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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MANUEL FLORES on behalf of himself and
all others similarly situated

Plaintiff,

vs.

WALMART, INC. a Delaware corporation, a
California corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof**
- 4) Failure to Timely Pay Wages**
- 5) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 6) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Plaintiff Manuel Flores, on behalf of himself and all other similarly situated Non-Exempt Employees employed by Defendants in California (hereinafter referred to as “Non-Exempt Employees” or “Class Members”), asserts the following Class Action claim, pursuant to Code of Civil Procedure section 382, against Walmart, Inc. dba Walmart Distribution Centers and DOES 1 through 50, inclusive (hereinafter collectively referred to as “Defendants”)

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations not paid all lawful wages owed; not provided compliant rest and meal periods; not provided accurate itemized wage statements and not paid timely wages at termination.

3. Plaintiff, on behalf of himself and all Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1199 California Code of Regulations, Title 8, section 11010 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay all overtime wages and rest and meal period premiums to each of their Non-Exempt Employees.

II.

VENUE

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous commercial activities in San Bernardino County, California and each Defendant is within the jurisdiction of

1 this Court for service of process purposes. Defendants employ numerous Class Members in San
2 Bernardino County, California.

3 **III.**

4 **PARTIES**

5 6. Plaintiff is and at all times mentioned in this complaint was a resident of
6 California.

7 7. On information and belief, Defendants were at all times mentioned herein licensed
8 and qualified to do business in California. On information and belief, Plaintiff alleges that at all
9 relevant times referenced herein Defendants did and continue to transact business throughout
10 California.

11 8. The true names and capacities of Defendants, whether individual, corporate,
12 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
13 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
14 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
15 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
16 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
17 true names and capacities of the Defendants designated hereinafter as DOES when such identities
18 become known.

19 9. Plaintiff is informed and believe, and based thereon allege, that Defendants acted
20 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
22 are legally attributable to the other Defendants.

23 **IV.**

24 **FACTUAL BACKGROUND**

25 10. On information and belief, Walmart Inc. owns and operates Walmart Distribution
26 Centers which are facilities where goods received from the manufacturer and suppliers are stored
27 and then shipped to the Walmart stores.
28

1 11. Plaintiff worked at the Walmart Distribution Center located in Apple Valley,
2 California from or about 2003 through on or about April 2019 and occupied non exempt, hourly
3 positions including that of fork lift driver.

4 12. During the relevant time period, Defendant implemented an alternative work week
5 schedule where Plaintiff and Class Members were scheduled to work four times a week and ten
6 (10) hour shifts. Plaintiff typically worked shifts from 5:30 a.m. to 4:00 p.m. four days a week,
7 Tuesday through Friday.

8 13. Defendants' distribution centers are very large facilities with hundreds of
9 employees working per shift. In the Walmart Distribution Center located in Apple Valley,
10 Plaintiff estimates there are 200 to 300 employees working per shift, three shifts per day.
11 Plaintiff and Class Members must typically wait in line at the start of the shift to pass through
12 metal detectors at the entrance prior to clocking in. Further, at the end of the work shift, Plaintiff
13 and Class Members are required to clock out and then, after walking a long distance towards the
14 entrance of the building, must line up to pass through security screening to exit the facility.

15 14. Plaintiff and Class Members were not compensated for the time they are required
16 to wait in line prior to clocking in at the start of their shift. Plaintiff and Class Members are also
17 not compensated for the time they are required to wait in line, after clocking out at the end of
18 their shift, to pass through security screening/metal detector. Plaintiff estimates that the waiting
19 time at the start of the shift, prior to clocking in, was 1 to 4 minutes and the time spent waiting in
20 line to pass through security after clocking, out at the end of the shift, was anywhere from 10 to
21 18 minutes.

22 15. During the relevant time period, Defendants did not compensate Plaintiff and
23 Class Members for the time spent going through Defendants' security procedures. For example,
24 Plaintiff and Class Members were not compensated for time under Defendants' control after they
25 passed through security procedures at the beginning of the day to enter the work facilities.
26 Plaintiff and Class Members were also required to clock-out prior to passing through
27 Defendants' security procedures to leave the facility. During the liability period, Defendants
28 required Plaintiff and Class Members to clock-out prior to leaving on a lunch break and at the

1 end of the day, subjecting them to passing through Defendants' security procedures before
2 leaving the premises, without pay and reducing their time to take meal breaks as well as failing to
3 compensate them for all hours they were under Defendants' control.

4 16. As a matter of uniform Company policy, Plaintiffs and Class Members routinely
5 worked shifts over eight (8) hours in a day and over forty (40) hours in a work week, but they
6 were not paid at the appropriate overtime rate for all such hours, including by being required to
7 perform tasks under Defendants' control without pay and while off-the-clock. As a result,
8 Defendants failed to pay Non Exempt Employees the wages due for all hours worked, including
9 properly calculated overtime.

10 17. During the liability period, Defendants have regularly required distribution center
11 employees in California to work shifts greater than five (5) hours without providing them with
12 timely, uninterrupted, and duty-free meal periods of not less than thirty (30) minutes. Plaintiff
13 and Class Members were required to clock-out for the beginning of their meal periods and were
14 then subjected to security procedures to leave the work site. As a result of these uniform policies
15 and practices, the meal periods Defendants provided to the Class were less than the requisite 30
16 minutes. Plaintiff and Class Members were not compensated one (1) hour of pay at their regular
17 rate of compensation for each workday that a meal period was not lawfully provided in violation
18 of California labor laws, regulations, and IWC Wage Orders.

19 18. During the relevant time period, Plaintiff and Class Members were not provided a
20 third ten minute rest period when they worked shifts over ten hours and were not compensated
21 one (1) hour of pay at their regular rate of compensation for each workday that a rest period was
22 not lawfully provided in violation of California labor laws, regulations, and IWC Wage Orders.

23 19. On information and belief, Defendants willfully failed to pay all earned wages in a
24 timely manner to Non Exempt Employees; nor has Defendant paid to Non Exempt Employees,
25 upon or after termination of their employment with Defendant, all compensation due, including
26 but not limited to all wages owed and compensation for having failed to properly provide rest
27 periods and meal periods.
28

20. Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Plaintiff and Class Members with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked

21. Plaintiff is informed and believes, and based thereon allege, that Defendants currently employ and during the relevant period have employed over two hundred employees in Walmart Distribution Centers in the State of California in non-exempt positions.

22. Non-Exempt Employees employed by Defendants, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ACTION ALLEGATIONS

23. Plaintiff seek to represent a Class comprised of and defined as: All persons who were employed by Defendants and worked in Walmart Distribution Centers in California who are/were not classified as “Exempt” or primarily employed in executive, professional, or administrative capacities within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

24. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All persons employed by Defendants who worked in Walmart Distribution Centers in California as non-exempt employees and who, within the liability period, were not accurately and fully paid all wages owed to them for all their hours worked;

b. All persons employed by Defendants who worked in Walmart Distribution Centers in California as non-exempt employees and who, within the liability period have not been provided a minimum 30 minute meal period when they worked over five hours in a work shift and were not provided compensation in lieu thereof;

1 c. All persons employed by Defendants who worked in Walmart Distribution
2 Centers in California as non-exempt employees and who, within the liability period, have not
3 been authorized and permitted a ten (10) minute rest period for every four (4) hours or major
4 fraction thereof worked per day and were not provided compensation in lieu thereof;

5 d. All persons employed by Defendants who worked in Walmart Distribution
6 Centers in California as non-exempt employees and who, within the liability period, were not
7 timely paid all wages due and owed to them upon the termination of their employment with
8 Defendants; and

9 e. All persons employed by Defendants who worked in Walmart Distribution
10 Centers in California as non-exempt employees and who, within the liability period, were not
11 provided with accurate and complete itemized wage statements.

12 25. Plaintiff reserve the right under Rule 3.765, California Rules of Court, to amend
13 or modify the class description with greater specificity or further division into subclasses or
14 limitation to particular issues.

15 26. This action has been brought and may properly be maintained as a class action
16 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
17 defined community of interest in the litigation and the proposed Class is easily ascertainable.

18 **A. Numerosity**

19 27. The potential members of the Class as defined are so numerous that joinder of all
20 the members of the Class is impracticable. While the precise number of Class Members has not
21 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
22 and/or during the relevant time period employed, over one hundred Non-Exempt Employees in
23 California who are or have been affected by Defendants' unlawful practices as alleged herein.

24 **B. Commonality**

25 28. There are questions of law and fact common to the Class predominating over any
26 questions affecting only individual Class Members. These common questions of law and fact
27 include, without limitation:
28

- i. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including overtime compensation to Non-Exempt Employees who were required to spend time under the Defendants' control and "off the clock" and in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek;
- ii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for failing to pay minimum wages for time spent under the Defendants' control 'off the clock" and without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful
- iii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC Wage Order by failing to provide statutorily compliant 30 minute meal periods to Non-Exempt Employees on days in which they worked in excess of 5 hours and failing to compensate said employees one hour wages in lieu of meal periods;
- iv. Whether Defendants violated Labor Code sections 226.7 and applicable IWC Wage Orders by failing to provide minimum 10 minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one hours wages in lieu of rest periods;
- v. Whether Defendants violated sections 201-203 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing at the time that any Non-Exempt Employees' employment with Defendants terminated;
- vi. Whether Defendants violated sections 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions;
- vii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by failing to pay proper minimum and/or overtime wages to Non-Exempt Employees; failing to provide proper rest and/or meal periods and failing to pay compensation in lieu thereof; failing to pay wages due and owing at the time the

1 employee's employment with Defendants terminated failing to keep accurate records all in
2 violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1199 and
3 applicable IWC Wage Orders.

4 viii. Whether Defendants violated section 17200 *et seq.* of the Business and
5 Professions Code and Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194,
6 1197, 1199 and applicable IWC Wage Orders which violation constitutes a violation of
7 fundamental public policy;

8 **C. Typicality**

9 29. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
10 and all members of the Class sustained injuries and damages arising out of and caused by
11 Defendants' common course of conduct in violation of California laws, regulations, and statutes
12 as alleged herein.

13 **D. Adequacy of Representation**

14 30. Plaintiff will fairly and adequately represent and protect the interests of the
15 members of the Class. Counsel who represents Plaintiff is competent and experienced in
16 litigating large employment class actions.

17 **E. Superiority of Class Action**

18 31. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
20 questions of law and fact common to the Class predominate over any questions affecting only
21 individual members of the Class. Each member of the Class has been damaged and is entitled to
22 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

23 32. Class action treatment will allow those similarly situated persons to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
26 action that would preclude its maintenance as a class action.

27 **VI.**
28 **CAUSES OF ACTION**

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Failure to Pay Lawful Wages Including Overtime Wages and/or Minimum Wage
(Lab. Code §§ 510, 1194, 1199)
(Against All Defendants)

33. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

34. As discussed herein, during the liability period Defendants' policies, practices and work shift requirements resulted in Plaintiff and Class Members under Defendants' control and "off the clock" and not receiving compensation for all earned wages including overtime and/or minimum wage in violation of California state wage and hour laws.

35. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

36. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees not receiving minimum wages for time spent off the clock while subject to the control of Defendant all without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful.

37. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages including minimum wage and/ or overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

38. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

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Failure to Provide Lawful Meal Periods

Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

39. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

40. As set forth herein, by their failure to provide 30 minute meal periods for days on which Non-Exempt employees work(ed) work periods in excess of 5 hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

41. By failing to record and maintain adequate and accurate time records according to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff and Class Members.

42. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

43. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

Third Cause of Action
Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

44. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

45. By their failure to provide a minimum ten (10) minute rest period for every four hours or major fraction thereof worked per day by Non Exempt Employees, and failing to

1 provide compensation for such non-provided rest periods, as alleged above, Defendants willfully
2 violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

3 46. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
4 represent have been deprived of premium wages in amounts to be determined at trial, and are
5 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
6 §226.7.

7 47. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
8 described herein and below.

9 **Fourth Cause of Action**

10 Failure to Timely Pay Wages Due At Termination

11 (Lab. Code §§ 201-203)

12 (Against All Defendants)

13 48. Plaintiff repeats and incorporates herein by reference each and every allegation
14 set forth above, as though fully set forth herein.

15 49. Sections 201 and 202 of the California Labor Code require Defendants to pay its
16 employees all wages due within 72 hours of termination of employment. Section 203 of the
17 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
18 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
19 full or an action is commenced. The penalty cannot exceed 30 days of wages.

20 50. Plaintiff and affected class members are entitled to compensation for all forms of
21 wages earned including overtime and/or minimum wages, compensation for non compliant rest
22 and meal periods but to date have not received such compensation therefore entitling them Labor
23 Code section 203 penalties.

24 51. More than 30 days have passed since Plaintiff and affected Class Members have
25 left Defendants' employ, and on information and belief, have not received payment pursuant to
26 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
27 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
28 section 203 for failure to pay legal wages.

1 52. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
2 described herein and below.

3 **Fifth Cause of Action**
4 Knowing and Intentional Failure to Comply With Itemized Employee
5 Wage Statement Provisions
6 (Lab. Code § 226(b))
7 (Against All Defendants)

8 53. Plaintiff repeats and incorporates herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 54. Section 226(a) of the California Labor Code requires Defendants to itemize in
11 wage statements all deductions from payment of wages and to accurately report total hours
12 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
13 Defendants to maintain time records showing, among others, when the employee begins and ends
14 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
15 wage statement, and must show all deductions and reimbursements from payment of wages, and
16 accurately report total hours worked by Plaintiff and the members of the proposed class. On
17 information and belief, Defendants have failed to record all or some of the items delineated in
18 Industrial Wage Orders and Labor Code §226.

19 55. Plaintiff and Class Members have been injured by Defendants' actions by
20 rendering them unaware of the full compensation to which they were entitled under applicable
21 provisions of the California Labor Code and applicable IWC Wage Orders.

22 56. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
23 maximum of \$4,000.00 each for record-keeping violations.

24 57. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
25 described herein and below.

26 **Sixth Cause of Action**
27 Violation of Unfair Competition Law
28 (Bus. & Prof. Code, §§ 17200-17208)
 (Against All Defendants)

1 58. Plaintiff repeats and incorporates herein by reference each and every allegation set
2 forth above, as though fully set forth herein.

3 59. Business & Professions Code Section 17200 provides:

4 As used in this chapter, unfair competition shall mean and include any **unlawful,**
5 **unfair** or fraudulent business act or practice and unfair, deceptive, untrue or
6 misleading advertising and any act prohibited by Chapter 1 (commencing with
7 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
(Emphasis added.)

8 60. Defendants' violations of the Labor Code and Wage Order provisions set forth
9 above constitute unlawful and/or unfair business acts or practices.

10 61. The actions of Defendants, as alleged within this Complaint, constitute false,
11 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
12 Business and Professions Code section 17200, *et seq.*

13 62. Plaintiff and Class Members have been personally aggrieved by Defendants'
14 unlawful and unfair business acts and practices alleged herein.

15 63. As a direct and proximate result of the unfair business practices of Defendants,
16 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
17 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and
18 members of the Plaintiff Class as a result of the business acts and practices described herein.

19 64. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
20 described herein and below.

21 VII.

22 PRAYER

23 WHEREFORE, Plaintiff prays for judgment as follows:

- 24 1. That the Court determine that this action may be maintained as a class action;
- 25 2. For compensatory damages in an amount according to proof with interest thereon;
- 26 3. For economic and/or special damages in an amount according to proof with interest
27 thereon;
- 28 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;

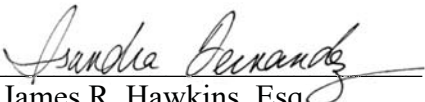
- 1 5. For premium pay and penalties pursuant to Labor Code §§203, 226;
2 6. For attorneys' fees, interests and costs of suit under Labor Code § 1194
3 7. For such other and further relief as the Court deems just and proper.
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5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.
7

8 **Dated: March 9, 2020**

JAMES HAWKINS, APLC

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11 James R. Hawkins, Esq.
12 Isandra Y. Fernandez, Esq.
13 Attorneys for Plaintiff
14 Manuel Flores
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