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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 21 2016

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

BY FAX

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.: CIVDS 1607743

Hon. Janet M. Frangie

Dept. S29

CLASS ACTION

**FIRST 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 Pay All Wages Due to Illegal
Rounding

4. Failure to Provide Meal Breaks (Labor
Code §§226.7 and 512, et seq.)

5. Inaccurate Wage Statements (Labor
Code §226)

6. Violation of Labor Code §§200, et seq.

7. Failure to Pay All Wages (Off the
Clock)

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

6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is a civil action seeking recovery of unpaid wages and waiting time penalties
9 under California Labor Code §§200, et seq., 226, 226.7, 510, 511, 512, 1194, 1194.2, 1197, and
10 1198, as well as the Wage Order. Plaintiff, for himself and on behalf of all others similarly
11 situated, and the general public, brings an action for monetary damages for failure to pay wages
12 as well as for injunctive relief, declaratory relief and restitution for Defendant’s violations of
13 California Business and Professions Code (“B&PC”) §§17200, et seq., including full restitution
14 of all compensation retained by Defendant as a result of its unlawful, fraudulent and unfair
15 business practices. Plaintiff seeks all available relief, including full damages, full restitution
16 and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by
17 Defendant as a result of its unlawful, unfair business practices. Further, Plaintiff seeks injunctive
18 relief under B&PC §§17200, et seq.

19 **VENUE**

20 2. Venue as to Defendant is proper in this judicial district pursuant to California
21 Code of Civil Procedure (“CCP”) §§395(a) and 395.5, as at least some of the acts complained of
22 herein occurred in the County of San Bernardino. Defendant either owns or maintains offices,
23 transacts business, has an agent or agents within the County of San Bernardino, or otherwise is
24 found within the County of San Bernardino, and Defendant is within the jurisdiction of this
25 Court for purposes of service of process.

26 **PARTIES**

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

1 California.

2 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
3 herein, Defendant, Wal-Mart Stores, Inc. (“Wal-Mart”), is and was a Delaware corporation.

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

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

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

16 8. Plaintiff does not know the true names or capacities, whether individual, partner,
17 or corporate, of Defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
18 Defendants are sued under such fictitious names, and Plaintiff will seek from this Court leave to
19 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
20 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
21 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
22 herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged and
23 the general public to be subjected to the unlawful employment practices, wrongs, injuries and
24 damages complained of herein.

25 9. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
27 Defendants, and each of them, were the agents, servants, and employees of each and every one of
28 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned

1 were acting within the course and scope of said agency and employment. Plaintiff herein alleges
2 that Defendant and each of them are the joint employer of Plaintiff and all others similarly
3 situated.

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

7 11. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and every one
9 of the other Defendants in proximately causing the complaints, injuries and damages alleged
10 herein.

11 12. At all times herein mentioned, Defendants, and each of them, approved of,
12 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
13 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
14 and omissions of each and every one of the other Defendants, thereby proximately causing the
15 damages, as herein alleged.

16 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

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

20 14. B&PC §§17200, et seq., often referred to as the Unfair Competition Law,
21 prohibits unfair competition, which is defined to include any unlawful, unfair, or fraudulent
22 business act or practices. Defendant has instituted and implemented unlawful wage-and-hour
23 policies, which constitute unfair, unlawful, or fraudulent business acts or practices within the
24 State of California. Any person that has suffered injury may initiate an action to enforce B&PC
25 §17200. The court is authorized to order injunctive relief, declaratory relief, and restitution to
26 affected members of the general public as remedies for any violations of B&PC §17200.

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

1 following:

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

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

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

13 **PLAINTIFF CLASSES**

14 16. The class representative Plaintiff who worked in the position of a non-exempt
15 Wal-Mart Distribution Center (WDC) hourly employee, while employed by Defendant within
16 the State of California, is Juan Garcia.

17 **CLASS ACTION ALLEGATIONS**

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

21 **Class 1:**

22 All California-based hourly non-exempt Wal-Mart Distribution Center (WDC)
23 employees who worked at least one (1) day of more than eight (8) hours in a day or more than
24 forty (40) hours in a week from four (4) years before the filing of this action through the date of
25 class certification order. ("Overtime Class");

26 **Subclass 1:**

27 All California-based hourly non-exempt WDC employees who work or worked for
28 Defendant pursuant to an Alternative Workweek Schedule (AWS) from four (4) years preceding

the filing of this complaint through the date of the class certification order, who worked between the eighth and tenth hour of a shift, and was not paid daily overtime. (Short Shift O.T. Class)

Class 2:

All California-based hourly WDC employees employed by Defendant as hourly employees during the time period from four years preceding the filing of this complaint to the date of the class certification order, who were subjected to Defendant's meal period policies and practices (**Meal Break Violation Class**);

Subclass 2:

All current and former California-based WDC non-exempt hourly employees who worked for Defendant from four (4) years preceding the filing of this complaint through the date of the class certification order, who were not provided with a second meal period when working over 10 hours in a shift. ("**Second Meal Period Class**")

Subclass 3:

All current and former California-based WDC non-exempt hourly employees who worked for Defendant from four (4) years preceding the filing of this complaint through the date of the class certification order, who signed a meal waiver of one (1) of the two (2) meal periods on a shift of ten (10) hours or more when hired by Defendant. ("**Meal Period Waiver Subclass**")

Class 3:

All California-based non-exempt hourly WDC employees who worked for Defendant from four (4) years preceding the filing of this complaint through the date of the class certification order, who were subject to Defendant's timekeeping rounding policy and practices. (**Rounding Class**);

Class 4:

All California-based hourly WDC employees who worked for Defendant from four (4) years preceding the filing of this complaint through the date of the class certification order, who were required to work without compensation paid at minimum wage while being subjected to bag checks. (**Off the Clock Class**);

Class 5:

All California-based non-exempt hourly employees who worked for Defendant from one (1) year preceding the filing of this complaint through the date of the class certification order, who were provided a paystub (a.k.a. wage statement) from Defendant (**Pay Stub Class**);

Class 6:

All California-based hourly employees of from four (4) years preceding the filing of this complaint through the date of the class certification order, who are no longer employed by Defendant. (**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 100 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;
- 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.

20. The nature of this action and the nature of laws available to the members of the classes and subclasses identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one (1) large corporate employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly superior financial and legal resources. Requiring each class member to pursue an

1 individual remedy would also discourage the assertion of lawful claims by employees who
2 would be disinclined to pursue an action against their present and/or former employer for an
3 appreciable and justifiable fear of retaliation and permanent damage to their careers at present
4 and/or subsequent employment. Proof of a common business practice or factual pattern, of which
5 the named Plaintiff experienced, is representative of the class mentioned herein and will establish
6 the right of each of the members of the named class to recovery on the causes of action alleged
7 herein.

8 21. The prosecution of separate actions by the individual class members, even if
9 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
10 respect to the individual class members against Defendant herein; and which would establish
11 potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations
12 with respect to individual class members which would, as a practical matter, be dispositive of the
13 interest of the other class members not parties to adjudications or which would substantially
14 impair or impede the ability of the class members to protect their interests. Further, the claims of
15 the individual members of the class are not sufficiently large to warrant vigorous individual
16 prosecution considering all of the concomitant costs and expenses attending thereto.

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

19 **FIRST CAUSE OF ACTION**

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

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

23 24. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
24 least since four (4) years before the filing of this action, Defendant has engaged in a pattern and
25 practice of acts of unfair competition in violation of B&PC §17200, including the practices
26 alleged herein.

27 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

28 25. Plaintiff is informed and believes and thereon alleges that as part of Defendant's

ongoing unfair business practice, Defendant's California Distribution Center (WDC) employees were and are employed and scheduled as a matter of established company policy to work, and in fact, worked in excess of eight (8) hour shifts. The hours worked by Plaintiff and the class is in excess of eight (8) hours per day, and in excess of forty (40) hours per week without receiving the proper overtime premium. The Defendant is in violation of Labor Code §§510 and 1194, and the relevant California Industrial Welfare Commission Order 9-2001, et seq.

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

27. Defendant, and each of them, consistently administered a corporate policy regarding, both staffing levels, duties and responsibilities of Defendant's employees, which required that the entirety of the employees work overtime without proper premium overtime pay. Further, Plaintiff and all others similarly situated are entitled to restitution of these wages obtained by Defendant, and each of them.

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

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

1 30. Plaintiff and all others similarly situated identified herein were and are employed
2 and scheduled as a matter of established company policy to work and in fact worked as non-
3 exempt hourly employees in excess of eight (8) hours per day. Defendant employed and
4 scheduled all employees without providing overtime compensation for such excess daily
5 overtime hours worked in violation of Labor Code §§510, 1194, 1198 and IWC Wage Order 9-
6 2001 without a valid exemption. Further, Plaintiff is informed and believes and thereon alleges
7 that Defendant failed to pay its WDC employees pursuant to Wage Order and LC §511.
8 Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by
9 the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order
10 No. 9, as amended, applies to Plaintiff. Defendant instituted an invalid AWS pay structure and
11 failed to pay daily overtime for regularly scheduled ten (10) hour shifts without a valid
12 exemption.

13 **VIOLATION OF MEAL PERIOD PROVISIONS**

14 31. Defendant's improper meal policies are in violation of California law including,
15 but not limited to Labor Code §§226.7 and 512, and IWC Wage Order 9-2001. Plaintiff and all
16 others similarly situated are entitled to a half hour meal period within the first five (5) hours of
17 their shift. Defendant violated the meal break provisions and did not provide Plaintiff and all
18 others similarly situated with duty free meal periods within the first five (5) hours of their shift.
19 Plaintiff and the class were entitled to one (1) hour of pay for each meal break violation at their
20 regular rate of pay. Defendant and each of them failed and continue to fail to pay for a meal
21 break violation at the employees' regular rate of pay in violation of IWC Wage Order 9-2001,
22 §11. Furthermore, Defendant failed to provide Plaintiff and other similarly situated employees
23 with a second meal period when said employees work in excess of 10 hours.

24 **OFF THE CLOCK**

25 32. Plaintiff is informed and believes and thereon alleges, that at all times herein
26 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited
27 by California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered
28 or permitted non-exempt employees to work off the clock including but not limited to time during

1 which the employees are required to stand in line and have their bags checked prior to leaving to
2 go to lunch or leaving to go home at the end of their shift, despite being clocked out. Further,
3 Plaintiff is informed and believes and thereon alleges, that due to Defendant's asset control policy
4 and timekeeping practices, preventing employees from clocking in prior to search upon entering
5 the building, Plaintiff and the putative class members are not paid for all time suffered or
6 permitted to work.

7 33. Plaintiff seeks restitution and injunctive relief for all the aforementioned
8 violations.

9 34. Defendant, and each of them, has engaged in unfair business practices in
10 California by practicing, employing and utilizing the employment practices complained of herein.
11 Defendant's use of such practices constitutes an unfair business practice, unfair competition, and
12 provides an unfair advantage over Defendant's competitors. Plaintiff and the putative class seek
13 full restitution of said monies, as necessary and according to proof, to restore any and all monies
14 withheld and/or acquired by Defendant by means of the unfair business practices complained of
15 herein. Plaintiff seeks, on behalf of all current and former employees of Defendant, restitution of
16 said monies. Plaintiff further seeks, on behalf of the Plaintiff and the putative class, the
17 appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendant.
18 The restitution includes all wages withheld by Defendant as a result of the unfair, unlawful,
19 and/or fraudulent business practices, including interest thereon. Absent a statutory provision
20 specifically governing the type of claim at issue, the prejudgment interest rate is 10 percent. The
21 acts complained of herein occurred, at least in part, within the last four (4) years preceding the
22 filing of the Complaint.

23 35. Plaintiff is informed and believes and thereon alleges that at all times herein
24 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices
25 prohibited by California B&PC §17200, thereby depriving its employees and the putative class
26 the minimum working condition, standards and conditions due to them under the California labor
27 laws and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff
28 seeks an injunction preventing Defendant from continuing its unfair business practice of

1 improperly depriving its employees' overtime pay. Plaintiff further seeks an order requiring
2 Defendant to identify by full name, telephone number, and last known address employees who
3 worked or still work for Defendant from four (4) years preceding the filing of the original
4 Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant to
5 timely pay restitution to all current and former employees, including back wages, and interest.
6 The acts complained of herein occurred, at least in part, within the last four (4) years preceding
7 the filing of the original Complaint.

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

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

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

21 39. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
22 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

23 **SECOND CAUSE OF ACTION**

24 **RECOVERY OF UNPAID WAGES & PENALTIES**

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

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

28 41. Plaintiff and all others similarly situated identified herein were and are employed

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

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

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

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

17 45. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
18 that Defendant has treated Plaintiff and all others similarly situated, as hourly non-exempt
19 employees. Despite this classification, Defendant has willfully violated the Labor Code with
20 respect to meeting the requirements of paying all wages earned, including minimum wages,
21 straight time pay, overtime, and remuneration when calculating the hourly non-exempt
22 employees regular rate of pay, as herein before alleged.

23 46. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
24 class was never paid any premium compensation or paid significantly less premium
25 compensation for work accomplished in excess of forty (40) hours per pay period, and/or eight
26 (8) hours per day.

27 47. Plaintiff is informed and believes and thereon alleges that Defendant consistently
28 administered a corporate policy regarding both staffing levels and duties and responsibilities of

1 the members of the classes which required the entirety of all classes to work overtime without
2 proper premium pay. This included a uniform corporate policy and practice of requiring
3 employees to work in excess of eight (8) hours a day without paying premium overtime or a
4 valid exemption thereto. This corporate policy and pattern of conduct was/is accomplished with
5 the advance knowledge and design of all Defendant herein. Thus, Plaintiff and all others
6 similarly situated routinely, regularly and customarily performed overtime work. Accordingly,
7 Plaintiff and all others similarly situated are entitled to overtime compensation under California
8 law.

9 48. Plaintiff is informed and believes and thereon alleges that the obligations and
10 responsibilities of both class employees are irrelevant because Plaintiff and all others similarly
11 situated merely allege wrongdoing with Defendant's pay plans. Further, the duties of Plaintiff
12 and all others similarly situated are not relevant in certifying any of the classes. Defendant's
13 hourly non-exempt employees work routinely included work in excess of eight (8) hours per day,
14 forty (40) hours per pay period and/or and they were not, and have never been, paid the proper
15 premium compensation for their overtime work.

16 49. Defendant, and each of them, in violation of Labor Code §§201 and 202, et seq.,
17 respectively, had a consistent and uniform policy, practice and procedure of willfully failing to
18 pay the earned and unpaid wages of all such former employees. Defendant has willfully failed to
19 pay the earned and unpaid wages of such individuals, including, but not limited to, other wages
20 earned including on call and/or stand by at the minimum wage and remaining uncompensated
21 amounts according to amendment, or proof.

22 50. Plaintiff and all others similarly situated identified herein were and are employed
23 and scheduled as a matter of established company policy to work and in fact worked as non-
24 exempt hourly employees in excess of eight (8) hours per day without overtime. Defendant
25 employed and scheduled all employees without providing proper overtime compensation for
26 such excess daily overtime hours worked in violation of Labor Code §§510, 1194, 1198 and
27 IWC Wage Order 9-2001. Pursuant to Labor Code §1198, it is unlawful to employ persons for
28 longer than the hours set by the IWC or under conditions prohibited by IWC Wage Order 9-

2001, without a valid exemption. Plaintiff is informed and believes that Defendant does not have a valid exemption from the daily overtime requirement.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING

52. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

53. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

54. California Code of Regulations Title 8, §11000(2) and the IWC Wage Orders §4(A) state: "Every employer shall pay to each employee ... wages not less than eight dollars (\$8.00) per hour for all hours worked, effective January 1, 2008...".

55. Labor Code §§1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

56. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

57. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

58. Pursuant to the IWC Wage Order(s), Defendant is required to pay the members of the Rounding Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to

1 work, whether or not required to do so.

2 59. Defendant, as a matter of established company policy and procedure, at each and
3 every one of the individual facilities owned and/or operated by Defendant, consistently:

4 a. Administered a uniform company policy and practice as to the rounding
5 policies regarding the members of the Rounding Class; and

6 b. Rounded the actual time worked and recorded by the members of the
7 Rounding Class, usually down, so that during the course of the their
8 employment, the members of the Rounding Class were paid far less than
9 they would have been paid had they been paid for actual recorded time
10 rather than “rounded” time.

11 60. Because Defendant required the members of the Rounding Class to remain under
12 Defendant’s control without paying therefore, this resulted in the members of the Rounding
13 Class earning less than the legal minimum wage in the State of California or the full amount of
14 overtime compensation for overtime hours worked.

15 61. Defendant’s pattern, practice and uniform administration of corporate policy
16 regarding illegal employee compensation as described herein is unlawful and creates an
17 entitlement, pursuant to Labor Code §218, to recovery by Plaintiff and the members of the
18 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
19 calculated at the appropriate rate.

20 62. Further, Defendant’s pattern and practice in uniform administration of corporate
21 policy regarding Defendant’s failure to pay the legal minimum wage to the members of the
22 Rounding Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
23 §1194(a), to recovery by the members of the Rounding Class, in a civil action, for the unpaid
24 balance of the full amount of the unpaid minimum wages owed or the full amount of earned
25 unpaid overtime compensation, including interest thereon.

26 63. That calculation of individual damages for the members of the Rounding Class
27 may at some point be required does not foreclose the possibility of taking common evidence on
28 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.

1 v. Superior Court (1981) 30 Cal.3d 256).

2 64. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the
3 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
4 herein.

5 65. Pursuant to Labor Code §218.5 and/or Labor Code §1194, the members of the
6 Rounding Class request that the Court award reasonable attorneys' fees and costs incurred by
7 them in this action.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL BREAKS**

10 66. Plaintiff incorporates by reference and realleges each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as though
12 fully set forth herein.

13 67. Labor Code §226.7 requires an employer to pay an additional hour of
14 compensation for each meal period the employer fails to provide. Plaintiff alleges that Defendant
15 failed to provide legally compliant meals in addition to impeding, discouraging and/or
16 dissuading employees from taking legally compliant meal periods. Employees are entitled to a
17 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and all others
18 similarly situated worked over five (5) hour shifts without meal periods due to Defendant's
19 policy of discouraging, dissuading and/or impeding Plaintiff and all others similarly situated
20 from taking meal periods. Pursuant to the Labor Code, Plaintiff and all others similarly situated
21 are entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours
22 of employment, and a second meal period for hours worked over ten (10) in a day.

23 68. Defendant failed to provide, impeded and/or discouraged Plaintiff and all others
24 similarly situated from taking timely meal breaks of not less than thirty (30) minutes as required
25 by the Labor Code during the relevant class period and/or failed to obtain legal waivers waiving
26 the first or second meal period. Plaintiff and all others similarly situated were deducted for thirty
27 (30) minute meal periods regardless if they took the meal periods. Such deductions are
28 prohibited by law. Plaintiff is informed, believes, and thereon alleges that Defendant during the

relevant time period has had a uniform policy and procedure wherein Defendant deducts all thirty (30) minute meal periods from the class members' wages and/or time cards as stated supra. Plaintiff and all others similarly situated have been subjected to the illegal and unlawful deductions on at least one occasion during their employment with Defendant. This practice amounts to an unlawful forfeiture.

69. 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.

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE §226

(Against All Defendants)

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

72. 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 item. Subsection (e) provides: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be 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 exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees.

73. During the Class Period, Defendant knowingly and intentionally failed to provide the Class Members, including Plaintiff, with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the

1 name and address of the legal entity employing that Class Member, and all applicable hourly
2 rates in effect during each pay period and the corresponding number of hours worked at each
3 hourly rate by that Class Member.

4 74. Defendant thus required the Class Members, including Plaintiff, to work under
5 conditions prohibited by order of the Industrial Welfare Commission, in violation of those
6 orders. The Class Members, including Plaintiff, suffered injury as a result of Defendant's
7 knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
8 and hour statements required by law.

9 75. Based on Defendant's conduct as alleged herein, Defendant is liable for actual
10 damages, statutory damages and/or statutory penalties pursuant to California Labor Code §226,
11 including attorney's fees and costs.

12 **SIXTH CAUSE OF ACTION**

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

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

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

22 78. Plaintiff on behalf of all former employees of Defendant employed in the State of
23 California separated from employment with Defendant. Plaintiff alleges that this derivate claim
24 is on behalf of all others similarly situated employees who did not timely receive a final pay
25 check from Defendant in violation of Labor Code §§200, et seq., based on the wage claims
26 asserted in this action. Plaintiff is informed and believes and thereon alleges that Defendant also
27 violated the mandates of Labor Code §§200, et seq., as to other employees whose employment
28 ended during the period of time covered by this action.

79. 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.

**SEVENTH CAUSE OF ACTION
(OFF THE CLOCK)
FAILURE TO PAY ALL WAGES
(On Behalf of All Class Members)
(Against All Defendants)**

80. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

81. Labor Code §510(a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

82. Labor Code §1182.12, effective July 1, 2014, states: “Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.”

83. Labor Code §§1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

84. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

85. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

1 86. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and the
2 members of the Class for all hours worked, meaning the time during which an employee is
3 subject to the control of an employer, including all the time the employee is suffered or permitted
4 to work, whether or not required to do so.

5 87. Defendant, as a matter of established company policy and procedure, at each and
6 every one of the individual facilities owned and/or operated by Defendant, consistently:

- 7 a. Administered a uniform company policy and practice as to the pay
- 8 policies regarding the class members; and
- 9 b. Scheduled to work and/or required the class members to work without
- 10 paying for all time they were under Defendants' control, as herein before
- 11 alleged.

12 88. Because Defendant required the class members to remain under Defendant's
13 control without paying therefore, this resulted in the class members earning less than the legal
14 minimum wage in the State of California.

15 89. Defendant's pattern, practice and uniform administration of corporate policy
16 regarding illegal employee compensation as described herein is unlawful and creates an
17 entitlement, pursuant to Labor Code §218, to recovery by Plaintiff and the class members in a
18 civil action, of the unpaid balance of the full amount of wages owing, calculated at the
19 appropriate rate.

20 90. Further, Defendant's pattern and practice in uniform administration of corporate
21 policy regarding Defendant's failure to pay the legal minimum wage to the class members as
22 described herein is unlawful and creates entitlement, pursuant to Labor Code §1194(a), to
23 recovery by the class members in a civil action, for the unpaid balance of the full amount of the
24 unpaid minimum wages owed, calculated as the difference between the straight time
25 compensation paid and the applicable minimum wage, including interest thereon.

26 91. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
27 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the class
28 members seek recovery of liquidated damages on the straight-time portion of uncompensated

1 hours of work (not including the overtime portion thereof) in an amount equal to the wages
2 unlawfully unpaid and interest thereon.

3 92. That calculation of individual damages for the class members may at some point
4 be required does not foreclose the possibility of taking common evidence on questions regarding
5 their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232;
6 Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept. v. Superior
7 Court (1981) 30 Cal.3d 256).

8 93. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the class
9 members seek recovery of pre-judgment interest on all amounts recovered herein.

10 94. Pursuant to Labor Code §218.5 and/or Labor Code §1194, the class members
11 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA LABOR CODE**

14 **PRIVATE ATTORNEY GENERAL ACT**

15 **[CAL. LABOR CODE §§2698-2699]**

16 **(Against All Defendants)**

17 95. Plaintiff re-alleges and incorporates each and every one of the allegations of all
18 preceding paragraphs contained in paragraphs 1- 94, inclusive of this Complaint, as if fully set
19 forth herein.

20 96. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of
21 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
23 agencies or employees for a violation of the Labor Code, may be recovered through a civil
24 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of
all other current or former employees.

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

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

4 99. Prior to filing this Complaint, Plaintiff gave written notice by certified mail to
5 the LWDA and the employer, of the specific provisions of this code alleged to have been
6 violated, including the facts and theories to support the alleged violations as required by Labor
7 Code §2699.3; A true and correct copy of which is attached hereto as **Exhibit 1**. Plaintiff
8 alleges that he has exhausted all administrative remedies on June 18, 2016 (33 days after
9 mailing), since the LWDA never responded with any intention to investigate. As such,
10 Plaintiff has exhausted his administrative requirements pursuant to LC §2699.3(a)(1) and (2)
11 (A-C).

12 100. Pursuant to Labor Code §2699.3, notwithstanding any other provision of law,
13 Plaintiff may as a matter of right amend the existing complaint, to add a cause of action under
14 Labor Code §2699 at any time within 60 days under the code.

15 101. Plaintiff asserts all of the claims in this Complaint against Defendant, and each
16 of them, individually and on behalf of all aggrieved employees in their capacity as private
17 attorney general, and seeks all statutory penalties available under the Labor Code.

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

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

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

1 C. Penalties under Labor Code §210, in addition to and entirely independent
2 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each
3 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee
4 per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

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

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

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

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

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

103. In addition thereto, Plaintiff seeks and is entitled to 50% of all penalties obtained

1 under Labor Code §2699 to be allocated to the General Fund, and 25% of all penalties obtained
2 to be allocated to the LWDA, for education of employers and employees about their rights and
3 responsibilities under the Labor Code, and 25% to all aggrieved employees.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays:

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

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

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

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

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

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

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

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

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

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

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

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

9 **As to the Second Cause of Action:**

10 12. For damages according to proof, as set forth in Labor Code §§204, 218, 226, 510,
11 1194, and 1198, et seq. and IWC Wage Order 9-2001 regarding wages due and owing;

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

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

15 **As to the Third Cause of Action:**

16 15. For recovery of the unpaid balance of the full amount of unpaid minimum wage
17 or overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2,
18 1197, and 1198 due and owing, according to proof;

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

22 17. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
23 §1194(a) and CC §3287;

24 18. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
25 §218.5 and/or Labor Code §1194(a);

26 **As to the Fourth Cause of Action:**

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

As to the Fifth Cause of Action:

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

21. 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);

22. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or §226(g);

As to the Sixth Cause of Action:

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

24. For reasonable attorneys' fees and costs;

As to the Seventh Cause of Action:

25. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

26. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code §1194.2(a);

27. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

28. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) and CC §3287;

29. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §§218.5 and/or 1194(a);

As to the Eighth Cause of Action:

30. 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;

31. 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;

32. 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;

33. 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 addition to an 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;

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

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

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

As to All Causes of Action:

36. For reasonable attorneys' fees and costs incurred;

37. For such other and further relief as this Court may deem just and proper.

Dated: June 20, 2016

LAW OFFICE OF JOSEPH ANTONELLI

By:


Janelle Carney, Attorney for Plaintiff

Exhibit 1



LAW OFFICE OF

JOSEPH ANTONELLI

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JANELLE CARNEY
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May 16, 2016

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PAGA Administrator
**California Labor & Workforce Development
Agency**
1515 Clay Street, Suite 801
Oakland, CA 94612-1463

Wal-Mart Stores, Inc.
c/o CT Corp. System
818 W. Seventh St.
Los Angeles, CA 90017

Wal-Mart Stores, Inc.
702 SW 8th Street
Bentonville, AR 72716

Re: California Labor Code Violations by Wal-Mart Stores, Inc.

Dear PAGA Administrator and Wal-Mart Stores, Inc.:

Please be advised that the Law Office of Joseph Antonelli, Law Offices of Kevin T. Barnes, and the Law Offices of Raphael A. Katri represent Plaintiff Juan Garcia ("Mr. Garcia"), who seeks to represent all other aggrieved employees with respect to their employment at the Wal-Mart Distribution Centers in California by Defendant, Wal-Mart Stores, Inc. ("WDC").

Mr. Garcia alleges WDC that has committed numerous violations of the California Labor Code including, but not limited to §§ 200, et seq., 203, 218, 226, 226.7, 510, 512, 1194, and 1198, as well, as the Wage Order that governs WDC's employees. The facts and theories to support the alleged violations are set forth herein and in the enclosed complaint.

A. Failure to Pay All Wages/Overtime

Mr. Garcia is a former employee of WDC. During his employment, WDC has failed to pay Mr. Garcia and other aggrieved employees the proper amount of straight time and overtime wages. WDC has violated various sections of the Labor Code, including §§ 510 and 1194, by failing to provide Mr. Garcia and all other aggrieved employees overtime compensation for work over 8 hours in a day and/or over 40 hours in a week, without a valid exemption. Furthermore, Mr. Garcia alleges that WDC failed to abide by the Wage Order, as it fails to pay overtime premiums on short shifts when its Distribution Center employees work over 8 hours but less than 10 hours in a shift.

Mr. Garcia also alleges that WDC requires him and the aggrieved employees to work "off the clock," as a result of requiring its employees to have their bags checked prior to leaving for lunch and at the end of their shift. WDC fails to pay Mr. Garcia at the very least, minimum wage for said time. Additionally, Mr. Garcia alleges that due to WDC's asset control policy combined with its rounding practice, WDC fails to pay Mr. Garcia and other aggrieved employees all wages owed, including minimum wages, straight time, and/or overtime premiums. Mr. Garcia and the aggrieved employees routinely work off the clock due to such practices.

B. Meal Breaks

WDC also failed to provide Mr. Garcia with meal periods under California law. WDC failed to adopt, implement, and enforce a meal period policy that complies with California law. For example, WDC fails to provide Mr. Garcia and other aggrieved employees with a second meal period or premium payment for a failure to provide a second meal period when Mr. Garcia and the aggrieved employees work over 10 hours in a shift. Furthermore, WDC fails to secure valid meal waivers for said second meal period. In addition, due to WDC's asset control policy, which requires its employees to stand in line to have their bags checked after they have clocked out for their meal period, the employees do not receive their full thirty (30) minute meal period, as required by the Labor Code. As such, Mr. Garcia and the aggrieved employees have been harmed. Additionally, WDC fails to provide meal periods within the first five (5) hours of beginning a work shift, and/or a meal period premium when meals are provided after the 5th hour, or are otherwise non-compliant.

C. Wage Statement Violations

WDC willfully failed and continues to fail to provide properly itemized wage statements to Mr. Garcia and the aggrieved employees pursuant to Labor Code § 226, as said pay stubs are inaccurate. The pay stubs provided fail to list all hours worked and fail to list all earnings.

Regarding wage statements, pursuant to Labor Code §226(a) and Industrial Wage Order 9-2001, the Employer is required to include on an employee's wage statement such information as (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period...". Here, the Employer issued improper wage statements to the Employee and all others similarly situated because the Employer's wage statements did not always contain the total number of hours worked and the net wages earned at the correct rate. As such, the Employer independently violated Labor Code §226, and owe penalties pursuant to Labor Code §§2699(f) and/or 226.3.

Also regarding wage statements, and in addition to the alleged independent violations of Labor Code §226 above, pursuant to Labor Code §226 and Industrial Wage Order 9-2001, as stated, the Employer is required to include on a paystub such information as that set forth above. Here, because of the Employer's illegal pay policies, and meal period policies as set forth above, all wages earned were not reflected on the wage statements provided by the Employer to the Employee and all

others similarly situated, and the Employer issued improper wage statements. As such, the Employer derivatively violated Labor Code §226, and owe penalties pursuant to Labor Code §§2699(f).

D. Waiting Time Penalties

WDC willfully failed and refused to timely pay all compensation due and owing to Mr. Garcia, whose employment was terminated during the relevant time period, by failing to pay overtime and straight time wages, failing to pay Mr. Garcia and aggrieved employees for time worked during meal periods and for off the clock work, failing to pay Mr. Garcia and aggrieved employees for an extra hour because WDC failed to provide compliant meal periods, and by unlawfully rounding hours worked by Mr. Garcia and aggrieved employees. As such, WDC is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

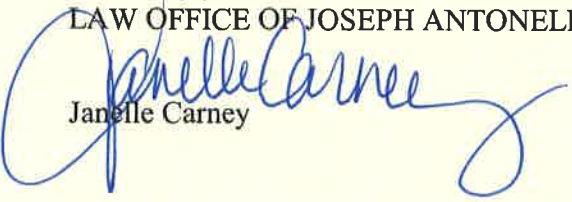
Pursuant to Labor Code §2699.3(a)(2)(A), please advise within thirty-three (33) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations. Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within thirty-three (33) calendar days of the postmark date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699 and/or amend his complaint to allege the PAGA claims accordingly. Please also consider this letter as providing notice on behalf of other aggrieved employees working for a California WDC location.

Very truly yours,

LAW OFFICE OF JOSEPH ANTONELLI

Janelle Carney



JC/jw
Enclosures as stated