Title of Action:** Ashley Mudry vs. The Stop & Shop Supermarket Company LLC

**Document(s) Type:** Summons/Complaint

**Nature of Action:** Class Action

**Court/Agency:** New York County Supreme Court, NY

**Case/Reference No:** 159625-2020

**Jurisdiction Served:** New York

**Date Served on CSC:** 12/15/2020

**Answer or Appearance Due:** 20 Days

**Originally Served On:** CSC

**How Served:** Certified Mail

**Sender Information:** Mark Gaylord  
516-742-4949

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

State of New York - Department of State  
Division of Corporations

Party Served:  
THE STOP & SHOP SUPERMARKET COMPANY LLC

Plaintiff/Petitioner:  
MUDRY, ASHLEY

CSC  
80 STATE STREET  
ALBANY, NY 12207

Dear Sir/Madam:

Enclosed herewith is a legal document which was served upon the Secretary of State on 11/13/2020 pursuant to SECTION 303 OF THE LIMITED LIABILITY COMPANY LAW. This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,  
Division of Corporations

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ASHLEY MUDRY, on behalf of herself  
and all others similarly situated,

Plaintiff,

-against-

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.  
-----X

Index No.: 159625-2020

Date Summons Filed: November 9, 2020

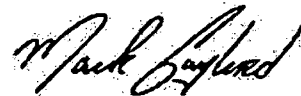
**SUMMONS**

Plaintiffs designates New York  
County as the place of trial.

*To the Above-Named Defendants:*

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Commack, New York  
November 9, 2020



\_\_\_\_\_  
Mark Gaylord, Esq.  
Bouklas Gaylord LLP  
*Attorneys for Plaintiff*  
357 Veterans Memorial Highway  
Commack, New York 11725  
Phone: (516) 742-4949

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ASHLEY MUDRY, on behalf of herself  
and all others similarly situated,

Index No.: 159625-2020

Plaintiff,

**COMPLAINT**

-against-

THE STOP & SHOP SUPERMARKET  
COMPANY LLC,

Defendant.  
-----X

Plaintiff ASHLEY MUDRY (“Plaintiff”), on behalf of herself and all others similarly situated, brings this action for damages and other legal and equitable relief against Defendant THE STOP & SHOP SUPERMARKET COMPANY LLC (“Defendant”), upon personal knowledge as to herself and upon information and belief as to others, for violations of the New York State Labor Law (“NYLL”), the New York Code of Rules and Regulations (“NYCRR”), The New York Wage Theft Prevention Act, and any other causes of action that can be inferred from the facts set forth herein:

**PARTIES**

1. Plaintiff is a citizen of New York State.
2. Plaintiff was throughout her entire employment with Defendant, a covered, non-exempt employee within the meaning of the NYLL. As such, Plaintiff was, and is, entitled to be paid in full for all hours worked.
3. Upon information and belief, Defendant is a foreign corporation organized pursuant to the laws of the State of Delaware.

4. Defendant is considered a large employer, having at least 11 or more employees during the duration of Plaintiff's employment.

5. Defendant maintained control, oversight, and direction over Plaintiff in regards to timekeeping, payroll, and other employment practices, and functioned as an employer pursuant to the NYLL.

6. Defendant, by virtue of its ownership, management, and control over the wages and work of Plaintiff, is considered an employer under the NYLL §190(3).

**CLASS ALLEGATIONS**

7. Plaintiff brings this action on behalf of herself and all other similarly situated non-exempt hourly paid employees of Defendant in the State of New York at any time during the period commencing six years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued (the "Class Period").

8. This action is properly maintainable as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules. Plaintiff brings this action on her own behalf and as a class consisting of:

All current and former employees who worked for Defendant in the State of New York during the Class Period who were required as a condition of their employment to wear uniforms; were not offered or provided laundering services for the required uniforms; and were not provided uniform maintenance pay or reimbursement;

9. Hereinafter, the class will be referred to as "Class," and members of the Class as "Class Plaintiffs"

10. The Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is presently unknown to the Plaintiff, and calculation of such number would require facts in the sole control of Defendant, upon information and belief the size



of the Class is believed to be in excess of 1,000 individuals. In addition, the names of all potential members of the Class are not known.

11. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

12. There is no conflict between Plaintiff and any other member of the Class.

13. The questions of law and fact common to the Class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to, the following:

- a. Whether Class Plaintiffs were required to wear uniforms;
- b. Whether Defendant failed to reimburse Class Plaintiffs for business expenses borne for the benefit and convenience of the Defendant including the laundering of said uniforms; and
- c. Whether Defendant laundered or offered to launder the required uniforms;

14. The claims of Plaintiff are typical to the claims of the Class because they are all current or former employees of Defendant who sustained damages, including underpayment of wages as a result of Defendant's common compensation policies and practices. The defenses that Defendant is likely to assert against the Plaintiff's claims are typical of the defenses that Defendant is likely to assert against the Class.

15. Plaintiff and her counsel will fairly and adequately protect the interests of the Class. The Plaintiff has retained counsel experienced in complex wage and hour class action litigation.

16. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiff and the Class members lack the financial resources to

adequately prosecute separate lawsuits against Defendant. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendant's policies.

**FACTS**

17. All of the below factual allegations are, upon information and belief, consistent among Plaintiff and all members of the Class.

18. Plaintiff was employed by Defendant from approximately May 2014 through January 25, 2020.

19. Plaintiff's duties were to perform labor in furtherance of Defendant's business.

20. Plaintiff had no authority to hire employees, fire employees, suspend employees, discipline employees, and/or discretion or independent judgment regarding matters of significance.

21. Plaintiff's rate of pay was always at or below the applicable minimum wage for an employer on Long Island on a weekly basis accounting for all compensation owed, including uniform maintenance pay.

22. Plaintiff was required to wear a uniform at all times while employed by Defendant. The uniform consisted of a shirt, apron, and hat, all emblazoned with Defendant's logo.

23. Plaintiff was not allowed to select the uniform and no variation was permitted by Defendant.

24. Plaintiff was required by Defendant to wear this uniform every shift.

25. Plaintiff did, in fact, wear the uniform every shift.

26. Defendant did not launder Plaintiff's required uniforms, nor did Defendant offer to launder the required uniforms.

27. Plaintiff's uniform was issued by Defendant to her for the express benefit of Defendant and it was a condition of her employment to wear it in a clean condition during each shift.

28. Defendant never paid any uniform maintenance pay or reimbursement for the cost of maintaining the uniform.

29. Plaintiff was entitled to additional pay for time spent off the clock and money spent in laundering and maintaining Defendant's uniform.

30. Because of Defendant's improper compensation policies, Plaintiff was deprived of pay, in direct violation of the NYLL

31. This pattern of conduct was continuous throughout Plaintiff's employment

32. Defendant's unlawful conduct has been widespread, repeated, and consistent.

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF  
OF PLAINTIFF AND THE CLASS  
For Violation of the New York Labor Law**

33. Plaintiff alleges and re-alleges all of the other paragraphs contained herein.

34. Defendant required Plaintiff and the Class to wear a uniform consisting of a shirt and pants emblazoned with Defendant's logo.

35. Defendant did not launder Plaintiff or the Class's required uniforms, nor did Defendant offer to launder them.

36. Plaintiff and the Class's uniforms were issued by Defendant for the express benefit of Defendant and it was a condition of their employment to wear them during each shift.

37. Defendant never paid to Plaintiff or the Class any uniform maintenance pay or reimbursement for the cost of maintaining uniforms.

38. Plaintiff and the Class routinely spent time off-the-clock and money to clean and maintain their uniforms consistent with the uniform appearance standards Defendant required.

39. The hourly rate paid by Defendant to Plaintiff and the Class was either the applicable minimum wage, or a rate that although above the minimum wage was effectively below the minimum wage when calculating the unpaid uniform maintenance pay.

40. Defendant's conduct is in violation of Article 19 of the New York Labor Law and its supporting regulations, including the New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. Part 146, and/or the former New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. Part 137 and/or 12 N.Y.C.R.R. Part 142 the Minimum Wage Order for Miscellaneous Industries and Occupations.

41. All liquidated and punitive damages are hereby waived.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all Class Plaintiffs, demands judgment against Defendant as follows:

1. Certification as a class as described herein pursuant to CPLR Article 9 and appointing Plaintiff as representative of the Class and Plaintiff's counsel as lead counsel for the class;

2. A jury trial on these issues to determine liability and damages;

3. A judgment declaring that the practices complained herein are unlawful and in violation of New York Labor Law § 230 et seq.; NYC Admin. Code § 6-109; and any other applicable state or federal statute or regulation;

4. All damages which Plaintiff and Class Plaintiffs have sustained as a result of Defendant's conduct and waiving all liquidated and punitive damages.

5. Awarding Plaintiff and the Class their costs and disbursements incurred in connection with this action including reasonable attorneys' fees, and other costs, where such are permitted under CPLR 901, and specifically waiving all punitive and liquidated damages;

6. Pre-judgment and post-judgment interest, as provided by law; and

7. Granting such other and further relief as this Court deems necessary and proper.

Dated: Commack, New York  
November 9, 2020

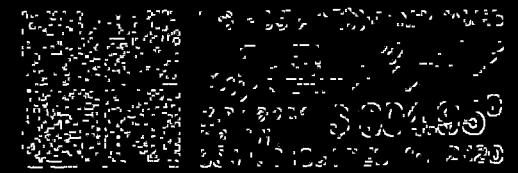


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Mark Gaylord, Esq.  
Bouklas Gaylord LLP  
*Attorneys for Plaintiffs*  
357 Veterans Memorial Highway  
Commack, New York 11725  
Phone: (516) 742-4949

2020 12 09 0087

D31



DEPARTMENT OF STATE  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231-0001

Return Services Requested

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

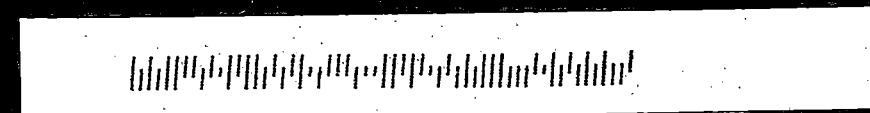
**USPS CERTIFIED MAIL**

**USPS CERTIFIED MAIL**



9214 8969 0059 7932 9272 83

202012090087  
CSC  
80 STATE STREET  
ALBANY NY, 12207



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>ASHLEY MUDRY, on behalf of herself and all other others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>THE STOP &amp; SHOP SUPERMARKET COMPANY LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No.</p>
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**DECLARATION OF GENEROSO DEL ROSARIO**

I, Generoso del Rosario, declare as follows:

1. I am over the age of 18, and I am competent to attest to the facts set forth herein. I am making this declaration based on my personal knowledge and/or my review of documents maintained in the ordinary course of business. If sworn as a witness, I could and would testify competently to the facts contained herein.

1. I am the Director of Labor Relations at The Stop & Shop Supermarket Company LLC (“Stop & Shop”).

2. At all times during the period from January 1, 2019 to the present, at least 12,000 unionized employees have been employed at Stop & Shop stores within New York State.

3. Unionized employees at Stop & Shop stores within New York State are required to wear certain Stop & Shop apparel.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of December, 2020 at 10:00am.

  
\_\_\_\_\_  
Generoso del Rosario

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Stop & Shop Workers Owed Reimbursement for Uniform Laundering, Class Action Claims](#)

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