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and Aggrieved Employees

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARK HENDRICKSON, individually
and on behalf of all similarly situated
and/or aggrieved employees of
Defendants in the State of California,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC.; and
DOES 1 THROUGH 50, inclusive,

Defendants.

Case No.: 3:23-cv-00110-AJB-MSB

**FOURTH AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- 1. FAILURE TO PROVIDE
RECOVERY PERIODS (Labor
Code §§ 226.7);**
- 2. FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (Labor Code §§ 226,
226.3, and 1198);**
- 3. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
(Bus. & Prof. Code §§ 17200 et seq.);
and**
- 4. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq.).**

DEMAND FOR JURY TRIAL

Plaintiff MARK HENDRICKSON, individually and on behalf of all other similarly situated and/or aggrieved employees of WAL-MART ASSOCIATES, INC., and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff MARK HENDRICKSON (“Plaintiff”) brings this individual and putative class action against Defendant WAL-MART ASSOCIATES, INC., and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.

2. Plaintiff brings this action on behalf of all current and former employees who were employed by Defendants in the State of California and who worked in any non-exempt position at Defendant’s El Centro location, located at 2150 N Waterman Avenue, El Centro, California 92243 (herein referred to as “Defendant’s El Centro location”) (hereinafter “similarly situated employees”).

3. Plaintiff also brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”) against Defendant, and DOES 1 through 50, inclusive, for engaging in wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff brings this action on behalf of all other current and former non-exempt employees of Defendants who worked at Defendant’s El Centro location, who suffered at least one of the wage and hour violations described herein from the previous one year and 65 days prior to filing the Complaint to the present. (hereinafter “aggrieved employees”).

4. Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9 (a) of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1,

2020.”] Any reference to the relevant time period or statute of limitations referenced in this complaint is extended into the past by the number of days in which this tolling was in effect.

5. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

6. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other similarly situated and/or aggrieved employees in California include, but are not limited to:

- a. Failure to provide compliant recovery periods;
- b. Failure to prevent heat related illnesses;
- c. Failure to maintain an adequate indoor temperature;
- d. Failure to maintain accurate records; and
- e. Failure to provide accurate itemized wage statements.

7. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory and civil penalties, and monetary relief on behalf of himself and all other similarly situated employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid recovery period premiums, interest, attorney’s fees, damages, liquidated damages, statutory and civil penalties, and costs pursuant to Labor Code §§ 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, California Business and Professions Code § 17200, et seq., and the provisions of the applicable IWC Wage Order.

8. Plaintiff reserves the right to name additional representatives.

II. PARTIES

A. Plaintiff

9. Plaintiff is a current employee of Defendants, who, at all relevant times, was employed as a Customer Service Associate at Defendant’s El Centro location as a non-exempt employee.

1 10. Plaintiff is a resident of the State of California and currently resides in
2 Imperial County.

3 11. At all relevant times, Plaintiff and, on information and belief, other similarly
4 situated employees of Defendants in California were subject to the same policies, practices,
5 and procedures governing their employment and their payment of wages and hours worked.

6 12. Plaintiff is an “aggrieved employee” within the meaning of Labor Code
7 section 2699(c) because he was employed by Defendants and suffered one or more of the
8 violations committed by Defendants.

9 13. Plaintiff and all other similarly situated and/or aggrieved current and former
10 employees of Defendants are and were employees of Defendants within the meanings set
11 forth in the Labor Code and IWC Wage Order at all times during the applicable statutory
12 period.

13 14. At all relevant times, Plaintiff and, on information and belief, other similarly
14 situated and/or aggrieved employees of Defendants in California were subject to the same
15 policies, practices, and procedures governing their employment and their payment of wages
16 and hours worked.

17 **B. Defendants**

18 15. Defendant WAL-MART ASSOCIATES, INC. is a Delaware corporation with
19 its principal place of business in Arkansas and, at all relevant times, was authorized to
20 conduct business and did conduct business in the State of California.

21 16. Defendants’ wrongful conduct, as alleged herein, occurred in the County of
22 Imperial, and in the State of California.

23 17. Plaintiff is informed and believes, and thereon alleges, that each Defendant,
24 whether named or fictitious, is and, at all relevant times, was authorized to do business and
25 did business in the State of California and was Plaintiff’s and other similarly situated and/or
26 aggrieved employees’ “employer” as defined in and subject to the California Labor Code
27 and the applicable IWC Wage Order.

28 18. Each of the fictitiously named Defendants participated in the acts alleged in

1 this Complaint. The true names and capacities of the Defendants named as DOES 1 through
2 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint,
3 setting forth the true names and capacities of the fictitious Defendants, if and when their
4 true names and capacities are ascertained. Plaintiff is informed and believes, and on that
5 basis alleges, that each of the fictitious Defendants participated in the acts alleged in this
6 Complaint.

7 19. Plaintiff and all other similarly situated and/or aggrieved employees are, and
8 at all relevant times were, non-exempt employees of each Defendant, including DOES 1
9 through 50, within the meanings set forth in the California Labor Code and applicable IWC
10 Wage Order.

11 20. Plaintiff is informed and believes that at all relevant times, each Defendant,
12 whether named or fictitious, was the agent, employee or other person acting on behalf of
13 every other Defendant, and, in participating in the acts alleged in this Complaint, acted
14 within the scope of such agency or employment and ratified the acts of each other
15 Defendant.

16 21. Plaintiff is informed and believes that at all relevant times, each Defendant,
17 whether named or fictitious, exercised control over Plaintiff's and other similarly situated
18 and/or aggrieved employees' wages, hours and/or working conditions.

19 22. Plaintiff is further informed and believes that at all relevant times, each
20 Defendant, whether named or fictitious, acted as the agent for the other Defendants, carried
21 out a joint scheme, business plan or policy, and the acts of each Defendant are legally
22 attributable to the other Defendants.

23 23. Each Defendant, whether named or fictitious, was the alter ego of each of the
24 other Defendants at all relevant times herein.

25 24. A unity of interest and ownership between each Defendant, whether named or
26 fictitious, exists such that all Defendants acted as a single employer of Plaintiff and all
27 other similarly situated employees.

28 25. Defendants, including DOES 1 THROUGH 50, were Plaintiff's employers or

1 persons acting on behalf of Plaintiff's employer, within the meaning of California Labor
2 Code section 558.1 and, as such, are liable as the employer for violations of Labor Code
3 sections 226, 226.7, 1193.6, or 1194, at all relevant times.

4 26. Defendants, including DOES 1 THROUGH 50, were Plaintiff's employers or
5 persons acting on behalf of Plaintiff's employer either individually or as an officer, agent,
6 or employee of another person, within the meaning of California Labor Code sections 558
7 and 1197.1, and as such, are subject to civil penalties for each underpaid employee.

8 **III. GENERAL ALLEGATIONS**

9 27. Plaintiff MARK HENDRICKSON is a current employee of Defendants who
10 worked in a non-exempt position as a customer service associate at all times during his
11 employment from approximately 1997 to the present.

12 28. Plaintiff was paid at an hourly rate of \$19.53 per hour.

13 29. At all times, Defendants controlled Plaintiff's worked hours and days worked.
14 Defendants typically scheduled Plaintiff to work approximately four shifts per workweek,
15 approximately ten hours per workday. At many times, Plaintiff worked more than eight
16 hours per workday. Plaintiff has worked both inside and outside during his employment
17 with Defendants.

18 30. On information and belief, Plaintiff and other similarly situated employees of
19 Defendants were subject to the same policies, practices, and procedures governing the
20 control and payment of wages and hours worked and were denied specific rights afforded
21 to them under the California Labor Code and applicable IWC Wage Order.

22 31. Plaintiff regularly works outdoors for Defendants in the Outdoor Garden
23 Area, and works outside in the parking lot and around the store building to retrieve
24 shopping carts.

25 32. Some days Plaintiff spends his entire shift working outdoors, and may be
26 outside for nearly eight to ten hours a day. Other days Plaintiff spends up to half his shift
27 working outdoors, or at a minimum spends several hours working outdoors with the
28 remainder of his shift taking place indoors.

1 33. Temperatures in the Outdoor Garden Area and outside the store often exceed
2 100 degrees Fahrenheit when Plaintiff and other similarly situated /or aggrieved employees
3 worked outdoors. The temperature outdoors can approach 120 degrees Fahrenheit during
4 the hottest summer months.

5 34. Despite these extreme temperatures, however, Plaintiff and, on information
6 and belief, other similarly situated and/or aggrieved employees were not provided with
7 recovery periods, adequate shade, or cold water when they worked outdoors.

8 35. Defendants had and have a pattern and practice of not providing Plaintiff and,
9 on information and belief, other similarly situated and/or aggrieved employees with legally
10 compliant recovery periods, even though Plaintiff and, on information and belief, other
11 similarly situated and/or aggrieved employees were subjected to excessive heat and/or
12 humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit.

13 36. Defendants did not and do not provide Plaintiff and, on information and belief,
14 other similarly situated and/or aggrieved employees with off-duty access to adequate shade
15 or water when the outdoor temperature exceeds 80 degrees Fahrenheit.

16 37. Defendants failed and fail to provide Plaintiff and, on information and belief
17 other similarly situated and/or aggrieved employees with compliant recovery periods and
18 Defendants did not provide them off-duty access to shade when the outdoor temperature at
19 the store exceeded 80 degrees Fahrenheit.

20 38. Defendants never allowed or encouraged Plaintiff and, on information and
21 belief, other similarly situated and/or aggrieved employees to take a preventative cool-
22 down recovery period in the shade when the employees felt the need to do so to protect
23 themselves from overheating. Defendants never encouraged Plaintiff and, on information
24 and belief, other similarly situated and/or aggrieved employees, to remain in the shade.

25 39. Defendants never informed Plaintiff and, on information and belief, other
26 similarly situated and/or aggrieved employees that they were permitted to take such
27 recovery periods at any time as necessary.

28 40. Defendants never informed Plaintiff and, on information and belief, other

1 similarly situated and/or aggrieved employees that such recovery periods could be taken
2 for as long as necessary and that the employees did not have to return to work from such
3 recovery periods until signs or symptoms of heat illness had abated.

4 41. Defendants never monitored Plaintiff and, on information and belief, other
5 similarly situated and/or aggrieved employees who were taking a recovery period and
6 never asked such employees if he or she was experiencing symptoms of heat exhaustion.

7 42. If Plaintiff and, on information and belief, other similarly situated and/or
8 aggrieved employees exhibited or reported symptoms of heat illness, Defendants never
9 offered appropriate first aid or emergency response procedures.

10 43. Defendants never allowed or encouraged recovery periods to Plaintiff and, on
11 information and belief, other similarly situated and/or aggrieved employees even though
12 Plaintiff and, on information and belief, other similarly situated and/or aggrieved
13 employees felt the need to take recovery periods to protect themselves from overheating.

14 44. If Plaintiff and, on information and belief, other similarly situated and/or
15 aggrieved employees did attempt to take a recovery period, they were ordered back to work
16 in fewer than five minutes, and were ordered back to work before all signs or symptoms of
17 heat illness had abated.

18 45. Due to the excessive heat that could reach up to 120 degrees Fahrenheit in the
19 summer, particularly when working in the pavement-covered parking lot to retrieve
20 shopping carts, Plaintiff routinely felt the effects of heat exhaustion.

21 46. On information and belief, several other employees performing outdoor job
22 duties also suffered heat-related illnesses, some even needing to be transported away from
23 the store in an ambulance.

24 47. Due to the effects of working in excessive heat, Plaintiff and, on information
25 and belief, other similarly situated and/or aggrieved employees often felt the need to take
26 a recovery period to protect themselves from overheating.

27 48. When Plaintiff and, on information and belief, other similarly situated and/or
28 aggrieved employees attempted to take a recovery period, they were not (a) monitored and

1 asked if they were experiencing symptoms of heat illness, (b) encouraged to remain in the
2 shade, and (c) allowed to remain in the shade until all signs or symptoms of heat illness
3 had abated and in no event less than five minutes, in direct contravention to Defendants'
4 obligations under California law.

5 49. Instead, when Plaintiff and, on information and belief, other similarly situated
6 and/or aggrieved employees did try to take a recovery period, they were discouraged from
7 taking such breaks as needed and were instructed by their managers to go back outside and
8 return to work.

9 50. Defendants have a pattern and practice of requiring Plaintiff and, on
10 information and belief, other similarly situated and/or aggrieved employees to always
11 remain on duty during their shifts so that they can always be available to assist customers
12 and to be as productive as possible. Plaintiff and, on information and belief, other similarly
13 situated and/or aggrieved employees only receive meal and rest breaks, but would be told
14 to get back to work if they were seen taking a recovery period to get out of the heat.

15 51. For example, on August 2, 2022, Plaintiff worked from approximately 1:54
16 p.m. to 11:09 p.m. On this day, the temperature was over 100 degrees Fahrenheit when
17 Plaintiff started his shift, and the lowest temperature was approximately 88 degrees
18 Fahrenheit when Plaintiff's shift ended. However, on this day, Plaintiff was not authorized
19 and did not receive a recovery period in a shaded area while he was working outside, and
20 was not paid a recovery period premium, which was not reflected on his wage statement,
21 resulting in an inaccurate wage statement for this pay period.¹

22 52. On August 3, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:00
23 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
24 his shift, and the lowest temperature was approximately 90 degrees Fahrenheit when
25 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
26

27 ¹ Attached hereto as **Exhibit B** are Plaintiff's wage statements for the month of August
28 2022 indicating that he was never paid a recovery period premium wage for any of the
dates he worked, including those addressed in paragraphs 51 through 64 of this complaint.

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 53. On August 5, 2022, Plaintiff worked from approximately 1:55 p.m. to 11:05
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 54. On August 6, 2022, Plaintiff worked from approximately 1:55 p.m. to 10:23
12 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
13 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
14 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
15 receive a recovery period in a shaded area while he was working outside, and was not paid
16 a recovery period premium, which was not reflected on his wage statement, resulting in an
17 inaccurate wage statement for this pay period.

18 55. On August 9, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:01
19 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
20 his shift, and the lowest temperature was approximately 86 degrees Fahrenheit when
21 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
22 receive a recovery period in a shaded area while he was working outside, and was not paid
23 a recovery period premium, which was not reflected on his wage statement, resulting in an
24 inaccurate wage statement for this pay period.

25 56. On August 10, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:00
26 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
27 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
28 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 57. On August 11, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:01
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 58. On August 13, 2022, Plaintiff worked from approximately 1:55 p.m. to 11:05
12 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
13 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
14 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
15 receive a recovery period in a shaded area while he was working outside, and was not paid
16 a recovery period premium, which was not reflected on his wage statement, resulting in an
17 inaccurate wage statement for this pay period.

18 59. On August 16, 2022, Plaintiff worked from approximately 1:56 p.m. to 11:01
19 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
20 his shift, and the lowest temperature was approximately 95 degrees Fahrenheit when
21 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
22 receive a recovery period in a shaded area while he was working outside, and was not paid
23 a recovery period premium, which was not reflected on his wage statement, resulting in an
24 inaccurate wage statement for this pay period.

25 60. On August 17, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:05
26 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
27 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
28 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 61. On August 18, 2022, Plaintiff worked from approximately 1:59 p.m. to 11:02
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 62. On August 19, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:00
12 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
13 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
14 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
15 receive a recovery period in a shaded area while he was working outside, and was not paid
16 a recovery period premium, which was not reflected on his wage statement, resulting in an
17 inaccurate wage statement for this pay period.

18 63. On August 30, 2022, Plaintiff worked from 1:56 p.m. to 11:02 p.m. On this
19 day, the temperature was over 100 degrees Fahrenheit when Plaintiff started his shift, and
20 the lowest temperature was approximately 92 degrees Fahrenheit when Plaintiff's shift
21 ended. However, on this day, Plaintiff was not authorized and did not receive a recovery
22 period in a shaded area while he was working outside, and was not paid a recovery period
23 premium, which was not reflected on his wage statement, resulting in an inaccurate wage
24 statement for this pay period.

25 64. On August 31, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:02
26 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
27 his shift, and the lowest temperature was approximately 97 degrees Fahrenheit when
28 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 65. On each of the above days, Plaintiff felt discouraged from taking a heat
5 recovery period, even though he felt the need to do so. When Plaintiff exhibited symptoms
6 of heat illness, he was not monitored by management or asked about his symptoms. When
7 Plaintiff did try to take a recovery period, he was not encouraged to remain in the shade
8 until his symptoms abated, nor was he informed of his right to do so. When Plaintiff did
9 try to take a recovery period, he was ordered to get back to work before all symptoms had
10 abated, and before even five minutes had passed.

11 66. During this time period and during these shifts, Plaintiff had to provide his
12 own access to cold water and was in fact refused water by Defendant when we had asked
13 for water for himself and other employees. In fact, Plaintiff and, on information and belief,
14 other similarly situated and/or aggrieved employees had to purchase their own water.

15 67. Even on the occasions water was provided, Plaintiff and other similarly
16 situated and/or aggrieved employees had to provide their own ice to make cold water.
17 Defendants therefore failed to comply with their obligations under California law by failing
18 to provide potable drinking water that was fresh, pure, suitably cool, and free of charge.

19 68. Even if Plaintiff and, on information and belief, other similarly situated and/or
20 aggrieved employees had been allowed and encouraged to take recovery periods as needed,
21 Defendants did not provide for adequate shaded areas. The purpose of shade, per the
22 relevant California law, is to allow the body to cool. Shade is not adequate when heat in
23 the area of shade defeats the purpose of the shade. The temperature indoors at Defendants'
24 El Centro location was frequently just as hot or even hotter than the temperature outdoors
25 due to the lack of a functioning air conditioning or cooling system indoors, including the
26 lack of functioning fans in the Outdoor Garden Area, thus defeating the purpose of the
27 shade and failing to comply with California law.

28 69. Although Defendants failed to provide Plaintiff and, on information and

1 belief, other similarly situated and/or aggrieved employees with compliant recovery
2 periods, Defendants never paid Plaintiff and, on information and belief, other similarly
3 situated and/or aggrieved employees, an additional hour of pay. (See, e.g., **Exhibit B.**)

4 70. Pursuant to Defendants' policies and procedures, Plaintiff and, on information
5 and belief, other similarly situated and/or aggrieved employees of Defendants were denied
6 the opportunity to take legally compliant recovery periods with reasonable comfort, in
7 violation of the applicable Wage Order.

8 71. Although Plaintiff and, on information and belief, other similarly situated
9 employees worked in excessive temperatures, Defendants did not compensate Plaintiff and,
10 on information and belief, other similarly situated and/or aggrieved employees an
11 additional hour of pay at their regular rate of pay when Plaintiff and other similarly situated
12 employees were not provided with compliant recovery periods. On information and belief,
13 Defendant never paid Plaintiff or any other non-exempt employee a recovery period
14 premium wage pursuant to Labor Code § 226.7 despite being aware of its requirement to
15 do so.

16 72. On days when Plaintiff spent part of his shift working indoors, Defendants
17 also failed to maintain the indoor temperature within the range of industry standards by
18 providing adequate air conditioning, in violation of the IWC Wage Order.

19 73. For instance, on August 16, 2022, Plaintiff worked a shift from 1:56 p.m. to
20 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor
21 temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations
22 Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort
23 and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-
24 2001, section 15(A).

25 74. As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m. on
26 September 1, 2022, during which he spent a portion of his shift working indoors. The
27 indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit,
28 approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions

1 failed to provide for reasonable comfort and far exceeded the industry standards, resulting
2 in a violation of IWC Wage Order 7-2001, section 15(A).

3 75. Plaintiff had access to thermometers which he placed in various locations
4 throughout the store, including in the locations he was stationed to work, and could note
5 the temperatures in his area of work during each shift.

6 76. Defendants similarly had a pattern and practice of failing to maintain industry
7 standards by providing functioning Air Conditioning systems inside its store. For example,
8 Plaintiff and, on information and belief, other similar situated and/or aggrieved employees
9 submitted complaints to OSHA based on the temperatures inside the store. Based on
10 information and belief, OSHA has notified Defendants that corrections are needed, yet
11 Defendants have and continue to fail to provide recovery periods, cold water, and fix its
12 air condition system.

13 77. Since May 2022, the temperature inside the store regularly has reached over
14 80 degrees. The average temperature inside the El Centro location in August 2022 reached
15 up to 106 degrees. The excessive temperatures inside the store are in violation of the
16 standard conditions of labor regarding the temperature maintained in a workplace as fixed
17 by Section 15 of the Wage Order. The employment of any employee under such conditions
18 is unlawful pursuant to Labor Code section 1198.

19 78. These problems have persisted through 2023 and 2024 despite Plaintiff's
20 Complaint being filed in December 2022. Excessive heat warnings have continued to be
21 issued in El Centro. Yet, Defendants have failed to fix its air conditioning units inside the
22 store.

23 79. For example, the temperature on July 2, 2023, reached 114 degrees Fahrenheit
24 at its peak, and despite this, Defendants have continued to fail to have a functioning AC
25 Unit in the store. Even at night on 9 p.m. on July 2, 2023, the temperature was over 82
26 degrees Fahrenheit inside the store at the Customer Service Center.

27 80. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information
28 and belief, other similarly situated and/or aggrieved employees dealt with heat related

1 illnesses, with four employees losing consciousness at work due to the heat. Some
2 employees have been transported out of Defendants' store in an ambulance due to the heat.
3 Further, Plaintiff has suffered heat related illnesses almost every day as a result of the
4 excessive temperatures and being told to get back to work when he would try to take a
5 recovery period.

6 81. As a direct result of Defendants' failure to pay Plaintiff and other similarly
7 situated and aggrieved employees all recovery period premiums owed, Defendants failed
8 to maintain payroll records showing the wages paid to Plaintiff and other similarly situated
9 and aggrieved employees. The records maintained by Defendants for Plaintiff and other
10 similarly situated and aggrieved employees are incomplete and inaccurate and fail to
11 comply with the requirements of Labor Code § 1174(d) and the Records section of the
12 applicable IWC Wage Order.

13 82. Defendants also intentionally and knowingly failed to provide Plaintiff and
14 other similarly situated and aggrieved employees with accurate itemized wage statements
15 as required by Labor Code § 226 and the Records section of the applicable IWC Wage
16 Order, as Plaintiff and other similarly situated and aggrieved employees were not properly
17 compensated all recovery period premiums owed due to Defendants' failure to provide
18 recovery periods and pay recovery period premiums.

19 83. As a result of the foregoing, the wage statements issued by Defendants did not
20 include the correct amount of gross and net wages earned, and all applicable hourly rates,
21 as required under Labor Code § 226. As a result of Defendants' failure to include the
22 correct information on the wage statements that were issued, Plaintiff and other similarly
23 situated and aggrieved employees were unable to promptly and easily determine from their
24 wage statement alone the correct amount of the total hours worked, and the gross and net
25 wages earned and owed during the pay period.

26 84. Specifically, Plaintiff made an employment records request to Defendant on
27 August 17, 2022. In response, Defendant produced Plaintiff's time and payroll records on
28 or around September 9, 2022. The payroll records produced showed that Defendant never

1 paid Plaintiff a recovery period premium, including, but not limited to August 2, 3, 5, 6, 9,
2 10, 11, 13, 16, 17, 18, 19, 30, and 31, when Plaintiff was never authorized or allowed to
3 take a recovery period, and was therefore owed a recovery period premium.

4 85. To this date, Defendants have not paid Plaintiff and, on information and belief,
5 other similarly situated and/or aggrieved employees all wages owed, including all recovery
6 premium wages.

7 86. Based on the foregoing violations of the Labor Code and IWC Wage Order,
8 Defendants engaged in unfair business practices in California and willingly and knowingly
9 engaged in employment patterns and practices that violated Business & Professions Code
10 § 17200 *et seq.*, and Plaintiff and, on information and belief, other similarly situated
11 employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent actions.

12 **IV. CLASS ACTION DESIGNATION**

13 87. Plaintiff re-alleges and incorporates by reference the allegations contained in
14 the paragraphs above, as though fully set forth herein.

15 88. Plaintiff brings Causes of Action One through Three as a Class Action
16 pursuant to California Code of Civil Procedure § 382 or, in the alternative, FRCP Rule No.
17 23, on behalf of himself and all current and former employees of Defendants in California
18 and who worked in any non-exempt position at Defendant's El Centro location and who
19 were affected by Defendants' Labor Code, and IWC Wage Order violations, as alleged
20 herein.

21 89. Plaintiff seeks to represent the following Class and Subclass, which are
22 defined as:

23 **The Non-Exempt Class:**

24 "All current and former employees of Defendant WAL-MART
25 ASSOCIATES, INC. in the State of California who worked in
26 any non-exempt position at Defendant's El Centro location since
27 four (4) years prior to the filing of this action to the present, plus
28 any additional time during which the statutes of limitation for the

causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19, through the present, and worked at least one shift when the outdoor temperature was at or exceeded 80 degrees Fahrenheit.’”

The UCL Subclass:

“All members of the Non-Exempt Class who worked for Defendant in the State of California at any time between June 19, 2018 to June 19, 2019.”

90. **Reservation of Rights:** Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

91. Causes of Action One through Three are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure, or, in the alternative, FRCP Rule 23 because the following requirements are met:

A. Numerosity

92. The members of the Class and Subclass are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Class and Subclass, Plaintiff is informed and believes that the Class and Subclass likely consists of over 200 individuals. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’ time and payroll records and other personnel records.

B. Commonality and Predominance

93. Common questions of law and fact exist as to all class members and predominate over any questions affecting only individual members of the Class or Subclass. The common questions of law and fact that predominate include, but are not limited to:

a. Whether Defendants failed to authorize and permit Non-Exempt Class

members and UCL Subclass members to take recovery periods or provide access to adequate shade and/or water during the recovery periods;

- b. Whether Defendants failed to prevent heat related illnesses;
- c. Whether Defendants' improper practice of failing to provide recovery periods results in Non-Exempt Class members and UCL Subclass members suffering heat related illnesses;
- d. Whether Defendants failed to pay one additional hour of pay at the employees' regular rate of compensation to Non-Exempt Class members and UCL Subclass members when they were not provided with compliant recovery periods;
- e. Whether Defendants failed to properly and accurately record and maintain records of all recovery period premiums owed to Non-Exempt Class members and UCL Subclass members; and
- f. Whether Defendants failed to provide Non-Exempt Class members and UCL Subclass members with accurate itemized wage statements showing, among other things, the recovery period premiums owed.

C. Typicality

94. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

95. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying

1 each cause of action are the same and the remedies sought by Plaintiff and all class
2 members are the same.

3 **D. Adequacy of Representation**

4 96. Plaintiff has no fundamental conflict of interest with the Class or Subclass he
5 seeks to represent. Plaintiff will adequately protect the interests of all class members
6 because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full
7 compensation and penalties due to him and putative class members.

8 97. Plaintiff retained attorneys who are experienced employment law litigators
9 with significant wage and hour and class action experience.

10 **E. Superiority of Class Action**

11 98. Plaintiff believes a class action is a superior method of litigation for the fair
12 and efficient adjudication of this controversy. Individual joinder of all class members is
13 not practicable. Class action treatment will allow similarly situated employees to litigate
14 their claims in the manner that is most efficient and economical for the parties and the
15 judicial system.

16 99. Plaintiff knows of no difficulty that might be encountered in the management
17 of this suit, which would preclude maintenance as a class action.

18 **V. THE PAGA REPRESENTATIVE ACTION DESIGNATION**

19 100. Plaintiff re-alleges and incorporates by reference the allegations contained in
20 the paragraphs above, as though fully set forth herein.

21 101. The Fourth Cause of Action alleged herein is appropriately suited for a PAGA
22 action because:

23 a. Pursuant to Labor Code section 2699(a), any provision of the Labor
24 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of
25 its departments, divisions, commissions, boards, agencies, or employees, for a violation of
26 the Labor Code, may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and all other current or former
28 employees pursuant to the procedures specified in section 2699;

1 b. This action involves allegations of violations of provisions of the Labor
2 Code that provide or do not provide for a civil penalty to be assessed and collected by the
3 LWDA or any departments, divisions, commissions, boards, agencies or employees;

4 c. Plaintiff is an “aggrieved employee” because he was employed by the
5 alleged violators and had one or more of the alleged violations committed against him;

6 d. On August 19, 2022, Plaintiff satisfied the procedural requirements of
7 Labor Code § 2699.3 by serving the LWDA electronically and Defendant WAL-MART
8 ASSOCIATES, INC. via Certified Mail with his notice for wage and hour violations and
9 penalties, including the facts and theories to support each violation. A true and correct copy
10 of Plaintiff’s notice and proof of service is attached as **Exhibit A**:

11 e. More than 65 days have passed since Plaintiff served notice via
12 Certified Mail to the LWDA and his employers. Therefore, Plaintiff satisfied all the
13 administrative requirements to pursue civil penalties against Defendants pursuant to Labor
14 Code sections 2698–99.5.

15 f. Plaintiff filed this action pursuant to Labor Code sections 2699(a), (f),
16 on behalf of himself and all other aggrieved employees of Defendants to recover civil
17 penalties.

18 g. Defendants were Plaintiffs’ employers or persons acting on behalf of
19 Plaintiffs’ employer, within the meaning of California Labor Code section 558, who
20 violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor
21 Code or any provision regulating hours and days of work in any order of the Industrial
22 Welfare Commission and, as such, are subject to civil penalties, as set forth in Labor Code
23 section 558, at all relevant times.

24 h. Defendants were Plaintiff’s employers or persons acting on behalf of
25 Plaintiff’s employer either individually or as an officer, agent, or employee of another
26 person, within the meaning of California Labor Code section 1197.1, who paid or caused
27 to be paid to any employee a wage less than the minimum fixed by California state law,
28 and as such, are subject to civil penalties.

VI. CAUSES OF ACTION**FIRST CAUSE OF ACTION****FAILURE TO PROVIDE RECOVERY PERIODS**

(Violation of Labor Code § 226.7)

(Alleged by Plaintiff Individually and on Behalf of the Non-Exempt Class Against All Defendants)

102. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

103. Labor Code § 226.7(a) states that, “‘recovery period’ means a cooldown period afforded an employee to prevent heat illness.”

104. Labor Code § 226.7(b) states that, “[a]n employer shall not require an employee to work during a . . . recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational and Health Standards Board, or the Division of Occupational Safety and Health.”

105. California Code of Regulations, Title 8, Section 3395, while not providing a private right of action in and of itself, is “an applicable statute, or applicable regulation, standard, or order of the...Occupational and Health Standards Board, or the Division of Occupational Safety” which mandates certain requirements that a recovery period under Labor Code section 226.7 must meet.

106. California Code of Regulations, Title 8, Section 3395(d)(3) provides:

Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times. An individual employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the shade.

1 107. California Code of Regulations, Title 8, Section 3395(d)(1) provides:

2 Shade shall be present when the temperature exceeds 80 degrees
3 Fahrenheit. When the outdoor temperature in the work area
4 exceeds 80 degrees Fahrenheit, the employer shall have and
5 maintain one or more areas with shade at all times while
6 employees are present that are either open to the air or provided
7 with ventilation or cooling . . . The shade shall be located as close
8 as practicable to the areas where the employees are working.

9 108. The Code of Regulations further states, in Section 3395(b), that “[s]hade is
10 not adequate when heat in the area of shade defeats the purpose of shade, which is to allow
11 the body to cool.”

12 109. Code of Regulations, Title 8, Section 3395(c) states that “employees shall
13 have access to potable drinking water,” which means that the water must be “fresh, pure,
14 suitably cool, and provided to employees free of charge.” Section 3395(c) goes on to state
15 that “[t]he frequent drinking of water...shall be encouraged.”

16 110. California Code of Regulations, Title 8, Section 3395(i) provides that “[t]he
17 employer shall establish, implement, and maintain, an effective heat illness prevention
18 plan. The plan shall be in writing in both English and the language understood by the
19 majority of the employees and shall be made available at the worksite to employees and to
20 representatives of the Division upon request.”

21 111. Defendants failed to make a heat illness prevention plan available at the
22 worksite to Plaintiff, and on information and belief, to the Non-Exempt Class. Even if
23 Defendants had a heat illness prevention plan, it was never explained to Plaintiff or, on
24 information and belief, the Non-Exempt Class. Nor was it explained to Plaintiff and, on
25 information and belief, the Non-Exempt Class that they were allowed to take recovery
26 periods in addition to their rest periods, that they could take recovery periods at any time
27 as needed, and that they could take recovery periods for as long as necessary until all
28 symptoms of heat illness abated.

112. Plaintiff and, on information and belief, the Non-Exempt Class were subject
to the same policies, practices, and procedures governing the provision and scheduling of

1 recovery periods.

2 113. On information and belief, Defendants have a pattern and practice of requiring
3 Plaintiff and the Non-Exempt Class to remain on duty at all times, and of not providing
4 them with compliant recovery periods when the outdoor temperature in the work area
5 exceeded 80 degrees Fahrenheit.

6 114. Pursuant to the Code of Regulations, Title 8, Section 3395, employees must
7 be allowed and encouraged to take recovery periods in suitable shade as needed to protect
8 themselves from overheating. Defendants neither allowed for nor encouraged such
9 recovery periods.

10 115. Plaintiff and, on information and belief, the Non-Exempt Class felt
11 discouraged from taking recovery periods.

12 116. For instance, Plaintiff regularly worked outdoors in temperatures that could
13 reach up to 120 degrees Fahrenheit during the summer months. Plaintiff sometimes spent
14 his entire shift working outdoors. As a result of working outdoors in excessive heat,
15 Plaintiff would often feel symptoms of heat-related illness including, but not limited to,
16 lightheadedness and shortness of breath, and would attempt to take a recovery period either
17 in the shade or inside the store. Plaintiff's managers, however, would instruct Plaintiff to
18 go back outside and get back to work if they saw him trying to take a recovery period,
19 without monitoring or asking about his symptoms and without ensuring that his symptoms
20 had abated.

21 117. Although Plaintiff and, on information and belief, the Non-Exempt Class were
22 provided their regular rest periods as required under California law, they were not allowed
23 or encouraged to take heat illness prevention recovery periods at any time as needed, for
24 as long as necessary until their heat illness symptoms abated.

25 118. Plaintiff's managers and/or supervisors, instead of encouraging employees to
26 take preventative cool-down recovery periods, would order employees back to work if the
27 employee was taking a recovery period.

28 119. Therefore, Plaintiff's and, on information and belief, the Non-Exempt Class's

1 employer required them to work during a recovery period mandated by the applicable
2 statute, regulation, standard or order of the Occupation Safety and Health Standards Board
3 or the Division of Occupational Safety and Health – i.e., Code of Regulations, Title 8,
4 Section 3395 – and in doing so therefore violated Labor Code section 226.7(b).

5 120. Plaintiff's managers and/or supervisors were aware of the presence of
6 excessive heat both indoors and outdoors, were aware that Plaintiff would spend up to his
7 entire shift working outdoors, were aware that Plaintiff and, on information and belief,
8 other members of the Non-Exempt Class were not provided with potable drinking water,
9 were aware that several employees have suffered heat related illnesses included fainting
10 and needing to be transported to the hospital, and were aware that Plaintiff and, on
11 information and belief, other members of the Non-Exempt Class would feel the need to
12 take and actually attempt to take recovery periods when needed.

13 121. Despite the knowledge of all the above facts, the managers and/or supervisors
14 at Defendants' El Centro location failed to comply with their affirmative obligation to
15 allow and encourage recovery periods. Plaintiff's managers and/or supervisors actively
16 discouraged taking heat recovery periods, and if they saw employees taking recovery
17 periods, they ordered the employees back to work rather than monitor their symptoms and
18 encourage them to remain in the shade on a break until the symptoms abated.

19 122. When Plaintiff and, on information and belief, other similarly situated and/or
20 aggrieved employees attempted to take a recovery period, they were not (a) monitored and
21 asked if they were experiencing symptoms of heat illness, (b) encouraged to remain in the
22 shade, and (c) allowed to remain in the shade until all signs or symptoms of heat illness
23 had abated and in no event less than five minutes, in direct contravention to Defendants'
24 obligations under Code of Regulations, Title 8, Section 3395(d)(3).

25 123. For instance, on each date identified above in paragraphs 51 through 64 of this
26 complaint, Plaintiff worked outdoors in excessive heat.

27 124. On each date identified above in paragraphs 51 through 64 of this complaint,
28 Plaintiff felt symptoms of heat exhaustion and felt the need to take recovery periods in

1 addition to his regular rest periods to protect himself from overheating.

2 125. On each date identified above in paragraphs 51 through 64 of this complaint,
3 Plaintiff was not allowed to and felt discouraged from taking recovery periods as needed.

4 126. When Plaintiff did attempt to take recovery periods, he was sent back to work
5 before all symptoms had abated, and without being provided a recovery period of at least
6 five minutes.

7 127. Even if Defendants had allowed recovery periods at any time as needed, the
8 conditions of the recovery period still would have been noncompliant with Code of
9 Regulations, Title 8, Section 3395. The temperature inside Defendants' El Centro location
10 was such that it would not have provided for adequate shade anyway, as the heat inside the
11 store defeated the purpose of the shade because the indoor temperature was so hot it did
12 not allow the body to cool.

13 128. Defendants further failed to comply with Code of Regulations, Title 8, Section
14 3395(c) by failing to provide potable water that was fresh, pure, suitably cool, and provided
15 to employees free of charge. In fact, on several occasions Plaintiff and, on information and
16 belief, other members of the Non-Exempt Class had to purchase their own water. On the
17 rare occasions that water was provided, Plaintiff and, on information and belief, other
18 members of the Non-Exempt Class had to provide their own ice to make the water "suitably
19 cool."

20 129. Nor did Defendants frequently encourage the drinking of water, as required
21 by Section 3395(c).

22 130. Labor Code section 226.7(d) requires employers, including Defendants, to
23 provide to their non-exempt employees, including Plaintiff, paid recovery periods as
24 mandated by California law.

25 131. Labor Code § 226.7(c) states that "[i]f an employer fails to provide an
26 employee a . . . recovery period in accordance with a state law, including, but not limited
27 to, an applicable statute or applicable regulation, standard, or order of the Industrial
28 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division

1 of Occupational Safety and Health, the employer shall pay the employee one additional
 2 hour of pay at the employee's regular rate of compensation for each work day that the . . .
 3 recovery period is not provided."

4 132. Even though Plaintiff and, on information and belief, Non-Exempt Class
 5 members were not authorized and permitted to take off-duty recovery periods, Defendants
 6 did not pay Plaintiff and the Non-Exempt Class appropriate recovery period premium
 7 wages for each day in which Defendants did not authorize and permit Plaintiff and the Non-
 8 Exempt Class to take compliant recovery periods, in violation of Labor Code § 226.7.

9 133. On information and belief, Defendants have a common policy, pattern, and
 10 practice of failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay
 11 at their regular rate of pay for the times that Plaintiff and the Non-Exempt Class were not
 12 authorized to take recovery periods, in violation of Labor Code § 226.7.

13 134. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses
 14 related to Defendants' failure to pay an additional hour of pay for each day a recovery
 15 period was not provided and the associated use and enjoyment of compensation due and
 16 owing to them as a direct result of Defendants' Labor Code violations.

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **SECOND CAUSE OF ACTION**

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

20 (Violation of Labor Code §§ 226, 226.3, and 1198)

21 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All
 22 Defendants)

23 135. Plaintiff re-alleges and incorporates by reference the allegations contained in
 24 the paragraphs above, as though fully set forth herein.

25 136. Labor Code § 226(a) requires that employers, including Defendants, furnish
 26 their employees with each wage payment an accurate and itemized writing that shows gross
 27 wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of
 28 the period for which the employee is paid, the name of the employee and the portion of his

1 or her social security number, the name and address of the legal entity that is the employer,
2 and all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 137. Labor Code § 226(e), in part, permits employees suffering injury to collect
5 the greater of all actual damages or the amount specified in Labor Code § 226 per violation.

6 138. Labor Code § 226(e)(2)(B) states, in pertinent part, “an employee is deemed
7 to suffer injury for purposes of this subdivision if the employer fails to provide accurate
8 and complete information as required by any one or more of items (1) to (9), inclusive, of
9 subdivision (a) and the employee cannot promptly and easily determine from the wage
10 statement alone one or more of the following: (i) The amount of the gross wages or net
11 wages paid to the employee during the pay period or any of the other information required
12 to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6),
13 and (9) of subdivision (a).”

14 139. Labor Code § 226(h) states, “An employee may also bring an action for
15 injunctive relief to ensure compliance with this section and is entitled to an award of costs
16 and reasonable attorney's fees.”

17 140. Labor Code § 223.6 states that, “Any employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
19 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
20 per employee for each violation in a subsequent citation, for which the employer fails to
21 provide the employee a wage deduction statement or fails to keep the records required in
22 subdivision (a) of Section 226.”

23 141. Labor Code § 1198 states in relevant part, “The employment of any employee
24 for longer hours than those fixed by the order or under conditions of labor prohibited by
25 the order is unlawful.”

26 142. As a result of Defendants’ conduct during the applicable statutory period,
27 Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class
28 members an accurate itemized wage statement with each wage payment as required by

1 Labor Code § 226(a). Defendants knowingly and intentionally failed to provide Plaintiff
2 and members of the Non-Exempt Class with each wage payment an accurate wage
3 statement showing, among other things, the recovery period premium wages owed.

4 143. Defendants' failure to provide accurate wage statements with this information
5 deprived Plaintiff and members of the Non-Exempt Class of the ability to promptly and
6 easily understand and question the calculation and rate of pay and hours used to calculate
7 the wages paid by Defendants. Plaintiff and members of the Non-Exempt Class, therefore,
8 had no way to dispute any error in the payment or calculation of their wages, all of which
9 resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members
10 of the Non-Exempt Class suffered actual damages as a result.

11 144. Defendants' failure to provide accurate itemized wage statements constitutes
12 an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members
13 of the Non-Exempt Class have suffered an injury for purposes of Labor Code § 226 and
14 are entitled to recover the greater of all actual damages or the amount specified in § 226
15 per violation.

16 145. Plaintiff and Non-Exempt Class members suffered and continue to suffer
17 injuries, losses and actual damages as a direct result of Defendants' Labor Code violations,
18 including lost interest on such wages, and expenses and attorney's fees in seeking to compel
19 Defendants to fully perform their obligations, in an amount to be shown according to proof
20 at trial.

21 146. Plaintiff seeks to recover all available remedies including, but not limited to
22 damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent
23 permitted by law.

24 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

25 ///

26 ///

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THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Alleged by Plaintiff Individually and On Behalf of the UCL Subclass Against All Defendants)

147. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

148. As codified in Business & Professions §§ 17200 *et seq.*, California’s Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or practice.”

149. A cause of action may be brought under the UCL if a practice violates some other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code §§ 17200 *et seq.* (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 377, 383.)

150. Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute “unlawful, unfair or fraudulent business act or practices,” which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper recovery periods and pay Plaintiff and the UCL Subclass premium wages for failure to provide compliant recovery periods; (ii) failure to provide to adequate air conditioning, shade, and/or water; (iii) failure to maintain accurate records; and (iv) failure to provide Plaintiff and the UCL Subclass with accurate itemized wage statements.

151. Defendants intentionally avoided paying Plaintiff and the UCL Subclass all wages and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

152. Defendants lowered their costs of doing business by not maintaining industry standards and paying Plaintiff and the UCL Subclass an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated employees to

1 perform work without fair compensation and benefits.

2 153. Defendants held themselves out to Plaintiff and the UCL Subclass as being
3 knowledgeable about, and adhering to, the employment laws of California at all times
4 relevant herein. Plaintiff and the UCL Subclass relied on and believed in Defendants'
5 representation concerning Defendants' adherence to the California laws, all to their
6 detriment.

7 154. Defendants' scheme to lower its payroll and operation costs and thus profit,
8 by withholding money owed to the class and withholding wages, compensation and
9 benefits, which are all the property of Plaintiff and the UCL Subclass, in violation of the
10 California Labor Code and the IWC Wage Orders, as alleged herein, constitutes an
11 "unlawful, unfair or fraudulent business act or practice," under California Business and
12 Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition, Plaintiff
13 and the UCL Subclass suffered injury in fact by losing money and/or property.

14 155. California's unfair competition law defines "unfair competition" to include
15 "any unlawful...act or practice..." Bus. & Prof. Code § 17200.

16 156. California Labor Code section 1198 makes unlawful "[t]he employment of
17 any employee...under conditions of labor prohibited by the order."

18 157. Section 15 of IWC Wage Order 7-2001 requires employers to maintain an
19 indoor temperature in each work area of "reasonable comfort consistent with industry-wide
20 standards."

21 158. As discussed above, on days when Plaintiff spent part of his shift working
22 indoors, Defendants failed to maintain the indoor temperature within the range of industry
23 standards by providing adequate air conditioning.

24 159. For instance, on August 16, 2022, Plaintiff worked a shift from 1:56 p.m. to
25 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor
26 temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations
27 Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort
28 and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-

2001 section 15(A), and therefore amounting to an unlawful business practice.

160. As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m. on September 1, 2022, during which he spent a portion of his shift working indoors. The indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit, approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-2001 section 15(A), and therefore amounting to an unlawful business practice.

161. Plaintiff had access to thermometers which he placed in various locations throughout the store, including in the locations he was stationed to work, and could note the temperatures in his area of work during each shift.

162. Business and Professions Code § 17204, states, in relevant part, “[a]ctions for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.”

163. Plaintiff and the UCL Subclass are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that “any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204.”

164. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the putative classes.

165. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.”

166. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff

1 and the UCL Subclass by committing the unlawful acts alleged herein. Thus, Defendants
2 must make restitution and/or be subject to other equitable relief pursuant to Business &
3 Professions Code § 17203 and restore all unpaid wages to Plaintiff and the UCL Subclass.

4 167. Business and Professions Code § 17208 states: “Any action to enforce any
5 cause of action pursuant to this chapter shall be commenced within four years after the
6 cause of action accrued.” California’s UCL four-year statute of limitations “applies even if
7 the borrowed statute has a shorter limitations statute.” *RA Medical Systems, Inc. v.*
8 *PhotoMedex, Inc.*, 373 Fed. Appx. 784, 786 (9th Cir. 2010); *Blanks v. Seyfarth Shaw LLP*,
9 171 Cal. App. 4th 336, 364 (2009); see also *Cortez v. Purolator Air Filtration Products*
10 *Co.*, 23 Cal.4th 163, 178-79 (2000) (“Any action on any UCL cause of action is subject to
11 the four-year period of limitations created by that section.”) (emphasis in original).

12 168. “[A]ny business act or practice that violates the Labor Code through failure to
13 pay wages is, by definition, an unfair business practice.” *Cortez v. Purolator Air Filtration*
14 *Products Co.*, 23 Cal.4th 163, 178-79 (2000).

15 169. “[A]n action to recover wages that might be barred if brought pursuant to
16 Labor Code section 1194 still may be pursued as a UCL action seeking restitution pursuant
17 to section 17203 if the failure to pay constitutes a business practice.” *Cortez v. Purolator*
18 *Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000).

19 170. Plaintiff’s claim for damages for Defendant’s alleged violations of Labor
20 Code § 226.7 for the failure to provide recovery periods is subject to a three-year statute of
21 limitations. Plaintiff and the UCL Subclass therefore lack an adequate remedy at law for
22 violations suffered beyond the three-year statute of limitations governing Labor Code §
23 226.7. Plaintiff and the UCL Subclass therefore seek restitution under the Business and
24 Professions Code solely for the fourth year preceding the three-year statute of limitations
25 governing the claims under Labor Code § 226.7.

26 171. Plaintiff and the UCL Subclass suffered and continue to suffer loss of wages
27 and monies, all in an amount to be shown according to proof at trial and within the
28 jurisdiction of this Court.

172. Plaintiff seeks all available remedies on behalf of himself and on behalf of the UCL Subclass, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

FOURTH CAUSE OF ACTION
REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT OF 2004

(Labor Code § 2698, et seq.)

(Alleged by Plaintiff Individually and On Behalf of the Aggrieved Employees Against
All Defendants)

173. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

174. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

175. This cause of action involves allegations of violations of Labor Code §§ 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 558, 558.1, 1174, 1174.5, 1194.2, 1198, and 6720 which, pursuant to Labor Code § 2699.5, provide for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

176. Defendants employed Plaintiff and Plaintiff had one or more of the alleged violations committed against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged violator employed him and he had one or more of the alleged violations committed against him. As such, Plaintiff is properly suited to represent the

1 interests of other aggrieved employees in a PAGA Representative action.

2 177. Labor Code § 6720 states that the Division of Occupational Safety and Health
3 shall adopt a “standard that minimizes heat-related illness and injury among workers
4 working in indoor places of employment.”

5 178. Labor Code § 6720 states that “[t]he standard shall be based on environmental
6 temperatures, work activity levels, and other factors,” and “shall take into consideration
7 heat stress and heat strain guidelines.” Cal/OSHA’s draft standard applies its proposed
8 regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees
9 Fahrenheit when employees are present.”

10 179. Labor Code § 1198 states:

11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work
13 and the standard conditions of labor for employees. The
14 employment of any employee for longer hours than those fixed
15 by the order or under conditions of labor prohibited by the order
16 is unlawful.

17 180. Section 15(A) of the IWC Wage Orders, states:

18 (A) The temperature maintained in each work area shall provide
19 reasonable comfort consistent with industry-wide standards
20 for the nature of the process and the work performed.

21 181. While California does not currently have a Heat Illness Prevention in Indoor
22 Places of Employment Standard that mirrors the Heat Illness Prevention in Outdoor Places
23 of Employment standard contained in 8 Cal. Code Regs. § 3395, the California
24 Occupational Safety and Health Standards Board has drafted and received public comment
25 on a proposed Indoor Heat Standard that may be added as new section 3396 to Title 8 of
26 the California Code of Regulations in the near future. The requirements of proposed section
27 3396 will be triggered when the temperature in an indoor work area equals or exceeds 82
28 degrees Fahrenheit. Additional conditions will be required when the indoor temperature
equals or exceeds 87 degrees Fahrenheit. While not yet a controlling regulation, this

1 proposed Indoor Heat Standard offers insight into the “industry-wide standards” for
2 tolerable temperatures in indoor places of work.

3 182. Federal OSHA standards offer additional insight into the “industry-wide
4 standards,” which recommend temperature control in the range of 68-76 degrees
5 Fahrenheit for indoor workspaces and humidity control in the range of 20%-60%.

6 183. Here, Defendants failed to provide Plaintiff and other aggrieved employees
7 with reasonable comfort by maintaining the indoor temperature within the range of industry
8 standards. Defendants failed to provide adequate air conditioning and/or cooling, and as a
9 result, indoor temperatures during the summer months at Defendants’ location often
10 exceeded 100 degrees when Plaintiff and other aggrieved employees worked inside.

11 184. For instance, on August 16, 2022, Plaintiff worked a shift from 1:56 p.m. to
12 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor
13 temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations
14 Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort
15 and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-
16 2001, section 15(A).

17 185. As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m. on
18 September 1, 2022, during which he spent a portion of his shift working indoors. The
19 indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit,
20 approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions
21 failed to provide for reasonable comfort and far exceeded the industry standards, resulting
22 in a violation of IWC Wage Order 7-2001, section 15(A).

23 186. Plaintiff had access to thermometers which he placed in various locations
24 throughout the store, including in the locations he was stationed to work, and could note
25 the temperatures in his area of work during each shift.

26 187. On information and belief, Defendants have had an opportunity to cure its
27 Labor Code violations, but has not, to date.

28 188. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty

1 of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code
2 § 1198, and \$200 for each aggrieved employee per pay period for each subsequent
3 violation.

4 189. Plaintiff seeks to recover civil penalties pursuant to Labor Code §§ 558, 558.1,
5 and 1197.1, on behalf of himself and other aggrieved employees for Defendants' violations
6 of the Labor Code, including but not limited to Defendants' violations of Labor Code §§
7 221, 226, 226.7, 510, 558, 1174(d), 1197, 1198.

8 190. For all provisions of the Labor Code for which a civil penalty is not
9 specifically provided, Labor Code § 2699(f) imposes upon Defendants, and each of them,
10 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
11 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per
12 pay period for each subsequent violation.

13 191. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide
14 Plaintiff and aggrieved employees lawfully compliant recovery periods and by failing to
15 pay them recovery period premium wages for each day a recovery period was not provided.
16 Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
17 aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7 and
18 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

19 192. Defendants violated Labor Code §§ 510, 1194, and 1198, by not paying
20 Plaintiff and other aggrieved employees all recovery period premium wages earned for all
21 the time they were suffered or permitted to work, engaged in work and/or under
22 Defendants' control, as alleged herein. At all relevant times, Plaintiff and, on information
23 and belief, other aggrieved employees were not paid all recovery period premium wages
24 when they worked under lawful conditions. Thus, under Labor Code § 2699(f)(2),
25 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay
26 period for the initial violation of Labor Code §§ 1194, and 1198, and \$200 for each
27 aggrieved employee per pay period for each subsequent violation.

28 193. Defendants violated Labor Code § 1198 by not paying Plaintiff and aggrieved

1 employees all recovery premium wages owed by the time set forth by law during their
2 employment, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are
3 subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial
4 violation of Labor Code § 1198, and \$200 for each aggrieved employee per pay period for
5 each subsequent violation.

6 194. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 by failing to
7 maintain records detailing the recovery period premium wages owed, and knowingly and
8 intentionally failing to maintain and provide Plaintiff and other aggrieved employees of
9 Defendants with wage statements itemizing accurately all information required by Labor
10 Code § 226(a), as alleged herein, including the total hours worked, all regular hours
11 worked, all overtime hours worked, the applicable hourly rate per hour worked, and the
12 total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil
13 penalty of \$100 for each aggrieved employee per pay period for the initial violation of
14 Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for
15 each subsequent violation.

16 195. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount
17 of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent
18 citation, for which the employer fails to provide the employee a wage deduction statement
19 or fails to keep the records required in subdivision (a) of § 226.

20 196. Labor Code § 1174.5 provides for a civil penalty of \$500 for any person
21 employing labor who willfully fails to maintain accurate and complete records required by
22 subdivision (d) of § 1174.

23 197. Defendants are and were Plaintiff's and aggrieved employees' employers or
24 other person(s) acting either individually or as an officer, agent, or employee of another
25 person(s), who pays or causes to be paid to any employee a wage less than the minimum
26 fixed by an order of the Commission, and, as such, are subject to civil penalties for each
27 underpaid employee pursuant to Labor Code § 1197.1.

28 198. Labor Code § 1197.1 imposes upon Defendants for each initial violation of

1 Labor Code § 1197 by paying or causing an employee to be paid less than the minimum
2 wage, a civil penalty of \$100.00 for each underpaid employee for each pay period for which
3 the employee is underpaid. Furthermore, Labor Code § 1197.1 imposes upon Defendants
4 for each subsequent violation a civil penalty of \$250.00 for each underpaid employee for
5 each pay period for which the employee was underpaid. The civil penalty recoverable
6 under Labor Code § 1197.1 is in addition to an amount sufficient to recover the underpaid
7 wages, as well as liquidated damages pursuant to Labor Code § 1194.2.

8 199. Defendants are and were Plaintiff's and other aggrieved employees'
9 employers, or persons acting on their behalf, within the meaning of Labor Code § 558, who
10 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in any IWC Wage Order and, as such, are
12 subject to civil penalties for each underpaid employee as set forth in Labor Code § 558.

13 200. Pursuant to Labor Code § 558, Defendants are subject to a civil penalty of
14 \$50.00 for an initial violation of Labor Code § 510, for each aggrieved employee, for each
15 pay period for which the aggrieved employee was not provided with all recovery period
16 premium wages, as alleged herein. Furthermore, Labor Code § 558 imposes upon
17 Defendants for each subsequent violation of Labor Code § 510, a civil penalty of \$100.00
18 for each aggrieved employee for each pay period for which the aggrieved employee was
19 not provided with all recovery period premium wages, as alleged herein.

20 201. Pursuant to Labor Code § 558.1, Defendant is an employer or other person
21 acting on behalf of an employer, who violates, or causes to be violated, any provision
22 regulating the "Hours and Days of Work" and the "Minimum Wages" sections of the
23 Applicable Wage Order, or who violates, or causes to be violated, sections 203, 226, 226.7,
24 1193.6, or 1194 of the Labor Code, and is subject to a civil penalty for each initial and/or
25 subsequent violation. Defendant committed such violations when it failed to pay all
26 recovery periods or pay recovery period premium wages, to provide accurate itemized
27 wage statements, and to timely pay all wages due, as alleged herein.

28 202. For bringing this action, Plaintiff is additionally entitled to attorney's fees and

costs incurred herein.

203. Plaintiff seeks to recover civil penalties on behalf of himself and other aggrieved employees for Defendants' violations of the Labor Code, including but not limited to Defendants' violations of Labor Code §§ 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, pursuant to Labor Code § 2698, *et seq.* The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For general damages;
- b. For special damages;
- c. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, and 1194;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- g. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- h. For an award of damages in the amount of unpaid compensation and

monies including, but not limited to actual damages, unpaid wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;

- i. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant recovery period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- j. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- k. For injunctive relief as provided by the Labor Code including but not limited to Labor Code §§ 226(h), and Business and Professions Code § 17200, et seq.
- l. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- m. For an order imposing a constructive trust upon Defendants to compel them to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- n. For an accounting to determine all money wrongfully obtained and held by Defendants;
- o. For a declaratory judgment that Defendants violated Labor Code §§ 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as the "Minimum Wages" and "Records" sections of the Wage Order of the Industrial Welfare Commission;
- p. For all applicable civil penalties under PAGA, to the extent permitted by law, on behalf of Plaintiff and all other aggrieved employees of

Defendants in California, and

q. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: June 25, 2024

GRAHAMHOLLIS APC

Bv: /s/ Alex M. Kuner

GRAHAM S.P. HOLLIS
VILMARIE CORDERO
ALEX M. KUNER
Attorneys for Plaintiff
MARK HENDRICKSON

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
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EXHIBIT A



August 19, 2022

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Wal-Mart Associates, Inc.
c/o 1505 Corporation 112
12 C T Corporation System
330 N Brand Blvd, Ste 700
Glendale, CA 91203

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

Re: Mark Hendrickson's Wage and Hour Claims Against Wal-Mart
Associates, Inc.

Dear Labor and Workforce Development Agency and Wal-Mart Associates, Inc.:

Please be advised that Mark Hendrickson ("Claimant") has retained our firm to represent him for claims against his employer Wal-Mart Associates, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations. Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former non-exempt store employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (hereinafter collectively "aggrieved employees").

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Nora Steinhagen

Alyssa Smith

Allison Schubert

Dustin S. Delp

Alex Kuner

Dawn M. Berry

*Provisionally Licensed Lawyer

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Page 2



FACTUAL BACKGROUND

Wal-Mart Associates, Inc. is a Delaware corporation that operates Wal-Mart retail stores throughout the entire state of California. The Company operates throughout the entire United States. Claimant works for the Company as a Customer Service Associate at the Company's retail location in El Centro, California. Claimant is paid an hourly rate of \$19.53. Claimant has worked for the Company for 25 years. At all times, Claimant has been non-exempt employee and was compensated on an hourly basis.

The Company failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods, as the Company did not provide them off-duty access to adequate shade when the outdoor temperature exceeded 80 degrees Fahrenheit. Temperatures in the Outdoor Garden Area of the store often exceed 100 degrees. However, Claimant and, on information and belief, other aggrieved employees are not provided with recovery periods, adequate shade, or water.

Claimant and other aggrieved employees are also subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82° F. The Company fails to provide Claimant and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning. The Company also failed to maintain the temperature in toilet rooms, resting rooms, and change rooms during hours of use to no less than 68° F. For example, Claimant's location in El Centro has not had a functioning Air Conditioning system since May 2022. Every day since then, the temperature inside the store has reached over 80 degrees. The average temperature for El Centro in August is 106 degrees. Aggrieved employees deal with heat related illnesses every day and about four employees have lost consciousness at work due to the heat. Some employees have had to be transported out of the store in an ambulance due to the heat. Claimant has also suffered heat related illnesses almost every day. As a result, Claimant, other aggrieved employees, and customers have submitted complaints to OSHA. Based on information and belief, OSHA has notified the Company that corrections are needed. However, the Company has and continues to fail to provide recovery periods and/or extra water, and fails to pay a recovery period premium when a recovery period is not provided. Instead, it pressures employees to continue working in the excessive heat.

The Company never notified Claimant and, on information and belief, other aggrieved employees that they were entitled to recovery periods, nor did the Company ever offer recovery periods to Claimant and, on information and belief, other aggrieved employees. The Company also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods.

As a result of the foregoing, the Company further failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' wages paid, in violation of California law.

In addition, the Company failed to accurately keep all the information required under Labor Code section 226(a). The wage statements issued by the Company also did not include all the required items provided for in Labor Code section 226. For example, the wage statements issued by the Company did not include all recovery period premiums owed as required under Labor Code section 226.

Lastly, as a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, other aggrieved employees all wages due and payable during and

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upon separation of employment, including minimum, regular, and overtimes wages for all recovery period premium wages, as required pursuant to Labor Code sections 201, 202 and 204.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other aggrieved current and form

**FAILURE TO PROVIDE RECOVERY PERIODS AND FAILURE TO PREVENT HEAT
RELATED ILLNESSES**

(Labor Code sections 226.7, 6720, and California Code of Regulations, Title 8, section 3395)

Labor Code section 226.7(a) states that, “‘recovery period’ means a cooldown period afforded an employee to prevent heat illness.” Labor Code section 226.7(b) states that, “[a]n employer shall not require an employee to work during a ... recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational and Health Standards Board, or the Division of Occupational Safety and Health.” Labor Code section 226.7(c) states that “[i]f an employer fails to provide an employee a ... recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the ... recovery period is not provided.”

California Code of Regulations, Title 8, Section 3395(d)(1) provides that, “[s]hade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling ... [t]he shade shall be located as close as practicable to the areas where the employees are working.”

Labor Code section 1198 requires an employer to comply with the standard conditions of labor for California employees as set forth by the Industrial Welfare Commission (“IWC”). Section 15 of the IWC Wage Orders, states: (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section. (See e.g., Cal. Code Regs., tit. 8, § 11070(15), Cal. Code Regs., tit. 8, § 11090(15).) California law requires an employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.)

Further, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by January 1, 2019. (Lab. Code §6720.) Cal/OSHA’s draft standard applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

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As set forth above, the Company also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods. The Company also failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods because it did not provide them off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. Furthermore, Claimant and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82° F and/or to excessive cold temperatures. The Company failed to provide Claimant and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, inter alia, providing adequate air conditioning or heat, ventilation, etc. The Company also failed to maintain the temperature in toilet rooms, resting rooms, and change rooms during hours of use to no less than 68° F. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198, and the "Records" section of the Applicable IWC Wage Order)

Labor Code section 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments."

The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company violated these requirements by failing to record all recovery period premiums owed. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code sections 226, 226.3, and 1198)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: "(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and

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reasonable attorney's fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

The Company failed to provide Claimant and, on information and belief, other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not include the recovery period premiums owed. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the
"Minimum Wages" section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code section 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." The requirements of Labor Code section 204 are "deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Labor Code section 204(d). Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

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

As set forth above, the Company further violated this Labor Code section by not paying to Claimant and, on information and belief, other aggrieved employees all recovery period premium wages, within the required time during and upon separation of their employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and, on information and belief, other aggrieved employees, which they have not yet

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paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or 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. 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.”

Labor Code section 558.1(a) states, “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpaid Claimant and, on information and belief, aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to pay them all regular, minimum, and overtime wages, meal, rest, and recovery period premium wages, and business expense reimbursements, as required under Labor Code sections 203, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

August 19, 2022
Page 7



ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),
558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq.)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq., among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, et seq., an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation. Accordingly, the Company is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney's fees and they will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read "Erik Dos Santos". The signature is stylized with a large "E" and a prominent "S" at the end.

Erik Dos Santos

EDS/MV

Magdalena Valdez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, August 19, 2022 1:32 PM
To: Magdalena Valdez
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

*** [CAUTION: This email originated from outside of Graham Hollis. Do not click links or open attachments unless you recognize the sender and know the content is safe] ***

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-902894-22

Order Number: ORD-000190284

Total:\$75.00

Card Type: Visa

Date: 8/19/2022

Billing Information

Name: Graham Hollis

Email: mvaldez@grahamhollis.com

Billing Address:

3555 Fifth Ave, Suite 200

San Diego, California

92103

Magdalena Valdez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, August 19, 2022 1:32 PM
To: Magdalena Valdez
Subject: Thank you for submission of your PAGA Case.

*** [CAUTION: This email originated from outside of Graham Hollis. Do not click links or open attachments unless you recognize the sender and know the content is safe] ***

8/19/2022

LWDA Case No. LWDA-CM-902894-22
Law Firm : GrahamHollis APC
Plaintiff Name : Mark Hendrickson
Employer: Wal-Mart Associates, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://url.emailprotection.link/?bWhZGmtVpkolk3PyXCFMH4PF8pRZR0-JgiPF7QETj_UxW5y1YhA9kQUfo4OtjAcum2SmR46sljNeUcz_f60P3AIYd4RUZuY5ZKdYbpHgM-D2BPYxSV9fTgX3mRRc8OB8

Electronic Delivery Confirmation™**USPS CERTIFIED MAIL™**

GrahamHollis APC
 3555 5TH AVE STE 200
 SAN DIEGO CA 92103-5057

\$6.81 US POSTAGE
FIRST-CLASS
 Aug 19 2022
 Mailed from ZIP 92103
 2 oz First-Class Mail Letter



stamps
 indicia

11923275

062S0012913542

USPS CERTIFIED MAIL**9414 8118 9876 5815 1019 77**

Wal-Mart Associates, Inc.
 co CT Corporation System AFSOP
 330 N BRAND BLVD STE 700
 GLENDALE CA 91203-2336



Reference	35090-00001 HENDRICKSON WALMART MV
USPS #	9414811898765815101977
USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was picked up at a postal facility at 7:45 am on August 23, 2022 in GLENDALE, CA 91209.
USPS History	Arrived at Post Office, 08/22/2022, 11:02 am, GLENDALE, CA 91209 Available for Pickup, 08/22/2022, 10:15 am, GLENDALE, CA 91209 Departed USPS Regional Facility, August 21, 2022, 5:26 pm, SANTA CLARITA CA DISTRIBUTION CENTER Arrived at USPS Regional Facility, August 20, 2022, 6:20 am, SANTA CLARITA CA DISTRIBUTION CENTER Arrived at USPS Regional Facility, August 19, 2022, 8:40 pm, SAN DIEGO CA DISTRIBUTION CENTER

Electronic Delivery Confirmation Report © 2022 Certified Mail Envelopes, Inc. All rights reserved.

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Date Verified: 08/24/2022 00:33:36 (UTC)



August 23, 2022

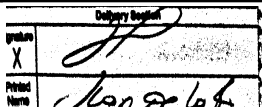
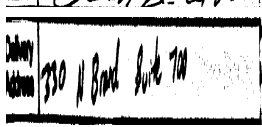
Dear Reference 35090 00001 HENDRICKSON WALMART MV:

The following is in response to your request for proof of delivery on your item with the tracking number:
9414 8118 9876 5815 1019 77.

Item Details

Status:	Delivered, Individual Picked Up at Postal Facility
Status Date / Time:	August 23, 2022, 7:45 am
Location:	GLENDALE, CA 91209
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Recipient Signature

Signature of Recipient:	
	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

EXHIBIT B

Statement of Earnings and Deductions.

Wal-Mart Associates, Inc., 702 S.W. 8th St., Bentonville, Arkansas 72716. ☎ 479-273-4000

Pay Period: 07/30/2022 - 08/12/2022

WIN: *****7182

Deposit Date: 08-18-2022

Advice # 614371806

PAID TO

MARK J HENDRICKSON

\$1,114.48

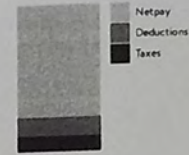
GOVERNMENT
AGENCIES FCU

SAVINGS ACCT

\$1,114.48

THIS IS NOT A REAL CHECK

CURRENT PAY OVERVIEW



07/30 - 08/12

PTO	HRS
PTO AVAILABLE	52.77
PROTPTOUSEDYTD	117.00
PROTECTED PTO	2.04

CATEGORY	
Pay Category	Hourly

FEDERAL TAX WITHHOLDING	
Tax Method	Head of Household
Claim Dependents	\$500.00
Additional Withholding	\$0.00

STATE TAX WITHHOLDING	
Tax Method	Head of Household
Exemptions	0
Additional Withholding	\$0.00

EARNINGS	HOURS	RATE	CURRENT	YEAR TO DATE	DEDUCTIONS	CURRENT	YEAR TO DATE
REGULAR EARNING	71.50	\$19.5300	\$1,396.39	\$20,769.78	INS LTD	\$13.85	\$266.85
OVERTIME EARN	1.43	\$29.2950	\$41.89	\$821.14	INS MED U *	\$125.20	\$2,124.60
COVID-19 PAY			\$0.00	\$1,848.03	INS DEN U *	\$33.90	\$576.30
REPORTING PAY			\$0.00	\$447.24	INS AD&D U *	\$0.31	\$5.27
PROT PTO USED	1.00	\$19.5300	\$19.53	\$2,291.61	ACCIDENT *	\$1.80	\$30.60
PTO PAY			\$0.00	\$1,620.99	INS VIS *	\$8.26	\$140.42
BEREAVEMENT			\$0.00	\$292.95	Total	\$183.32	\$3,144.04
WRKDHRS	72.93						
Total			\$1,457.82	\$28,091.74			

TAX	CURRENT	YEAR TO DATE
FEDERAL TAX	\$34.98	\$985.43
SOCIAL SECURITY	\$79.88	\$1,563.30
MEDICARE	\$18.68	\$365.61
CALIFORNIA	\$12.31	\$282.23
SDI	\$14.17	\$277.36
Total	\$160.02	\$3,473.93

	CURRENT	YEAR TO DATE
NET PAY	\$1,114.48	\$21,473.77

Statement of Earnings and Deductions.

Wal-Mart Associates, Inc., 702 S.W. 8th St., Bentonville, Arkansas 72716 ☎ 479-273-4000

Pay Period: 08/13/2022 - 08/26/2022

WIN: *****7182

Deposit Date: 09-01-2022

Advice # 615881242

PAID TO

MARK J HENDRICKSON

\$1,332.54

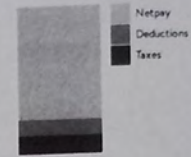
GOVERNMENT
AGENCIES FCU

SAVINGS ACCT

\$1,332.54

THIS IS NOT A REAL CHECK

CURRENT PAY OVERVIEW



08/13 - 08/26

PTO	HRS
PTO AVAILABLE	18.65
PROTPTOUSEDYT	125.00
D	
PROTECTED PTO	7.92

CATEGORY	
Pay Category	Hourly

FEDERAL TAX WITHHOLDING	
Tax Method	Head of Household
Claim Dependents	\$500.00
Additional Withholding	\$0.00

STATE TAX WITHHOLDING	
Tax Method	Head of Household
Exemptions	0
Additional Withholding	\$0.00

EARNINGS	HOURS	RATE	CURRENT	YEAR TO DATE	DEDUCTIONS	CURRENT	YEAR TO DATE
REGULAR EARNING	40.00	\$19.5300	\$781.20	\$21,550.98	INS LTD	\$16.57	\$283.42
OVERTIME EARN	0.86	\$29.2950	\$25.19	\$846.33	INS MED U *	\$125.20	\$2,249.80
COVID-19 PAY			\$0.00	\$1,848.03	INS DEN U *	\$33.90	\$610.20
REPORTING PAY			\$0.00	\$447.24	INS AD&D U *	\$0.31	\$5.58
PROT PTO USED	8.00	\$19.5300	\$156.24	\$2,447.85	ACCIDENT *	\$1.80	\$32.40
PTO PAY	40.00	\$19.5300	\$781.20	\$2,402.19	INS VIS *	\$8.26	\$148.68
BEREAVEMENT			\$0.00	\$292.95	Total	\$186.04	\$3,330.08
WRKDHRS	40.86						
Total			\$1,743.83	\$29,835.57			

TAX	CURRENT	YEAR TO DATE
FEDERAL TAX	\$68.88	\$1,054.31
SOCIAL SECURITY	\$97.61	\$1,660.91
MEDICARE	\$22.83	\$388.44
CALIFORNIA	\$18.61	\$300.84
SDI	\$17.32	\$294.68
Total	\$225.25	\$3,699.18

	CURRENT	YEAR TO DATE
NET PAY	\$1,332.54	\$22,806.31

Statement of Earnings and Deductions.

Wal-Mart Associates, Inc., 702 S.W. 8th St., Bentonville, Arkansas 72716 ☎ 479-273-4000

Pay Period: 08/27/2022 - 09/09/2022

WIN: *****7182

Deposit Date: 09-15-2022

Advice # 617389991

PAID TO

MARK J HENDRICKSON

\$1,229.40

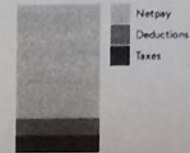
GOVERNMENT
AGENCIES FCU

SAVINGS ACCT

\$1,229.40

THIS IS NOT A REAL CHECK

CURRENT PAY OVERVIEW



08/27 - 09/09

PTO	HRS
PTO AVAILABLE	17.63
PROPTOUSEDYTD	127.00
PROTECTED PTO	11.90

CATEGORY	
Pay Category	Hourly

FEDERAL TAX WITHHOLDING

Tax Method	Head of Household
Claim Dependents	\$500.00
Additional Withholding	\$0.00

STATE TAX WITHHOLDING

Tax Method	Head of Household
Exemptions	0
Additional Withholding	\$0.00

EARNINGS	HOURS	RATE	CURRENT	YEAR TO DATE	DEDUCTIONS	CURRENT	YEAR TO DATE
REGULAR EARNING	71.79	\$19.5300	\$1,402.06	\$22,953.04	INS LTD	\$15.28	\$298.70
OVERTIME EARN	1.04	\$29.2950	\$30.47	\$876.80	INS MED U *	\$125.20	\$2,375.00
COVID-19 PAY			\$0.00	\$1,848.03	INS DEN U *	\$33.90	\$644.10
REPORTING PAY			\$0.00	\$447.24	INS AD&D U *	\$0.31	\$5.89
PROT PTO USED	2.00	\$19.5300	\$39.06	\$2,486.91	ACCIDENT *	\$1.80	\$34.20
PTO PAY	7.00	\$19.5300	\$136.71	\$2,538.90	INS VIS *	\$8.26	\$156.94
BEREAVEMENT			\$0.00	\$292.95			
WRKDHRS	72.83						
Total			\$1,608.30	\$31,443.87	Total	\$184.75	\$3,514.83

TAX	CURRENT	YEAR TO DATE
FEDERAL TAX	\$52.62	\$1,106.93
SOCIAL SECURITY	\$89.21	\$1,750.12
MEDICARE	\$20.86	\$409.30
CALIFORNIA	\$15.63	\$316.47
SDI	\$15.83	\$310.51
Total	\$194.15	\$3,893.33

	CURRENT	YEAR TO DATE
NET PAY	\$1,229.40	\$24,035.71

**Redlined Amended
Complaint
Civil Local Rule 15.1.c**

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
vcordero@grahamhollis.com
Alex M. Kuner (SBN 323194)
akuner@grahamhollis.com
3555 Fifth Avenue Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

Attorneys for Plaintiff MARK HENDRICKSON
and Aggrieved Employees

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARK HENDRICKSON, individually
and on behalf of all similarly situated
and/or aggrieved employees of
Defendants in the State of California,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC.; and
DOES 1 THROUGH 50, inclusive,

Defendants.

Case No.: 3:23-cv-00110-AJB-MSB

**FOURTH~~THIRD~~ AMENDED CLASS
AND REPRESENTATIVE ACTION
COMPLAINT**

- 1. FAILURE TO PROVIDE
RECOVERY PERIODS (Labor
Code §§ 226.7, ~~Cal. Code Regs. Tit. 8
§ 3395~~);**
- ~~2. FAILURE TO MAINTAIN
ACCURATE RECORDS (Labor
Code §§ 1174, 1174.5, 1198, and the
“Records” Section of IWC Wage
Order No. 7-2001);~~**
- ~~3.2. FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (Labor Code §§ 226,
226.3, and 1198);~~**
- ~~4.3. VIOLATION OF CALIFORNIA’S
UNFAIR COMPETITION LAW
(Bus. & Prof. Code §§ 17200 et seq.);
and~~**
- ~~5.4. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq.).~~**

DEMAND FOR JURY TRIAL

Plaintiff MARK HENDRICKSON, individually and on behalf of all other similarly situated and/or aggrieved employees of WAL-MART ASSOCIATES, INC., and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff MARK HENDRICKSON (“Plaintiff”) brings this individual and putative class action against Defendant WAL-MART ASSOCIATES, INC., and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.

2. Plaintiff brings this action on behalf of all current and former employees who were employed by Defendants in the State of California and who worked in any non-exempt position at Defendant’s El Centro location, located at 2150 N Waterman Avenue, El Centro, California 92243 (herein referred to as “Defendant’s El Centro location”) (hereinafter “similarly situated employees”).

3. Plaintiff also brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”) against Defendant, and DOES 1 through 50, inclusive, for engaging in wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff brings this action on behalf of all other current and former non-exempt employees of Defendants who worked at Defendant’s El Centro location, who suffered at least one of the wage and hour violations described herein from the previous one year and 65 days prior to filing the Complaint to the present. (hereinafter “aggrieved employees”).

4. Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9 (a) of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October”].

1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this complaint is extended into the past by the number of days in which this tolling was in effect.

5. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

6. –Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other similarly situated and/or aggrieved employees in California include, but are not limited to:

- a. Failure to provide compliant recovery periods;
- b. Failure to prevent heat related illnesses;
- c. Failure to maintain an adequate indoor temperature;
- d. Failure to maintain accurate records; and
- e. Failure to provide accurate itemized wage statements; and
- ~~g. Failure to timely pay all wages due during and upon separation of employment.~~

8.7. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory and civil penalties, and monetary relief on behalf of himself and all other similarly situated employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid recovery period premiums, interest, attorney’s fees, damages, liquidated damages, statutory and civil penalties, and costs pursuant to Labor Code §§ ~~201, 202, 203, 204,~~ 210, 218.5, 218.6, ~~223,~~ 225.5, 226, 226.3, 226.7, 510, ~~512,~~ 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, ~~-and~~ 1198, California Business and Professions Code § 17200, et seq., and the provisions of the applicable IWC Wage Order.

9.8. Plaintiff reserves the right to name additional representatives.

++

++

IV. PARTIES

A. Plaintiff

~~10.9.~~ Plaintiff is a current employee of Defendants, who, at all relevant times, was employed as a Customer Service Associate at Defendant's El Centro location as a non-exempt employee.

~~11.10.~~ Plaintiff is a resident of the State of California and currently resides in Imperial County.

~~12.11.~~ At all relevant times, Plaintiff and, on information and belief, other similarly situated employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

~~13.12.~~ Plaintiff is an "aggrieved employee" within the meaning of Labor Code section 2699(c) because he was employed by Defendants and suffered one or more of the violations committed by Defendants.

~~14.13.~~ Plaintiff and all other similarly situated and/or aggrieved current and former employees of Defendants are and were employees of Defendants within the meanings set forth in the Labor Code and IWC Wage Order at all times during the applicable statutory period.

~~15.14.~~ At all relevant times, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendants

~~16.15.~~ Defendant WAL-MART ASSOCIATES, INC. is a Delaware corporation with its principal place of business in Arkansas and, at all relevant times, was authorized to conduct business and did conduct business in the State of California.

~~17.16.~~ Defendants' wrongful conduct, as alleged herein, occurred in the County of Imperial, and in the State of California.

~~18.17.~~ Plaintiff is informed and believes, and thereon alleges, that each Defendant,

whether named or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of California and was Plaintiff's and other similarly situated and/or aggrieved employees' "employer" as defined in and subject to the California Labor Code and the applicable IWC Wage Order.

~~19.18.~~ Each of the fictitiously named Defendants participated in the acts alleged in this Complaint. ~~The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged in this Complaint.~~

~~20.19.~~ Plaintiff and all other similarly situated and/or aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable IWC Wage Order.

~~21.20.~~ Plaintiff is informed and believes that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

~~22.21.~~ Plaintiff is informed and believes that at all relevant times, each Defendant, whether named or fictitious, exercised control over Plaintiff's and other similarly situated and/or aggrieved employees' wages, hours and/or working conditions.

~~23.22.~~ Plaintiff is further informed and believes that at all relevant times, each Defendant, whether named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

~~24.23.~~ Each Defendant, whether named or fictitious, was the alter ego of each of the

1 other Defendants at all relevant times herein.

2 ~~25.24.~~ A unity of interest and ownership between each Defendant, whether named or
3 fictitious, exists such that all Defendants acted as a single employer of Plaintiff and all
4 other similarly situated employees.

5 ~~26.25.~~ Defendants, including DOES 1 THROUGH 50, were Plaintiff's employers or
6 persons acting on behalf of Plaintiff's employer, within the meaning of California Labor
7 Code section 558.1 and, as such, are liable as the employer for violations of Labor Code
8 sections ~~203,~~ 226, 226.7, 1193.6, or 1194, at all relevant times.

9 ~~27.26.~~ Defendants, including DOES 1 THROUGH 50, were Plaintiff's employers or
10 persons acting on behalf of Plaintiff's employer either individually or as an officer, agent,
11 or employee of another person, within the meaning of California Labor Code sections 558
12 and 1197.1, and as such, are subject to civil penalties for each underpaid employee.

13 **V.III. GENERAL ALLEGATIONS**

14 ~~28.27.~~ Plaintiff MARK HENDRICKSON is a current employee of Defendants who
15 worked in a non-exempt position as a customer service associate at all times during his
16 employment from approximately 1997 to the present.

17 ~~29.28.~~ Plaintiff was paid at an hourly rate of \$19.53 per hour.

18 ~~30.29.~~ At all times, Defendants controlled Plaintiff's worked hours and days worked.
19 Defendants typically scheduled Plaintiff to work approximately four shifts per workweek,
20 approximately ten hours per workday. At many times, Plaintiff worked more than eight
21 hours per workday. Plaintiff has worked both inside and outside during his employment
22 with Defendants.

23 ~~31.30.~~ On information and belief, Plaintiff and other similarly situated employees of
24 Defendants were subject to the same policies, practices, and procedures governing the
25 control and payment of wages and hours worked and were denied specific rights afforded
26 to them under the California Labor Code and applicable IWC Wage Order.

27 ~~32.31.~~ Plaintiff regularly works outdoors for Defendants in the Outdoor Garden
28 Area, and works outside in the parking lot and around the store building to retrieve

1 shopping carts.

2 ~~33.32~~. Some days Plaintiff spends his entire shift working outdoors, and may be
3 outside for nearly eight to ten hours a day. Other days Plaintiff spends up to half his shift
4 working outdoors, or at a minimum spends several hours working outdoors with the
5 remainder of his shift taking place indoors.

6 ~~34.33~~. Temperatures in the Outdoor Garden Area and outside the store often exceed
7 100 degrees Fahrenheit when Plaintiff and other similarly situated /or aggrieved employees
8 worked outdoors. The temperature outdoors can approach 120 degrees Fahrenheit during
9 the hottest summer months.

10 ~~35.34~~. Despite these extreme temperatures, however, Plaintiff and, on information
11 and belief, other similarly situated and/or aggrieved employees were not provided with
12 recovery periods, adequate shade, or cold water when they worked outdoors.

13 ~~36.35~~. Defendants had and have a pattern and practice of not providing Plaintiff and,
14 on information and belief, other similarly situated and/or aggrieved employees with legally
15 compliant recovery periods, even though Plaintiff and, on information and belief, other
16 similarly situated and/or aggrieved employees were subjected to excessive heat and/or
17 humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit.

18 ~~37.36~~. Defendants did not and do not provide Plaintiff and, on information and belief,
19 other similarly situated and/or aggrieved employees with off-duty access to adequate shade
20 or water when the outdoor temperature exceeds 80 degrees Fahrenheit.

21 ~~38.37~~. Defendants failed and fail to provide Plaintiff and, on information and belief
22 other similarly situated and/or aggrieved employees with compliant recovery periods and
23 Defendants did not provide them off-duty access to shade when the outdoor temperature at
24 the store exceeded 80 degrees Fahrenheit.

25 ~~39.38~~. Defendants never allowed or encouraged Plaintiff and, on information and
26 belief, other similarly situated and/or aggrieved employees to take a preventative cool-
27 down recovery period in the shade when the employees felt the need to do so to protect
28 themselves from overheating. Defendants never encouraged Plaintiff and, on information

1 and belief, other similarly situated and/or aggrieved employees, to remain in the shade.

2 ~~40.39~~. Defendants never informed Plaintiff and, on information and belief, other
3 similarly situated and/or aggrieved employees that they were permitted to take such
4 recovery periods at any time as necessary.

5 ~~41.40~~. Defendants never informed Plaintiff and, on information and belief, other
6 similarly situated and/or aggrieved employees that such recovery periods could be taken
7 for as long as necessary and that the employees did not have to return to work from such
8 recovery periods until signs or symptoms of heat illness had abated.

9 ~~42.41~~. Defendants never monitored Plaintiff and, on information and belief, other
10 similarly situated and/or aggrieved employees who were taking a recovery period and
11 never asked such employees if he or she was experiencing symptoms of heat exhaustion.

12 ~~43.42~~. If Plaintiff and, on information and belief, other similarly situated and/or
13 aggrieved employees exhibited or reported symptoms of heat illness, Defendants never
14 offered appropriate first aid or emergency response procedures.

15 ~~44.43~~. Defendants never allowed or encouraged recovery periods to Plaintiff and, on
16 information and belief, other similarly situated and/or aggrieved employees even though
17 Plaintiff and, on information and belief, other similarly situated and/or aggrieved
18 employees felt the need to take recovery periods to protect themselves from overheating.

19 ~~45.44~~. If Plaintiff and, on information and belief, other similarly situated and/or
20 aggrieved employees did attempt to take a recovery period, they were ordered back to work
21 in fewer than five minutes, and were ordered back to work before all signs or symptoms of
22 heat illness had abated.

23 ~~46.45~~. Due to the excessive heat that could reach up to 120 degrees Fahrenheit in the
24 summer, particularly when working in the pavement-covered parking lot to retrieve
25 shopping carts, Plaintiff routinely felt the effects of heat exhaustion.

26 ~~47.46~~. On information and belief, several other employees performing outdoor job
27 duties also suffered heat-related illnesses, some even needing to be transported away from
28 the store in an ambulance.

1 48.47. Due to the effects of working in excessive heat, Plaintiff and, on information
2 and belief, other similarly situated and/or aggrieved employees often felt the need to take
3 a recovery period to protect themselves from overheating.

4 49.48. When Plaintiff and, on information and belief, other similarly situated and/or
5 aggrieved employees attempted to take a recovery period, they were not (a) monitored and
6 asked if they were experiencing symptoms of heat illness, (b) encouraged to remain in the
7 shade, and (c) allowed to remain in the shade until all signs or symptoms of heat illness
8 had abated and in no event less than five minutes, in direct contravention to Defendants'
9 obligations under California law.

10 50.49. Instead, when Plaintiff and, on information and belief, other similarly situated
11 and/or aggrieved employees did try to take a recovery period, they were discouraged from
12 taking such breaks as needed and were instructed by their managers to go back outside and
13 return to work.

14 51.50. Defendants have a pattern and practice of requiring Plaintiff and, on
15 information and belief, other similarly situated and/or aggrieved employees to always
16 remain on duty during their shifts so that they can always be available to assist customers
17 and to be as productive as possible. Plaintiff and, on information and belief, other similarly
18 situated and/or aggrieved employees only receive meal and rest breaks, but would be told
19 to get back to work if they were seen taking a recovery period to get out of the heat.

20 52.51. For example, on August 2, 2022, Plaintiff worked from approximately 1:54
21 p.m. to 11:09 p.m. On this day, the temperature was over 100 degrees Fahrenheit when
22 Plaintiff started his shift, and the lowest temperature was approximately 88 degrees
23 Fahrenheit when Plaintiff's shift ended. However, on this day, Plaintiff was not authorized
24 and did not receive a recovery period in a shaded area while he was working outside, and
25 was not paid a recovery period premium, which was not reflected on his wage statement,
26 resulting in an inaccurate wage statement for this pay period.¹

27
28 ¹ Attached hereto as **Exhibit B** are Plaintiff's wage statements for the month of August

1 ~~53.52.~~ On August 3, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:00
2 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
3 his shift, and the lowest temperature was approximately 90 degrees Fahrenheit when
4 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
5 receive a recovery period in a shaded area while he was working outside, and was not paid
6 a recovery period premium, which was not reflected on his wage statement, resulting in an
7 inaccurate wage statement for this pay period.

8 ~~54.53.~~ On August 5, 2022, Plaintiff worked from approximately 1:55 p.m. to 11:05
9 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
10 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
11 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
12 receive a recovery period in a shaded area while he was working outside, and was not paid
13 a recovery period premium, which was not reflected on his wage statement, resulting in an
14 inaccurate wage statement for this pay period.

15 ~~55.54.~~ On August 6, 2022, Plaintiff worked from approximately 1:55 p.m. to 10:23
16 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
17 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
18 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
19 receive a recovery period in a shaded area while he was working outside, and was not paid
20 a recovery period premium, which was not reflected on his wage statement, resulting in an
21 inaccurate wage statement for this pay period.

22 ~~56.55.~~ On August 9, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:01
23 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
24 his shift, and the lowest temperature was approximately 86 degrees Fahrenheit when
25 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
26

27 _____
28 2022 indicating that he was never paid a recovery period premium wage for any of the
dates he worked, including those addressed in paragraphs 51 through 64 of this complaint.

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 ~~57.56.~~ On August 10, 2022, Plaintiff worked from approximately 1:57 p.m. to 11:00
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 ~~58.57.~~ On August 11, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:01
12 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
13 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
14 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
15 receive a recovery period in a shaded area while he was working outside, and was not paid
16 a recovery period premium, which was not reflected on his wage statement, resulting in an
17 inaccurate wage statement for this pay period.

18 ~~59.58.~~ On August 13, 2022, Plaintiff worked from approximately 1:55 p.m. to 11:05
19 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
20 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
21 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
22 receive a recovery period in a shaded area while he was working outside, and was not paid
23 a recovery period premium, which was not reflected on his wage statement, resulting in an
24 inaccurate wage statement for this pay period.

25 ~~60.59.~~ On August 16, 2022, Plaintiff worked from approximately 1:56 p.m. to 11:01
26 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
27 his shift, and the lowest temperature was approximately 95 degrees Fahrenheit when
28 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not

1 receive a recovery period in a shaded area while he was working outside, and was not paid
2 a recovery period premium, which was not reflected on his wage statement, resulting in an
3 inaccurate wage statement for this pay period.

4 ~~61.60.~~ On August 17, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:05
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 ~~62.61.~~ On August 18, 2022, Plaintiff worked from approximately 1:59 p.m. to 11:02
12 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
13 his shift, and the lowest temperature was approximately 93 degrees Fahrenheit when
14 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
15 receive a recovery period in a shaded area while he was working outside, and was not paid
16 a recovery period premium, which was not reflected on his wage statement, resulting in an
17 inaccurate wage statement for this pay period.

18 ~~63.62.~~ On August 19, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:00
19 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
20 his shift, and the lowest temperature was approximately 91 degrees Fahrenheit when
21 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
22 receive a recovery period in a shaded area while he was working outside, and was not paid
23 a recovery period premium, which was not reflected on his wage statement, resulting in an
24 inaccurate wage statement for this pay period.

25 ~~64.63.~~ On August 30, 2022, Plaintiff worked from 1:56 p.m. to 11:02 p.m. On this
26 day, the temperature was over 100 degrees Fahrenheit when Plaintiff started his shift, and
27 the lowest temperature was approximately 92 degrees Fahrenheit when Plaintiff's shift
28 ended. However, on this day, Plaintiff was not authorized and did not receive a recovery

1 period in a shaded area while he was working outside, and was not paid a recovery period
2 premium, which was not reflected on his wage statement, resulting in an inaccurate wage
3 statement for this pay period.

4 ~~65.64.~~ On August 31, 2022, Plaintiff worked from approximately 1:58 p.m. to 11:02
5 p.m. On this day, the temperature was over 100 degrees Fahrenheit when Plaintiff started
6 his shift, and the lowest temperature was approximately 97 degrees Fahrenheit when
7 Plaintiff's shift ended. However, on this day, Plaintiff was not authorized and did not
8 receive a recovery period in a shaded area while he was working outside, and was not paid
9 a recovery period premium, which was not reflected on his wage statement, resulting in an
10 inaccurate wage statement for this pay period.

11 ~~66.65.~~ On each of the above days, Plaintiff felt discouraged from taking a heat
12 recovery period, even though he felt the need to do so. When Plaintiff exhibited symptoms
13 of heat illness, he was not monitored by management or asked about his symptoms. When
14 Plaintiff did try to take a recovery period, he was not encouraged to remain in the shade
15 until his symptoms abated, nor was he informed of his right to do so. When Plaintiff did
16 try to take a recovery period, he was ordered to get back to work before all symptoms had
17 abated, and before even five minutes had passed.

18 ~~67.66.~~ During this time period and during these shifts, Plaintiff had to provide his
19 own access to cold water and was in fact refused water by Defendant when we had asked
20 for water for himself and other employees. In fact, Plaintiff and, on information and belief,
21 other similarly situated and/or aggrieved employees had to purchase their own water.

22 ~~68.67.~~ Even on the occasions water was provided, Plaintiff and other similarly
23 situated and/or aggrieved employees had to provide their own ice to make cold water.
24 Defendants therefore failed to comply with their obligations under California law by failing
25 to provide potable drinking water that was fresh, pure, suitably cool, and free of charge.

26 ~~69.68.~~ Even if Plaintiff and, on information and belief, other similarly situated and/or
27 aggrieved employees had been allowed and encouraged to take recovery periods as needed,
28 Defendants did not provide for adequate shaded areas. The purpose of shade, per the

relevant California law, is to allow the body to cool. Shade is not adequate when heat in the area of shade defeats the purpose of the shade. The temperature indoors at Defendants' El Centro location was frequently just as hot or even hotter than the temperature outdoors due to the lack of a functioning air conditioning or cooling system indoors, including the lack of functioning fans in the Outdoor Garden Area, thus defeating the purpose of the shade and failing to comply with California law.

70.69. Although Defendants failed to provide Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees with compliant recovery periods, Defendants never paid Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees, an additional hour of pay. (See, e.g., **Exhibit B.**)

71.70. Pursuant to Defendants' policies and procedures, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees of Defendants were denied the opportunity to take legally compliant recovery periods with reasonable comfort, in violation of the applicable Wage Order.

72.71. Although Plaintiff and, on information and belief, other similarly situated employees worked in excessive temperatures, Defendants did not compensate Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees an additional hour of pay at their regular rate of pay when Plaintiff and other similarly situated employees were not provided with compliant recovery periods. On information and belief, Defendant never paid Plaintiff or any other non-exempt employee a recovery period premium wage pursuant to Labor Code § 226.7 despite being aware of its requirement to do so.

73.72. On days when Plaintiff spent part of his shift working indoors, Defendants also failed to maintain the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of the IWC Wage Order.

74.73. For instance, on August 16, 2022, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations

1 Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort
2 and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-
3 2001, section 15(A).

4 ~~75.74.~~ As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m. on
5 September 1, 2022, during which he spent a portion of his shift working indoors. The
6 indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit,
7 approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions
8 failed to provide for reasonable comfort and far exceeded the industry standards, resulting
9 in a violation of IWC Wage Order 7-2001, section 15(A).

10 ~~76.~~ Plaintiff had access to thermometers which he placed in various locations
11 throughout the store, including in the locations he was stationed to work, and could note
12 the temperatures in his area of work during each shift.

13 ~~77.~~ During the winter months, Defendants also failed to maintain the temperature
14 in toilet rooms, resting rooms, and change rooms during hours of use to no less than 68
15 degrees Fahrenheit, in violation of Section 15(C) of the Wage Order.

16 ~~78.~~ During the winter of 2022-2023, the temperatures in El Centro reached as low as 42
17 degrees Fahrenheit. However, during these months, Defendants fail to maintain air
18 conditioning and heating units, which resulted in indoor temperatures, including those in
19 the toilet rooms, resting rooms, and change rooms being less than 68 degrees Fahrenheit,
20 in violation of Section 15(C) of the Wage Order.

21 ~~79.75.~~ During this time period, employees and customers have routinely complained
22 about the indoor temperatures and these areas being too cold. However, Defendants have
23 failed to make any corrections to address these low temperatures.

24 ~~80.~~ For example, on January 29, 2023, the high temperature for the day was 66
25 degrees Fahrenheit and low temperature was 37 degrees Fahrenheit. Thus, as a result of
26 Defendants not having heating units, the indoor temperature, including those in the toilet
27 rooms, resting rooms, and change rooms was less than 68 degrees Fahrenheit.

28 ~~81.~~ On January 30, 2023, the high temperature for the day was 55 degrees

~~Fahrenheit and low temperature was 46 degrees Fahrenheit. Thus, as a result of Defendants not having heating units, the indoor temperature, including those in the toilet rooms, resting rooms, and change rooms was less than 68 degrees Fahrenheit.~~

~~82. On January 31, 2023, the high temperature for the day was 59 degrees Fahrenheit and low temperature was 48 degrees Fahrenheit. Thus, as a result of Defendants not having heating units, the indoor temperature, including those in the toilet rooms, resting rooms, and change rooms was less than 68 degrees Fahrenheit.~~

~~83. On February 1, 2023, the high temperature for the day was 66 degrees Fahrenheit and low temperature was 45 degrees Fahrenheit. Thus, as a result of Defendants not having heating units, the indoor temperature, including those in the toilet rooms, resting rooms, and change rooms was less than 68 degrees Fahrenheit.~~

84.76. Defendants similarly had a pattern and practice of failing to maintain industry standards by providing functioning Air Conditioning systems inside its store. For example, Plaintiff and, on information and belief, other similar situated and/or aggrieved employees submitted complaints to OSHA based on the temperatures inside the store. Based on information and belief, OSHA has notified Defendants that corrections are needed, yet Defendants have and continue to fail to provide recovery periods, cold water, and fix its air condition system.

85.77. -Since May 2022, the temperature inside the store regularly has reached over 80 degrees. The average temperature inside the El Centro location in August 2022 reached up to 106 degrees. The excessive temperatures inside the store are in violation of the standard conditions of labor regarding the temperature maintained in a workplace as fixed by Section 15 of the Wage Order. The employment of any employee under such conditions is unlawful pursuant to Labor Code section 1198.

86.78. These problems have persisted through 2023 and 2024 despite Plaintiff's Complaint being filed in December 2022. Excessive heat warnings have continued to be issued in El Centro. -Yet, Defendants have failed to fix its air conditioning units inside the store.

1 87.79. For example, the temperature on July 2, 2023, reached 114 degrees Fahrenheit
2 at its peak, and despite this, Defendants have continued to fail to have a functioning AC
3 Unit in the store. Even at night on 9 p.m. on July 2, 2023, the temperature was over 82
4 degrees Fahrenheit inside the store at the Customer Service Center.

5 88.80. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information
6 and belief, other similarly situated and/or aggrieved employees dealt with heat related
7 illnesses, with four employees losing consciousness at work due to the heat. Some
8 employees have been transported out of Defendants' store in an ambulance due to the heat.
9 Further, Plaintiff has suffered heat related illnesses almost every day as a result of the
10 excessive temperatures and being told to get back to work when he would try to take a
11 recovery period.

12 89.81. As a direct result of Defendants' failure to pay Plaintiff and other similarly
13 situated and aggrieved employees all recovery period premiums owed, Defendants failed
14 to maintain payroll records showing the wages paid to Plaintiff and other similarly situated
15 and aggrieved employees. The records maintained by Defendants for Plaintiff and other
16 similarly situated and aggrieved employees are incomplete and inaccurate and fail to
17 comply with the requirements of Labor Code § 1174(d) and the Records section of the
18 applicable IWC Wage Order.

19 90.82. Defendants also intentionally and knowingly failed to provide Plaintiff and
20 other similarly situated and aggrieved employees with accurate itemized wage statements
21 as required by Labor Code § 226 and the Records section of the applicable IWC Wage
22 Order, as Plaintiff and other similarly situated and aggrieved employees were not properly
23 compensated all recovery period premiums owed due to Defendants' failure to provide
24 recovery periods and pay recovery period premiums.

25 91.83. As a result of the foregoing, the wage statements issued by Defendants did not
26 include the correct amount of gross and net wages earned, and all applicable hourly rates,
27 as required under Labor Code § 226. As a result of Defendants' failure to include the
28 correct information on the wage statements that were issued, Plaintiff and other similarly

1 situated and aggrieved employees were unable to promptly and easily determine from their
2 wage statement alone the correct amount of the total hours worked, and the gross and net
3 wages earned and owed during the pay period.

4 ~~92.84.~~ Specifically, Plaintiff made an employment records request to Defendant on
5 August 17, 2022. In response, Defendant produced Plaintiff's time and payroll records on
6 or around September 9, 2022. The payroll records produced showed that Defendant never
7 paid Plaintiff a recovery period premium, including, but not limited to August 2, 3, 5, 6, 9,
8 10, 11, 13, 16, 17, 18, 19, 30, and 31, when Plaintiff was never authorized or allowed to
9 take a recovery period, and was therefore owed a recovery period premium.

10 ~~93.— Defendants maintained a pattern and practice of failing to timely pay~~
11 ~~aggrieved employees' all wages due and owing, as required by Labor Code §§ 201 and 202~~
12 ~~upon separation of their employment. Defendants failed to pay aggrieved employees' all~~
13 ~~wages due and owing at the time of separation of their employment because Defendants~~
14 ~~willfully failed to pay aggrieved employees all recovery period premiums owed upon their~~
15 ~~separation of employment. Further, Defendants have failed to pay aggrieved employees~~
16 ~~waiting time penalties, in violation of the Labor Code.~~

17 ~~94.85.~~ To this date, Defendants have not paid Plaintiff and, on information and belief,
18 other similarly situated and/or aggrieved employees all wages owed, including all recovery
19 premium wages.

20 ~~95.— Plaintiff is informed and believes that Defendants maintained a pattern and~~
21 ~~practice of failing to pay Plaintiff and other similarly situated employees all wages due and~~
22 ~~owing during their employment within the time specified by Labor Code § 204 because~~
23 ~~Defendants failed to pay Plaintiff and all aggrieved employees all recovery period premium~~
24 ~~wages.~~

25 ~~96.86.~~ Based on the foregoing violations of the Labor Code and IWC Wage Order,
26 Defendants engaged in unfair business practices in California and willingly and knowingly
27 engaged in employment patterns and practices that violated Business & Professions Code
28 § 17200 *et seq.*, and Plaintiff and, on information and belief, other similarly situated

employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent actions.

VI.IV. CLASS ACTION DESIGNATION

97.87. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

98.88. Plaintiff brings Causes of Action One through ~~Three~~**Four** as a Class Action pursuant to California Code of Civil Procedure § 382 or, in the alternative, FRCP Rule No. 23, on behalf of himself and all current and former employees of Defendants in California and who worked in any non-exempt position at Defendant's El Centro location and who were affected by Defendants' Labor Code, and IWC Wage Order violations, as alleged herein.

99.89. Plaintiff seeks to represent the following Classes and Subclass, which are defined as:

The Non-Exempt Class:

"All current and former employees of Defendant WAL-MART ASSOCIATES, INC. in the State of California who worked in any non-exempt position at Defendant's El Centro location since four (4) years prior to the filing of this action to the present, plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19, through the present, and worked at least one shift when the outdoor temperature was at or exceeded 80 degrees Fahrenheit."

The UCL Subclass:

"All members of the Non-Exempt Class who worked for Defendant in the State of California at any time between June 19, 2018, to June 19, 2019."

1 ~~100.90.~~ **Reservation of Rights:** Plaintiff reserves the right to amend or modify
 2 the class definitions with greater specificity, by further division into subclasses, and/or
 3 limitation to particular issues.

4 ~~101.91.~~ Causes of Action One through ~~Three~~Five are appropriately suited for a
 5 class action pursuant to § 382 of the Code of Civil Procedure, or, in the alternative, FRCP
 6 Rule 23 because the following requirements are met:

7 **A. Numerosity**

8 ~~102.92.~~ -The members of the Class and Subclass are sufficiently numerous to
 9 render the joinder of all their members impracticable. -While Plaintiff has not yet
 10 determined the precise number of members of the Class and Subclass, Plaintiff is informed
 11 and believes that the Class and Subclass likely consists of over 200 individuals. -Although
 12 the exact number is currently unknown to Plaintiff, this information is easily ascertainable
 13 from Defendants' time and payroll records and other personnel records.

14 **B. Commonality and Predominance**

15 ~~103.93.~~ Common questions of law and fact exist as to all class members and
 16 predominate over any questions affecting only individual members of the Class or
 17 Subclass. -The common questions of law and fact that predominate include, but are not
 18 limited to:

- 19 a. Whether Defendants failed to authorize and permit Non-Exempt Class
 20 members and UCL Subclass members to take recovery periods or
 21 provide access to adequate shade and/or water during the recovery
 22 periods;
- 23 b. Whether Defendants failed to prevent heat related illnesses;
- 24 c. Whether Defendants' improper practice of failing to provide recovery
 25 periods results in Non-Exempt Class members and UCL Subclass
 26 members suffering heat related illnesses;
- 27 d. Whether Defendants failed to pay one additional hour of pay at the
 28 employees' regular rate of compensation to Non-Exempt Class

members and UCL Subclass members when they were not provided with compliant recovery periods;

~~e. Whether Defendants failed to pay Non-Exempt Class members recovery period premium wages owed;~~

~~f.e.~~ Whether Defendants failed to properly and accurately record and maintain records of all recovery period premiums owed to Non-Exempt Class members and UCL Subclass members; and

~~g.f.~~ Whether Defendants failed to provide Non-Exempt Class members and UCL Subclass members with accurate itemized wage statements showing, among other things, the recovery period premiums owed.

C. Typicality

~~104.94.~~ Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. -Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

~~105.95.~~ Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. -Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

~~106.96.~~ Plaintiff has no fundamental conflict of interest with the Class or Subclass he seeks to represent. -Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and putative class members.

~~107.97.~~ Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

~~108.98.~~ Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. -Individual joinder of all class members is not practicable. -Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

~~109.99.~~ Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

~~VII.V.~~ THE PAGA REPRESENTATIVE ACTION DESIGNATION

~~110.100.~~ Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

~~111.101.~~ The ~~Fourth~~~~Fifth~~ Cause of Action alleged herein is appropriately suited for a PAGA action because:

a. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and all other current or former employees pursuant to the procedures specified in section 2699;

b. This action involves allegations of violations of provisions of the Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

c. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and had one or more of the alleged violations committed against him;

d. On August 19, 2022, Plaintiff satisfied the procedural requirements of Labor Code § 2699.3 by serving the LWDA electronically and Defendant WAL-MART

ASSOCIATES, INC. via Certified Mail with his notice for wage and hour violations and penalties, including the facts and theories to support each violation. A true and correct copy of Plaintiff's notice and proof of service is attached as **Exhibit A**:

e. More than 65 days have passed since Plaintiff served notice via Certified Mail to the LWDA and his employers. Therefore, Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant to Labor Code sections 2698–99.5.

f. Plaintiff filed this action pursuant to Labor Code sections 2699(a), (f), on behalf of himself and all other aggrieved employees of Defendants to recover civil penalties.

g. Defendants were Plaintiffs' employers or persons acting on behalf of Plaintiffs' employer, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties, as set forth in Labor Code section 558, at all relevant times.

h. Defendants were Plaintiff's employers or persons acting on behalf of Plaintiff's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties.

~~VIII.VI.~~ CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE RECOVERY PERIODS

(Violation of Labor Code § 226.7, ~~6720, and of California Code of Regulations, Title 8, § 3395~~)

(Alleged by Plaintiff Individually and on Behalf of the Non-Exempt Class Against All Defendants)

1 ~~112.102.~~ Plaintiff re-alleges and incorporates by reference the allegations
2 contained in the paragraphs above, as though fully set forth herein.

3 ~~113.103.~~ Labor Code § 226.7(a) states that, “‘recovery period’ means a
4 cooldown period afforded an employee to prevent heat illness.”

5 ~~114.104.~~ Labor Code § 226.7(b) states that, “[a]n employer shall not require an
6 employee to work during a . . . recovery period mandated pursuant to an applicable statute,
7 or applicable regulation, standard, or order of the Industrial Welfare Commission, the
8 Occupational and Health Standards Board, or the Division of Occupational Safety and
9 Health.”

10 ~~105.~~ California Code of Regulations, Title 8, Section 3395, while not providing a
11 private right of action in and of itself, is “an applicable statute, or applicable regulation,
12 standard, or order of the...Occupational and Health Standards Board, or the Division of
13 Occupational Safety” which mandates certain requirements that a recovery period under
14 Labor Code section 226.7 must meet.

15 ~~115.106.~~ California Code of Regulations, Title 8, Section 3395(d)(3) provides:

16 Employees shall be allowed and encouraged to take a
17 preventative cool-down rest in the shade when they feel the need
18 to do so to protect themselves from overheating. Such access to
19 shade shall be permitted at all times. An individual employee
20 who takes a preventative cool-down rest (A) shall be monitored
21 and asked if he or she is experiencing symptoms of heat illness;
22 (B) shall be encouraged to remain in the shade; and (C) shall not
23 be ordered back to work until any signs or symptoms of heat
24 illness have abated, but in no event less than 5 minutes in
25 addition to the time needed to access the shade.

26 ~~117.107.~~ California Code of Regulations, Title 8, Section 3395(d)(1) provides:

27 Shade shall be present when the temperature exceeds 80 degrees
28 Fahrenheit. When the outdoor temperature in the work area
exceeds 80 degrees Fahrenheit, the employer shall have and
maintain one or more areas with shade at all times while
employees are present that are either open to the air or provided
with ventilation or cooling . . . The shade shall be located as close

as practicable to the areas where the employees are working.

~~119.108.~~ The Code of Regulations further states, in Section 3395(b), that “[s]hade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool.”

~~120.109.~~ Code of Regulations, Title 8, Section 3395(c) states that “employees shall have access to potable drinking water,” which means that the water must be “fresh, pure, suitably cool, and provided to employees free of charge.” Section 3395(c) goes on to state that “[t]he frequent drinking of water...shall be encouraged.”

~~121.110.~~ California Code of Regulations, Title 8, Section 3395(i) provides that “[t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.”

~~122.111.~~ Defendants failed to make a heat illness prevention plan available at the worksite to Plaintiff, and on information and belief, to the Non-Exempt Class. Even if Defendants had a heat illness prevention plan, it was never explained to Plaintiff or, on information and belief, the Non-Exempt Class. Nor was it explained to Plaintiff and, on information and belief, the Non-Exempt Class that they were allowed to take recovery periods in addition to their rest periods, that they could take recovery periods at any time as needed, and that they could take recovery periods for as long as necessary until all symptoms of heat illness abated.

~~123.112.~~ Plaintiff and, on information and belief, the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of recovery periods.

~~124.113.~~ On information and belief, Defendants have a pattern and practice of requiring Plaintiff and the Non-Exempt Class to remain on duty at all times, and of not providing them with compliant recovery periods when the outdoor temperature in the work

1 area exceeded 80 degrees Fahrenheit.

2 ~~125.114.~~ Pursuant to the Code of Regulations, Title 8, Section 3395, employees
3 must be allowed and encouraged to take recovery periods in suitable shade as needed to
4 protect themselves from overheating. Defendants neither allowed for nor encouraged such
5 recovery periods.

6 ~~126.115.~~ Plaintiff and, on information and belief, the Non-Exempt Class felt
7 discouraged from taking recovery periods.

8 ~~127.116.~~ For instance, Plaintiff regularly worked outdoors in temperatures that
9 could reach up to 120 degrees Fahrenheit during the summer months. Plaintiff sometimes
10 spent his entire shift working outdoors. As a result of working outdoors in excessive heat,
11 Plaintiff would often feel symptoms of heat-related illness including, but not limited to,
12 lightheadedness and shortness of breath, and would attempt to take a recovery period either
13 in the shade or inside the store. Plaintiff's managers, however, would instruct Plaintiff to
14 go back outside and get back to work if they saw him trying to take a recovery period,
15 without monitoring or asking about his symptoms and without ensuring that his symptoms
16 had abated.

17 ~~128.117.~~ Although Plaintiff and, on information and belief, the Non-Exempt
18 Class were provided their regular rest periods as required under California law, they were
19 not allowed or encouraged to take heat illness prevention recovery periods at any time as
20 needed, for as long as necessary until their heat illness symptoms abated.

21 ~~118.~~ Plaintiff's managers and/or supervisors, instead of encouraging employees to
22 take preventative cool-down recovery periods, would order employees back to work if the
23 employee was taking a recovery period.

24 ~~129.119.~~ Therefore, Plaintiff's and, on information and belief, the Non-Exempt
25 Class's employer required them to work during a recovery period mandated by the
26 applicable statute, regulation, standard or order of the Occupation Safety and Health
27 Standards Board or the Division of Occupational Safety and Health – i.e., Code of
28 Regulations, Title 8, Section 3395 – and in doing so therefore violated Labor Code section

1 226.7(b).

2 ~~130.120.~~ Plaintiff's managers and/or supervisors were aware of the presence of
3 excessive heat both indoors and outdoors, were aware that Plaintiff would spend up to his
4 entire shift working outdoors, were aware that Plaintiff and, on information and belief,
5 other members of the Non-Exempt Class were not provided with potable drinking water,
6 were aware that several employees have suffered heat related illnesses included fainting
7 and needing to be transported to the hospital, and were aware that Plaintiff and, on
8 information and belief, other members of the Non-Exempt Class would feel the need to
9 take and actually attempt to take recovery periods when needed.

10 ~~131.121.~~ Despite the knowledge of all the above facts, the managers and/or
11 supervisors at Defendants' El Centro location failed to comply with their affirmative
12 obligation to allow and encourage recovery periods. Plaintiff's managers and/or
13 supervisors actively discouraged taking heat recovery periods, and if they saw employees
14 taking recovery periods, they ordered the employees back to work rather than monitor their
15 symptoms and encourage them to remain in the shade on a break until the symptoms abated.

16 ~~132.122.~~ When Plaintiff and, on information and belief, other similarly situated
17 and/or aggrieved employees attempted to take a recovery period, they were not (a)
18 monitored and asked if they were experiencing symptoms of heat illness, (b) encouraged
19 to remain in the shade, and (c) allowed to remain in the shade until all signs or symptoms
20 of heat illness had abated and in no event less than five minutes, in direct contravention to
21 Defendants' obligations under Code of Regulations, Title 8, Section 3395(d)(3).

22 ~~133.123.~~ For instance, on each date identified above in paragraphs 51 through 64
23 of this complaint, Plaintiff worked outdoors in excessive heat.

24 ~~134.124.~~ On each date identified above in paragraphs 51 through 64 of this
25 complaint, Plaintiff felt symptoms of heat exhaustion and felt the need to take recovery
26 periods in addition to his regular rest periods to protect himself from overheating.

27 ~~135.125.~~ On each date identified above in paragraphs 51 through 64 of this
28 complaint, Plaintiff was not allowed to and felt discouraged from taking recovery periods

1 as needed.

2 ~~136.126.~~ When Plaintiff did attempt to take recovery periods, he was sent back
3 to work before all symptoms had abated, and without being provided a recovery period of
4 at least five minutes.

5 ~~137.127.~~ Even if Defendants had allowed recovery periods at any time as needed,
6 the conditions of the recovery period still would have been noncompliant with Code of
7 Regulations, Title 8, Section 3395. The temperature inside Defendants' El Centro location
8 was such that it would not have provided for adequate shade anyway, as the heat inside the
9 store defeated the purpose of the shade because the indoor temperature was so hot it did
10 not allow the body to cool.

11 ~~138.128.~~ Defendants further failed to comply with Code of Regulations, Title 8,
12 Section 3395(c) by failing to provide potable water that was fresh, pure, suitably cool, and
13 provided to employees free of charge. In fact, on several occasions Plaintiff and, on
14 information and belief, other members of the Non-Exempt Class had to purchase their own
15 water. On the rare occasions that water was provided, Plaintiff and, on information and
16 belief, other members of the Non-Exempt Class had to provide their own ice to make the
17 water "suitably cool."

18 ~~139.129.~~ Nor did Defendants frequently encourage the drinking of water, as
19 required by Section 3395(c).

20 ~~140.130.~~ Labor Code section 226.7(d) requires employers, including Defendants,
21 to provide to their non-exempt employees, including Plaintiff, paid recovery periods as
22 mandated by California law.

23 ~~141.131.~~ Labor Code § 226.7(c) states that "[i]f an employer fails to provide an
24 employee a . . . recovery period in accordance with a state law, including, but not limited
25 to, an applicable statute or applicable regulation, standard, or order of the Industrial
26 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division
27 of Occupational Safety and Health, the employer shall pay the employee one additional
28 hour of pay at the employee's regular rate of compensation for each work day that the . . .

1 recovery period is not provided.”

2 ~~142.132.~~ Even though Plaintiff and, on information and belief, Non-Exempt
3 Class members were not authorized and permitted to take off-duty recovery periods,
4 Defendants did not pay Plaintiff and the Non-Exempt Class appropriate recovery period
5 premium wages for each day in which Defendants did not authorize and permit Plaintiff
6 and the Non-Exempt Class to take compliant recovery periods, in violation of Labor Code
7 § 226.7 ~~and California Code of Regulations, Title 8, Section 3395(d).~~

8 ~~143.133.~~ On information and belief, Defendants have a common policy, pattern,
9 and practice of failing to compensate Plaintiff and the Non-Exempt Class with an hour of
10 pay at their regular rate of pay for the times that Plaintiff and the Non-Exempt Class were
11 not authorized to take recovery periods, in violation of Labor Code § 226.7 ~~and California~~
12 ~~Code of Regulations, Title 8, Section 3395(d).~~

13 ~~144.134.~~ Plaintiff and the Non-Exempt Class suffered and continue to suffer
14 losses related to Defendants’ failure to pay an additional hour of pay for each day a
15 recovery period was not provided and the associated use and enjoyment of compensation
16 due and owing to them as a direct result of Defendants’ Labor Code ~~and California Code~~
17 ~~of Regulations, Title 8~~ violations.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 ~~///~~

20 ~~///~~

21 ~~///~~

22 ~~///~~

23 ~~SECOND CAUSE OF ACTION~~

24 ~~FAILURE TO MAINTAIN ACCURATE RECORDS~~

25 ~~(Violation of Labor Code §§ 1174, 1174.5, 1198, and the “Records” Section of IWC~~
26 ~~Wage Order No. 7-2001)~~

27 ~~(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All~~
28 ~~Defendants)~~

1 ~~145. Plaintiff re-alleges and incorporates by reference the allegations contained in~~
2 ~~the paragraphs above, as though fully set forth herein.~~

3 ~~146. Labor Code § 1174(d) requires that employers, including Defendants,~~
4 ~~maintain accurate records showing the hours worked daily by its employees and to whom~~
5 ~~wages were paid.~~

6 ~~147. Additionally, the “Records” section of the applicable IWC Wage Order~~
7 ~~obligates the employer, including Defendants, to keep accurate information with respect to~~
8 ~~each one of their employees including, but not limited to, the recovery period premium~~
9 ~~wages owed.~~

10 ~~147. Defendants violated Labor Code §§ 1174(d) and 1198, and the applicable~~
11 ~~Wage Order when they failed to keep accurate information and records regarding each~~
12 ~~employees’ recovery period premium wages owed. Defendants did not provide Plaintiff~~
13 ~~and, on information and belief, Non-Exempt Class members any recovery period premium~~
14 ~~wages when they were not provided with compliant recovery periods.~~

15 ~~147. Pursuant to Labor Code § 1174.5, any person employing labor who willfully~~
16 ~~fails to maintain accurate and complete records required by Labor Code § 1174(d) is~~
17 ~~subject to a penalty. On information and belief, Defendants intentionally failed to maintain~~
18 ~~accurate records of the Non-Exempt Class members’ recovery period premium wages~~
19 ~~owed.~~

20 ~~147. Labor Code § 1198 states in relevant part, “The employment of any employee~~
21 ~~for longer hours than those fixed by the order or under conditions of labor prohibited by~~
22 ~~the order is unlawful.”~~

23 ~~147. The “Records” section of IWC Wage Order No. 7-2001 states that every~~
24 ~~employer shall keep accurate information with respect to each one of its employees,~~
25 ~~including time records showing when the employee begins and ends each work period,~~
26 ~~meal periods, total daily hours worked, total wages paid each payroll period, and total hours~~
27 ~~worked in the payroll period and applicable rates of pay.~~

28 ~~147. As a direct result of Defendants’ violations alleged herein, Plaintiff and Non-~~

~~Exempt Class members have suffered and continue to suffer substantial losses related to Defendants' failure to record and maintain records of recovery period premium wages owed.~~

~~147. Plaintiff, individually and on behalf of the Non-Exempt Class, seeks all available remedies for Defendants' violations including, but not limited to, penalties and costs to the extent permitted by law.~~

~~WHEREFORE, Plaintiff prays for relief as hereinafter requested.~~

SECONDT ~~THIR~~ CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226, 226.3, and 1198)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

~~148.135.~~ Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

~~149.136.~~ Labor Code § 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

~~150.137.~~ Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code § 226 per violation.

~~151.138.~~ Labor Code § 226(e)(2)(B) states, in pertinent part, "an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from

the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).”

~~152.139.~~ Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorney's fees.”

~~153.140.~~ Labor Code § 223.6 states that, “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

~~154.141.~~ Labor Code § 1198 states in relevant part, “The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

~~155.142.~~ As a result of Defendants’ conduct during the applicable statutory period, Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class members an accurate itemized wage statement with each wage payment as required by Labor Code § 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Non-Exempt Class with each wage payment an accurate wage statement showing, among other things, the recovery period premium wages owed.

~~156.143.~~ Defendants’ failure to provide accurate wage statements with this information deprived Plaintiff and members of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and

1 Plaintiff and members of the Non-Exempt Class suffered actual damages as a result.

2 ~~157.144.~~ Defendants' failure to provide accurate itemized wage statements
3 constitutes an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and
4 members of the Non-Exempt Class have suffered an injury for purposes of Labor Code §
5 226 and are entitled to recover the greater of all actual damages or the amount specified in
6 § 226 per violation.

7 ~~158.145.~~ Plaintiff and Non-Exempt Class members suffered and continue to
8 suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code
9 violations, including lost interest on such wages, and expenses and attorney's fees in
10 seeking to compel Defendants to fully perform their obligations, in an amount to be shown
11 according to proof at trial.

12 ~~159.146.~~ Plaintiff seeks to recover all available remedies including, but not
13 limited to damages, penalties, attorney's fees, costs, and injunctive relief to the fullest
14 extent permitted by law.

15 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

16 ///

17 ///

18 ///

19 ///

20 **THIRDFOURTH CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

22 (Bus. & Prof. Code §§ 17200 *et seq.*)

23 (Alleged by Plaintiff Individually and On Behalf of the UCL Subclass Against All
24 Defendants)

25 ~~160.147.~~ Plaintiff re-alleges and incorporates by reference the allegations
26 contained in the paragraphs above, as though fully set forth herein.

27 ~~161.148.~~ As codified in Business & Professions §§ 17200 *et seq.*, California's
28 Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent

business act or practice.”

~~162.149.~~ A cause of action may be brought under the UCL if a practice violates some other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code §§ 17200 *et seq.* (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 377, 383.)

~~163.150.~~ Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute “unlawful, unfair or fraudulent business act or practices,” which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper recovery periods and pay Plaintiff and the UCL SubclassNon-Exempt-Employees premium wages for failure to provide compliant recovery periods; (ii) failure to provide to adequate air conditioning, shade, and/or water; (iii) failure to maintain accurate records; and (iv) failure to provide Plaintiff and the UCL SubclassNon-Exempt-Employees with accurate itemized wage statements; ~~and (v) failure to timely pay Plaintiff and the Non-Exempt Employees of the Waiting Time Penalties Subclass all wages owed upon separation of their employment with Defendant.~~

~~164.151.~~ Defendants intentionally avoided paying Plaintiff and the UCL SubclassNon-Exempt-Class all wages and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

~~165.152.~~ Defendants lowered their costs of doing business by not maintaining industry standards and paying Plaintiff and the UCL SubclassNon-Exempt-Class an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated employees to perform work without fair compensation and benefits.

~~166.153.~~ Defendants held themselves out to Plaintiff and the UCL SubclassNon-Exempt-Class as being knowledgeable about, and adhering to, the employment laws of California at all times relevant herein. Plaintiff and the UCL SubclassNon-Exempt-Class relied on and believed in Defendants’ representation concerning Defendants’ adherence to

1 the California laws, all to their detriment.

2 ~~167.154.~~ Defendants' scheme to lower its payroll and operation costs and thus
 3 profit, by withholding money owed to the class and withholding wages, compensation and
 4 benefits, which are all the property of Plaintiff and the UCL Subclass~~Non-Exempt Class~~,
 5 in violation of the California Labor Code and the IWC Wage Orders, as alleged herein,
 6 constitutes an "unlawful, unfair or fraudulent business act or practice," under California
 7 Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair
 8 competition, Plaintiff and the UCL Subclass~~Non-Exempt Class~~ suffered injury in fact by
 9 losing money and/or property.

10 ~~168.155.~~ California's unfair competition law defines "unfair competition" to
 11 include "any unlawful...act or practice..." Bus. & Prof. Code § 17200.

12 ~~169.156.~~ California Labor Code section 1198 makes unlawful "[t]he
 13 employment of any employee...under conditions of labor prohibited by the order."

14 ~~170.157.~~ Section 15 of IWC Wage Order 7-2001 requires employers to maintain
 15 an indoor temperature in each work area of "reasonable comfort consistent with industry-
 16 wide standards."

17 ~~171.158.~~ As discussed above, on days when Plaintiff spent part of his shift
 18 working indoors, Defendants failed to maintain the indoor temperature within the range of
 19 industry standards by providing adequate air conditioning.

20 ~~172.159.~~ For instance, on August 16, 2022, Plaintiff worked a shift from 1:56
 21 p.m. to 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor
 22 temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations
 23 Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort
 24 and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-
 25 2001 section 15(A), and therefore amounting to an unlawful business practice.

26 ~~173.160.~~ As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01
 27 p.m. on September 1, 2022, during which he spent a portion of his shift working indoors.
 28 The indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit,

approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-2001 section 15(A), and therefore amounting to an unlawful business practice.

174.161. Plaintiff had access to thermometers which he placed in various locations throughout the store, including in the locations he was stationed to work, and could note the temperatures in his area of work during each shift.

175.162. Business and Professions Code § 17204, states, in relevant part, “[a]ctions for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.”

176.163. Plaintiff and the UCL Subclass~~Non-Exempt Class~~ are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that “any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204.”

177.164. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the putative classes.

178.165. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.”

166. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the UCL Subclass~~Non-Exempt Class~~ by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203 and restore all unpaid wages to Plaintiff and the UCL Subclass~~Non-Exempt Class~~.

167. Business and Professions Code § 17208 states: “Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued.” California’s UCL four-year statute of limitations “applies even if the borrowed statute has a shorter limitations statute.” *RA Medical Systems, Inc. v. PhotoMedex, Inc.*, 373 Fed. Appx. 784, 786 (9th Cir. 2010); *Blanks v. Seyfarth Shaw LLP*, 171 Cal. App. 4th 336, 364 (2009); see also *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000) (“Any action on any UCL cause of action is subject to the four-year period of limitations created by that section.”) (emphasis in original).

168. “[A]ny business act or practice that violates the Labor Code through failure to pay wages is, by definition, an unfair business practice.” *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000).

169. “[A]n action to recover wages that might be barred if brought pursuant to Labor Code section 1194 still may be pursued as a UCL action seeking restitution pursuant to section 17203 if the failure to pay constitutes a business practice.” *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000).

179:170. Plaintiff’s claim for damages for Defendant’s alleged violations of Labor Code § 226.7 for the failure to provide recovery periods is subject to a three-year statute of limitations. Plaintiff and the UCL Subclass therefore lack an adequate remedy at law for violations suffered beyond the three-year statute of limitations governing Labor Code § 226.7. Plaintiff and the UCL Subclass therefore seek restitution under the Business and Professions Code solely for the fourth year preceding the three-year statute of limitations governing the claims under Labor Code § 226.7.

180:171. Plaintiff and the UCL Subclass ~~Non-Exempt Class~~ suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

181:172. Plaintiff seeks all available remedies on behalf of himself and on behalf of the UCL Subclass ~~Non-Exempt Class~~, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All

1 such remedies are cumulative of relief available under other laws, pursuant to Business &
2 Professions Code § 17205.

3 **FOURTH~~FIFTH~~ CAUSE OF ACTION**
4 **REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA PRIVATE**
5 **ATTORNEYS GENERAL ACT OF 2004**

6 (Labor Code § 2698, et seq.)

7 (Alleged by Plaintiff Individually and On Behalf of the Aggrieved Employees Against
8 All Defendants)

9 182.173. Plaintiff re-alleges and incorporates by reference the allegations
10 contained in the paragraphs above, as though fully set forth herein.

11 183.174. Pursuant to Labor Code § 2699(a), any provision of the Labor Code
12 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
13 departments, divisions, commissions, boards, agencies or employees for violation of the
14 code may, as an alternative, be recovered through a civil action brought by an aggrieved
15 employee on behalf of himself or herself and other current or former employees pursuant
16 to the procedures specified in Labor Code § 2699.3.

17 184.175. This cause of action involves allegations of violations of Labor Code
18 §§ 201, 202, 203, 204, 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 512, 558, 558.1, 1174,
19 1174.5, 1194.2, 1198, and 6720 which, pursuant to Labor Code § 2699.5, provide for a
20 civil penalty to be assessed and collected by the LWDA or recovered through a civil action
21 brought by an aggrieved employee on behalf of himself or herself and other current or
22 former employees pursuant to the procedures specified in Labor Code § 2699.3.

23 185.176. Defendants employed Plaintiff and Plaintiff had one or more of the
24 alleged violations committed against him. Therefore, Plaintiff is an “aggrieved employee”
25 under PAGA because the alleged violator employed him and he had one or more of the
26 alleged violations committed against him. As such, Plaintiff is properly suited to represent
27 the interests of other aggrieved employees in a PAGA Representative action.

28 186.177. Labor Code § 6720 states that the Division of Occupational Safety and

1 Health shall adopt a “standard that minimizes heat-related illness and injury among
2 workers working in indoor places of employment.”

3 ~~187.178.~~ Labor Code § 6720 states that “[t]he standard shall be based on
4 environmental temperatures, work activity levels, and other factors,” and “shall take into
5 consideration heat stress and heat strain guidelines.” Cal/OSHA’s draft standard applies its
6 proposed regulations to “all indoor work areas where the temperature equals or exceeds 82
7 degrees Fahrenheit when employees are present.”

8 ~~188.179.~~ Labor Code § 1198 states:

9 The maximum hours of work and the standard conditions of labor
10 fixed by the commission shall be the maximum hours of work
11 and the standard conditions of labor for employees. The
12 employment of any employee for longer hours than those fixed
13 by the order or under conditions of labor prohibited by the order
14 is unlawful.

14 ~~189.180.~~ Section 15(A) of the IWC Wage Orders, states:

15 (A) The temperature maintained in each work area shall provide
16 reasonable comfort consistent with industry-wide standards
17 for the nature of the process and the work performed.

18 ~~(A) If excessive heat or humidity is created by the work process,~~
19 ~~the employer shall take all feasible means to reduce such~~
20 ~~excessive heat or humidity to a degree providing reasonable~~
21 ~~comfort. Where the nature of the employment requires a~~
22 ~~temperature of less than 60° F., a heated room shall be~~
23 ~~provided to which employees may retire for warmth, and~~
24 ~~such room shall be maintained at not less than 68°.~~

23 ~~(A) A temperature of not less than 68° shall be maintained in the~~
24 ~~toilet rooms, resting rooms, and change rooms during hours~~
25 ~~of use.~~

26 ~~(A) Federal and State energy guidelines shall prevail over any~~
27 ~~conflicting provision of this section.~~

28 ~~190.181.~~ While California does not currently have a Heat Illness Prevention in

Indoor Places of Employment Standard that mirrors the Heat Illness Prevention in Outdoor Places of Employment standard contained in 8 Cal. Code Regs. § 3395, the California Occupational Safety and Health Standards Board has drafted and received public comment on a proposed Indoor Heat Standard that may be added as new section 3396 to Title 8 of the California Code of Regulations in the near future. The requirements of proposed section 3396 will be triggered when the temperature in an indoor work area equals or exceeds 82 degrees Fahrenheit. Additional conditions will be required when the indoor temperature equals or exceeds 87 degrees Fahrenheit. While not yet a controlling regulation, this proposed Indoor Heat Standard offers insight into the “industry-wide standards” for tolerable temperatures in indoor places of work.

~~191.182.~~ Federal OSHA standards offer additional insight into the “industry-wide standards,” which recommend temperature control in the range of 68-76 degrees Fahrenheit for indoor workspaces and humidity control in the range of 20%-60%.

~~192.183.~~ Here, Defendants failed to provide Plaintiff and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards. Defendants failed to provide adequate air conditioning and/or cooling, and as a result, indoor temperatures during the summer months at Defendants’ location often exceeded 100 degrees when Plaintiff and other aggrieved employees worked inside.

~~193.184.~~ For instance, on August 16, 2022, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m., during which he spent a portion of his shift working indoors. The indoor temperature on August 16, 2022 was greater than 100 degrees Fahrenheit in the locations Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-2001, section 15(A).

~~194.185.~~ As another example, Plaintiff worked a shift from 1:56 p.m. to 11:01 p.m. on September 1, 2022, during which he spent a portion of his shift working indoors. The indoor temperature on September 1, 2022 was greater than 95 degrees Fahrenheit,

approaching 100 degrees, in the locations Plaintiff was stationed to work. Such conditions failed to provide for reasonable comfort and far exceeded the industry standards, resulting in a violation of IWC Wage Order 7-2001, section 15(A).

~~195.186.~~ Plaintiff had access to thermometers which he placed in various locations throughout the store, including in the locations he was stationed to work, and could note the temperatures in his area of work during each shift.

~~196.187.~~ On information and belief, Defendants have had an opportunity to cure its Labor Code violations, but has not, to date.

~~197.188.~~ Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code § 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

~~198.189.~~ Plaintiff seeks to recover civil penalties pursuant to Labor Code §§ 558, 558.1, and 1197.1, on behalf of himself and other aggrieved employees for Defendants' violations of the Labor Code, including but not limited to Defendants' violations of Labor Code §§ ~~201, 202, 204,~~ 221, ~~223,~~ 226, 226.7, 510, ~~512,~~ 558, 1174(d), 1197, 1198.

~~199.190.~~ For all provisions of the Labor Code for which a civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants, and each of them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

~~200.191.~~ Defendants violated Labor Code §§ 226.7, ~~512,~~ and 1198 by failing to provide Plaintiff and aggrieved employees lawfully compliant recovery periods and by failing to pay them recovery period premium wages for each day a recovery period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

~~201. Defendants violated Labor Code §§ 226.7 and 1198 by failing to authorize and permit Plaintiff and aggrieved employees to take recovery periods and by failing to pay them recovery period premium wages for each day a recovery period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.~~

~~202.192.~~ Defendants violated Labor Code §§ 510, 1194, and 1198, by not paying Plaintiff and other aggrieved employees all recovery period premium wages earned for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. At all relevant times, Plaintiff and, on information and belief, other aggrieved employees were not paid all recovery period premium wages when they worked under lawful conditions. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ ~~223~~, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

~~203. Under Labor Code § 225.5, Defendants, in addition to, and entirely independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding wages due Plaintiff and other aggrieved employees in violation of Labor Code § 223 as follows: (1) For an initial violation, one hundred dollars (\$100.00) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200.00) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.~~

~~204. Defendants violated Labor Code §§ 201, 202, and 1198 by not paying Plaintiff and aggrieved employees all recovery premium wages owed by the time set forth by law upon their separation of employment, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, and 1198, and \$200 for~~

~~each aggrieved employee per pay period for each subsequent violation.~~

205.193. Defendants violated Labor Code §§ ~~204 and~~ 1198 by not paying Plaintiff and aggrieved employees all recovery premium wages owed by the time set forth by law during their employment, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ ~~204, 1174(d), and~~ 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

~~206. Under Labor Code § 210(a), Defendants, in addition to, and entirely independent and apart from any other penalty, are subject to a civil penalty for failing to pay the wages of each aggrieved employee as provided in Labor Code § 204, as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each aggrieved employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each aggrieved employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.~~

207.194. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 by failing to maintain records detailing the recovery period premium wages owed, and knowingly and intentionally failing to maintain and provide Plaintiff and other aggrieved employees of Defendants with wage statements itemizing accurately all information required by Labor Code § 226(a), as alleged herein, including the total hours worked, all regular hours worked, all overtime hours worked, the applicable hourly rate per hour worked, and the total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

208.195. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction

1 statement or fails to keep the records required in subdivision (a) of § 226.

2 ~~209.196.~~ Labor Code § 1174.5 provides for a civil penalty of \$500 for any person
3 employing labor who willfully fails to maintain accurate and complete records required by
4 subdivision (d) of § 1174.

5 ~~210.197.~~ Defendants are and were Plaintiff's and aggrieved employees'
6 employers or other person(s) acting either individually or as an officer, agent, or employee
7 of another person(s), who pays or causes to be paid to any employee a wage less than the
8 minimum fixed by an order of the Commission, and, as such, are subject to civil penalties
9 for each underpaid employee pursuant to Labor Code § 1197.1.

10 ~~211.198.~~ Labor Code § 1197.1 imposes upon Defendants for each initial
11 violation of Labor Code § 1197 by paying or causing an employee to be paid less than the
12 minimum wage, a civil penalty of \$100.00 for each underpaid employee for each pay
13 period for which the employee is underpaid. Furthermore, Labor Code § 1197.1 imposes
14 upon Defendants for each subsequent violation a civil penalty of \$250.00 for each
15 underpaid employee for each pay period for which the employee was underpaid. The civil
16 penalty recoverable under Labor Code § 1197.1 is in addition to an amount sufficient to
17 recover the underpaid wages, as well as liquidated damages pursuant to Labor Code §
18 1194.2., ~~and any applicable penalties imposed pursuant to Labor Code § 203, which shall~~
19 ~~be paid directly to each affected employee.~~

20 ~~212.199.~~ Defendants are and were Plaintiff's and other aggrieved employees'
21 employers, or persons acting on their behalf, within the meaning of Labor Code § 558, who
22 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any
23 provision regulating hours and days of work in any IWC Wage Order and, as such, are
24 subject to civil penalties for each underpaid employee as set forth in Labor Code § 558.

25 ~~213.200.~~ Pursuant to Labor Code § 558, Defendants are subject to a civil penalty
26 of \$50.00 for an initial violation of Labor Code §§ 510 ~~and 512~~, for each aggrieved
27 employee, for each pay period for which the aggrieved employee was not provided with
28 all recovery period premium wages, as alleged herein. Furthermore, Labor Code § 558

1 imposes upon Defendants for each subsequent violation of Labor Code §§ 510~~and 512~~, a
 2 civil penalty of \$100.00 for each aggrieved employee for each pay period for which the
 3 aggrieved employee was not provided with all recovery period premium wages, as alleged
 4 herein.

5 214.201. Pursuant to Labor Code § 558.1, Defendant is an employer or other
 6 person acting on behalf of an employer, who violates, or causes to be violated, any
 7 provision regulating the “Hours and Days of Work” and the “Minimum Wages” sections
 8 of the Applicable Wage Order, or who violates, or causes to be violated, sections 203, 226,
 9 226.7, 1193.6, or 1194 of the Labor Code, and is subject to a civil penalty for each initial
 10 and/or subsequent violation. Defendant committed such violations when it failed to pay
 11 all recovery periods or pay recovery period premium wages, to provide accurate itemized
 12 wage statements, and to timely pay all wages due, as alleged herein.

13 215.202. For bringing this action, Plaintiff is additionally entitled to attorney’s
 14 fees and costs incurred herein.

15 216.203. Plaintiff seeks to recover civil penalties on behalf of himself and other
 16 aggrieved employees for Defendants’ violations of the Labor Code, including but not
 17 limited to Defendants’ violations of Labor Code §§ ~~201, 202, 203, 204~~, 210, 218.5, 218.6,
 18 ~~223~~, 225.5, 226, 226.3, 226.7, ~~512~~, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
 19 and 1198, pursuant to Labor Code § 2698, *et seq.* The exact amount of the applicable
 20 penalties is in an amount to be shown according to proof at trial and within the jurisdictional
 21 limitations of this Court.

22 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 25 a. For general damages;
- 26 b. For special damages;
- 27 c. For an award of liquidated damages to the extent permissible by Labor
- 28 Code § 1194.2;

- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, and 1194;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For restitution as provided by Business and Professions Code § 17200, et seq.;
- g. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, et seq.;
- h. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- i. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant recovery period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- j. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- k. For injunctive relief as provided by the Labor Code including but not limited to Labor Code §§ 226(h), and Business and Professions Code § 17200, et seq.

1. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- m. For an order imposing a constructive trust upon Defendants to compel them to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- n. For an accounting to determine all money wrongfully obtained and held by Defendants;
- o. For a declaratory judgment that Defendants violated Labor Code §§ ~~201, 202, 203, 204~~, 210, 218.5, 218.6, ~~223~~, 225.5, 226, 226.3, 226.7, 510, ~~512~~, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as the “Minimum Wages” and “Records” sections of the Wage Order of the Industrial Welfare Commission;
- p. For all applicable civil penalties under PAGA, to the extent permitted by law, on behalf of Plaintiff and all other aggrieved employees of Defendants in California, and
- q. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: ~~January 2, 2024~~ June 25, 2024

GRAHAMHOLLIS APC

Bv: /s/ Alex M. Kuner

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13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 MARK HENDRICKSON, individually
17 and on behalf of all similarly situated
18 and/or aggrieved employees of
19 Defendants in the State of California,

20 Plaintiff,

21 v.

22 WAL-MART ASSOCIATES, INC.; and
23 DOES 1 THROUGH 50, inclusive,

24 Defendants.

Case No.: 3:23-cv-00110-AJB-MSB

**CLASS AND REPRESENTATIVE
ACTION**

CERTIFICATE OF SERVICE

Crtrm: 4A
Judge: Hon. Anthony J. Battaglia

Complaint Filed: December 14, 2022
FAC Filed: March 3, 2023
SAC Filed: July 10, 2023
Removal Date: January 20, 2023
Trial Date: None set

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CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

I am employed in the State of California, County of San Diego. I am over the age of 18 and not a party to the within suit: my business address is 3555 Fifth Avenue, Suite 200, San Diego, California 92103.

On June 25, 2024, I served the documents described as:

- **FOURTH AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

Upon:

GREENBERG TRAURIG, LLP

Ryan C. Bykerk

bykerkr@gtlaw.com

Blakeley S. Oranburg

oranburgb@gtlaw.com

1840 Century Park East, 19th Floor

Los Angeles, California 90067

Counsel for Defendant Wal-Mart Associates, Inc.

☒ **BY ECF:** I hereby certify that this document was served by San Diego, California, by ECF delivery on the parties listed herein at their more recent known email addresses or e-mail of record in this action.

☒ **(FEDERAL):** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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

Executed this 25th day of June, 2024, in San Diego, California.



Andrea Gorriño