

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/12/2021 6:18:26 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD542/2020
File Title:	MARIA PABALAN v COLES SUPERMARKETS AUSTRALIA PTY LTD ABN 45 004 189 708
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 6/12/2021 10:22:19 AM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 19  
Rule 9.32

**Second Further Amended Originating application  
Part IVA of the Federal Court of Australia Act 1976**

**(Amended pursuant to leave granted by the Honourable Justice Perram made on 3 December 2021)**

No. NSD 542 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work Division

**Maria Pabalan**

Applicant

**Coles Supermarkets Australia Pty Ltd  
(ABN 45 004 189 708)**

Respondent

**To the Respondent**

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar



## Representative Action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

## Details of claim

In respect of each contravention of **each civil remedy provision under s 45** of the *Fair Work Act 2009* FWA alleged in the Statement of Claim filed herewith the Applicant, on the grounds stated therein (and **hereon** adopting the terms therein defined), claims on ~~his~~ **her** own behalf, or on behalf of each Group Member as the case may be:

1. an order pursuant to **ss 545(2)(b) and 547** FWA that Coles pay to ~~the Applicant~~ **Ms Pabalan** or the relevant Group Member:
  - (1) **compensation for the loss she or he suffered because of that contravention; and**
  - (2) **interest up to judgment on the above amount;**
2. an order pursuant to s 546(1) and (3) FWA that Coles pay a pecuniary penalty:
  - (1) ~~to the Applicant~~ **Ms Pabalan** or the relevant Group Member,
  - (2) on the basis that each contravention was a “serious contravention” within the meaning of s 557A FWA; **and**
3. ~~pursuant to s 547 FWA, interest up to judgment on the above amounts~~ **an order pursuant to s 545 of the FWA and s 54A of the *Federal Court of Australia Act 1976* (Cth):**
  - (1) **appointing a suitably qualified referee to:**
    - (a) **audit the Roster, time, absenteeism, pay, and employee file records of Coles in respect of Ms Pabalan and each of the Group Members; and**
    - (b) **provide the Court with a report in accordance with r 28.66 of the *Federal Court Rules 2011* (Cth) setting out the referee's opinion as to the loss suffered by Ms Pabalan and each of the Group Members in respect of each contravention of each civil remedy provision of the FWA alleged in the Statement of Claim; and**
  - (2) **that Coles pay the costs associated with the referee's engagement and completion of the report.**



## The Group

4. The Applicant **Ms Pabalan** brings these proceedings:

- (1) for herself, and
- (2) as the representative of a group constituted by all persons:
  - (a) employed by ~~the Respondent~~ (“Coles”) at any time within the ~~period of 6 years ending on the date of the filing of the Originating Application herein (the “Relevant Period”)~~; **and**
  - (b) **who in the Relevant Period worked** in a position:
    - (i) in a supermarket in the “general retail industry” within the meaning of that phrase in the ~~General Retail Industry Award 2010 (the “Award”)~~,
    - (ii) the title of which was, or the title of which included the word, “manager”, “Coles Services Team Leader” or “Coles Services Team Leader Area Support” ~~(a “Manager Position”)~~, and
    - (iii) which was undertaken as a “full time employee” or “part time employee” as those terms are defined in the Award;
  - (c) ~~who in any Pay Period~~ in the Relevant Period worked ~~an rostered hour~~ **(or part thereof); and**
    - ~~(i) which was on a Monday to Friday on what was for the purposes of the Award an evening,~~
    - ~~(ii) outside the spread of hours from time to time prescribed in the Award for undertaking ordinary hours, or~~
    - ~~(iii) on a Saturday, Sunday or Public Holiday; and~~
  - (d) to whom the Award applied in relation to their employment with the Respondent during the Relevant Period.

~~(the “Group” and a/the “Group Member/s”).~~

## Common Questions

5. Whether the Award applied to **Ms Pabalan and** each Group Member in respect of their employment by Coles from time to time in the Relevant Period.



6. Whether the Award and FWA as it each applied to the Applicant Ms Pabalan and each Group Member from time to time during the Relevant Period required that any work undertaken: as specified in [4(2)(c)] above

(1) be paid at a rate attracting one or more of:

- (a) Evening Work Loadings;
- (b) Night Work Loadings;
- (c) Saturday Work Loadings;
- (d) Sunday Work Loadings;
- (e) Overtime Rates;
- (f) Public Holidays Work Loadings;
- (g) Break Between Work Rates;
- (h) First Meal Allowance;
- (i) Further Meal Allowance; and
- (j) Annual Leave Loading;

(2) be paid in accordance with the Payment Term; and

(3) which was an Overtime Hour be recorded and the records retained by Coles in accordance with the Record Keeping Obligation and the False or Misleading Records Prohibition.

### **Applicant's address for Service**

Place: Adero Law  
3 Hobart Place 5 Torren Street,  
City ACT 2601 Braddon ACT 2612

Email: rory.markham@aderolaw.com.au | nathan.schofield@aderolaw.com.au

### **Service on the Respondent**

It is intended to serve this application on the Respondent.



Date: 3 December 2021

A handwritten signature in black ink, consisting of the letters "RM" followed by a long horizontal stroke, is positioned above a horizontal line.

Signed by Rory Markham  
Lawyer for the Applicant