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25 Company

26 **UNITED STATES DISTRICT COURT**  
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

28 UNITED FOOD AND COMMERCIAL  
29 WORKERS UNION, LOCALS 135,  
30 324, 770, 1167, 1428, AND 1442, an  
31 unincorporated association,

32 Petitioners,

33 v.

34 RALPHS GROCERY COMPANY, a  
35 California Corporation,

36 Respondent.

Case No. 2:19-cv-04265-AB-AFMx

**ANSWER TO PETITION AND  
COUNTERCLAIM**

37 Respondent Ralphs Grocery Company, (“Respondent” or “Ralphs”),  
38 by and through its attorneys, hereby files this Answer to Verified Petition for an  
39 Order Compelling Arbitration Pursuant to a Collective Bargaining Agreement and  
40

1 Counterclaim pursuant to 29 U.S.C.A. § 187(b) (Section 303 of the LMRA, herein  
2 referred to as “Section 303”).

3 **JURISDICTION AND VENUE**

4 1. Ralphs admits that the Locals have filed the present Petition to  
5 Compel Arbitration against Ralphs in an unlawful attempt to have Ralphs cease  
6 doing business with a separate company and acquire work that is not covered by  
7 the collective bargaining agreement (“CBA”) between Ralphs and the Locals.  
8 Ralphs denies that the Court has jurisdiction to compel arbitration under the present  
9 circumstances and denies the remaining allegations contained in Paragraph 1 of the  
10 Petition.

11 2. Ralphs admits that it operates numerous stores within the  
12 Central District and admits that one or more of the Locals have offices in the  
13 Central District. Ralphs denies the remaining allegations contained in Paragraph 2  
14 of the Petition.

15 3. Admitted.

16 4. Ralphs admits that it is a corporation organized and existing  
17 under the laws of Ohio which is presently qualified for the transaction of intrastate  
18 business in, and registered with, the State of California. Ralphs admits that it is an  
19 employer within the meaning of Section 2(2) of the NLRA and that it is doing  
20 business in the County of Los Angeles within the State of California. Ralphs denies  
21 the remaining allegations contained in Paragraph 4 of the Petition.

22 5. Admitted.

23 6. Admitted. However, Ralphs affirmatively states that the  
24 parties’ CBA and applicable law specifically precludes application of any provision  
25 of the CBA, including Article 12, in a manner which violates the law, such as  
26 attempted by the Locals hereby.

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1           7. Admitted. However, Ralphs affirmatively states that the  
2 parties' CBA and applicable law specifically precludes application of any provision  
3 of the CBA, including Article 12, in a manner which violates the law, such as  
4 attempted by the Locals hereby.

5           8. Ralphs denies that a proper grievance was filed by the Locals  
6 and affirmatively states that Exhibit B evidences the Locals' unlawful attempt at  
7 coercion and is a knowingly unlawful threat against Ralphs. Ralphs denies the  
8 remaining allegations contained in Paragraph 8 of the Petition.

9           9. Ralphs denies that arbitration was properly demanded on  
10 January 24, 2018, or at any other time and affirmatively states that the document  
11 attached as Exhibit C to the Petition evidences the Locals' unlawful attempt at  
12 coercion and is a knowingly unlawful threat against Ralphs. Ralphs denies the  
13 remaining allegations contained in Paragraph 9 of the Petition.

14           10. Ralphs admits that, on April 4, 2018, the email attached to the  
15 Petition as Exhibit D was sent by Mr. Four to counsel for Ralphs. Ralphs denies  
16 the remaining allegations contained in Paragraph 10 of the Petition.

17           11. Ralphs admits that the email attached to the Petition as  
18 Exhibit E was sent on April 12, 2018, but denies that Ralphs did not respond to the  
19 Locals' improper demands for arbitration. Ralphs denies the remaining allegations  
20 contained in Paragraph 11 of the Petition.

21           12. Ralphs admits that the email attached to the Petition as  
22 Exhibit F was sent on April 13, 2018, and affirmatively states that this email speaks  
23 for itself. Ralphs denies the remaining allegations contained in Paragraph 12 of the  
24 Petition.

25           13. Ralphs admits that on April 20, 2018 Mr. Four e-mailed counsel  
26 for Ralphs, as reflected in Exhibit H attached to the Petition and affirmatively states  
27 that this e-mail speaks for itself. Upon information and belief, Ralphs admits that  
28

1 the Locals obtained a list of arbitrators from the FMCS on or about April 13, 2018,  
2 as reflected in Exhibit G attached to the Petition. Ralphs denies the remaining  
3 allegations contained in Paragraph 13 of the Petition.

4           14. Ralphs admits that the e-mail reflected in Exhibit I attached to  
5 the Petition was sent on April 30, 2018, but denies that Ralphs did not communicate  
6 with the Locals regarding the impropriety of their demands for arbitration prior to  
7 that e-mail. Ralphs denies the remaining allegations contained in Paragraph 14 of  
8 the Petition.

9           15. Ralphs admits that the letter attached to the Petition as Exhibit J  
10 was sent to Ralphs' legal counsel on or about May 4, 2018, and admits that this  
11 letter contained a threat that the Locals would seek to compel arbitration if Ralphs  
12 did not acquiesce to the Locals' unlawful demands. Ralphs denies the remaining  
13 allegations contained in Paragraph 15 of the Petition.

14           16. Ralphs admits that its legal counsel sent the letter attached to  
15 the Petition as Exhibit K to counsel for the Locals on or about May 7, 2018 and  
16 affirmatively states that this letter speaks for itself. Ralphs admits that it continued  
17 to refuse to acquiesce in the Locals' attempts to unlawfully acquire non-bargaining  
18 unit work and force Ralphs and Instacart to cease doing business with one another.  
19 Ralphs denies the remaining allegations contained in Paragraph 16 of the Petition.

20           17. Ralphs admits that the correspondence attached to the Petition  
21 as Exhibit L was sent to Ralphs on or about October 23, 2018. Ralphs denies the  
22 remaining allegations contained in Paragraph 17 of the Petition.

23           18. Ralphs admits that the letter attached to the Petition as  
24 Exhibit M was sent to Ralphs on or about November 1, 2018, and admits that in  
25 that letter the Locals continued their unlawful demands. Upon information and  
26 belief, Ralphs admits that a list of arbitrators was received by the Locals from  
27 FMCS on November 12, 2018. Ralphs denies the remaining allegations contained  
28

1 in Paragraph 18 of the Petition.

2           19. Ralphs admits that, on December 10, 2018, Margo A. Feinberg  
3 emailed counsel for Ralphs and reiterated the Locals’ unlawful demands.

4           20. Admitted.

5           21. Ralphs admits that on or about December 26, 2018, the Locals  
6 filed a Petition for an Order Compelling Arbitration in Federal District Court for  
7 the Central District of California but affirmatively states that this Petition was  
8 unlawful and improper. Ralphs admits that this pleading was served on Ralphs.

9           22. Admitted.

10          23. Admitted.

11          24. Ralphs admits that on or about May 9, 2019, the Locals renewed  
12 their unlawful demands. Ralphs denies the remaining allegations contained in  
13 Paragraph 24 of the Petition.

14          25. Ralphs admits that it continues to refuse to submit to the Locals’  
15 unlawful demands to arbitrate a dispute clearly not subject to the parties’ CBA.

16          26. Denied.

17          27. Denied.

18          28. Ralphs admits that it will not agree to submit to the Locals’  
19 unlawful attempts to demand arbitration of a dispute clearly not covered by the  
20 parties’ CBA.

21          29. Denied.

22          30. Denied.

23   **SEPARATE DEFENSES**

24          1. The Locals have failed to state a claim upon which relief can be granted.

25          2. The Locals’ Petition is barred by the applicable statute of limitations  
26 and/or is otherwise untimely.

27          3. The dispute the Locals have identified between the parties in their Petition  
28

1 to Compel is not subject to the grievance procedures outlined in the parties' CBA.

2 4. The instant Petition is an unlawful attempt to acquire work in violation of  
3 Section 8(e) of the NLRA.

4 5. The instant Petition is an unlawful and coercive attempt to have Ralphs  
5 cease doing business with a neutral employer/person in violation of Section 8(e) of  
6 the NLRA.

7 6. The Locals are engaged in an unlawful attempt at "top down" organizing  
8 and otherwise engaged in an unlawful restraint of trade.

9 7. The Locals' anti-trust violations are not subject to the labor exemption.

10 8. The Locals' conduct in attempting to force arbitration is unlawful under  
11 Section 8(b)(4) of the NLRA.

12 9. The Locals' Petition is barred by the doctrines of illegality, estoppel,  
13 and/or waiver.

14 **COUNTERCLAIM**

15 **Violation of 29 U.S.C § 187**  
16 **("Section 303 of LMRA")**

17 1. Ralphs Grocery Company operates several grocery stores in the state of  
18 California.

19 2. The parties have entered into a CBA which allows Ralphs to assign  
20 bargaining unit work to its employees, who are represented by the Locals.

21 3. As employees of a grocery store, this bargaining unit work generally  
22 consists of the handling of merchandise for sale to customers.

23 4. Instacart is a customer shopping service that shops at various grocers at  
24 the sole direction of the customers of those grocers and delivers those items to their  
25 customers. Instacart uses technology to shop and pay for merchandise online for  
26 the grocers' customers. Ralphs has no right to control, or actual control over, the  
27 operations of Instacart-affiliated personnel in Ralphs stores. Instacart-affiliated  
28

1 personnel in Ralphs stores operate as and are, in fact, customers of Ralphs.

2 5. Kroger has a business-to-business contract with Instacart which, through  
3 the use of current technology, facilitates the offer to customers of increased  
4 merchandizing itemization, as well as better pricing, on the Instacart and grocers'  
5 online platforms.

6 6. The Locals have been provided a copy of the agreement between Instacart  
7 and Kroger and are fully aware that the work being performed by Instacart  
8 representatives at Ralphs' stores is not bargaining unit work nor is in any way  
9 controlled or directed by Ralphs.

10 7. The Locals are aware that Instacart and other personal shopping services  
11 operate and have historically operated in Ralphs and other grocers.

12 8. The Locals are aware that Instacart is a separate entity and a separate  
13 employer from Ralphs. Instacart's operations are not "fairly claimable" by the  
14 Locals.

15 9. The Locals have engaged in an ongoing unlawful effort for more than a  
16 year to acquire work that is not covered by the parties' CBA. The "grievance" the  
17 Locals reference in their Petition, their demands for arbitration, and the Petition  
18 itself are each unlawful coercive acts used in those efforts, which are unlawfully  
19 intended to force Ralphs to cease doing business with a neutral third party  
20 employer/person.

21 10. Since receiving the Locals' unlawful "grievance" on or about  
22 November 14, 2017, Ralphs has repeatedly discussed the Locals' unlawful actions  
23 with the Locals, through in person meetings and electronic correspondence in  
24 which Ralphs explained the applicable law and the unlawful nature of the Locals'  
25 demands for arbitration.

26 11. The Locals' conduct has been engaged in with the object of forcing or  
27 requiring Instacart and/or its alleged employees to be represented by the Locals.  
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1 12. The Locals' conduct described herein is an unlawful attempt to force  
2 Instacart to cease doing business with Ralphs in direct violation of Section 8(b)(4)  
3 and 8(e) of the NLRA.

4 13. This conduct is also an unlawful attempt at "top down" organizing and  
5 the Locals, through their conduct described herein, are otherwise engaged in an  
6 unlawful restraint of trade.

7 14. This conduct constitutes an unfair labor practice, as that term is used in  
8 the NLRA and LMRA.

9 15. Ralphs has been injured by reason of the Locals' unfair labor practices  
10 in an amount to be proven at trial.

11 16. Ralphs is entitled to recover its damages, as well as the cost of this suit,  
12 pursuant to Section 303 of the LMRA.

13 WHEREFORE, Ralphs prays for relief as follows:

14 1. For an Order of the Court dismissing, with prejudice, the Locals' unlawful  
15 Petition to Compel Arbitration.

16 2. For an award of its actual damages, in an amount to be proven at trial.

17 3. For recovery of its reasonable attorneys' fees.

18 4. For costs of suit incurred herein.

19 5. For such other and further relief as this Court deems just and proper.

20 Respectfully submitted this 11th day of June, 2019.

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22  
23 By: /s/ Raymond M. Deeny

24 Raymond M. Deeny (*Pro Hac Vice*)  
25 Patrick R. Scully (*Pro Hac Vice*)  
26 Beth Ann Lennon (*Pro Hac Vice*)  
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*Attorneys for Ralphs Grocery Company*



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**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to the action. My business address is Sherman & Howard L.L.C., 90 S. Cascade Avenue, Suite 1500, Colorado Springs, CO 80903.

On June 11, 2019, I served the following document(s) described as **ANSWER TO PETITION AND COUNTERCLAIM** on the interested parties in this action as follows:

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**X BY CM/ECF NOTICE OF ELECTRONIC FILING:** I caused said document(s) to be served by means of this Court’s electronic transmission of the Notice of Electronic Filing through the Court’s transmission facilities, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list obtained from this Court.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 11, 2019, in Colorado Springs, Colorado.

/s/ Mary Navrides