

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/03/2022 12:56:36 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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



*Sia Lagos*

Dated: 16/03/2022 1:06:37 PM 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 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 17  
Rule 8.05(1)(a)

## Second **Third** Further Amended Statement of Claim

(Amended pursuant to leave granted by the Honourable Justice Perram made on 4 March 2022)

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

1. The Applicant (“**Ms Pabalan**”) brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):
  - (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**”),
    - (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 “**Salaried 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 the Relevant Period worked an hour (or part thereof); 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**”).

2. Coles was at every time material to any claim herein:

- (1) a corporation under the *Corporations Act 2001* (Cth), able to sue, and liable to be sued in its corporate name and style;
- (2) a constitutional corporation within the meaning of s 12 and s 14 of the *Fair Work Act 2009* (Cth) (the “**FWA**”); and
- (3) a national system employer within the meaning of s 12 and s 14 of the FWA.

3. The Award:

- (1) covered throughout Australia any employer engaged in the general retail industry and employees of any such employer; and
- (2) commenced on 1 January 2010, was from time to time thereafter varied and remained in force throughout the Relevant Period.

#### **The Applicant and her claim**

4. Pursuant to an offer in writing:

- (1) from Coles dated 1 June 2016,
- (2) accepted by ~~the~~ Ms Pabalan in writing on 14 June 2016,

Ms Pabalan, on 13 June 2016, commenced full-time employment with Coles at its supermarket at Westfield Miranda, 600 Kingsway, Miranda, New South Wales (the “**Miranda Supermarket**”), in a position entitled “Caretaking Customer Service Manager” at a salary of \$66,000.00 per annum (the “**Contract**”).

4A. Thereafter, Ms Pabalan:

- (1) on 11 November 2016, was engaged in a position entitled “Customer Service Manager” at the Miranda Supermarket, with an annualised salary of \$66,000.00;

- (2) on 7 August 2017, was transferred to Coles' supermarket located on Roselands Drive, Roselands, New South Wales (the "**Roselands Supermarket**"), with an annualised salary of \$70,000.00;
  - (3) on or about August 2018 until 4 November 2018, was required to perform the duties of an "Online Manager" at the Roselands Supermarket, in addition to being Customer Service Manager;
  - (4) on 5 November 2018, was transferred to Coles' supermarket located at 566-594 Princes Highway, Kirrawee, New South Wales, in the position of Customer Service Manager, with an annualised salary of \$71,925.00;
  - (5) on 1 April 2019, had her an annualised salary increased to \$75,500.00 pursuant to an employment contract received on 14 March 2019; and
  - (6) on 19 August 2019, was transferred to Coles' supermarket located at 822-826 Old Princes Highway, Sutherland, New South Wales, in a position entitled "Caretaking Dairy Manager".
5. The Award permitted, and the Contract required, that Ms Pabalan's salary and any other monetary entitlements to which she might become entitled to under either the Award or Contract be paid to her on the 15<sup>th</sup> day of each month (a/the "**Pay Period**").
  6. The first Pay Period to conclude after 13 June 2016 concluded on ~~14 July~~ **30 June** 2016.
  7. Ms Pabalan remained in a Salaried Manager Position until the end of the shift commenced by her on 23 September 2019 whereupon she ceased to be employed with Coles (the "**Termination**").
  8. Each position in which Ms Pabalan was employed as pleaded in paragraphs 4 and 4A above was:
    - (1) in a supermarket in the general retail industry as defined in the Award;
    - (2) a Salaried Manager Position; and
    - (3) within the Award classification of "Retail Employee Level 6",(the "**Positions**").

9. The Award as amended from time to time applied to, among others, Ms Pabalan in respect of her employment with Coles.
10. On and from 13 June 2016, Ms Pabalan was in each of the Positions rostered to work 160 hours on various days from Monday to Sunday, and for varying hours on such days, over a four week roster cycle (a/the “**Roster/s**”).
11. In the premises pleaded in paragraphs 2 to 10 above Ms Pabalan was throughout the period of her employment with Coles a “full-time employee” as defined in the Award.

Award cl. 11

12. Other than when she was for any reason on leave, Ms Pabalan for so long as she was employed by Coles worked:
  - (1) the days and hours specified in the Rosters as were from time to time operative, including any day that was for the purposes of the Award a “Public Holiday”; and
  - (2) the days and hours other than or outside those specified in the Rosters as were from time to time operative, as required from time to time by Coles.
13. Throughout the periods in which a Roster operated, the hours worked by Ms Pabalan on a day in accordance with that Roster:
  - (1) within the span of hours and roster conditions from time to time prescribed in the Award for undertaking ordinary hours, and
  - (2) in so far as the cumulative total thereof did not exceed 152 hours in four consecutive weeks,

were for the purpose of the Award her “ordinary hours” of work for that day.

14. **The Evening Work Contraventions.** For each Pay Period in the period in which a Roster operated, it was a term of the Award applicable to Ms Pabalan’s employment that for any “ordinary hour” worked by her after 6:00pm on any Monday to Friday she would be paid an additional loading of 25% (the “**Evening Work Term/Loading**”).

Award cl. 29.4(a)

15. In contravention of the Evening Work Term Coles did not in any Pay Period pleaded in paragraph 14 above, in respect of any hour worked by Ms Pabalan after 6:00pm on any

Monday to Friday, pay her the Evening Work Loading or any part thereof (collectively the “**Evening Work Contraventions**”).

16. In respect of each Evening Work Contravention Ms Pabalan suffered loss, being the difference between:

- (1) what she was paid for each Evening Work hour undertaken by her, and
- (2) the hourly rate that the Evening Work Term required be paid to her for that hour.

17. **The Night Work Contraventions.** For each Pay Period in the period in which a Roster operated, it was a term of the Award applicable to Ms Pabalan’s employment that ordinary hours worked after 11:00pm on any day were to be paid at:

- (1) time and a half for the first three hours so worked, and
- (2) double time thereafter until the end of the shift that had commenced before or at 11:00pm,

(the “**Night Work Term/Loading**”).

Award cl. 29(2)(a)

18. In contravention of the Night Work Term, Coles did not in any Pay Period pleaded in paragraph 17 above:

- (1) in respect of any hour worked by Ms Pabalan after 11:00pm on any day,
- (2) pay her the applicable Night Work Loading or any part thereof,

(collectively the “**Night Work Contraventions**”).

19. In respect of each Night Work Contravention, Ms Pabalan suffered loss, being the difference between:

- (1) ~~between~~ what she was paid for each Night Work hour undertaken by her, and
- (2) the hourly rate that the Night Work Term required be paid for that hour.

20. **The Saturday Work Contraventions.** For each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan’s employment that “an additional 25%

loading” would apply for “ordinary hours” worked at any time on a Saturday (the “**Saturday Work Term/Loading**”).

Award cl. 29.4(c)

21. In contravention of the Saturday Work Term, Coles did not in any Pay Period pleaded in paragraph 20 above, in respect of any hours worked by Ms Pabalan on a Saturday, pay her the Saturday Work Loading or any part thereof (collectively the “**Saturday Work Contraventions**”).

22. In respect of each Saturday Work Contravention, Ms Pabalan suffered loss; **being** the difference between:

- (1) what she was paid for each Saturday Work hour undertaken by her, and
- (2) the hourly rate that the Saturday Work Term required be paid for that hour.

23. **The Sunday Work Contraventions.** For each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan’s employment that “ordinary hours” worked at any time on a Sunday:

- (1) between 1 January ~~2020~~**2010** and 30 June 2017 would be paid an additional 100% loading;
- (2) between 1 July 2017 and 30 June 2018 would be paid an additional 95% loading;
- (3) between 1 July 2018 and ~~the Termination~~ **30 June 2019** would be paid an additional 80% loading; **and**
- (4) **between 1 July 2019 and the Termination would be paid an additional 65% loading,**

(the “**Sunday Work Term/Loading**”).

Award cl. 29.4(e)

24. In contravention of the Sunday Work Term, Coles did not in any Pay Period pleaded in paragraph 23 above pay Ms Pabalan for any hours worked by her on a Sunday the applicable Sunday Work Loading (collectively the “**Sunday Work Contraventions**”).

25. In respect of each Sunday Work Contravention, Ms Pabalan suffered loss; **being** the difference between:

- (1) what she was paid for each Sunday Work hour undertaken by her, and
- (2) the hourly rate that the Sunday Work Term required she be paid for that hour.

26. **The Public Holiday Work Contraventions.** For each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan's employment ~~employment~~ that hours worked by her on a Public Holiday:

- (1) between 1 January 2010 and 30 June 2017 be compensated by payment at the rate of an additional 150%; and
- (2) between 1 July 2017 and the Termination be compensated by payment of an additional 125%,

(the "**Public Holiday Work Term/Loading**").

Award cl. 29.4(f)

27. In contravention of the Public Holiday Work Term, Coles did not in any Pay Period pleaded in paragraph 26 above, pay Ms Pabalan for any hours worked by her on a Public Holiday the applicable Public Holiday Loading or any part thereof (collectively the "**Public Holiday Contraventions**").

28. In respect of each Public Holiday Contravention Ms Pabalan suffered loss~~s~~, being the difference between:

- (1) what she was paid for each Public Holiday hour undertaken by her, and
- (2) the hourly rate that the Public Holiday Term required be paid for that hour.

29. **The Overtime Contraventions.** In each Pay Period in which Ms Pabalan worked it was a term of the Award applicable to Ms Pabalan's employment that any hours worked by her as required by Coles:

- (1) in excess of ordinary hours ("**Overtime Hours**");
- (2) outside the span of hours (excluding shift work) prescribed in cl 27.2 of the Award; or
- (3) outside any roster condition prescribed in cls- 27 and 28 of the Award,

were to be paid~~at~~ for any such hours:



- (4) as were worked on a Public Holiday at double time and a half;
- (5) as were worked on a Sunday at double time; and
- (6) other than those worked on a Public Holiday or Sunday at time and a half for the first three such hours and double time thereafter,

(the "**Overtime Term/Rates**").

Award cl. 29.2

30. Throughout the period in which she was employed, Ms Pabalan was from time to time required by Coles to work hours:

- (1) contiguous to but prior to the commencement of her rostered shift on any day;
- (2) contiguous to but after the scheduled end of her rostered shift on any day,
- (3) after the end of a single contiguous period of work on any day and before the commencement of her next rostered shift (and discontinuously from either period);
- (4) that were Overtime Hours;
- (5) outside the span of hours prescribed in cl 27.2 of the Award; and
- (6) outside the roster conditions prescribed in cls- 27 and 28 of the Award.

31. In contravention of the Overtime Term, Coles did not in any Pay Period pleaded in paragraph 29 above pay Ms Pabalan the Overtime Rates or any part thereof for any such hour worked by her (collectively the "**Overtime Contraventions**").

32. In respect of each Overtime Contravention Ms Pabalan suffered loss; **being** the difference between:

- (1) what she was paid for each hour worked by her in respect of which she was entitled to the Overtime Rates, and
- (2) the hourly rate that the Overtime Term required be paid for that hour.

32A. **The Break Between Work Periods Contraventions.** In each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan's employment that:

- (1) Ms Pabalan was entitled to a 12-hour rest period between:

- (a) the completion of work, including any reasonable additional hours or Overtime Hours, on one day; and
- (b) the commencement of work on the next day; and

Award cl. 31.2(a)

- (2) if she recommenced work again without having had 12 hours off work, then Coles was required to pay each hour thereupon worked at double the rate to which she would otherwise have been entitled to until such time as she was released from duty for 12 consecutive hours,

(the “**Break Between Work Term/Rate**”).

Award cl. 31.2(b)

32B. In contravention of the Break Between Work Term, Coles did not in any Pay Period in which Ms Pabalan worked otherwise than with a break of 12 hours between the completion of work on one day and the commencement of work on the next:

- (1) in respect of any such hour,
- (2) pay her the applicable Break Between Work Rate or any part thereof,

(collectively the “**Break Between Work Contraventions**”).

32C. By reason of each Break Between Work Contraventions, Ms Pabalan suffered loss, being the difference between:

- (1) what she was paid for each hour worked by her without having had 12 hours off work, and
- (2) the hourly rate that the Break Between Work Term required be paid for that hour.

32D. **The Meal Allowance Contraventions.** In each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan’s employment that:

- (1) if Ms Pabalan was required to work more than one hour after her ordinary time of ending work,
- (2) without being given 24 hours’ notice of that request,

(3) then Coles was required to provide her with a meal or pay her an initial meal allowance of:

- (a) \$16.99 for the period between 1 July 2014 and 30 June 2015;
  - (b) \$17.34 for the period between 1 July 2015 and 30 June 2016;
  - (c) \$17.73 for the period between 1 July 2016 and 30 June 2017;
  - (d) \$17.92 for the period between 1 July 2017 and 30 June 2018;
  - (e) \$18.29 for the period between 1 July 2018 and 30 June 2019; and
  - (f) \$18.87 for the period between 1 July 2019 and the Termination,
- (the “**First Meal Allowance Term/Amount**”).

32E. If the duration of the hours that Ms Pabalan was required to work, referred to in paragraph 32D(1) above, exceeded four hours then Coles was required to pay her a meal allowance of:

- (1) \$15.38 for the period between 1 July 2014 and 30 June 2015;
- (2) \$15.70 for the period between 1 July 2015 and 30 June 2016;
- (3) \$16.05 for the period between 1 July 2016 and 30 June 2017;
- (4) \$16.23 for the period between 1 July 2017 and 30 June 2018;
- (5) \$16.57 for the period between 1 July 2018 and 30 June 2019; and
- (6) \$17.10 for the period between 1 July 2019 and the Termination,

(the “**Further Meal Allowance Term/Amount**”).

Award cl. 20.1(a)

32F. In contravention of the **First** Meal Allowance and Further Meal Allowance Terms, Coles did not in any Pay Period:

- (1) in respect of any hours worked in the circumstances engaging the First Meal Allowance Term, provide her with a meal or pay her the First Meal Allowance Amount or any part thereof; and

(2) in respect of any hours worked in the circumstances engaging the Further Meal Allowance Term, pay her the Further Meal Allowance Amount or any part thereof,

(collectively the “**Meal Allowance Contraventions**”).

32G. By reason of each Meal Allowance Contravention, Ms Pabalan suffered loss as she was not paid the **First** Meal Allowance Amount or Further Meal Allowance Amount.

32H. **The Annual Leave Loading Contraventions.** In each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan’s employment that during any period of annual leave she was entitled to receive a loading of:

(1) 17.5%; or

(2) the relevant weekend penalty rates for that would have been earned had she not been on leave,

whichever was the greater (the “**Annual Leave Loading Term/Rate**”).

Award cl. 32.3

32I. In contravention of the Annual Leave Loading Term, Coles did not in any Pay Period pleaded in paragraph 32H above:

(1) in respect of any period of annual leave taken by Ms Pabalan,

(2) pay her the applicable Annual Leave Loading Rate or any part thereof,

(the “**Annual Leave Loading Contraventions**”).

32J. By reason of each Annual Leave Loading Contravention, Ms Pabalan suffered loss, being the difference **between**:

(1) ~~between~~ what she was paid for each hour for any period of annual leave taken, and

(2) the hourly rate that the Annual Leave Loading Term required be paid for that hour.

32.JA **The Uniform Contraventions.** At all times in the Relevant Period, Coles had in place a policy that required all supermarket-based employees (including, Ms Pabalan and the Group Members) to:

(1) wear a Coles branded uniform during each shift that they worked; and

- (2) keep their uniform clean.

32.JB During the Relevant Period:

- (1) in order to comply with the policy pleaded at paragraph 32.JA above, Ms Pabalan from time to time placed orders for Coles branded uniform items using the 'MyColes' system;
- (2) Coles deducted the amounts identified as 'Bizwear Uniforms' which were attributable to the Coles branded uniform items that she had ordered using the 'MyColes' system from the amount paid by Coles to Ms Pabalan;
- (3) the ordered items were subsequently delivered to Ms Pabalan's store or home for her to wear in accordance with the policy pleaded at paragraph 32.JA above; and
- (4) in order to comply with the policy pleaded at paragraph 32.JA above, Ms Pabalan from time to time laundered the Coles branded uniform items.

32.JC In each Pay Period in which a Roster operated it was a term of the Award applicable to Ms Pabalan's employment that when Coles required her to wear or launder any special uniform, dress, or other clothing, she was entitled to receive:

- (1) an allowance of \$6.25 per week as a full-time employee, or \$1.25 per shift were she to have been a part-time employee, when she was required to launder her special uniform; and
- (2) a reimbursement for the cost of purchasing her special uniform and replacement items when replacement was due to normal wear and tear,

(the "**Special Clothing Allowance Term/Amount**").

Award cl. 20.2(a-b)

32.JD In contravention of the Special Clothing Allowance Term:

- (1) Coles did not in any Pay Period pleaded in paragraph 32.JC above, pay Ms Pabalan the applicable Special Clothing Allowance Amount or any part thereof; and
- (2) in the premises of paragraph 32.JB(2) above, Coles did not reimburse Ms Pabalan for the cost purchasing her Coles branded uniform and replacement items when replacement was due to normal wear and tear,

(the "**Uniform Contraventions**").

32.JE By reason of each Uniform Contravention, Ms Pabalan suffered loss, being the:

- (1) the Special Clothing Allowance Amount which was not paid to her; and
- (2) the amounts of the 'Bizwear Uniform' deductions made from the amount paid to her.

32K. **The Payment Contraventions.** In each Pay Period in which the a Roster operated it was a term of the Award applicable to Ms Pabalan's employment that Coles ~~will~~ was required to:

- (1) pay the wages of Ms Pabalan, including any applicable loadings, rates, and allowances, monthly,
  - (2) according to the actual hours worked each in four weeks consecutively,
- (the "Payment Term").

Award cl. 23.1

32L. In the premises pleaded in paragraphs 15, 21, 24, 27, 31, 32B, 32F, ~~and 32I,~~ and 32.JD above, Coles did not in any Pay Period pleaded in paragraph 32K above:

- (1) pay Ms Pabalan the wages, including any applicable rates, loadings, or allowances, monthly,
- (2) according to the actual hours worked each in the relevant four consecutive weeks,

and thereby also contravened the Payment Term (collectively the "Payment Term Contraventions").

33. **The Record Keeping Contraventions.** It was a requirement of the FWA in respect of Ms Pabalan as an employee of Coles, that Coles make and retain records of the following:

- (1) the number of Overtime Hours worked by Ms Pabalan during each day; or
- (2) when Ms Pabalan started and ceased working Overtime Hours.

(the "Record Keeping Obligation").

FWA s 535;  
*Fair Work Regulations 2009* (Cth) reg 3.34

34. In contravention of the Record Keeping Obligation, Coles did not in respect of any pPay pPeriod in which Ms Pabalan worked Overtime Hours record the number of Overtime Hours

worked by Ms Pabalan during each day or when Ms Pabalan started and ceased working Overtime Hours (collectively the “**Record Keeping Contraventions**”).

34A. **False or Misleading Records Contravention.** It was a requirement of the FWA that Coles in respect of Ms Pabalan not make or keep records that Coles knew was false and misleading (the “**False or Misleading Records Prohibition**”).

FWA s 535(4)

34B. Between about July 2017 to October 2017, Ms Pabalan received a direction from Coles via the Coles intranet that directed employees in Salaried Manager Positions to “clock on and off” for their shifts using the “Kronos” system by entering an 8-digit code provided by the Office in Charge (“**OIC**”).

34C. In about November 2017, a person with the first name Tracey, who at the time was the OIC at the Roselands Supermarket, gave Ms Pabalan her 8-digit code to use with Kronos, which allowed her to record the days and hours she worked.

34D. Between about November 2017 to February 2018:

(1) Mr Con Leiveris was employed by Coles as the store manager of the Roselands Supermarket; and

(2) Ms Pabalan was employed by Coles in a Salaried Manager Position at the Roselands Supermarket.

34E. In about December 2017 or January 2018 a managers meeting was held at the Roselands Supermarket, which was attended by, among others, Mr Liveris and Ms Pabalan (**Managers Meeting**).

34F. At the Managers Meeting, Mr Liveris:

(1) said words the effect that a large number of managers have been “flagged” in the Kronos system for recording hours in the Kronos system worked otherwise than in accordance with their rosters; and

(2) gave a direction that all persons employed in a Salaried Manager Position at the Roselands Supermarket were to record using Kronos only the days and hours of work as were provided in that individual’s rosters (the “**Punch to Roster Direction**”).

34G. A short period of time after the Managers Meeting, Ms Pabalan from time to time clocked on and off for her shifts using the Kronos system in accordance with the Punch to Roster Direction **and not when she actually commenced and finished her shift.**

34H. The conduct pleaded at paragraphs 34F and 34G above were engaged in:

- (1) by an officer, employee, or agent of Coles within the scope of their actual or apparent authority within the meaning of s 793(1)(a) FWA,
- (2) on behalf of Coles.

34I. In the premises of paragraphs 34F to 34H above, Coles knew the Kronos records from about the date of the Managers Meeting:

- (1) were not an accurate record of the days and hours worked by Ms Pabalan; and
- (2) were false or misleading,

(the “**False or Misleading Records Contravention**”).

#### **Contravention of civil remedy provisions and serious contraventions**

35. The conduct of Coles constituting each:

- (1) Evening Work Contravention;
- (2) Night Time Work Contravention;
- (3) Saturday Work Contravention;
- (4) Sunday Work Contravention;
- (5) Overtime Contravention;
- (6) Public Holiday Contravention;
- (7) Break Between Work Contravention;
- (8) Meal Allowance Contravention;
- (9) Annual Leave Loading Contravention; ~~and~~
- (10) Payment Term Contravention; **and**



(11) **Uniform Contravention,**

was prohibited by s 45 FWA and, together with the Record Keeping Contraventions and the False or Misleading Records Contravention prohibited by s 535 FWA, each was by operation of s 539 FWA a civil remedy provision for the purposes of ss 545 and 546 FWA.

35A. Further:

- (1) Coles knowingly contravened the False or Misleading Records Contravention; and
- (2) Coles' conduct constituting the False or Misleading Records Contravention was part of a systematic pattern of conduct relating to one or more other persons.

35B. In the premises of paragraph 35A above, Coles' conduct constituting the False or Misleading Records Contravention was a serious contravention within the meaning of s 557A FWA.

35C. **In the premises of paragraphs 35 to 35B above, Coles bears the burden of disproving any allegations in relation to which:**

- (1) **Coles was required to make and keep records in accordance with s 535 FWA; and**
- (2) **Coles failed to comply with that requirement.**

**FWA s 557C**

**Group Members  
and their claims**

36. Each Group Member was, by reason of:

- (1) working or taking as annual leave **of one or more hours** during a Pay Period,
- (2) in the Relevant Period,

~~one or more hours~~ entitled in respect of any such hour to a payment of one or more of the following:

- (3) the Evening Work Loading;
- (4) the Night Time Work Loading;
- (5) the Saturday Work Loading;
- (6) the Sunday Work Loading;

- (7) the Overtime Rates ;
- (8) the Public Holiday Loading;
- (9) Break Between Work Rates;
- (10) First Meal Allowance;
- (11) Further Meal Allowance; and
- (12) Annual Leave Loading; and
- (13) Special Clothing Allowance.

37. Coles did not pay to any Group Member in respect of any hour referred to in paragraph 36 above any, or any part of any, applicable Loading, Allowance, or Rate referred to in paragraphs 36(3) to 36(12)(13) above in accordance with the Payment Term.
38. The omission of Coles referred to in paragraph 37 above was a contravention by Coles of a term of the Award and conduct prohibited by s 45 FWA which has to the extent of the non-payment caused the Group's loss.

### Particulars

Particulars in relation to the Group's loss or damage will be provided if and when it is necessary for a determination to be made of the individual claims of each Group Member.

39. The failure of Coles to comply with the Record Keeping Obligation and False or Misleading Records Prohibition in respect of each Group Member was conduct prohibited by s 535 of the FWA.

Date: 4 March 2022



Signed by Rory Markham  
Lawyer for the Applicant

### **Certificate of lawyer**

I, Rory Markham, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 March 2022

A handwritten signature in black ink, consisting of the letters 'RM' followed by a long horizontal stroke.

---

Signed by Rory Markham  
Lawyer for the Applicant