

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Wal-Mart Associates, Inc.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Joseph P. Rosilez

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
**ELECTRONICALLY
FILED**
9/23/2021 6:22 PM

SAN LUIS OBISPO SUPERIOR COURT
BY: *C. M. Kastner*
C. M. Kastner, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Luis Obispo County Superior Court 901 Park Street Paso Robles, CA, 93446

CASE NUMBER: (Número del Caso):
21CVP-0263

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Steven M. Chanley; Javad Navran 735 Tank Farm Road, #224 San Luis Obispo, CA 93401 (805) 782-9900

DATE:

(Fecha)

Michael Powell

Clerk, by
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

9/23/2021 6:22 PM

SAN LUIS OBISPO SUPERIOR COURT
BY: C. M. Kastner
C. M. Kastner, Deputy Clerk

STEVEN M. CHANLEY, Bar No. 142079
JAVAD NAVRAN, Bar No. 321159

EAG, a Law Corporation

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Attorneys for Plaintiffs

JOSEPH P. ROSILEZ
AND OTHER AGGRIEVED EMPLOYEES
OF WAL-MART ASSOCIATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

(Unlimited Civil)

JOSEPH P. ROSILEZ, an individual, and on
behalf of other aggrieved employees of
Defendant,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC. a
Delaware Corporation; and DOES 1-10,
inclusive.

Defendants.

Case No.: 21CVP-0263

**COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, AND INJUNCTIVE RELIEF**

1. Violation of Labor Code section 96(k)
2. Violation of Labor Code section 226.7
3. Violation of Labor Code section 226(a)
4. Violation of Labor Code section 203
5. Termination in Violation of Public Policy
6. Retaliation in Violation of Public Policy
7. Illegal Business Practices (Business and Professions Code section 17200, *et seq.*)
8. Private Attorneys General Act Labor Code Enforcement Action (Labor Code sections 2698, *et seq.*)

Jury Trial Demanded

Plaintiff respectfully submits this Complaint for Civil Penalties, Injunctive Relief, and
Damages, and alleges as follows:

PARTIES

1
2 1. Plaintiff Joseph P. Rosilez (“Plaintiff”) is an individual who resides in San Luis
3 Obispo County, California.

4 2. Defendant Wal-Mart Associates, Inc. (“Defendant” or “Wal-Mart”) is a Delaware
5 corporation registered with the California Secretary of State to do business in California.

6
7 3. Plaintiff was employed by defendant in San Luis Obispo County.

8 4. Defendants Doe 1 through Doe 10, inclusive, are sued herein under fictitious names.
9 Their true names and capacities are unknown to Plaintiff. When their true names and capacities are
10 ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein.

JURISDICTION

11
12 5. Plaintiff was employed by Defendant in San Luis Obispo County. The facts giving rise
13 to this action took place in San Luis Obispo County.

14 6. The amount in controversy exceeds the jurisdictional minimum of this Court for
15 Unlimited Civil cases.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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18 7. On November 19, 2020, pursuant to Labor Code section 2699.3(a)(1), Plaintiff filed a
19 timely notice of claims with the California Labor and Workforce Development Agency (“LWDA”),
20 regarding Wal-Mart’s violation of Labor Code sections 226(c), 1198.5(b), and 96(k). On December
21 8, 2020, pursuant to Labor Code section 2699.3(a)(1), Plaintiff filed an amended notice of claims
22 with the LWDA, reasserting the violations of Labor Code sections 226(c), 1198.5(b), and 96(k), but
23 adding a claim under Labor Code section 227.6. The December 8, 2020, amended notice related back
24 to Plaintiff’s timely November 19, 2020, initial notice. On June 14, 2020, pursuant to Labor Code
25 section 2699.3(a)(1), Plaintiff filed a second amended notice of claims with the LWDA, reasserting
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the violations of Labor Code sections 226(c), 1198.5(b), 96(k), and 227.6, but adding a claim under Labor Code sections 226(a) and 203. As before, the June 14, 2021, second amended notice related back to Plaintiff's timely November 19, 2020, initial notice to the LWDA.

8. To date, the LWDA has not responded to any of Plaintiff's notice of claims. The LWDA's deadline for responding has now passed.

9. Through his actions, Plaintiff has fully exhausted his administrative remedies as to his Tenth Cause of Action below, brought under the Private Attorneys General Act provisions of the Labor Code. (Labor Code §§ 2698, *et seq.*)

RELEVANT FACTS

10. Plaintiff is a licensed pharmacist. He was employed by Defendant as a pharmacist continuously from December 2008 through December 2019 at the pharmacy inside the Wal-Mart store located at 180 Niblick Road in Paso Robles, California.

11. Before he was hired in 2008, Plaintiff made Defendant aware that he was also concurrently working part time at the pharmacy located in the Ralphs grocery store at 1240 Los Osos Valley Road, Los Osos, California. The Ralphs grocery store at which Plaintiff worked is 37.9 miles, or a 42-minute drive, from Defendant's store in Paso Robles, according to Google Maps, taking the "fastest route."¹ The store is 21.8 miles from the nearest other Wal-Mart store, in Arroyo Grande, California, which is a 30-minute drive, according to Google Maps, taking the "fastest route."²

¹<https://www.google.com/maps/dir/1240+Los+Osos+Valley+Rd,+Los+Osos,+CA+93402/180+Niblick+Rd,+Paso+Robles,+CA+93446/@35.4461057,-120.8776903,11z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x80ece30d4c40ab8b:0x28ca3a2f1362971f!2m2!1d-120.8271025!2d35.3111889!1m5!1m1!1s0x80ecc51117131a47:0xfef31b9b52b10b2e!2m2!1d-120.6816384!2d35.6123721>

²<https://www.google.com/maps/dir/1240+Los+Osos+Valley+Rd,+Los+Osos,+CA+93402/1168+West+Branch+Street,+Arroyo+Grande,+CA/@35.2459593,-120.8453705,11z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x80ece30d4c40ab8b:0x28ca3a2f1362971f!2m2!1d-120.8271025!2d35.3111889!1m5!1m1!1s0x80ec5ec1c4d39c6b:0x53eb182a65ea03af!2m2!1d-120.5975152!2d35.1289875>

12. Before he was hired in 2008, Plaintiff also made Defendant aware that he planned to continue to work part time at the Ralph's pharmacy in Los Osos if he were hired by Defendant to work in its Paso Robles pharmacy. Defendant hired Plaintiff knowing that he planned to continue to work part time and concurrently at the Ralph's pharmacy in Los Osos. In doing so, Defendant **(a)** raised no objection to Plaintiff's holding a second job at the pharmacy at Ralphs in Los Osos, **(b)** consented to Plaintiff's holding a second job at the pharmacy at Ralphs in Los Osos, **(c)** did not consider Plaintiff's holding a concurrent job at the pharmacy at Ralphs in Los Osos to be inconsistent with the employer's work expectations of Plaintiff regarding his employment at Wal-Mart's pharmacy in Paso Robles, **(d)** did not consider Plaintiff's holding a second job at the pharmacy at Ralphs in Los Osos to preclude his employment with Wal-Mart at its Paso Robles store, **(e)** raised no objection that the concurrent employment at Ralph's would violate any Wal-Mart policy; **(f)** raised no objection that Plaintiff would be working concurrently for a "competitor," and **(g)** raised no objection that the concurrent employment at Ralph's would breach any common law or statutory duty of loyalty toward Wal-Mart.

13. During the entirety of his employment with Defendant, Plaintiff's concurrent job at Ralphs pharmacy in Los Osos was common knowledge among the staff and Plaintiff's various supervisors overseeing the Wal-Mart store in Paso Robles. Plaintiff openly discussed his concurrent job at work, including with the several different supervisors he had during his tenure with Wal-Mart. None of Plaintiff's supervisors at Wal-Mart ever **(a)** voiced disapproval of his concurrent job with Ralphs; **(b)** claimed that his second job violated any policy of Wal-Mart; **(c)** claimed that Plaintiff was working for a "competitor" of Wal-Mart; **(d)** mentioned that Wal-Mart planned on opening a store in the geographic area served by the Ralphs pharmacy in Los Osos; **(e)** mentioned that Plaintiff's second job with Ralphs in Los Osos was "disloyal" or "unethical"; **(f)** claimed that Plaintiff's second job with Ralphs interfered with his job duties with Defendant; or **(g)** mentioned Plaintiff's second job with Ralphs in any performance review given to Plaintiff.

1 14. At no time during Plaintiff's employment with Defendant from December 2008
2 through December 2019 was he ever provided, nor did he sign, a written policy that would have
3 prohibited him from working concurrently at the pharmacy at Ralphs in Los Osos.

4 15. In fact, Plaintiff's employment with Ralphs did not violate any written policy or
5 Defendant, did not constitute a breach of Plaintiff's duty of loyalty to Defendant, did not interfere
6 with Defendant's business interests, and did not interfere with Plaintiff's ability to perform his job
7 duties at Wal-Mart in a satisfactory manner.

8 16. On January 11, 2015, Defendant promoted Plaintiff to the position of Pharmacy
9 Manager in its Paso Robles pharmacy. Wal-Mart did so with full knowledge that Plaintiff was
10 continuing to work part time at the pharmacy in the Ralphs pharmacy in Los Osos. Plaintiff's
11 holding his second job at Ralphs was not considered by Defendant to preclude his employment with
12 Defendant, nor was it considered something that precluded Plaintiff's becoming a Manager at
13 Defendant's pharmacy.

14 17. In December 2019, 11 years after accepting the job at Wal-Mart and almost five years
15 after being promoted, while concurrently holding his part-time position at Ralphs, Defendant for the
16 very first time objected to Plaintiff's holding a second job with Ralphs.

17 18. At that time, Wal-Mart did not say that the second job was affecting Plaintiff's
18 performance. Wal-Mart did not point to any specific acts or omissions by Plaintiff that was
19 problematic. It did not mention and specific acts showing unethical behavior, disloyalty, or steering
20 Wal-Mart's pharmacy customers to Ralphs pharmacy in Los Osos (which was presumably too great a
21 distance for Wal-Mart's pharmacy customers to drive, anyway). Additionally, Wal-Mart never stated
22 or intimated that Wal-Mart ever had any future plans to begin competing in the geographic market
23 that included Los Osos.

24 19. In December 2019, Wal-Mart gave Plaintiff a pointed ultimatum: quit his part-time job
25 at Ralphs or be fired by Wal-Mart. Plaintiff was stunned by Wal-Mart's position, which was
26 completely inconsistent with its knowing past practice of permitting Plaintiff to work a second job at
27 Ralphs in Los Osos. Because Plaintiff needed both incomes from Wal-Mart and Ralphs to support his
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1 family in the manner to which they were accustomed, quitting his part-time job at Ralph's was
2 untenable. Plaintiff pleaded with Wal-Mart to reconsider, pointing out that the current circumstances
3 were the same as they had been for years. Wal-Mart, however, was unmoved.

4 20. On December 9, 2019, Wal-Mart in Paso Robles involuntarily terminated Plaintiff's
5 employment for working a part-time job concurrently with Ralphs pharmacy in Los Osos, which was
6 not a competitor of Wal-Mart.

7 21. Even since his involuntary discharge, Plaintiff has continued to work part-time at
8 Ralphs in Los Osos and has been diligent in his search for other, full-time work to replace the
9 compensation and benefits that he lost as a result of his involuntary discharge by Wal-Mart.
10 Nevertheless, Plaintiff has suffered considerable monetary loss as a direct result of his wrongful and
11 unlawful discharge by Wal-Mart, in an amount to be proved at trial.

12 22. During the entirety of his employment with Defendant, Plaintiff was not provided the
13 opportunity to take legally compliant 10-minute duty-free rest breaks during his workday. Plaintiff's
14 required volume of work was such that it was not possible for him to take duty-free 10-minute rest
15 breaks, as required by law. That impossibility was the logical, unavoidable, and foreseeable
16 consequence of the volume of work expected of Plaintiff to perform.

17 23. Although Defendant was aware of Plaintiff's inability to take duty-free rest breaks
18 each day, Defendant did not compensate Plaintiff with one hour of premium pay per workday for
19 missed meal periods, as required by law. Additionally, Plaintiff's payroll checks stubs did not
20 include the total number of days during the payroll period that Plaintiff misses a duty-free rest break
21 or the missed rest break premium pay that was required to be paid to Plaintiff.

22 24. Plaintiff's payroll check from Wal-Mart on or about December 9, 2019, did not
23 include any wages for the rest break premiums to which Plaintiff was entitled. Wal-Mart also did not
24 pay those wages in the 30 days following his discharge.

FIRST CAUSE OF ACTION

(Violation of Labor Code sections 96(k), 98.6)

(Against All Defendants)

25. Plaintiff alleges all facts stated in Paragraphs 1 through 24 above and incorporates those allegations by this reference as if they were stated in full.

26. Labor Code section 96(k) provides for the Labor Commissioner to accept “[c]laims [by an employee] for loss of wages as the result of demotion, suspension, or discharge from employment **for lawful conduct occurring during nonworking hours away from the employer’s premises.**” (Labor Code § 96(k))(emphasis added.)

27. Labor Code section 98.6(a) provides that “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, **including the conduct described in subdivision (k) of Section 96.**” (Labor Code § 98.6(a)(emphasis added).)

28. The interests of an individual in his own mobility and self-betterment, and the decision of selecting for whom to work, is so personal as to implicate the individual’s constitutionally protected autonomy privacy and basic right of self-determination. (Cal. Const. art. I, § 1.)

29. Labor Code section 98.6(b)(1) provides that “[a]ny employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment **because the employee engaged in any conduct . . . described in subdivision (k) of Section 96 . . .** shall be entitled to . . . and reimbursement for lost wages and work benefits caused by those acts of the employer.” (Labor Code § 98.6(b)(1)(emphasis added).)

30. Labor Code section 98.6(b)(3) provides that “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars

1 (\$10,000) per employee for each violation of this section, to be awarded to the employee or
2 employees who suffered the violation.” (Labor Code § 98.6(b)(3).)

3 31. In working a second job with Ralphs during his employment with Wal-Mart, Plaintiff
4 was engaging in lawful and protected conduct occurring during nonworking hours away from the
5 employer’s premises, as defined and protected by Labor Code sections 96(k) and 98.6(a). Plaintiff
6 was not working for an actual or potential competitor of Wal-Mart, and Wal-Mart knowingly
7 acquiesced to Plaintiff’s employment in Los Osos for Ralphs, which was privileged and did not
8 violate any common law or statutory duties that Plaintiff owed Wal-Mart. Any such theoretical
9 duties were waived by Wal-Mart through its actions and inaction.

10 32. Additionally, in working a second job with Ralphs during his employment with Wal-
11 Mart, Plaintiff was exercising his constitutionally-protected autonomous privacy right in his own
12 mobility, self-betterment, and self-determination. (Cal. Const. art. I, § 1.)

13 33. Wal-Mart’s involuntary discharge of Plaintiff was motivated by the fact that Plaintiff
14 was engaging in lawful and protected conduct occurring during nonworking hours away from the
15 employer’s premises, as defined and protected by Labor Code sections 96(k) and 98.6(a).

16 34. As a proximate result of Wal-Mart’s violation of said provisions of the Labor Code,
17 Plaintiff has suffered and will continue to suffer losses in wages and benefits in an amount to be
18 proved at trial.

19 35. Additionally, pursuant to Labor Code section 98.6(b)(3), Wal-Mart is liable for a civil
20 penalty not exceeding ten thousand dollars (\$10,000) for its involuntary discharge of Plaintiff for
21 engaging in conduct protected by Labor Code sections 96(k) and 98.6(a).

22 **SECOND CAUSE OF ACTION**

23 (Violation of Labor Code section 226.7)

24 (Against All Defendants)

25 36. Plaintiff alleges all facts stated in Paragraphs 1 through 35 above and incorporates
26 those allegations by this reference as if they were stated in full.
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1 37. The wages, hours, and working conditions of Plaintiff's employment with Wal-Mart
2 was governed by California Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), which
3 covers "Professional, Technical, Clerical, Mechanical and Similar Occupations."

4 38. Paragraph 12(A) of Wage Order 4 provides that "[e]very employer shall authorize and
5 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
6 work period. The authorized rest period time shall be based on the total hours worked daily at the rate
7 of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

8 39. Paragraph 12(B) of Wage Order 4 provides that "[i]f an employer fails to provide an
9 employee a rest period in accordance with the applicable provisions of this order, the employer **shall**
10 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
11 workday that the rest period is not provided." (Emphasis added.)

12 40. Labor Code section 226.7(c) provides that "[i]f an employer fails to provide an
13 employee a meal or rest or recovery period in accordance with a state law . . . order of the Industrial
14 Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the
15 employee's regular rate of compensation for each workday that the . . . rest or recovery period is not
16 provided."

17 41. During the entirety of his employment, Wal-Mart did not permit Plaintiff to take rest
18 periods as required by law. Wal-Mart also did not pay Plaintiff one hour's pay for each workday that
19 he missed a rest break as required by law.

20 42. Plaintiff is entitled to receive from Wal-Mart missed meal period premiums equal to
21 one hour's pay for each workday during the three-year period before this action was filed, according
22 to proof at trial, plus interest.

THIRD CAUSE OF ACTION

(Violation of Labor Code section 226.7)

(Against All Defendants)

43. Plaintiff alleges all facts stated in Paragraphs 1 through 42 above and incorporates those allegations by this reference as if they were stated in full.

44. The wages, hours, and working conditions of Plaintiff's employment with Wal-Mart was governed by California Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), which covers "Professional, Technical, Clerical, Mechanical and Similar Occupations."

45. Paragraph 12(A) of Wage Order 4 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

46. Paragraph 12(B) of Wage Order 4 provides that "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer **shall** pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." (Emphasis added.)

47. Labor Code section 226.7(c) provides that "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law . . . order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the . . . rest or recovery period is not provided."

48. During the entirety of his employment, Wal-Mart did not permit Plaintiff to take rest periods as required by law. Wal-Mart also did not pay Plaintiff one hour's pay for each workday that he missed a rest break as required by law.

49. Plaintiff is entitled to receive from Wal-Mart missed meal period premiums equal to one hour's pay for each workday during the three-year period before this action was filed, according to proof at trial, plus interest.

FOURTH CAUSE OF ACTION

(Violation of Labor Code section 226(a))

(Against All Defendants)

50. Plaintiff alleges all facts stated in Paragraphs 1 through 49 above and incorporates those allegations by this reference as if they were stated in full.

51. Labor Code section 226 (a) provides that "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,. . . (5) net wages earned, . . . (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

52. Labor Code section 226(e)(1) provides that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

53. Labor Code section 226 (e)(2)(B) provides that "[a]n employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision [226](a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive."

54. Defendant knowingly and intentionally violated Labor Code section 226(a) by failing to include on Plaintiff's payroll check stub any information regarding the missed meal period premium wages that Plaintiff earned and that Defendant was mandated to pay Plaintiff. In that way, Defendant did not include on the payroll check stubs the gross wages he actually earned, the net wages he actually earned, and the number of hours the actually should have been multiplied by his regular rate of pay to arrive at his gross wages deemed earned by Defendant.

55. Plaintiff suffered injury because of Defendant's failure to provide accurate and complete information as required by Labor Code section 226(a) and because Plaintiff could not determine from the wage statements alone the gross wages he actually earned, the net wages he actually earned, and the number of hours the actually should have been multiplied by his regular rate of pay to arrive at his gross wages deemed earned by Defendant.

56. As a result of Defendant's violation of Labor Code section 226(a), Plaintiff is entitled to civil penalties as provided by Labor Code section 226(e)(1), as well as an award of costs and reasonable attorneys' fees pursuant to Labor Code section 226(h).

FIFTH CAUSE OF ACTION

(Violation of Labor Code section 203)

(Against All Defendants)

57. Plaintiff alleges all facts stated in Paragraphs 1 through 56 above and incorporates those allegations by this reference as if they were stated in full.

58. Labor Code section 203 provides that "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

59. Labor Code section 201(a) provides that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

60. Plaintiff was involuntarily discharged from Wal-Mart on December 9, 2019. At the time of Plaintiff’s receipt of his final payroll check from Wal-Mart, he was owed a significant sum of wages for missed rest break premium pay. Wal-Mart willfully failed to pay those earned and owing wages immediately, and more than 30 calendar days have passed since those wages were to be paid under Labor Code section 201(a).

61. Plaintiff is now entitled to an award of waiting time penalties equal to 30 days of his daily wage amount, plus costs and reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION

(Termination in Violation of Public Policy)

(Against All Defendants)

62. Plaintiff alleges all facts stated in Paragraphs 1 through 61 above and incorporates those allegations by this reference as if they were stated in full.

63. Business and Professions Code section 16600 (“Section 16600”) provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.”

64. "Section 16600 represents a strong public policy of this state." (*KGB, Inc. v. Giannoulas* (1980) 104 Cal. App. 3d 844, 848)(citation omitted).) "California courts have consistently declared [section 16600 an expression of public policy to ensure that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice." (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal. App. 4th 853, 859; *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 946.) **"The interests of the employee in his own mobility and betterment are deemed paramount to the competitive business interests of the employers"** in the absence of otherwise illegal conduct. (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 255 (emphasis added); *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 946.)) The public policy

embodied in section 16600 may form the basis of a cause of action for wrongful termination in violation of public policy. (*D'Sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, 933.)

65. Claims for wrongful discharged in violation of public policy may be predicated on public policies embodied in statutes or constitutional provisions. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889.) The California Constitution provides that privacy is an inalienable right. (Cal. Const. art. I, § 1.) California's right to privacy "protects individuals from the invasion of their privacy by private parties." (*Low v. LinkedIn Corp.* (N.D. Cal. 2012) 900 F. Supp.2d 1010, 1021.) A legally protected privacy interest generally falls into two classes of privacy interests: "informational privacy" and "autonomy privacy." (*Hill v. N.C.A.A.* (1994) 7 Cal. 4th 1, 35.) Autonomy privacy is defined as "interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference." (*Id.*) The interests of an individual in his own mobility and betterment, and the decision of selecting for whom to work is so personal as to implicate the individual's constitutionally protected autonomy privacy and basic right of self-determination³

66. Plaintiff was employed by Defendant as a pharmacist continuously from December 2008 through December 2019.

67. On December 9, 2019, Wal-Mart in Paso Robles involuntarily terminated Plaintiff's employment for working a part-time job concurrently with Ralphs pharmacy in Los Osos, which was not an actual or current or potential competitor of Wal-Mart. Wal-Mart knowingly acquiesced to Plaintiff's employment in Los Osos for Ralphs, which involved lawful work, was privileged, and did not violate any common law or statutory duties that Plaintiff owed Wal-Mart. Any such theoretical duties were waived by Wal-Mart through its actions and inaction.

68. Plaintiff's exercise of his right to pursue any lawful employment and enterprise of his choice, and the exercise of his right to employee mobility and self-betterment are rights grounded in

³ The freedom to voluntarily choose which willing employer to perform lawful work for is a logical and inherent corollary of the prohibition against involuntary servitude embodied in the 13th Amendment of the U.S. Constitution.

1 public policy and embodied in Labor Code sections 96(k), 98.6, Business & Professions Code section
2 16600, and California Constitution, art. I, § 1.

3 69. Plaintiff's exercise of said rights was a substantial motivating reason for Wal-Mart's
4 involuntary discharge of Plaintiff on December 9, 2019.

5 70. Plaintiff's involuntary discharge was a substantial factor in causing Plaintiff harm in
6 the way of lost wages and benefits, which will continue into the future despite Plaintiff's efforts to
7 mitigate his losses. Plaintiff will be entitled to an award of such lost wages and benefits as may be
8 determined at the time of trial.

9 71. Plaintiff's involuntary discharge was a substantial factor in causing Plaintiff severe
10 emotional damage.

11 72. The wrongful conduct set forth in the foregoing Paragraphs of this Cause of Action
12 were perpetrated by officers, directors, and managing agents of Wal-Mart, each of whom were acting
13 on behalf of Wal-Mart at the time of the conduct constituting malice, oppression, or fraud. In
14 addition, such acts of malice, oppression, fraud, and conscious disregard for Plaintiff's rights were
15 authorized, then later ratified, by officers, directors, or managing agents of Wal-Mart.

16
17 **SEVENTH CAUSE OF ACTION**

18 (Retaliation in Violation of Public Policy)

19 (Against All Defendants)

20 73. Plaintiff alleges all facts stated in Paragraphs 1 through 72 above and incorporates
21 those allegations by this reference as if they were stated in full.

22 74. Business and Professions Code section 16600 ("Section 16600") provides that "every
23 contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any
24 kind is to that extent void."

25 75. "Section 16600 represents a strong public policy of this state." (*KGB, Inc. v.*
26 *Giannoulas* (1980) 104 Cal. App. 3d 844, 848)(citation omitted).) "California courts have
27
28

consistently declared [section 16600 an expression of public policy to ensure that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice." (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal. App. 4th 853, 859; *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 946.) "**The interests of the employee in his own mobility and betterment are deemed paramount to the competitive business interests of the employers**" in the absence of otherwise illegal conduct. (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 255 (emphasis added); *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 946.)) The public policy embodied in section 16600 may form the basis of a cause of action for wrongful termination in violation of public policy. (*D'Sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, 933.)

76. The California Constitution provides that privacy is an inalienable right. (Cal. Const. art. I, § 1.) California's right to privacy "protects individuals from the invasion of their privacy by private parties." (*Low v. LinkedIn Corp.* (N.D. Cal. 2012) 900 F. Supp.2d 1010, 1021.) A legally protected privacy interest generally falls into two classes of privacy interests: "informational privacy" and "autonomy privacy." (*Hill v. N.C.A.A.* (1994) 7 Cal. 4th 1, 35.) Autonomy privacy is defined as "interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference." (*Id.*) The interests of an individual in his own mobility and betterment, and the decision of selecting for whom to work is so personal as to implicate the individual's constitutionally protected autonomy privacy and basic right of self-determination

77. Plaintiff was employed by Defendant as a pharmacist continuously from December 2008 through December 2019.

78. In December 2019, Wal-Mart gave Plaintiff a pointed ultimatum: quit his part-time job at Ralphs or be fired by Wal-Mart. Wal-Mart's ultimatum to Plaintiff constituted a retaliatory adverse employment action.

79. Plaintiff's exercise of his right to pursue any lawful employment and enterprise of his choice, and the exercise of his right to employee mobility and self-betterment constitute protected

activity and are rights grounded in public policy and embodied in Labor Code sections 96(k), 98.6, Business & Professions Code section 16600, and California Constitution, art. I, § 1.

80. Wal-Mart's ultimatum to Plaintiff that he quit his part-time job at Ralphs or he would be fired by Wal-Mart was substantially motivated by Plaintiff's engaging in said protected activity and in exercising said rights.

81. Wal-Mart's ultimatum to Plaintiff that he quit his part-time job at Ralphs or he would be fired by Wal-Mart was a substantial factor in causing Plaintiff harm in the way of lost wages and benefits, which will continue into the future despite Plaintiff's efforts to mitigate his losses. Plaintiff will be entitled to an award of such lost wages and benefits as may be determined at the time of trial.

82. Wal-Mart's retaliation against Plaintiff in violation of public policy was a substantial factor in causing Plaintiff severe emotional damage.

83. The wrongful conduct set forth in the foregoing Paragraphs of this Cause of Action were perpetrated by officers, directors, and managing agents of Wal-Mart, each of whom were acting on behalf of Wal-Mart at the time of the conduct constituting malice, oppression, or fraud. In addition, such acts of malice, oppression, fraud, and conscious disregard for Plaintiff's rights were authorized, then later ratified, by officers, directors, or managing agents of Wal-Mart.

EIGHTH CAUSE OF ACTION
(Illegal Business Practices Violation)
(Against All Defendants)

84. Plaintiff alleges all facts stated in Paragraphs 1 through 83 above and incorporates those allegations by this reference as if they were stated in full.

85. In carrying out the wrongful acts described in Paragraphs 10 through 24 above, Defendant has violated the Unfair Competition Law, Business and Professions Code section 17200 et seq., by committing unlawful, unfair, or fraudulent business acts and practices.

86. Those unlawful, unfair, or fraudulent business acts and practices include, without limitation, the following: **(a)** Defendant's discharge of employees for lawful conduct occurring during

1 nonworking hours away from the employer's premises, in violation of Labor Code sections 96(k) and
2 98.6(a); **(b)** Defendant's failure to provide compliant duty-free rest breaks, as required under
3 Paragraph 12(A) of Wage Order 4 and Labor Code 226.7; **(c)** Defendant's failure to pay employees
4 one hour's pay for each workday in which Wal-Mart did not provide them a compliant duty-free rest
5 break, as required under Labor Code 226.7; **(d)** Defendant's failure to pay employees all of their
6 wages owing in their final payroll check, in violation of Labor Code section 201 and 203; and **(e)**
7 Defendant's failure to include all information on employees' payroll check stubs, as required under
8 Labor Code section 226(a).

9 87. Plaintiff is informed and believes, and thereon alleges, that Defendant has a pattern
10 and practice of violating the laws, as set out in Paragraph 86 above.

11 88. Plaintiff is informed and believes, and thereon alleges, that such pattern and practice
12 has been applied to many current and former employees of Defendant throughout California. Such
13 pattern and practice has resulted in a violation of Defendant's current and former employees'
14 substantive rights.

15 89. In addition to harming the interests of Defendant's current and former employees,
16 Defendant's pattern and practice of violating the law as alleged gives Defendant an unfair business
17 advantage over other businesses in Defendant's sector that comply fully with California employment
18 law.

19 **NINTH CAUSE OF ACTION**

20 (Private Attorney General Act Enforcement Action (Labor Code §§ 2698, *et seq.*)

21 (Against All Defendants)

22 90. In addition to harming the interests of Defendant's current and former employee
23 Plaintiff alleges all facts stated in Paragraphs 1 through 89 above and incorporates those allegations
24 by this reference as if they were stated in full.

25 91. At all relevant times, the Private Attorney General Act ("PAGA") (Labor Code §§
26 2698, *et seq.*) has been applicable to Wal-Mart's business operations in California and Plaintiff's
27 employment with Wal-Mart in California.

1 92. PAGA provides that aggrieved employees may bring a civil action against an
2 employer to recover any civil penalties that could be recovered by the Labor and Workforce
3 Development Agency (“Agency”) under the California Labor Code. The procedures for bringing a
4 PAGA action are outlined in Labor Code § 2699.3.

5 93. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil
6 action arising under Labor Code § 2699 after exhausting his administrative remedies by filing a
7 notice with the Labor & Workforce Development Agency (the “Agency”) that includes the facts and
8 theories to support the alleged violation(s) of the Labor Code. Thereafter, the Agency has 60 days
9 within which to notify the parties that it does not intend to investigate the alleged violation(s). Upon
10 receipt of the Agency’s notice, or if no notice is provided within 65 calendar days, the aggrieved
11 employee may commence a civil action.

12 94. Plaintiff has satisfied these procedural prerequisites. (See, Paragraphs 7 through 9.)

13 95. The Agency provided no Notice within 60 calendar days of the postmark date of the
14 Notices that it intended to investigate the alleged violations identified by Plaintiff. Plaintiff has,
15 therefore, satisfied the requirements of Labor Code § 2699.3 and may recover civil penalties and
16 underpaid wages for the violations of the following statutory sections: Labor Code §§ 201-203
17 (failure to pay all wages earned; failure to timely pay all wages earned in final payroll check; waiting
18 time penalties); Labor Code § 96(k) (demoting, suspending, or discharging employees for lawful
19 conduct occurring during nonworking hours away from the employer’s premises; Labor Code § 226.7
20 (duty-free rest break violation); and Labor Code § 226 (inaccurate or incomplete payroll check stub
21 information).

22 96. Plaintiff brings this action under PAGA as an aggrieved employee and on behalf of
23 other aggrieved employees of Defendant.

24 97. One provision of law enforceable through PAGA is Labor Code § 558, which states
25 the following: (a) Any employer or other person acting on behalf of an employer who violates, or
26 causes to be violated, a section of this chapter or any provision regulating hours and days of work in
27
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any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff seeks all such civil penalties here.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays as follows:

1. That Plaintiff be awarded money damages for all wage and benefit losses he has and will continue to sustain as a result of Defendant's tortious conduct, according to proof at trial;
2. That Plaintiff be awarded punitive damages for Defendant's injurious tortious conduct;
3. That Plaintiff be awarded unpaid wage premiums for missed rest breaks;
4. That Plaintiff be awarded waiting time penalties pursuant to Labor Code section 203;
5. That, under California Business and Professions Code section 17203, Defendant, it successors, agents, representatives, employees, and all persons who act in concert with Defendant, be permanently enjoined from committing any acts of unfair competition, including the violations alleged in the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action;
6. That Plaintiff be awarded civil penalties pursuant to his Sixth Cause of Action as a Private Attorney General
7. That Plaintiff be awarded all costs and reasonable attorneys' fees associated with bringing his Sixth Cause of Action; and

8. Award Plaintiff all such other relief that the Court deems just and appropriate.

DATED: September 23, 2021

Respectfully submitted,

EAG, a Law Corporation


STEVEN M. CHANLEY
Attorneys for Plaintiff
JOSEPH P. ROSILEZ

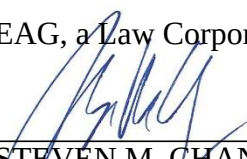
DEMAND FOR JURY TRIAL

Pursuant to Section 16 of Article I of the California Constitution, Plaintiff hereby demands a jury trial on all of his claims, excepting those asserted in equity.

DATED: September 23, 2021

Respectfully submitted,

EAG, a Law Corporation


STEVEN M. CHANLEY
Attorneys for Plaintiff
JOSEPH P. ROSILEZ

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven Chanley SBN 142079 Employer Advocates Group 735 Tank Farm Road Suite 224 San Luis Obispo, CA 93401 TELEPHONE NO.: (805) 782-9900 FAX NO. (Optional): E-MAIL ADDRESS (Optional): chanley@eaglawgroup.com ATTORNEY FOR (Name): Defendant	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO - PASO ROBLES STREET ADDRESS: 901 Park St. MAILING ADDRESS: 901 Park St. CITY AND ZIP CODE: Paso Robles, CA 93446 BRANCH NAME: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO - PASO ROBLES	
PLAINTIFF/PETITIONER: Joseph P Rosilez DEFENDANT/RESPONDENT: Wal-Mart Associates, Inc	CASE NUMBER: 21CVP-0263
PROOF OF SERVICE SUMMONS	Ref. No. or File No.: 1

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action. BY FAX
2. I served copies of: **Complaint; Civil Case Cover Sheet; Summons; Notice of Related Case; Notice of Assignment; ADR Information Packet**
3.
 - a. Party served (specify name of party as shown on documents served): **Wal-Mart Associates, Inc.**
 - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Melvin Bautista , C.T. Corp Agent
4. Address where the party was served: **330 N Brand Blvd Ste 700, 700 Glendale, CA 91203**
5. I served the party (check proper box)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: **11/19/2021** (2) at: **11:21 AM**
 - b. ☐ **by substituted service.** On: at: I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):

- (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) ☐ **(physical address unknown)** a person of at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents:
 on: from: or ☐ a declaration of mailing is attached.

PLAINTIFF/PETITIONER: Joseph P Rosilez	CASE NUMBER: 21CVP-0263
DEFENDANT/RESPONDENT: Wal-Mart Associates, Inc	

(5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on: (2) from:
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. ☐ **by other means** (*specify means of service and authorizing code section*):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (*specify*):
- c. ☐ as occupant.
- d. ☒ On behalf of (*specify*): **Wal-Mart Associates, Inc.**
under the following Code of Civil Procedure section:

- | | |
|---|---|
| ☒ 416.10 (corporation) | ☐ 415.95 (business organization, form unknown) |
| ☐ 416.20 (defunct corporation) | ☐ 416.60 (minor) |
| ☐ 416.30 (joint stock company/association) | ☐ 416.70 (ward or conservatee) |
| ☐ 416.40 (association or partnership) | ☐ 416.90 (authorized person) |
| ☐ 416.50 (public entity) | ☐ 415.46 (occupant) |
| | ☐ other: |

7. **Person who served papers**

- a. Name: **James P Sands**
- b. Address: **15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709**
- c. Telephone number: **909-664-9577**
- d. **The fee** for service was: **\$170.00**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: **914**
- (iii) County: **Los Angeles**

PLAINTIFF/PETITIONER: Joseph P Rosilez
DEFENDANT/RESPONDENT: Wal-Mart Associates, Inc

CASE NUMBER:
21CVP-0263

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



A handwritten signature in blue ink, appearing to read 'James P Sands', written over a horizontal line.

James P Sands

Date: 11/19/2021