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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

**THIRD 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 Wage Order 9. Plaintiff, for himself
 11 and on behalf of all others similarly situated, and the general public, brings an
 12 action for monetary damages for failure to pay wages as well as for declaratory
 13 relief and restitution for Defendant's violations of California Business and
 14 Professions Code ("B&PC") §§ 17200, et seq., including full restitution of all
 15 compensation retained by Defendant as a result of its unlawful, fraudulent and
 16 unfair business practices. Plaintiff seeks all available relief, including full damages,
 17 full restitution and/or disgorgement of all revenues, earnings, profits, compensation
 18 and benefits retained by Defendant as a result of its unlawful, unfair business
 19 practices. Plaintiff alleges that the total damages sought in this matter is less than
 20 \$5,000,000 as this amended complaint is only applicable to the Apple Valley
 21 Distribution Center and not any other facilities owned and operated by Defendants.

22 **VENUE**

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

1 the County of San Bernardino, and Defendant is within the jurisdiction of the San
2 Bernardino Superior Court for purposes of service of process.

3 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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PRIVATE ATTORNEY GENERAL ALLEGATIONS

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

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

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

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

b. This action will result in a significant benefit to the general public by causing the return of ill-gotten gains obtained by Defendant through its failure to properly pay its employees;

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

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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 brings 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 were 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**

1 **Time Period**, who were not provided with a second meal period when working
 2 over 10 hours in a shift. (“**Second Meal Period Class**”)

3 **Class 3:**

4 All California-based non-exempt hourly employees, excluding dispatcher
 5 and truck shop employees, who worked for Defendant at the Apple Valley – No.
 6 7033 Distribution Center during the last year of the Relevant Time Period, who
 7 were provided a paystub with an underpayment of wages (a.k.a. wage statement)
 8 from Defendant (**Pay Stub Class**);

9 **Class 4:**

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

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

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

- 23 i. Whether Defendant violated the applicable Labor Code
 24 provisions including §§ 510 and 1194 by requiring substantial
 25 overtime work and not paying for said work according to the
 26 overtime laws of the State of California;
- 27 ii. Whether Defendant failed to pay the appropriate straight time
 28 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;
- xi. Whether Defendant fails to provide compliant meal periods; and
- 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

1 fairly and adequately protect the interest of the classes by vigorously pursuing this
2 suit through his attorneys who are skilled and experienced in handling matters of
3 this type. Plaintiff has no claim or interest that is antagonistic to any class member.

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

23 21. The prosecution of separate actions by the individual class members,
24 even if possible, would create a substantial risk of inconsistent or varying verdicts
25 or adjudications with respect to the individual class members against Defendant
26 herein; and would establish potentially incompatible standards of conduct for
27 Defendant; and/or (b) legal determinations with respect to individual class
28 members which would, as a practical matter, be dispositive of the interest of the

1 other class members not parties to adjudications or which would substantially
 2 impair or impede the ability of the class members to protect their interests. Further,
 3 the claims of the individual members of the class are not sufficiently large to
 4 warrant vigorous individual prosecution considering all of the concomitant costs
 5 and expenses attending thereto.

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

9 **FIRST CAUSE OF ACTION**
 10 **(Violation of B&PC §§ 17200, et seq.)**

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

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

18 **FAILURE TO PAY PROPER WAGES AND OVERTIME**
 19 **COMPENSATION**

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

3 26. Under Labor Code § 1194, an employee is not fully compensated for
4 the unpaid balance of their overtime compensation unless the employee is paid all
5 unpaid compensation for the regular hours and overtime hours worked during an
6 overtime shift, unless there is a valid exemption. Plaintiff believes and thereon
7 alleges Defendant does not have such valid exemption. Plaintiff was regularly
8 scheduled to work 10 hour shifts. Plaintiff believes and thereon alleges that
9 approximately one-third of all shifts worked for Defendant were “short shifts”
10 (working more than 8 hours but less than 10 hours). All short shifts were due to
11 lack of work and/or required by the Defendant. The short shifts were due to
12 Defendant not having sufficient work for Plaintiff to perform. Plaintiff was not
13 paid daily overtime when he worked over 8 hours but less than 10 hours, i.e. short
14 shifts. Plaintiff alleges that approximately one-third of Plaintiff’s shifts are worked
15 between the 8th hour and 9.75 hours. During these short shifts, Plaintiff was
16 required to utilize the VOT “Voluntary Time Off” (no pay associated with said
17 code), PTO “Paid Time Off” and would pull from Plaintiff’s accrued PTO bank if
18 he wanted pay for short shifts. Plaintiff and other hourly employees would use
19 PTO codes if the Plaintiff and other employees did not want to incur a loss of
20 earnings. Alternatively, if Plaintiff and the employees did not have sufficient PTO,
21 they were required to punch out without receiving any wages for the balance of
22 hours that were short of the guaranteed 10-hour shift, when Defendant required
23 Plaintiff and other similarly situated employees to work short shifts. Plaintiff was
24 required to get approval when using VOT or PTO so as not to incur any occurrence
25 for unauthorized time off. In addition, Defendants policy and practice required the
26 employees with the most seniority to leave work first, when it was determined by
27 Defendant that the employees were required to work a short shift.

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1 27. Defendant, and each of them, consistently administered a corporate
2 policy regarding, both staffing levels, duties and responsibilities of Defendant's
3 employees, which required that the entirety of the employees work overtime
4 without proper premium overtime pay on at least 33 1/3% of all shifts worked.
5 Further, Plaintiff and all others similarly situated are entitled to restitution of these
6 wages obtained by Defendant, and each of them.

7 28. This corporate policy and pattern of conduct is accomplished with the
8 advance knowledge and designed intent to evade the legal requirements to pay the
9 employees at a premium rate for all overtime hours. Further, Plaintiff and all others
10 similarly situated are entitled to restitution of these wages obtained by Defendant,
11 and each of them.

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

23 30. Plaintiff and all others similarly situated identified herein were and are
24 employed and scheduled as a matter of established company policy to work and in
25 fact worked as non-exempt hourly employees in excess of eight (8) hours per day.
26 Defendant employed and scheduled all employees without providing overtime
27 compensation for such excess daily overtime hours worked in violation of Labor
28 Code §§ 510, 1194, 1198 and IWC Wage Order 9-2001 without a valid exemption

1 on at least 40% of the shifts worked. Further, Plaintiff is informed and believes
2 and thereon alleges that Defendant failed to pay its Apple Valley – No. 7033 WDC
3 employees (excluding dispatcher and truck shop employees) pursuant to Wage
4 Order and LC § 511. Pursuant to Labor Code § 1198, it is unlawful to employ
5 persons for longer than the hours set by the IWC or under conditions prohibited by
6 the applicable IWC Wage Orders. IWC Wage Order No. 9, as amended, applies to
7 Plaintiff.

8 31. During approximately 2004, Defendants instituted an invalid AWS pay
9 structure affecting their California Logistics employees. Plaintiff is informed and
10 believes and thereon alleges that Defendant' relies on this AWS as the basis of its
11 Affirmative Defense that it is exempt from paying overtime premiums. Defendant
12 has the burden of proof to prove its affirmative defense by a preponderance of the
13 evidence, and therefore is in a position of superior knowledge regarding the AWS.
14 Nonetheless, Plaintiff is informed and believes and thereon alleges that the alleged
15 AWS implemented during 2004 is unlawful and fails to comply with rudimentary
16 legal requirements as set forth below.

17 A. Defendant failed to comply with requirements of Wage Order 9-01
18 § 3 (c), regarding providing that written notice be distributed to employees at
19 least 14 days in advance of an AWS election of the effect of the proposed
20 election on wages, hours and benefits. Defendant issued a February 24, 2004
21 memo to employees informing them of the proposal for an AWS, without
22 the required written agreement and/or disclosure that is requires. Thereafter,
23 Defendant held a meeting on or about February 25, 2004. The disclosure
24 meeting was not held fourteen (14) days prior to the vote as is required by
25 Wage Order 9-01 § 3 (c). Any documents that were distributed were
26 deficient in that the Defendant did not adequately explain the effect of the
27 proposed AWS. Plaintiff is informed and believes and thereon alleges that
28 Defendant failed to explain its effects on the following aspects of

1 employment, among others;

2 (1) overtime premium rates and entitlement thereto;

3 (2) rates at which other monetary benefits would accrue, such as
4 vacation, PTO, shift premiums and others;

5 (3) other monetary and non-monetary benefits;

6 (4) entitlement to breaks including second meal periods and third rest
7 breaks; and

8 (5) The entitlement to not less than 4 hours of work on any shift.

9 B. Defendant failed to comply with requirements of Wage Order 9-01
10 § 3 (c) (1), mandating that the proposed AWS be set forth and distributed in
11 a proposed written agreement. Plaintiff never received such an agreement.

12 C. Defendant failed to comply with requirements of Wage Order 9-01
13 § 3 (c) (3) providing that written notice be mailed to employees not in
14 attendance at disclosure meetings. In 2004, Defendant did not give sufficient
15 notice of the disclosure meeting held on February 25, 2004, nor mailed the
16 disclosures accordingly

17 D. Defendant failed to provide full disclosure of requirements set
18 forth in Wage Order 9-01 § 3 (c) (3) during live presentations made at the
19 disclosure meeting.

20 F. Further, Defendant failed to mail the report of voting results within
21 thirty (30) days of the vote. Defendant mailed the results of the alleged vote
22 on or about December 2, 2015, well after thirty (30) days of any vote- as is
23 required by Wage Order 9-01 § 3 (c) (6).

24 31. Defendant failed to pay daily overtime for regularly scheduled ten (10)
25 hour shifts without a valid exemption and/or failed to pay overtime on short shifts,
26 as is required by the Wage Order.

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VIOLATION OF MEAL PERIOD PROVISIONS

32. 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 these meal break provisions and failed to provide Plaintiff and all others similarly situated with the opportunity to take duty-free meal periods when working over 10 hours in a shift. Defendant engaged in the following policies, among others, pursuant to its policy of failing to provide Plaintiff and class members meal breaks to which they were lawfully entitled and/or penalty payments:

A. Defendant failed to provide Plaintiff and class members any opportunity to take a second meal period on virtually all AWS shifts of 10 or more hours. There are approximately 8 shifts Plaintiff worked in excess of 10 hours. On said shifts, Plaintiff was not provided a second 30-minute meal nor did he voluntarily waive it.

B. Defendant failed to obtain Plaintiff's signature on any lawful meal break waivers.

C. Defendant scheduled its AWS shifts in such a manner that Plaintiff and class members did not have the opportunity to take a second meal break when they worked shifts in excess of ten (10) hours.

D. Defendant has implemented and documented a policy essentially stating that Logistics Employees are eligible for only one 30-minute meal break on shifts of 10 or more hours. Such policy confirms the corporate-wide policy of denying Logistics Employees the opportunity to take a second meal period.

On each occasion on which a lawful meal break was not provided, Plaintiff and the class members were entitled to one (1) hour of pay for each meal break violation at their regular rate of pay. Defendant failed and continues to fail to pay

1 for continuing meal break violations at the employees' regular rate of pay in
2 violation of IWC Wage Order 9-2001, §11. Plaintiff believes and thereon alleges
3 that at least 1-10% of all shifts worked by the class members are in excess of 10
4 hours. Plaintiff himself worked approximately 8 shifts over ten (10) hours or 1% of
5 his shifts without being provided a second meal period, nor did he waive his right
6 to do so on such occasions.

7 33. Plaintiff is informed and believes and thereon alleges that at all times
8 herein mentioned, Defendant has engaged in unlawful, deceptive, and unfair
9 business practices prohibited by California B&PC §17200, thereby depriving its
10 employees and the putative class the minimum working condition, standards and
11 conditions due to them under the California labor laws and Industrial Welfare
12 Commission wage orders as specifically described herein. Plaintiff further seeks an
13 order requiring Defendant to identify by full name, telephone number, and last
14 known address employees who worked or still work for Defendant during the
15 Relevant Time Period; Plaintiff further seeks an order requiring Defendant to timely
16 pay restitution to all current and former employees, including back wages, and
17 interest. The acts complained of herein occurred, at least in part, within the last four
18 (4) years preceding the filing of the original Complaint and/or during the Relevant
19 Time Period.

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

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

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

6 **SECOND CAUSE OF ACTION**

7 **RECOVERY OF UNPAID WAGES & PENALTIES**

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

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

11 38. Plaintiff and all others similarly situated identified herein were and are
12 employed and scheduled as a matter of established company policy to work and in
13 fact worked as non-exempt hourly employees in excess of eight (8) hours per day
14 and/or in excess of forty (40) hours per week. Defendant exercised complete
15 control over scheduling of all employees, including determining the times they
16 were to report for work and be released from work. Plaintiff is informed and
17 believes and thereon alleges that Defendant also maintained policies requiring
18 employees to adhere to the schedules, and rendering them subject to discipline for
19 failure to abide by such schedules. Defendant scheduled all employees for shifts
20 which caused employees to work in excess of 8 hours in a day or 40 in a week
21 without providing overtime compensation for such excess hours worked in
22 violation of Labor Code §§510 and 1194 and IWC Wage Order 9-2001. Labor
23 Code §204 establishes the fundamental right of all employees in the state of
24 California to be paid the proper amount of wages in a timely fashion for their
25 work, including overtime. Plaintiff and the putative class members were not paid
26 daily overtime on any short shift in excess of 8 in a day up to 10 hours in a day.
27 Approximately 34% of Plaintiff's shifts worked are between the 10th hour but over
28 8 yet he was not paid daily overtime.

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

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

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

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

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

24 44. Plaintiff is informed and believes and thereon alleges that Defendant
25 consistently administered a corporate policy regarding both staffing levels and
26 duties and responsibilities of the members of the classes which required the
27 entirety of all classes to work overtime without proper premium pay. This included
28 a uniform corporate policy and practice of requiring employees to work in excess

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

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

16 46. Defendant, and each of them, in violation of Labor Code §§201 and
17 202, et seq., respectively, had a consistent and uniform policy, practice and
18 procedure of willfully failing to pay the earned and unpaid wages of all such
19 former employees.

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

1 9-2001, without a valid exemption. Plaintiff is informed and believes that
 2 Defendant does not have a valid exemption from the daily overtime requirement.

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL BREAKS**

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

11 50. Labor Code §226.7 requires an employer to pay an additional hour of
 12 compensation for each meal period the employer fails to provide. Plaintiff alleges
 13 that Defendant failed to provide legally compliant meals in addition to impeding,
 14 discouraging and/or dissuading employees from taking legally compliant meal
 15 periods. Employees are entitled to a meal period of at least thirty (30) minutes per
 16 five (5) hour work period. Plaintiff and all class members similarly situated worked
 17 over ten (10) hour shifts without meal periods due to Defendant's policy of
 18 discouraging, dissuading and/or impeding Plaintiff and all others similarly situated
 19 from taking meal periods. Pursuant to the Labor Code, Plaintiff and all others
 20 similarly situated are entitled to a meal period of not less than thirty (30) minutes a
 21 second meal period for hours worked over ten (10) in a day. Plaintiff worked
 22 approximately 8 shifts in excess of ten (10) hours and was not provided a second
 23 meal period nor did he sign a waiver or provide a verbal waiver, waiving his right
 24 to a second meal period on those shifts. Plaintiff believes and thereon alleges that
 25 he worked 8 shifts in excess of ten (10) hours without a second meal period and
 26 seven (7) of those shifts was not paid for said missed second meal.

27 51. Defendant failed to provide, impeded and/or discouraged Plaintiff and
 28 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 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.

56. During the Class Period, Defendant knowingly and intentionally failed to provide the Class Members, including Plaintiff, with timely and accurate

1 wage and hour statements showing gross wages earned, total hours worked, all
 2 deductions made, net wages earned, the name and address of the legal entity
 3 employing that Class Member, and all applicable hourly rates in effect during each
 4 pay period and the corresponding number of hours worked at each hourly rate by
 5 that Class Member. This is a derivative claim based on the wage claims asserted
 6 herein. As such, only pay stubs where Plaintiff and the class were not paid proper
 7 premium overtime and/or their missed meal period at the correct regular rate are in
 8 violation of Labor Code §226.

9 57. Defendant thus required the Class Members, including Plaintiff, to
 10 work under conditions prohibited by order of the Industrial Welfare Commission,
 11 in violation of those orders. The Class Members, including Plaintiff, suffered
 12 injury as a result of Defendant's knowing and intentional failure to provide the
 13 Class Members, including Plaintiff, with the wage and hour statements required by
 14 law, as stated supra.

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

19 **FIFTH CAUSE OF ACTION**

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

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

23 60. Labor Code §§200, et seq., provides that an employer is required to
 24 pay an employee all wages (including accrued vacation), within twenty-four (24)
 25 hours of the employees' involuntary separation from employment; within twenty-
 26 four (24) hours of his voluntary separation if the employee gave at least seventy-
 27 two (72) hours' notice, and within seventy-two (72) hours, if the employee
 28 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 derivative 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.

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.

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

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

9 67. Prior to filing this Complaint, Plaintiff gave written notice by
10 certified mail to the LWDA and the employer, of the specific provisions of this
11 code alleged to have been violated, including the facts and theories to support the
12 alleged violations as required by Labor Code §2699.3; A true and correct copy of
13 which is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted all
14 administrative remedies on June 18, 2016 (33 days after mailing), since the
15 LWDA never responded with any intention to investigate. As such,
16 Plaintiff has exhausted his administrative requirements pursuant to LC
17 §2699.3(a)(1) and (2) (A-C).

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

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

26 70. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf
27 of all aggrieved employees, requests and is entitled to recover from the Defendant,
28 and each of them; overtime compensation, meal period compensation and

penalties, waiting time period penalties, and PAGA penalties according to proof, and Plaintiff is further entitled to recover interest, attorney's fees and costs pursuant to Labor Code §§218.5 and 1194(a), as well as all statutory penalties and attorneys' fees against Defendant, and each of them, including, but not limited to:

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

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

C. 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;

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

E. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid

1 employee for each pay period for which the employee was underpaid in addition
 2 to an amount sufficient to recover underpaid wages, with all wages recovered
 3 pursuant to Labor Code §558 provided to the affected employees;

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

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

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

16 71. In addition thereto, Plaintiff seeks and is entitled to 50% of all
 17 penalties obtained under Labor Code § 2699 to be allocated to the General Fund,
 18 and 25% of all penalties obtained to be allocated to the LWDA, for education of
 19 employers and employees about their rights and responsibilities under the Labor
 20 Code, and 25% to all aggrieved employees.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays:

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

28 \\\ \\\ \\\

As to the First Cause of Action:

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

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

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

5. 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;

6. 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;

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

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

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

10. For an order requiring Defendant to identify, by name, address and telephone number of each person who worked as an hourly non-exempt employee

1 for Defendant from four (4) years before filing of the original complaint in this
2 action through the time of judgment;

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

4 11. For damages according to proof, as set forth in Labor Code §§ 204,
5 218, 226, 510, 1194, and 1198, et seq. and IWC Wage Order 9-2001 regarding
6 wages due and owing;

7 12. For unpaid straight time and premium wages pursuant to Labor Code
8 § 1194.

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

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

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

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

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

17 **As to the Fifth Cause of Action:**

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

20 17. For reasonable attorneys' fees and costs;

21 **As to the Sixth Cause of Action:**

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

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

20. 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;

21. 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;

22. 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;

23. 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.

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As to All Causes of Action:

24. For reasonable attorneys' fees and costs incurred;

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

Dated: April 24, 2017

LAW OFFICE OF JOSEPH ANTONELLI

By:

Janelle Carney, Attorney for Plaintiff

EXHIBIT 1



LAW OFFICE OF

JOSEPH ANTONELLI

14758 PIPELINE AVENUE, SUITE E, SECOND FLOOR
CHINO HILLS, CALIFORNIA 91709
tel 909.393.0223 fax 909.393.0471
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JOSEPH ANTONELLI
jantonelli@antonellilaw.com

JANELLE CARNEY
jcarney@antonellilaw.com

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.

California Labor & Workforce Development Agency
Re: *California Labor Code Violations by Wal-Mart Stores, Inc.*
May 16, 2016
Page 2

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

California Labor & Workforce Development Agency
Re: *California Labor Code Violations by Wal-Mart Stores, Inc.*
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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.

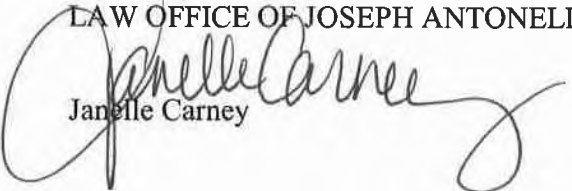
Pursuant to Labor Code §2699.3(a)(2)(A), please advise within thirty-three (33) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations. Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 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

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Wal-Mart Stores, Inc., a Delaware corporation and Does 1 to 100,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Juan Garcia, on behalf of himself and all others similarly situated and the
general public

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

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
Civil Division

247 W. Third Street, San Bernardino, CA 92415-0210

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Joseph Antonelli; Janelle Carney (Bar # 137039; 201570)

Fax No.: (909) 393-0471

Law Office of Joseph Antonelli

Phone No.: (909) 393-0223

14758 Pipeline Ave., Ste. E, 2nd Floor, Chino Hills, CA 91709

DATE:

Clerk, by

, Deputy

(Fecha)

(Secretario)

(Adjunto)

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

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

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 Janelle Carney, Esq. (Bar No. 201570)
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Attorneys for Plaintiff JUAN GARCIA, on behalf of himself
 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

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.:

CLASS ACTION

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.

DEMAND FOR JURY TRIAL

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///

///

1 Raphael A. Katri (State Bar No. 221941)
Law Offices of Raphael A. Katri
2 264 S. La Cienega Blvd., Suite 200
Beverly Hills CA 90211-3302
3 Tel. (310) 940-2034/ Fax: (310) 733-5644
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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

following:

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

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

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

PLAINTIFF CLASSES

16. The class representative Plaintiff who worked in the position of a non-exempt Wal-Mart Distribution Center (WDC) hourly employee, 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 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 from four (4) years before the filing of this action through the date of class certification order. ("Overtime Class");

Subclass 1:

All California-based hourly non-exempt WDC employees who work or worked for 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;

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 individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an

1 appreciable and justifiable fear of retaliation and permanent damage to their careers at present
2 and/or subsequent employment. Proof of a common business practice or factual pattern, of which
3 the named Plaintiff experienced, is representative of the class mentioned herein and will establish
4 the right of each of the members of the named class to recovery on the causes of action alleged
5 herein.

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

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

26 25. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
27 ongoing unfair business practice, Defendant's California Distribution Center (WDC) employees
28 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.

30. 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-

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

11 **VIOLATION OF MEAL PERIOD PROVISIONS**

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

22 **OFF THE CLOCK**

23 32. Plaintiff is informed and believes and thereon alleges, that at all times herein
24 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited
25 by California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered
26 or permitted non-exempt employees to work off the clock including but not limited to time during
27 which the employees are required to stand in line and have their bags checked prior to leaving to
28 go to lunch or leaving to go home at the end of their shift, despite being clocked out. Further,

1 Plaintiff is informed and believes and thereon alleges, that due to Defendant's asset control policy
2 and timekeeping practices, preventing employees from clocking in prior to search upon entering
3 the building, Plaintiff and the putative class members are not paid for all time suffered or
4 permitted to work.

5 33. Plaintiff seeks restitution and injunctive relief for all the aforementioned
6 violations.

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

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

1 worked or still work for Defendant from four (4) years preceding the filing of the original
2 Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant to
3 timely pay restitution to all current and former employees, including back wages, and interest.
4 The acts complained of herein occurred, at least in part, within the last four (4) years preceding
5 the filing of the original Complaint.

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

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

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

19 39. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
20 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

21 **SECOND CAUSE OF ACTION**

22 **RECOVERY OF UNPAID WAGES & PENALTIES**

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

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

26 41. Plaintiff and all others similarly situated identified herein were and are employed
27 and scheduled as a matter of established company policy to work and in fact worked as non-
28 exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40)

1 hours per week. Defendant employed and scheduled all employees without providing overtime
2 compensation for such excess hours worked in violation of Labor Code §§510 and 1194 and
3 IWC Wage Order 9-2001. Labor Code §204 establishes the fundamental right of all employees
4 in the state of California to be paid the proper amount of wages in a timely fashion for their
5 work, including overtime.

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

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

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

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

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

25 47. Plaintiff is informed and believes and thereon alleges that Defendant consistently
26 administered a corporate policy regarding both staffing levels and duties and responsibilities of
27 the members of the classes which required the entirety of all classes to work overtime without
28 proper premium pay. This included a uniform corporate policy and practice of requiring

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

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

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

20 50. Plaintiff and all others similarly situated identified herein were and are employed
21 and scheduled as a matter of established company policy to work and in fact worked as non-
22 exempt hourly employees in excess of eight (8) hours per day without overtime. Defendant
23 employed and scheduled all employees without providing proper overtime compensation for
24 such excess daily overtime hours worked in violation of Labor Code §§510, 1194, 1198 and
25 IWC Wage Order 9-2001. Pursuant to Labor Code §1198, it is unlawful to employ persons for
26 longer than the hours set by the IWC or under conditions prohibited by IWC Wage Order 9-
27 2001, without a valid exemption. Plaintiff is informed and believes that Defendant does not have
28 a valid exemption from the daily overtime requirement.

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

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

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

12 54. California Code of Regulations Title 8, §11000(2) and the IWC Wage Orders
13 §4(A) state: "Every employer shall pay to each employee ... wages not less than eight dollars
14 (\$8.00) per hour for all hours worked, effective January 1, 2008...".

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

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

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

25 58. Pursuant to the IWC Wage Order(s), Defendant is required to pay the members of
26 the Rounding Class for all hours worked, meaning the time during which an employee is subject
27 to the control of an employer, including all the time the employee is suffered or permitted to
28 work, whether or not required to do so.

59. Defendant, as a matter of established company policy and procedure, at each and

every one of the individual facilities owned and/or operated by Defendant, consistently:

- a. Administered a uniform company policy and practice as to the rounding policies regarding the members of the Rounding Class; and
- b. Rounded the actual time worked and recorded by the members of the Rounding Class, usually down, so that during the course of the their employment, the members of the Rounding Class were paid far less than they would have been paid had they been paid for actual recorded time rather than “rounded” time.

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

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

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

63. That calculation of individual damages for the members of the Rounding Class may at some point be required does not foreclose the possibility of taking common evidence on 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. v. Superior Court (1981) 30 Cal.3d 256).

64. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the

1 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
2 herein.

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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL BREAKS**

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

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

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

1 Plaintiff and all others similarly situated have been subjected to the illegal and unlawful
2 deductions on at least one occasion during their employment with Defendant. This practice
3 amounts to an unlawful forfeiture.

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

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

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **PURSUANT TO LABOR CODE §226**

11 **(Against All Defendants)**

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

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

15 Every employer shall semimonthly or at the time of each payment of wages
16 furnish each employee, either as a detachable part of the check, draft, or voucher
17 paying the employee's wages, or separately, an itemized statement in writing
18 showing: (1) all deductions; (2) the inclusive dates of the period for which the
19 employee is paid; (3) the name of the employee or the employee's social security
20 number; and (4) the name of the employer, provided all deductions made on
21 written orders of the employee may be aggregated and shown as one item.
22 Subsection (e) provides: "Any employee suffering injury as a result of a knowing
23 and intentional failure by an employer to comply with subdivision (a) shall be
24 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
25 initial pay period in which a violation occurs and one hundred dollars (\$100) per
26 employee for each violation in a subsequent pay period, not exceeding an
27 aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
28 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
name and address of the legal entity employing that Class Member, and all applicable hourly
rates in effect during each pay period and the corresponding number of hours worked at each

hourly rate by that Class Member.

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

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

SIXTH CAUSE OF ACTION

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

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

77. 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.

78. Plaintiff on behalf of all former employees of Defendant employed in the State of California 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.

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

1 for each day that he or she was paid late, until payment was made, up on a maximum of thirty
2 (30) days.

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

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

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

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

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

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

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

28 86. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and the
members of the Class for all hours worked, meaning the time during which an employee is

1 subject to the control of an employer, including all the time the employee is suffered or permitted
2 to work, whether or not required to do so.

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

5 a. Administered a uniform company policy and practice as to the pay
6 policies regarding the class members; and

7 b. Scheduled to work and/or required the class members to work without
8 paying for all time they were under Defendants' control, as herein before
9 alleged.

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

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

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

24 91. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
25 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the class
26 members seek recovery of liquidated damages on the straight-time portion of uncompensated
27 hours of work (not including the overtime portion thereof) in an amount equal to the wages
28 unlawfully unpaid and interest thereon.

92. That calculation of individual damages for the class members may at some point be required does not foreclose the possibility of taking common evidence on 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. v. Superior Court (1981) 30 Cal.3d 256).

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

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

As to the First Cause of Action:

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

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

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

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

As to the Third Cause of Action:

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

16. 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);

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

18. For an award of reasonable attorneys' fees and costs pursuant to Labor Code

§218.5 and/or Labor Code §1194(a);

As to the Fourth Cause of Action:

19. 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 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 All Causes of Action:

30. For reasonable attorneys' fees and costs incurred;

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

1 Dated: May 17, 2016

LAW OFFICE OF JOSEPH ANTONELLI

2
3 By:

4 
Janelle Carney, Attorney for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): #858 Joseph Antonelli; Janelle Carney (Bar # 137039; 201570) Law Office of Joseph Antonelli 14758 Pipeline Ave., Ste. E, 2nd Floor Chino Hills, CA 91709 TELEPHONE NO.: (909) 393-0223 FAX NO.: (909) 393-0471 ATTORNEY FOR (Name): Plaintiff Juan Garcia	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 W. Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino 92415-0210 BRANCH NAME: Civil Division	
CASE NAME: Garcia v. Wal-Mart Stores, Inc.	
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER:	
JUDGE:	
DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

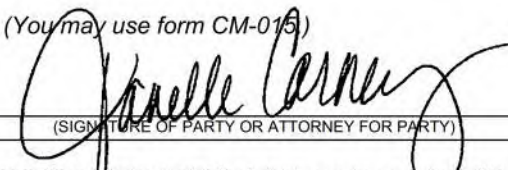
1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. ☐ Large number of separately represented parties
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): SIX (6)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 16, 2016

 Janelle Carney
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property
Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip
and fall)
Intentional Bodily Injury/PD/WD
(e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business
Practice (07)
Civil Rights (e.g., discrimination,
false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel)
(13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice
(*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open
book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections
Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court
Case Matter
Writ—Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of
County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award
(*not unpaid taxes*)
Petition/Certification of Entry of
Judgment on Unpaid Taxes
Other Enforcement of Judgment
Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint
Case (*non-tort/non-complex*)
Other Civil Complaint
(*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate
Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult
Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late
Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Juan Garcia

CASE NO.: _____

vs.

CERTIFICATE OF ASSIGNMENT

Wal-Mart Stores, Inc.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the
San Bernardino District of the Superior Court under Rule 404 of this court for the
checked reason:

☐ General

☐ Collection

Nature of Action	Ground
☐ 1. Adoption	Petitioner resides within the district.
☐ 2. Conservator	Petitioner or conservatee resides within the district.
☐ 3. Contract	Performance in the district is expressly provided for.
☐ 4. Equity	The cause of action arose within the district.
☐ 5. Eminent Domain	The property is located within the district.
☐ 6. Family Law	Plaintiff, defendant, petitioner or respondent resides within the district.
☐ 7. Guardianship	Petitioner or ward resides within the district or has property within the district.
☐ 8. Harassment	Plaintiff, defendant, petitioner or respondent resides within the district.
☐ 9. Mandate	The defendant functions wholly within the district.
☐ 10. Name Change	The petitioner resides within the district.
☐ 11. Personal Injury	The injury occurred within the district.
☐ 12. Personal Property	The property is located within the district.
☐ 13. Probate	Decedent resided or resides within the district or had property within the district.
☐ 14. Prohibition	The defendant functions wholly within the district.
☐ 15. Review	The defendant functions wholly within the district.
☐ 16. Title to Real Property	The property is located within the district.
☐ 17. Transferred Action	The lower court is located within the district.
☐ 18. Unlawful Detainer	The property is located within the district.
☐ 19. Domestic Violence	The petitioner, defendant, plaintiff or respondent resides within the district.
☐ 20. Other _____	
☒ 21. THIS FILING WOULD	NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Wal-Mart Stores, Inc.	21101 Johnson Rd.
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR	ADDRESS
Apple Valley	CA 92307-9357
CITY	STATE ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on May 16, 2016 at Chino Hills, California


Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT

