

James R. Hawkins, Esq. SBN 192925
Isandra Fernandez, Esq. SBN 220482
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, TA MIAYA FITZGERALD
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TA MIAYA FITZGERALD on behalf of herself
and all others similarly situated

Plaintiff,

vs.

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

Defendants.

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

CLASS ACTION COMPLAINT

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

JURY TRIAL DEMANDED

Named Plaintiff alleges as follows:

I.

INTRODUCTION

1. Plaintiff TA MIAYA FITZGERALD (hereinafter "Plaintiff") on behalf of herself and all Non-Exempt Employees employed by Defendants in California (hereinafter referred to as

1 “Non-Exempt Employees” or “Class Members”) assert the following Class Action claim,
2 pursuant to Code of Civil Procedure section 382, against Defendant WALMART, INC, and
3 DOES 1 through 50, inclusive (hereinafter collectively referred to as "Defendants" and/or
4 “WALMART”).

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

11 3. Plaintiff, on behalf of herself and Class Members, bring this action pursuant to
12 Labor Code sections 201, 202, 203, 226, 226.7, 512, 1198, Title 8, Section 11070 and any other
13 applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages,
14 unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable
15 attorneys’ fees and costs.

16 **II.**

17 **VENUE**

18 4. Venue as to each Defendant is proper in this judicial district pursuant to Code of
19 Civil Procedure section 395. Defendants conduct substantial and continuous commercial
20 activities in Los Angeles County, California and each Defendant is within the jurisdiction of this
21 Court for service of process purposes. Defendants employ numerous Class Members in Los
22 Angeles County, California.

23 **III.**

24 **PARTIES**

25 5. Plaintiff is, and at all times mentioned in this complaint was, a resident of
26 California.
27
28

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

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

8. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.

FACTUAL BACKGROUND

9. WALMART operates a chain of retail stores throughout California and the United States.

10. Plaintiff was employed by Defendants on or about October 2018 and occupied an hourly non exempt position as a cashier working in Burbank, California. Plaintiff occupied said non- exempt, hourly position until the last day of her employment in or about March 2019.

11. During the liability period, Plaintiff and Class Members were instructed when to take their meal periods and were required to wait to be relieved from their job duties before taking a meal break. Therefore, there were shifts in which Plaintiff and Class Members were unable to take a 30 minute meal period before the end of the fifth hour of their work shift. Further, WALMART did not provide Plaintiff and Class Members with a second thirty (30)

1 minute meal period when they worked in shifts in excess of ten (10) hours and/or twelve (12)
2 hours. Plaintiff and Class Members were not compensated one (1) hour of pay at their regular
3 rate of compensation for each workday that a meal period was not lawfully provided in violation
4 of California labor laws, regulations, and IWC Wage Order.

5 12. During the relevant time period, Plaintiff and Non- Exempt Employees who
6 worked as "cashiers", or similar positions that required standing, were not provided suitable
7 seating and when employees were not engaged in duties which required them to stand, no seating
8 was placed in reasonable proximity to their work stations. As such, Defendant failed to provide
9 Plaintiff and Class Members who worked as cashiers with suitable seating while performing their
10 job duties in violation of California Wage Orders.

11 13. During the relevant time period, Plaintiff and Class Members were instructed
12 when to take their rest breaks and if the store was very busy, they were frequently required to
13 work without being permitted or authorized a complete ten (10) minute rest period for every four
14 hours or major fraction thereof worked and not compensated one (1) hour of pay at their regular
15 rate of compensation for each workday that a rest period was not provided, in violation of
16 California labor laws, regulations, and IWC Wage Orders.

17 14. On information and belief, Defendants willfully failed to pay all earned wages in a
18 timely manner to Plaintiff and Class Members; nor has Defendant paid to Non Exempt
19 Employees, upon or after termination of their employment with WALMART all compensation
20 due, including but not limited to all wages owed and compensation for having failed to properly
21 provide rest periods and meal periods.

22 15. Defendants have also failed to maintain accurate itemized records reflecting total
23 hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage
24 statements reflecting total hours worked and appropriate rates of pay for those hours worked.

25 16. Plaintiff is informed and believes, and based thereon alleges, that WALMART
26 currently employs and/or during the relevant period has employed over one hundred (100)
27 employees in the State of California in non-exempt hourly positions of cashiers or similar
28 positions.

17. Class Members employed by WALMART 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

18. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by WALMART in the state of California as hourly non exempt employees and occupied position of cashier or similar positions 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”).

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

a. All persons who are or were employed by WALMART in the state of California as hourly non exempt employees who occupied position of cashiers or similar positions and who, within the liability period, have not been provided an uninterrupted 30 minute meal period when they worked over five hours in a work shift by the end of the fifth hour and/or a second 30 minute meal period when they worked over 10 hours and/or 12 hours in a shift by the end of the tenth hour and were not provided compensation in lieu thereof;

b. All persons who are or were employed by WALMART in the state of California as hourly non exempt employees who occupied position of cashiers or similar positions and who, within the liability period, have not been provided lawful minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day and were not provided compensation in lieu thereof;

c. All persons who are or were employed by WALMART in the state of California as hourly non exempt employees who occupied position of cashiers or similar positions and who, within the liability period, were not timely paid all wages due and owed to them upon the termination of their employment with Defendants; and

1 d. All persons who are or were employed by WALMART in the state of
2 California as hourly non exempt employees, who occupied position of cashiers or similar
3 positions and who, within the liability period, were not provided with accurate and complete
4 itemized wage statements.

5 20. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
6 or modify the class description with greater specificity or further division into subclasses or
7 limitation to particular issues.

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

11 **A. Numerosity**

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

18 **B. Commonality**

19 23. There are questions of law and fact common to the Class predominating over any
20 questions affecting only individual Class Members. These common questions of law and fact
21 include, without limitation:

- 22 i. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC
23 Wage Order by failing to provide statutorily compliant 30 minute meal periods to Non-
24 Exempt Employees on days in which they worked in excess of 5 hours and/or 10 hours
25 and failing to compensate said employees one hour wages in lieu of meal periods;
- 26 ii. Whether Defendants violated Labor Code sections 226.7 and applicable IWC
27 Wage Orders by failing to authorize and permit 10 minute rest periods to Non-Exempt
28

1 Employees for every four hours or major fraction thereof worked and failing to
2 compensate said employees one hours wages in lieu of rest periods;

3 iii. Whether Defendants violated sections 201-203 of the Labor Code by failing to
4 pay all earned wages and/or premium wages due and owing at the time that Plaintiff and
5 any Class Members' employment with Defendants terminated;

6 iv. Whether Defendants violated sections 226 of the Labor Code and applicable IWC
7 Wage Orders by failing to, among other violations, maintain accurate records of Non-
8 Exempt Employees' earned wages, work periods, meal periods and deductions;

9 v. Whether Defendants violated section 17200 *et seq.* of the Business and
10 Professions Code by failing to pay lawful wages owed including overtime and minimum
11 wages to Non-Exempt Employees; failing to provide lawful rest and/or meal periods and
12 failing to pay compensation in lieu thereof; failing to pay wages due and owing at the
13 time the employee's employment with Defendants terminated failing to keep accurate
14 records all in violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1198 and
15 applicable IWC Wage Orders.

16 vi. Whether Defendants violated section 17200 *et seq.* of the Business and
17 Professions Code and Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512,
18 1198 and applicable IWC Wage Orders which violation constitutes a violation of
19 fundamental public policy;

20 **C. Typicality**

21 24. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
22 and all members of the Class sustained injuries and damages arising out of and caused by
23 Defendants' common course of conduct in violation of California laws, regulations, and statutes
24 as alleged herein.

25 **D. Adequacy of Representation**

26 25. Plaintiff will fairly and adequately represent and protect the interests of the
27 members of the Class. Counsel who represents Plaintiff is competent and experienced in
28 litigating large employment class actions.

1 **E. Superiority of Class Action**

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

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

11
12 **VI.**
13 **CAUSES OF ACTION**

14 Failure to Provide Lawful Meal Periods
15 Or Compensation in Lieu Thereof
16 (Lab. Code §§226.7, 512, IWC Wage Orders)
17 (Against All Defendants)

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

20 29. As set forth herein, by Defendants' failure to provide 30 minute uninterrupted
21 meal periods by the end of the fifth hour for days on which Non-Exempt employees work(ed)
22 work periods in excess of 5 hours and/or failing to provide a second 30 minute uninterrupted
23 meal period for days in which the Non Exempt Employees worked shifts in excess of 10 and/or
24 12 hours and failing to provide compensation for such statutorily non-compliant meal periods,
25 Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

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

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

5 32. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
6 described herein and below.

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

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

12 34. As set forth herein, by Defendant's failure to provide lawful ten (10) minute rest
13 period for every four hours or major fraction thereof worked per day by Non Exempt Employees,
14 and failing to provide compensation for such non-provided rest periods, as alleged above,
15 Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable
16 Wage Orders.

17 35. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
18 represent have been deprived of premium wages in amounts to be determined at trial, and are
19 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
20 §226.7.

21 36. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
22 described herein and below.

23 **Third Cause of Action**
24 Failure to Timely Pay Wages Due At Termination
25 (Lab. Code §§ 201-203)
 (Against All Defendants)

26 37. Plaintiff repeats and incorporates herein by reference each and every allegation set
27 forth above, as though fully set forth herein.
28

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

6 39. Affected class members are entitled to compensation for all forms of wages
7 earned, including compensation for non provided rest and meal periods but to date have not
8 received such compensation therefore entitling them Labor Code section 203 penalties.

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

14 41. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
15 described herein and below.

16
17 **Fourth Cause of Action**
18 Knowing and Intentional Failure to Comply With Itemized Employee
19 Wage Statement Provisions
 (Lab. Code § 226(b))
 (Against All Defendants)

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

22 43. Section 226(a) of the California Labor Code requires Defendants to itemize in
23 wage statements all deductions from payment of wages and to accurately report total hours
24 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
25 Defendants to maintain time records showing, among others, when the employee begins and ends
26 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
27 wage statement, and must show all deductions and reimbursements from payment of wages, and
28 accurately report total hours worked by Plaintiff and the members of the proposed class. On

1 information and belief, Defendants have failed to record all or some of the items delineated in
2 Industrial Wage Orders and Labor Code §226.

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

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

8 46. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
9 described herein and below.

10 **Fifth Cause of Action**
11 Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
12 (Against All Defendants)

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

15 48. Business & Professions Code Section 17200 provides:

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

21 49. Defendants' violations of the Labor Code and Wage Order provisions set forth
22 above constitute unlawful and/or unfair business acts or practices.

23 50. The actions of Defendants, as alleged within this Complaint, constitute false,
24 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
25 Business and Professions Code section 17200, *et seq.*

26 51. Plaintiff and Class Members have been personally aggrieved by Defendants'
27 unlawful and unfair business acts and practices alleged herein.
28

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

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

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §203;
6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226
7. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: February 28, 2020

JAMES HAWKINS, APLC

James R. Hawkins, Esq.
James R. Hawkins, Esq.

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Attorneys for Plaintiff

TA MIAYA FITZGERALD