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 and all others similarly situated and the general public
 (additional counsel listed on the continued caption)

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

JUAN GARCIA, on behalf of himself and
 all others similarly situated and the
 general public,

Plaintiff,

v.

WAL-MART STORES, INC., a Delaware
 corporation; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: 5:16-cv-01645 BRO
 (RAOx)

Hon. Beverly Reid O'Connell
 Courtroom 14

CLASS ACTION

**SECOND AMENDED
 COMPLAINT FOR DAMAGES
 FOR:**

1. Violation of B&PC §§17200, et seq.;
2. Failure to Pay All Wages (Labor Code §§200, et seq., 218, 226, 510, 511, 1194, 1198, and 2802);
3. Failure to Provide Meal Breaks (Labor Code §§226.7 and 512, et seq.);
4. Inaccurate Wage Statements (Labor Code §226);
5. Violation of Labor Code §§200, et seq.
6. Failure to Pay All Wages (Off the Clock);
7. Violation of Labor Code §§2698-2699 Private Attorney General Act (PAGA)

DEMAND FOR JURY TRIAL

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1 Plaintiff, Juan Garcia, on behalf of himself and all other persons similarly
 2 situated and the general public (hereinafter collectively referred to as “Plaintiff”),
 3 hereby complains against Defendant, Wal-Mart Stores, Inc., a Delaware
 4 corporation; and DOES 1 to 100, inclusive (hereinafter referred to as “Defendant”
 5 or “Wal-Mart”), and on information and belief, alleges as follows:

6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is a civil action seeking recovery of unpaid wages and waiting
 9 time penalties under California Labor Code §§200, et seq., 226, 226.7, 510, 511,
 10 512, 1194, 1194.2, 1197, and 1198, as well as the Wage Order. Plaintiff, for
 11 himself and on behalf of all others similarly situated, and the general public, brings
 12 an action for monetary damages for failure to pay wages as well as for injunctive
 13 relief, declaratory relief and restitution for Defendant’s violations of California
 14 Business and Professions Code (“B&PC”) §§17200, et seq., including full
 15 restitution of all compensation retained by Defendant as a result of its unlawful,
 16 fraudulent and unfair business practices. Plaintiff seeks all available relief,
 17 including full damages, full restitution and/or disgorgement of all revenues,
 18 earnings, profits, compensation and benefits retained by Defendant as a result of its
 19 unlawful, unfair business practices. Further, Plaintiff seeks injunctive relief under
 20 B&PC §§17200, et seq. Plaintiff alleges that the total damages sought in this
 21 matter is less than \$5,000,000 as this amended complaint is only as to the Apple
 22 Valley Distribution Center and not any other facilities owned and operated by
 23 Defendants.

24 **VENUE**

25 2. Venue as to Defendant is proper in the California State judicial
 26 district pursuant to California Code of Civil Procedure (“CCP”) §§395(a) and
 27 395.5, as at least some of the acts complained of herein occurred in the County of
 28 San Bernardino. Defendant either owns or maintains offices, transacts business,

1 has an agent or agents within the County of San Bernardino, or otherwise is found
 2 within the County of San Bernardino, and Defendant is within the jurisdiction of
 3 the San Bernardino Superior Court for purposes of service of process.

4 **PARTIES**

5 3. Juan Garcia is an individual over the age of eighteen (18). At all
 6 relevant times herein, Plaintiff Garcia was and currently is a resident of the County
 7 of San Bernardino, State of California.

8 4. Plaintiff is informed and believes and thereon alleges that at all times
 9 mentioned herein, Defendant, Wal-Mart Stores, Inc. ("Wal-Mart"), is and was a
 10 Delaware corporation.

11 5. Plaintiff is informed and believes and thereon alleges that at all times
 12 mentioned herein, Defendant and each of them listed herein is a professional entity
 13 licensed to do business in California.

14 6. Plaintiff is informed and believe and thereon allege that all relevant
 15 times each Defendant was licensed to do business in the State of California,
 16 County of San Bernardino, with its principal place of business in San Bernardino,
 17 California, among other counties throughout the State of California.

18 7. Plaintiff is informed and believe and thereon allege that Defendant
 19 and DOES 1 to 100, control and operate business and establishments in locations
 20 within the State of California, including, but not limited to, the County of San
 21 Bernardino, for the purposes of distribution of retail products. Thus, each named
 22 Defendant and DOES 1 to 100 are subject to B&PC §§17200, et seq. and the Labor
 23 Code, as hereinafter alleged.

24 8. Plaintiff does not know the true names or capacities, whether
 25 individual, partner, or corporate, of Defendants sued herein as DOES 1 to 100,
 26 inclusive, and for that reason, said Defendants are sued under such fictitious
 27 names, and Plaintiff will seek from this Court leave to amend this Complaint when
 28 such true names and capacities are discovered. Plaintiff is informed and believes

1 and thereon alleges that each Defendant and each fictitious Defendant, whether
2 individual, partners, or corporate, was responsible in some manner for the
3 circumstances alleged herein, and proximately caused Plaintiff and all others
4 similarly situated hereinafter alleged and the general public to be subjected to the
5 unlawful employment practices, wrongs, injuries and damages complained of
6 herein.

7 9. At all times herein mentioned, each of said Defendants participated in
8 the doing of the acts hereinafter alleged to have been done by the named
9 Defendants; and furthermore, Defendants, and each of them, were the agents,
10 servants, and employees of each and every one of the other Defendants, as well as
11 the agents of all Defendants, and at all times herein mentioned were acting within
12 the course and scope of said agency and employment. Plaintiff herein alleges that
13 Defendant and each of them are the joint employer of Plaintiff and all others
14 similarly situated.

15 10. At all times mentioned herein, Defendants, and each of them, were
16 members of and engaged in a joint venture, partnership, and common enterprise,
17 and acting within the course and scope of and in pursuance of said joint venture,
18 partnership, and common enterprise.

19 11. At all times herein mentioned, the acts and omissions of various
20 Defendants, and each of them, concurred and contributed to the various acts and
21 omissions of each and every one of the other Defendants in proximately causing
22 the complaints, injuries and damages alleged herein.

23 12. At all times herein mentioned, Defendants, and each of them,
24 approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein. At all times herein mentioned, Defendants, and
26 each of them, aided and abetted the acts and omissions of each and every one of
27 the other Defendants, thereby proximately causing the damages, as herein alleged.

28 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

1 13. Plaintiff on behalf of himself and all others similarly situated, filed
2 this cause of action acting as a private attorney general on behalf of the general
3 public to challenge and remedy the business practices of Defendants alleged
4 herein.

5 14. B&PC §§17200, et seq., often referred to as the Unfair Competition
6 Law, prohibits unfair competition, which is defined to include any unlawful,
7 unfair, or fraudulent business act or practices. Defendant has instituted and
8 implemented unlawful wage-and-hour policies, which constitute unfair, unlawful,
9 or fraudulent business acts or practices within the State of California. Any person
10 that has suffered injury may initiate an action to enforce B&PC §17200. The court
11 is authorized to order injunctive relief, declaratory relief, and restitution to affected
12 members of the general public as remedies for any violations of B&PC §17200.

13 15. Plaintiff is entitled to an award of attorneys' fees and costs in
14 prosecuting this action as a private attorney general against Defendant under CCP
15 §1021.5 based in part on the following:

16 a. A successful outcome in this action will result in the
17 enforcement of important rights affecting the public interest by maintaining the
18 integrity of entities that employ employees;

19 b. This action will result in a significant benefit to the general
20 public by ceasing unlawful, unfair and deceptive activity, and by causing the return
21 of ill-gotten gains obtained by Defendant through its failure to properly pay its
22 employees;

23 c. Unless this action is prosecuted, members of the general public
24 will not recover monies wrongfully taken from them, and many employees and
25 consumers would not be aware that they were victimized by Defendant's wrongful
26 acts and practices; and unless attorneys' fees and costs are awarded against
27 Defendant, the general public will not be made whole.

28 /////

PLAINTIFF CLASSES

16. The class representative Plaintiff who worked in the position of a non-exempt Wal-Mart Distribution Center (WDC) hourly employee at the Apple Valley - No. 7033 Distribution Center, while employed by Defendant within the State of California, is Juan Garcia.

CLASS ACTION ALLEGATIONS

17. Plaintiff bring this action on behalf of himself and all others similarly situated as a class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of and defined as follows:

Class 1:

All California-based hourly non-exempt Wal-Mart Distribution Center (WDC) employees, excluding dispatcher and truck shop employees, who worked at least one (1) day of more than eight (8) hours in a day or more than forty (40) hours in a week at the Apple Valley - No. 7033 Distribution Center, from May 17, 2012 through the date of class certification order ("**Relevant Time Period**"). ("Overtime Class");

Subclass 1:

All California-based hourly non-exempt WDC employees, excluding dispatcher and truck shop employees, who work or worked for Defendant pursuant to an Alternative Workweek Schedule (AWS) at the Apple Valley – No. 7033 Distribution Center, during the **Relevant Time Period**, who worked between the eight and ten hours of a scheduled ten hour shift, and was not paid daily overtime. (Short Shift O.T. Class)

Class 2:

All current and former California-based WDC non-exempt hourly employees, excluding dispatcher and truck shop employees, who worked for Defendant at the Apple Valley – No. 7033 Distribution Center during the **Relevant Time Period**, who were not provided with a second meal period when working

over 10 hours in a shift. (“**Second Meal Period Class**”)

Class 3:

All California-based non-exempt hourly employees, excluding dispatcher and truck shop employees, who worked for Defendant at the Apple Valley – No. 7033 Distribution Center during the last year of the Relevant Time Period, who were provided a paystub with an underpayment of wages (a.k.a. wage statement) from Defendant (**Pay Stub Class**);

Class 4:

All California-based hourly employees, excluding dispatcher and truck shop employees, who worked at the Apple Valley – No. 7033 Distribution Center during the **Relevant Time Period**, who are no longer employed by Defendant and were not paid all their earned overtime wages. (**Waiting Time Penalty Class**).

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time; however, it is estimated that the classes number greater than 500 individuals. The identity of such membership is readily ascertainable via inspection of Defendant’s employment records.

18. There are common questions of law and fact as to Plaintiff and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendant violated the applicable Labor Code provisions including §§510 and 1194 by requiring substantial overtime work and not paying for said work according to the overtime laws of the State of California;
- ii. Whether Defendant failed to pay the appropriate straight time and premium overtime compensation to the WDC non-exempt hourly employees (excluding dispatcher and truck shop employees) of the Apple Valley – No. 7033 Distribution

Center;

- iii. Whether Defendant improperly retained, appropriated or deprived Plaintiff of the use of monies or sums to which Plaintiff and the class were legally entitled;
- iv. Whether Defendant engaged in unfair business practices;
- v. Whether Defendant, and each of them, was/were participants in the alleged unlawful conduct;
- vi. Whether Defendant's conduct was willful or reckless;
- vii. The effect upon and the extent of injuries suffered by Plaintiff and all others similarly situated and the appropriate amount of compensation;
- viii. The appropriate amount of monetary penalties allowed by Labor Code §§201, et seq. and 226;
- ix. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and all others similarly situated as required by Labor Code §1174 and §7 of California Industrial Welfare Commission Wage Order 9-2001 ("IWC Wage Order 9-2001");
- x. Whether Defendant willfully violated provisions of the Labor Code; and
- xi. Whether Defendant fails to provide compliant meal periods;
- xii. Whether Defendant is subject to civil penalties pursuant to Labor Code §§2699, et seq.

19. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as a representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through their attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claim or interest that is antagonistic to any class member.

1 20. The nature of this action and the nature of laws available to the
2 members of the classes and subclasses identified herein make use of the class
3 action format a particularly efficient and appropriate procedure to afford relief to
4 Plaintiff for the wrongs alleged herein. Further, this claim involves one (1) large
5 corporate employer, Defendant, and a large number of individual employees
6 (Plaintiff and all others similarly situated) with many relatively small claims with
7 common issues of law and fact. If each employee were required to file an
8 individual lawsuit, the corporate Defendant would necessarily gain an
9 unconscionable advantage since it would be able to exploit and overwhelm the
10 limited resources of each individual Plaintiff with its vastly superior financial and
11 legal resources. Requiring each class member to pursue an individual remedy
12 would also discourage the assertion of lawful claims by employees who would be
13 disinclined to pursue an action against their present and/or former employer for an
14 appreciable and justifiable fear of retaliation and permanent damage to their
15 careers at present and/or subsequent employment. Proof of a common business
16 practice or factual pattern, of which the named Plaintiff experienced, is
17 representative of the class mentioned herein and will establish the right of each of
18 the members of the named class to recovery on the causes of action alleged herein.

19 21. The prosecution of separate actions by the individual class members,
20 even if possible, would create a substantial risk of inconsistent or varying verdicts
21 or adjudications with respect to the individual class members against Defendant
22 herein; and which would establish potentially incompatible standards of conduct
23 for Defendant; and/or (b) legal determinations with respect to individual class
24 members which would, as a practical matter, be dispositive of the interest of the
25 other class members not parties to adjudications or which would substantially
26 impair or impede the ability of the class members to protect their interests. Further,
27 the claims of the individual members of the class are not sufficiently large to
28 warrant vigorous individual prosecution considering all of the concomitant costs

1 and expenses attending thereto.

2 22. Plaintiff and all others similarly situated are entitled to the wages and
3 other monies unlawfully withheld. This action is brought for the benefit of the
4 public.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of B&PC §§17200, et seq.)**

7 23. Plaintiff re-alleges and incorporates by reference herein the
8 allegations of all preceding paragraphs as though fully set forth herein.

9 24. Beginning on an exact date unknown to Plaintiff but believed to have
10 occurred at least since four (4) years before the filing of this action or during the
11 Relevant Time Period, Defendant has engaged in a pattern and practice of acts of
12 unfair competition in violation of B&PC §17200, including the practices alleged
13 herein.

14 **FAILURE TO PAY PROPER WAGES AND OVERTIME**

15 **COMPENSATION**

16 25. Plaintiff is informed and believes and thereon alleges that as part of
17 Defendant's ongoing unfair business practice, Defendant's Apple Valley – No.
18 7033 Distribution Center (WDC) employees, excluding dispatcher and truck shop
19 employees, were and are employed and scheduled as a matter of established
20 company policy to work, and in fact, worked in excess of eight (8) hour shifts. The
21 hours worked by Plaintiff and the class is in excess of eight (8) hours per day, and
22 in excess of forty (40) hours per week without receiving the proper overtime
23 premium on at least 40% of the shifts worked. The Defendant is in violation of
24 Labor Code §§510 and 1194, and the relevant California Industrial Welfare
25 Commission Order 9-2001, et seq.

26 26. Under Labor Code §1194, an employee is not fully compensated for
27 the unpaid balance of their overtime compensation unless the employee is paid all
28 unpaid compensation for the regular hours and overtime hours worked during an

1 overtime shift, unless there is a valid exemption. Plaintiff believes and thereon
2 alleges Defendant does not have such valid exemption.

3 27. Defendant, and each of them, consistently administered a corporate
4 policy regarding, both staffing levels, duties and responsibilities of Defendant's
5 employees, which required that the entirety of the employees work overtime
6 without proper premium overtime pay on at least 40% of the shifts worked.
7 Further, Plaintiff and all others similarly situated are entitled to restitution of these
8 wages obtained by Defendant, and each of them.

9 28. This corporate policy and pattern of conduct is accomplished with the
10 advance knowledge and designed intent not to pay the employees at a premium
11 rate for all overtime hours. Further, Plaintiff and all others similarly situated are
12 entitled to restitution of these wages obtained by Defendant, and each of them.

13 29. Further, Plaintiff and all others similarly situated are entitled to
14 restitution of all unpaid wages obtained by Defendant, and each of them. Plaintiff,
15 and the class, may seek restitution for unpaid straight time wages under B&PC
16 §§17200, et seq. Any business act or practice that violates the Labor Code through
17 a failure to pay wages is by definition an unfair business practice under §17200.
18 Section 17200 provides an action to recover wages as restitution, even if such
19 recovery might be barred if brought pursuant to the Labor Code, if the failure to
20 pay constitutes a business practice. Unpaid straight time wages and unpaid
21 overtime wages are recoverable as restitution under §17200 based on Defendant's
22 subterfuge which constitutes an unfair business practice that fails to pay earned
23 wages in violation of the Labor Code.

24 30. Plaintiff and all others similarly situated identified herein were and are
25 employed and scheduled as a matter of established company policy to work and in
26 fact worked as non-exempt hourly employees in excess of eight (8) hours per day.
27 Defendant employed and scheduled all employees without providing overtime
28 compensation for such excess daily overtime hours worked in violation of Labor

Code §§510, 1194, 1198 and IWC Wage Order 9-2001 without a valid exemption on at least 40% of the shifts worked. Further, Plaintiff is informed and believes and thereon alleges that Defendant failed to pay its Apple Valley – No. 7033 WDC employees (excluding dispatcher and truck shop employees) pursuant to Wage Order and LC §511. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 9, as amended, applies to Plaintiff. Defendant instituted an invalid AWS pay structure and failed to pay daily overtime for regularly scheduled ten (10) hour shifts without a valid exemption and/or failed to pay overtime on short shifts, as is required by the Wage Order.

VIOLATION OF MEAL PERIOD PROVISIONS

31. Defendant's improper meal policies are in violation of California law including, but not limited to Labor Code §§226.7 and 512, and IWC Wage Order 9-2001. Plaintiff and all others similarly situated are entitled to a second half hour meal period when working over ten (10) hours in a shift. Defendant violated the meal break provisions and did not provide Plaintiff and all others similarly situated with duty free meal periods when working over 10 hours in a shift.. Plaintiff and the class were entitled to one (1) hour of pay for each meal break violation at their regular rate of pay. Defendant and each of them failed and continue to fail to pay for a meal break violation at the employees' regular rate of pay in violation of IWC Wage Order 9-2001, §11. Plaintiff believes and thereon alleges that at least 40% of all shifts worked by the class members are in excess of 10 hours.

32. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited by California B&PC §17200, thereby depriving its employees and the putative class the minimum working condition, standards and conditions due to them under the California labor laws and Industrial Welfare

Commission wage orders as specifically described herein. Plaintiff seeks an injunction preventing Defendant from continuing its unfair business practice of improperly depriving its employees' overtime pay. Plaintiff further seeks an order requiring Defendant to identify by full name, telephone number, and last known address employees who worked or still work for Defendant during the Relevant Time Period; Plaintiff further seeks an order requiring Defendant to timely pay restitution to all current and former employees, including back wages, and interest. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original Complaint and/or during the Relevant Time Period.

33. By and through its unfair, unlawful, and/or fraudulent business practices and acts described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits guaranteed by law, all to their detriment.

34. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to and do seek such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and class members have been deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

35. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above described business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices at all times in the future.

36. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class and the public.

SECOND CAUSE OF ACTION

RECOVERY OF UNPAID WAGES & PENALTIES

(Violation of Labor Code §§218, 226, 510, 511, 1194 and 1198)

37. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

38. Plaintiff and all others similarly situated identified herein were and are employed and scheduled as a matter of established company policy to work and in fact worked as non-exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per week. Defendant employed and scheduled all employees without providing overtime compensation for such excess hours worked in violation of Labor Code §§510 and 1194 and IWC Wage Order 9-2001. Labor Code §204 establishes the fundamental right of all employees in the state of California to be paid the proper amount of wages in a timely fashion for their work, including overtime.

39. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the Division of Labor Standards Enforcement (hereinafter “DLSE”) and may recover such wages, together with interest thereon, penalties, attorneys’ fees and costs.

40. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all others similarly situated wages when due as required by Labor Code §204.

41. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the IWC or under conditions prohibited by IWC Wage Order 9-2001, which applies to Plaintiff.

42. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges that Defendant has treated Plaintiff and all others similarly situated, as hourly non-exempt employees. Despite this classification, Defendant has willfully violated the Labor Code with respect to meeting the requirements of

1 paying all wages earned, including minimum wages, straight time pay, overtime,
2 and remuneration when calculating the hourly non-exempt employees regular rate
3 of pay, as herein before alleged.

4 43. Plaintiff is informed and believes and thereon alleges that the hourly
5 non-exempt class was never paid any premium compensation or paid significantly
6 less premium compensation for work accomplished in excess of forty (40) hours
7 per pay period, and/or eight (8) hours per day on at least 40% of the shifts worked
8 by hourly employees at the Apple Valley facility between the 8th and 10th hour of
9 their shifts.

10 44. Plaintiff is informed and believes and thereon alleges that Defendant
11 consistently administered a corporate policy regarding both staffing levels and
12 duties and responsibilities of the members of the classes which required the
13 entirety of all classes to work overtime without proper premium pay. This included
14 a uniform corporate policy and practice of requiring employees to work in excess
15 of eight (8) hours a day without paying premium overtime or a valid exemption
16 thereto. This corporate policy and pattern of conduct was/is accomplished with the
17 advance knowledge and design of all Defendant herein. Thus, Plaintiff and all
18 others similarly situated routinely, regularly and customarily performed overtime
19 work. Accordingly, Plaintiff and all others similarly situated are entitled to
20 overtime compensation under California law.

21 45. Plaintiff is informed and believes and thereon alleges that the
22 obligations and responsibilities of both class employees are irrelevant because
23 Plaintiff and all others similarly situated merely allege wrongdoing with
24 Defendant's pay plans. Further, the duties of Plaintiff and all others similarly
25 situated are not relevant in certifying any of the classes. Defendant's hourly non-
26 exempt employees work routinely included work in excess of eight (8) hours per
27 day, forty (40) hours per pay period and/or and they were not, and have never
28 been, paid the proper premium compensation for their overtime work on 40% of

1 the shifts worked.

2 46. Defendant, and each of them, in violation of Labor Code §§201 and
3 202, et seq., respectively, had a consistent and uniform policy, practice and
4 procedure of willfully failing to pay the earned and unpaid wages of all such
5 former employees.

6 47. Plaintiff and all others similarly situated identified herein were and are
7 employed and scheduled as a matter of established company policy to work and in
8 fact worked as non-exempt hourly employees in excess of eight (8) hours per day
9 without overtime. Defendant employed and scheduled all employees without
10 providing proper overtime compensation for such excess daily overtime hours
11 worked in violation of Labor Code §§510, 1194, 1198 and IWC Wage Order 9-
12 2001. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer
13 than the hours set by the IWC or under conditions prohibited by IWC Wage Order
14 9-2001, without a valid exemption. Plaintiff is informed and believes that
15 Defendant does not have a valid exemption from the daily overtime requirement.

16 48. Accordingly, Plaintiff seeks all wages Defendant has failed to pay,
17 which are owing, including interest thereon, willful penalties, attorneys' fees, and
18 costs of suit according to the mandate of Labor Code §1194, et seq.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL BREAKS**

21 49. Plaintiff incorporates by reference and realleges each and every one of
22 the allegations contained in the preceding and foregoing paragraphs of this
23 Complaint as though fully set forth herein.

24 50. Labor Code §226.7 requires an employer to pay an additional hour of
25 compensation for each meal period the employer fails to provide. Plaintiff alleges
26 that Defendant failed to provide legally compliant meals in addition to impeding,
27 discouraging and/or dissuading employees from taking legally compliant meal
28 periods. Employees are entitled to a meal period of at least thirty (30) minutes per

five (5) hour work period. Plaintiff and all others similarly situated worked over ten(10) hour shifts without meal periods due to Defendant's policy of discouraging, dissuading and/or impeding Plaintiff and all others similarly situated from taking meal periods. Pursuant to the Labor Code, Plaintiff and all others similarly situated are entitled to a meal period of not less than thirty (30) minutes a second meal period for hours worked over ten (10) in a day.

51. Defendant failed to provide, impeded and/or discouraged Plaintiff and all others similarly situated from taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during the relevant class period and/or failed to obtain legal waivers waiving the first or second meal period.

52. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial.

53. Pursuant to Labor Code §218.5 Plaintiff requests that the court award reasonable attorney's fees and costs incurred by them in this action.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE §226

(Against All Defendants)

54. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

55. IWC Wage Order 9-2001, §7 provides:

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one

1 item. Subsection (e) provides: "Any employee suffering injury as a
2 result of a knowing and intentional failure by an employer to comply
3 with subdivision (a) shall be entitled to recover the greater of all
4 actual damages or fifty dollars (\$50) for the initial pay period in
5 which a violation occurs and one hundred dollars (\$100) per
6 employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000),
8 and shall be entitled to an award of costs and reasonable attorney's
9 fees.

10 56. During the Class Period, Defendant knowingly and intentionally
11 failed to provide the Class Members, including Plaintiff, with timely and accurate
12 wage and hour statements showing gross wages earned, total hours worked, all
13 deductions made, net wages earned, the name and address of the legal entity
14 employing that Class Member, and all applicable hourly rates in effect during each
15 pay period and the corresponding number of hours worked at each hourly rate by
16 that Class Member. This is a derivative claim based on the wage claims asserted
17 herein. As such, only pay stubs where Plaintiff and the class were not paid proper
18 premium overtime and/or their missed meal period at the correct regular rate are in
19 violation of Labor Code §226.

20 57. Defendant thus required the Class Members, including Plaintiff, to
21 work under conditions prohibited by order of the Industrial Welfare Commission,
22 in violation of those orders. The Class Members, including Plaintiff, suffered
23 injury as a result of Defendant's knowing and intentional failure to provide the
24 Class Members, including Plaintiff, with the wage and hour statements required by
25 law, as stated supra.

26 58. Based on Defendant's conduct as alleged herein, Defendant is liable
27 for actual damages, according to proof, statutory damages and/or statutory
28 penalties pursuant to California Labor Code §226, including attorney's fees and
costs.

/////

FIFTH CAUSE OF ACTION

(Violation of Labor Code §§200, et seq.)

59. Plaintiff re-alleges and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

60. Labor Code §§200, et seq., provides that an employer is required to pay an employee all wages (including accrued vacation), within twenty-four (24) hours of the employees' involuntary separation from employment; within twenty-four (24) hours of his voluntary separation if the employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

61. Plaintiff on behalf of all former employees of Defendant employed in the State of California at the Apple Valley - No. 7033 Distribution Center, separated from employment with Defendant. Plaintiff alleges that this derivate claim is on behalf of all others similarly situated employees who did not timely receive a final pay check from Defendant in violation of Labor Code §§200, et seq., based on the wage claims asserted in this action. Plaintiff is informed and believes and thereon alleges that Defendant also violated the mandates of Labor Code §§200, et seq., as to other employees whose employment ended during the period of time covered by this action.

62. Pursuant to Labor Code §§200, et seq., each member of the classes that no longer works for Defendant, and who was not timely paid is entitled to one (1) day of pay in penalties for each day that he or she was paid late, until payment was made, up on a maximum of thirty (30) days.

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SIXTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE
PRIVATE ATTORNEY GENERAL ACT
[CAL. LABOR CODE §§2698-2699]
(Against All Defendants)

63. Plaintiff re-alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs 1- 95, inclusive of this Complaint, as if fully set forth herein.

64. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

65. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

66. Plaintiff, and all hourly employees of Defendant are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

67. Prior to filing this Complaint, Plaintiff gave written notice by certified mail to the LWDA and the employer, of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of which is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted all administrative remedies on June 18, 2016 (33 days after mailing), since the

1 LWDA never responded with any intention to investigate. As such,
 2 Plaintiff has exhausted his administrative requirements pursuant to LC
 3 §2699.3(a)(1) and (2) (A-C).

4 68. Pursuant to Labor Code §2699.3, notwithstanding any other
 5 provision of law, Plaintiff may as a matter of right amend the existing complaint,
 6 to add a cause of action under Labor Code §2699 at any time within 60 days under
 7 the code.

8 69. Plaintiff asserts all of the claims in this Complaint against Defendant,
 9 and each of them, individually and on behalf of all aggrieved employees in their
 10 capacity as private attorney general, and seeks all statutory penalties available
 11 under the Labor Code.

12 70. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf
 13 of all aggrieved employees, requests and is entitled to recover from the Defendant,
 14 and each of them; overtime compensation, meal period compensation and
 15 penalties, waiting time period penalties, and PAGA penalties according to proof,
 16 and Plaintiff is further entitled to recover interest, attorney's fees and costs
 17 pursuant to Labor Code §§218.5 and 1194(a), as well as all statutory penalties and
 18 attorneys' fees against Defendant, and each of them, including, but not limited to:

19 A. Penalties under Labor Code §2699 in the amount of \$100 for
 20 each aggrieved employee per pay period for each initial violation, and \$200 for
 21 each aggrieved employee per pay period for each subsequent violation;

22 B. Penalties under Code of Regulations, Title 8 §11070 in the
 23 amount of \$50 for each aggrieved employee per pay period for the initial
 24 violation, and \$100 for each aggrieved employee per pay period for each
 25 subsequent violation;

26 C. Penalties under Labor Code §210, in addition to and entirely
 27 independent and apart from other penalty provided in the Labor Code, in the
 28 amount of \$100 for each aggrieved employee per pay period for each violation,

1 and \$200 for each aggrieved employee per pay period for each subsequent
2 violation, plus 25% of the wage wrongly withheld;

3 D. Penalties under Labor Code §256, in addition to and entirely
4 independent and apart from other penalty provided in the Labor Code, including
5 Labor Code §2699, *et seq.*, for any aggrieved employee who was discharged or
6 quit, and was not paid all earned wages at termination in accordance with Labor
7 Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one
8 day of pay, at the same rate, for each day that he or she was paid late, until
9 payment was/is made, up to a maximum of thirty (30) days;

10 E. Penalties under Labor Code §558, in addition to and entirely
11 independent and apart from other penalty provided in the Labor Code, in the
12 amount of \$50 for each underpaid aggrieved employee for each pay period the
13 aggrieved employee was underpaid in addition to an amount sufficient to recover
14 underpaid wages, and \$100 for each subsequent violation for each underpaid
15 employee for each pay period for which the employee was underpaid in addition
16 to an amount sufficient to recover underpaid wages, with all wages recovered
pursuant to Labor Code §558 provided to the affected employees;

17 F. Penalties under Labor Code §226.3, in addition to and entirely
18 independent and apart from other penalty provided in the Labor Code, in the
19 amount of \$250 for each aggrieved employee per pay period for each violation,
20 and \$1,000 for each aggrieved employee per pay period for each subsequent
21 violation;

22 G. Penalties under Labor Code §2699(f), in addition to and
23 entirely independent and apart from other penalty provided in the Labor Code and
24 for Labor Code violations without a specific civil penalty, in the amount of \$100
25 for each aggrieved employee per pay period for each violation, and \$200 for each
26 aggrieved employee per pay period for each subsequent violation;

27 H. Any and all additional penalties and sums as provided by the
28 Cal. Labor Code and/or other statutes.

1 71. In addition thereto, Plaintiff seeks and is entitled to 50% of all
2 penalties obtained under Labor Code §2699 to be allocated to the General Fund,
3 and 25% of all penalties obtained to be allocated to the LWDA, for education of
4 employers and employees about their rights and responsibilities under the Labor
5 Code, and 25% to all aggrieved employees.

6 72. Further, Plaintiff is entitled to seek and recover reasonable attorney's
7 fees and costs pursuant to Labor Codes §§ 2699, 1194, 210, and 212 and any other
8 applicable statute.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays:

11 1. That the Court determine this action may be maintained as a class
12 action;

13 **As to the First Cause of Action:**

14 2. For an order preliminarily and permanently enjoining Defendant from
15 engaging in the practices challenged herein;

16 3. An order for full restitution of all monies, as necessary and according
17 to proof, to restore any and all monies withheld by the Defendant by means of the
18 unfair practice complained of herein. Plaintiff seeks, on behalf of the putative
19 class, the appointment of a receiver, as necessary. The restitution includes all
20 monies retained as wages, as defined in Labor Code §§200, et seq., 510, and 1194,
21 and interest, and attorneys' fees as a result of the unfair business practices or
22 retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

23 4. For an order finding and declaring that Defendant's acts and practices
24 as challenged herein are unlawful, and unfair and/or fraudulent;

25 5. For an accounting, under administration of Plaintiff and subject to
26 Court Review, to determine the amount to be returned by Defendant and the
27 amounts to be refunded to members who are or were not paid all their wages due to
28 Defendant's unfair business practices;

6. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively that each current or former eligible employee may submit a claim in order to receive his/her money;

7. For an order requiring Defendant to make full restitution and payment pursuant to B&PC §§17200, et seq. for unfair business practices that violate Labor Code §§200, et seq., 510, and 1194;

8. For reasonable attorneys' fees under CCP §1021.5 all other appropriate declaratory and equitable relief;

9. For pre-judgment interest to the extent permitted by law;

10. For pre-judgment interest to the extent permitted by law and the California Constitution;

11. For an order requiring Defendant to identify, by name, address and telephone number of each person who worked as an hourly non-exempt employee for Defendant from four (4) years before filing of the original complaint in this action through the time of judgment;

As to the Second Cause of Action:

12. For damages according to proof, as set forth in Labor Code §§204, 218, 226, 510, 1194, and 1198, et seq. and IWC Wage Order 9-2001 regarding wages due and owing;

13. For unpaid straight time and premium wages pursuant to Labor Code §1194.

14. For pre-judgment interest as allowed by Labor Code §1194 and Civil Code §3287(b), and for reasonable attorneys' fees;

15. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor Code §1194.2(a);

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As to the Third Cause of Action:

16. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

As to the Fourth Cause of Action:

17. For recovery as authorized by Labor Code §226(e);

18. For injunctive relief to ensure Defendant's compliance with Labor Code §226 and IWC Wage Order 9-2001, §7(A) pursuant to Labor Code §226(g);

As to the Fifth Cause of Action:

19. For waiting time penalties for all former employees not timely paid their last pay check, including vacation pay;

20. For reasonable attorneys' fees and costs;

As to the Sixth Cause of Action:

21. On behalf of all current and former employees, for all civil penalties authorized by Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558 plus Labor Code §1197.1 for former or current employees who are due overtime and other wage payments;

22. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

23. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

24. For civil penalties pursuant to Labor Code § 558 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 additional

1 to an amount sufficient to recover underpaid wages;

2 (2) For each subsequent violation, one hundred dollars (\$100) for
3 each underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages;

5 (3) For any and all unpaid wages that shall be paid to the affected
6 employees;

7 25. For civil penalties under Labor Code §210, in addition to and entirely
8 independent and apart from other penalty provided in the Labor Code, in the
9 amount of \$100 for each aggrieved employee per pay period for each violation,
10 and \$200 for each aggrieved employee per pay period for each subsequent
11 violation, plus 25% of the wage wrongly withheld;

12 26. For civil penalties under Labor Code §2699(f), in addition to and
13 entirely independent and apart from other penalty provided in the Labor Code and
14 for Labor Code violations without a specific civil penalty, in the amount of \$100
15 for each aggrieved employee per pay period for each violation, and \$200 for each
16 aggrieved employee per pay period for each subsequent violation.

17 **As to All Causes of Action:**

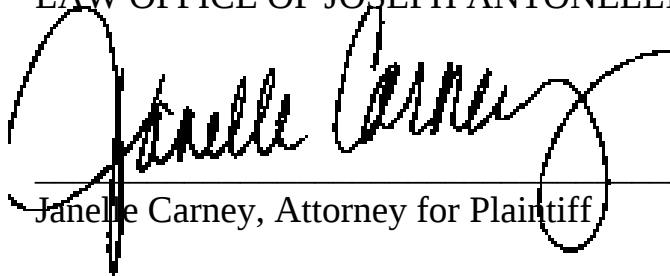
18 27. For reasonable attorneys' fees and costs incurred;

19 28. For such other and further relief as this Court may deem just and
20 proper.

21 Dated: February 17, 2017

LAW OFFICE OF JOSEPH ANTONELLI

22
23
24 By:


Janelle Carney, Attorney for Plaintiff