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11 Attorneys for Defendant
12 Wal-Mart Associates, Inc.

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

16 CECELIA RODRIGUEZ and
BREANA STEWART, on behalf of
17 themselves and all others similarly
situated,

18 Plaintiffs,

19 v.

20 WAL-MART ASSOCIATES, INC., a
21 Delaware limited liability company;
22 and DOES 1 to 100, inclusive,

23 Defendants.

Case No. 2:20-cv-07045

**NOTICE OF REMOVAL OF ACTION
BY DEFENDANT WAL-MART
ASSOCIATES, INC.**

*[Filed concurrently with Civil Cover
Sheet; Declarations of Laura Kish and
Paloma Peracchio; Corporate Disclosure
Statement; Notice of Pendency of Other
Actions or Proceedings and Notice of
Related Case; and Certificate of
Interested Parties]*

Complaint Filed: June 29, 2020
Trial Date: None Set
District Judge: Hon. TBD
Magistrate Judge: Hon. TBD

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA, AND TO PLAINTIFFS CECELIA**
3 **RODRIGUEZ AND BREANA STEWART AND THEIR COUNSEL OF**
4 **RECORD:**

5 **PLEASE TAKE NOTICE THAT**, pursuant to the Class Action Fairness Act
6 of 2005, 28 U.S.C. §§ 1332(d), 1453, 1711, Defendant Wal-Mart Associates, Inc.
7 (“Walmart” or “Defendant”), hereby removes to the United States District Court for
8 the Central District of California, the above-captioned state court action, originally
9 filed as Case No. 20STCV24761 in Los Angeles County Superior Court in the State
10 of California. Removal is proper for the reasons explained below.

11 **TIMELINESS OF REMOVAL**

12 1. Plaintiffs Cecelia Rodriguez and Breana Stewart (together, “Plaintiffs”)
13 filed a putative Class Action Complaint (“Complaint”) against Walmart on June 29,
14 2020. *See* Declaration of Paloma Peracchio (“Peracchio Decl.”), Exhibit A. Plaintiffs
15 served the Complaint on Walmart on July 6, 2020. (*Id.*) Pursuant to 28 U.S.C.
16 § 1446(a), a true and correct copy of any and all process, pleadings, and orders served
17 upon Walmart are attached as Exhibit A to the Declaration of Paloma Peracchio, filed
18 concurrently herewith. This notice of removal is timely pursuant to 28 U.S.C.
19 § 1446(b) because Walmart has removed this action within 30 days of being served.

20 **GROUND FOR REMOVAL**

21 2. Defendant is authorized to remove this action to this Court pursuant to
22 the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711
23 (“CAFA”) since Plaintiffs have filed a class action complaint where the amount in
24 controversy exceeds five million dollars and Defendant is a citizen of a state different
25 from Plaintiffs.

26 **A. Plaintiffs Bring This Case As A Class Action Against Defendant**

27 3. Plaintiffs’ Complaint is titled “CLASS ACTION COMPLAINT.” (*See*
28 Complaint, Caption.)

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1 4. Plaintiffs' Complaint alleges that "[California Code of Civil
2 Procedure] §382 provides in pertinent part: '... [W]hen the question is one of a
3 common or general interest, of many persons, or when the parties are numerous, and
4 it is impracticable to bring them all before the court, one or more may sue or defend
5 for the benefit of all.' Plaintiffs bring this suit as a class action pursuant to CCP §382."
6 (Complaint ¶ 27.) Plaintiffs identify the putative classes they seek to represent as the
7 "Rest Period Class," the "Wage Statement Class," the "LC 203 Class," and the "17200
8 Class." (*Id.* ¶ 28.) The "Rest Period Class" is defined as "[a]ll California citizens
9 employed by Defendants as hourly-paid non-exempt store employees (excluding
10 Distribution Centers, Fulfillment Centers and Warehouses) during the appropriate
11 time period who were subjected to Defendants' policies and practices regarding
12 providing all paid off premises rest periods as specifically described herein." (*Id.*)
13 The "Wage Statement Class" is defined as "[a]ll California citizens employed by
14 Defendants as hourly-paid non-exempt store employees (excluding Distribution
15 Centers, Fulfillment Centers and Warehouses) during the appropriate time period who
16 were subjected to Defendants' policies and practices regarding itemized wage
17 statements as specifically described herein." (*Id.*) The "LC 203 Class" is defined as
18 "[a]ll formerly-employed California citizens employed by Defendants as hourly-paid
19 non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and
20 Warehouses) during the appropriate time period who were subjected to Defendants'
21 policies and practices regarding Labor Code §203 and the payment of final wages as
22 specifically described herein." (*Id.*) The "17200 Class" is defined as "[a]ll California
23 citizens employed by Defendants as hourly-paid non-exempt store employees
24 (excluding Distribution Centers, Fulfillment Centers and Warehouses) during the
25 appropriate time period regarding whom Defendants have engaged in unlawful, unfair
26 and/or fraudulent business acts or practices prohibited by B&PC §17200, et seq. as
27 specifically described herein." (*Id.*) The Complaint further allege that "[t]he acts
28 complained of herein occurred, occur and will occur, at least in part, within the time

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1 period from four (4) years preceding the filing of the original Complaint herein, up to
2 and through the time of trial for this matter.” (*Id.* ¶ 3.)

3 5. Plaintiffs’ Complaint alleges that “[t]his is a civil action seeking recovery
4 for Defendants’ violations of the California Labor Code[,] . . . California Business and
5 Professions Code[,] . . . the applicable Wage Orders issued by the California Industrial
6 Welfare Commission[,]. . . and related common law principles.” (Complaint ¶ 1.)

7 6. Plaintiffs’ Complaint brings the following causes of action on behalf of
8 the putative classes: (1) Failure to Provide All Paid Off Premise Rest Periods [Cal.
9 Labor Code § 226.7]; (2) Failure to Timely Furnish Accurate Itemized Wage
10 Statements [Cal. Labor Code § 226(a)]; (3) Violations of Labor Code § 203;
11 (4) Penalties Pursuant to Labor Code § 2699¹; and (5) Unfair Business Practices [Cal.
12 Business & Professions Code § 17200]. (Complaint ¶¶ 35-87.)

13 7. Defendant denies any liability in this case, as to Plaintiffs’ individual,
14 class, and representative claims, and will present compelling defenses to these claims
15 on the merits. Defendant intends to oppose class certification. Defendant expressly
16 reserves all rights in this regard. However, for purposes of the jurisdictional
17 requirements for removal only, Defendant notes that, as set forth in more detail below,
18 the allegations in Plaintiffs’ Complaint that they seek to represent various
19 subcategories of all California citizens employed by Walmart as hourly-paid
20 non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and
21 Warehouses), puts in controversy an amount that exceeds \$5 million. *See* 28 U.S.C.
22 § 1332(d)(6).

23 **B. There Are More Than 100 Members In The Proposed Class**

24 8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in
25 addition to the other requirements of § 1332(d), the action involves a putative class of
26

27 ¹ In addition to their individual and class claims, Plaintiffs bring a representative action
28 for civil penalties under the California Private Attorneys General Act (“PAGA”) [Cal.
Labor Code §§ 2698-2699.5]. (Complaint ¶¶ 66-76.)

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1 at least 100 persons. Plaintiffs allege that this action is brought on behalf of all
 2 California citizens employed by Walmart as hourly-paid non-exempt store employees
 3 (excluding Distribution Centers, Fulfillment Centers and Warehouses) subject to
 4 various alleged policies and practices of Walmart. (Complaint ¶ 28.) Plaintiffs further
 5 allege that the acts alleged in the Complaint occurred during the time from four years
 6 preceding the filing of the complaint up to and through the time of trial in this matter.
 7 (*Id.* ¶ 4.) Plaintiff Cecelia Rodriguez was employed from March 11, 2014 to October
 8 24, 2019 as an hourly associate² at the Walmart location in San Jacinto, California.
 9 (*Id.* ¶ 7; Declaration of Laura Kish [“Kish Decl.”] ¶ 5.) Plaintiff Breana Stewart was
 10 employed from September 28, 2019 to December 19, 2019 as an hourly associate at
 11 the Walmart location in Lancaster, California. (Complaint ¶ 10; Kish Decl. ¶ 6.)
 12 There are approximately 229,408 current and former non-exempt associates who
 13 worked at a Walmart location in California at any time from June 29, 2016 to the
 14 present. (Kish Decl. ¶ 7.) Although Defendant denies that class treatment is
 15 appropriate, Plaintiffs’ proposed class, if certified, would consist of more than 100
 16 members.

17 **C. Defendant Is A Citizen Of A Different State Than Plaintiff**

18 9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in
 19 addition to the other requirements of § 1332(d), a member of the class is a citizen of a
 20 state different from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

21 10. A person is a “citizen” of the state in which he/she is domiciled. *Kantor*
 22 *v. Wellesley Galleries, Ltd.*, 704 F. 2d 1088, 1090 (9th Cir. 1983). A person’s domicile
 23 is the place she resides with the intention to remain or to which she intends to return.
 24 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

25 11. Plaintiff Cecelia Rodriguez began her Walmart employment on March
 26 11, 2014 and ended her Walmart employment on October 24, 2019. (Complaint ¶ 7;

27 _____
 28 ² Walmart refers to its employees as “associates.”

1 Kish Decl. ¶ 5.) Throughout her employment, Plaintiff Cecelia Rodriguez only
2 worked at the Walmart location in San Jacinto, California, in Riverside County.
3 (Complaint ¶ 7; Kish Decl. ¶ 5.) Furthermore, the Complaint states that Plaintiff
4 Cecelia Rodriguez “is now and/or at all times mentioned in this Complaint was a
5 citizen of the State of California.” (Complaint ¶¶ 6, 25.)³ As such, Plaintiff Cecelia
6 Rodriguez is a citizen of California.

7 12. Plaintiff Breana Stewart began her Walmart employment on September
8 28, 2019 and ended her Walmart employment on December 19, 2019. (Complaint
9 ¶ 10; Kish Decl. ¶ 6.) Throughout her employment, Plaintiff Breana Stewart only
10 worked at a Walmart location in Lancaster, California. (Complaint ¶ 10; Kish Decl.
11 ¶ 6.) Furthermore, the Complaint states that Plaintiff Breana Stewart “is now and/or
12 at all times mentioned in this Complaint was a citizen of the State of California.”
13 (Complaint ¶¶ 9, 25.) As such, Plaintiff Breana Stewart is a citizen of California.

14 13. Additionally, each of Plaintiffs’ proposed classes is defined to include
15 only certain “California citizens employed by [Defendant] as hourly-paid non-exempt
16 store employees.” (Complaint ¶ 28.) Indeed, the Complaint makes clear that
17 “Plaintiffs CECELIA RODRIGUEZ and BREANA STEWART and the members of
18 the putative Classes herein were all California citizens.” (*Id.* ¶ 25.)

19 14. A corporation is a citizen of its state of incorporation and the state of its
20 principal place of business. 28 U.S.C. § 1332(c)(1). Defendant Wal-Mart Associates,
21 Inc. is a wholly-owned subsidiary of Walmart Inc. (Kish Decl. ¶ 3.) Walmart Inc. and
22 Wal-Mart Associates, Inc. are incorporated in the State of Delaware and both have
23 their principal place of business in Bentonville, Arkansas. (*Id.* ¶ 4; Peracchio Decl.
24 ¶¶ 5, 6.)

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28 ³ In alleging that the requirements of CAFA are satisfied, Defendant does not concede
in any way the allegations in the Complaint are true and accurate.

1 15. Defendant’s “principal place of business,” which the Supreme Court has
2 interpreted to mean “the place where a corporation’s officers direct, control, and
3 coordinate the corporation’s activities” (*Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192
4 (2010); 28 U.S.C. § 1332(c)(1)) is Bentonville, Arkansas. Thus, Defendant is a citizen
5 of Delaware and Arkansas – not California, and there is accordingly minimal
6 jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d)(2)(A); *Hertz*, 130 S. Ct. at 1192;
7 *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1230 n.2 (9th Cir. 2011).

8 **D. The Amount In Controversy Exceeds \$5 Million**

9 16. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)
10 because, in addition to the other requirements of § 1332(d), the amount in controversy
11 exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2).

12 **1. Rest Periods**

13 17. Plaintiffs allege that “[w]ith regard to [its] hourly-paid, non-exempt store
14 employees, [Defendant has] . . . [f]ailed to provide all paid off premises rest periods.”
15 (Complaint ¶ 5.) Plaintiffs further allege that “[t]he members of the Rest Period Class
16 were entitled to a rest period of not less than ten (10) minutes prior to exceeding four
17 (4) hours of employment” but that “the members of the Rest Period Class were not
18 allowed to leave Defendants’ premises for their rest breaks, in violation of Augustus
19 v ABM Security Services, Inc. (2016) 2 Cal.^{5th} 257, as Defendants failed to relinquish
20 all control over how the members of the Rest Period Class spent their breaks.”
21 (Complaint ¶¶ 41, 43.) Plaintiffs allege that “as a matter of [Defendant’s] established
22 company policy, [Defendant] failed to authorize and permit required paid off premise
23 rest periods established by Labor Code §226.7 and Labor Code §516 and Section 12
24 of the IWC Wage Order(s).” (Complaint ¶ 44.) Plaintiffs also allege that “the
25 members of the Rest Period Class are entitled to damages in an amount equal to one
26 (1) additional hour of pay at each employee’s regular rate of compensation for each
27 work day that the rest period was not so provided.” (*Id.* ¶ 45.)

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1 18. Defendant denies that any such violations occurred or that compensation
2 is owed to Plaintiffs or putative class members. However, for purposes of this
3 jurisdictional analysis *only*, Defendant relies on Plaintiffs' allegation that violations
4 occurred and compensation is owed. *See Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d
5 395, 399 (9th Cir. 2010) ("In determining the amount [in controversy], we first look
6 to the complaint."); *Heejin Lim v. Helio, LLC*, No. CV 11-9183 PSG, 2012 WL
7 359304, at *2 (C.D. Cal. Feb. 2, 2012) ("The ultimate inquiry is, therefore, what
8 amount is put 'in controversy' by the plaintiff's complaint or other papers, not what
9 the defendant will actually owe for the action number of violations that occurred, if
10 any.") (citations omitted).

11 19. Under California law, employees who are denied the opportunity to take
12 proper rest periods are entitled to one hour of premium pay for each day that a rest
13 period is missed. *See Marlo v. United Parcel Service, Inc.*, 2009 WL 1258491, *7
14 (C.D. Cal. 2009). Rest period claims are properly considered in determining the
15 amount in controversy. *See Muniz v. Pilot Travel Ctr. LLC*, 2007 WL 1302504, *4
16 (E.D. Cal. 2007); *Helm v. Alderwoods Group, Inc.*, 2008 WL 2002511, *4-5 (N.D.
17 Cal. 2008).

18 20. Plaintiffs also allege that the failure to provide rest periods constitutes
19 unfair competition within the meaning of Business and Professions Code Section
20 17200. (*See* Complaint ¶¶ 81-82.) The statute of limitations for such a claim is four
21 years. Cal. Bus. & Prof. Code § 17208. Accordingly, the measure of potential
22 damages for rest break claims is based on a four-year limitations period.

23 21. Numerous courts have held that a conservative estimate is proper when
24 the complaint does not provide the number of alleged meal and rest period violations
25 at issue. *See Campbell v. Vitran Express, Inc.*, 471 F. App'x 646, 648-49 (9th Cir.
26 2012) (finding that the amount in controversy was satisfied based on an estimate of
27 one meal break and one rest break per week because Plaintiff alleged that defendants
28 "regularly and consistently" failed to provide proper breaks); *Jasso v. Money Mart*

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1 *Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at *5 (N.D. Cal. Mar. 1, 2012)
 2 (accepting defendant’s “reasonable and conservative estimate” of one missed meal
 3 break and one missed rest break per week); *Long v. Destination Maternity Corp.*, No.
 4 15-CV-2836 WQH, 2016 WL 1604968, at *8 (S.D. Cal. April 21, 2016) (“Because
 5 Plaintiff does not include fact-specific allegations regarding the circumstances of the
 6 alleged missed meal and rest periods, it is reasonable for Defendant to estimate
 7 damages sought based on one meal period or rest period violation per employee per
 8 week.”).

9 22. During the period of June 29, 2016 to present, there were at least 229,408
 10 associates within the putative class who worked 7,991,076 total pay periods during
 11 that same period. (Kish Decl. ¶¶ 7-8.) These associates earned a minimum of \$10 per
 12 hour.⁴ (*Id.* ¶ 11.) A conservative estimate is unnecessary for Plaintiffs’ rest period
 13 claim, as they alleges that Defendant’s “established company policy” deprived
 14 putative class members of the rest breaks to which they were entitled, suggesting daily
 15 violations.⁵ Nevertheless, even with a far more conservative estimate of one missed
 16 rest break per putative class member per pay period, the amount in controversy with
 17 respect to this claim would be \$79,910,760 (\$10 x 1 rest period x 7,991,076 pay
 18 periods = **\$79,910,760.**)

19 23. Therefore, based on Plaintiffs’ allegations, the amount placed in
 20 controversy on their rest period claims alone is in excess of the requisite \$5,000,000.

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 22 _____
 23 ⁴ The minimum wage in the State of California in 2016 was \$10.00 per hour. *See*
 24 <https://www.dir.ca.gov/iwc/minimumwagehistory.htm>.

25 ⁵ *See Stevenson v. Dollar Tree Stores, Inc.*, 2011 WL 4928753, *3-4 (E.D. Cal. 2011)
 26 (defendant’s calculation of potential missed meal period damages at 100% of the shifts
 27 was appropriate where plaintiff alleged that class members were routinely denied meal
 28 periods or were not compensated for meal periods.); *Duberry v. J. Crew Grp., Inc.*,
 No. 14-CV-08810 SVW, 2015 WL 4575018, at *1, 6 (C.D. Cal. July 28, 2015)
 (applying a 70% violation rate but finding allegations were “sufficient to ground an
 assumed 100% violation rate” where Plaintiff alleged defendant engaged in a “uniform
 policy and systematic scheme of wage abuse against their hourly-paid or non-exempt
 employees,” which included a failure to pay for “missed meal periods and rest breaks
 in violation of California law”).

2. Wage Statements

24. California Labor Code section 226(a) states that every employer shall furnish his or her employees an accurate itemized wage statement in writing showing nine specific categories of information. Plaintiffs allege that “[a]s a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each of the members of the Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual and/or pertaining to the total hours worked for Defendants by the members of the Wage Statement Class, including but not limited to rest periods, rest period premium payments and applicable rates of pay for each.” (Complaint ¶ 51.) The Complaint further states that “[p]ursuant to Labor Code §226(g), the members of the Wage Statement Class are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).” (Complaint ¶ 56.) The Complaint also states that “[p]ursuant to Labor Code §226(g), the members of the Wage Statement Class are also entitled to an award of costs and reasonable attorneys’ fees.” (Complaint ¶ 58.)

25. California Labor Code section 226(e) provides for the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100) for each subsequent pay period. The applicable statute of limitations is one year. *See* Cal. Code Civ. Proc. § 340(a).

26. There have been more than 2,108,138 wage statements issued to putative class members during the applicable one-year statute of limitations. (Kish Decl. ¶ 9.) Plaintiffs’ allegation that Walmart failed to provide accurate wage statements “as a

1 pattern and practice” and that the wage statements are inaccurate, in part, because of
2 the failure to include rest break premiums based on the alleged illegal rest break policy,
3 suggests conduct that applies uniformly to every wage statement issued during this
4 time period. Therefore, utilizing an alleged violation rate of 100% is proper here, as
5 Plaintiffs have alleged a section 226 violation that occurred on every wage statement.
6 Applying the initial violation rate of \$50 penalty per wage statement, the amount in
7 controversy for this claim is **\$105,406,900** (\$50 x 2,108,138 wage statements issued).

8 **3. Waiting Time Penalties**

9 27. California Labor Code Sections 201 and 202 require employers to pay
10 employees all wages owed to them in a timely fashion at the end of their employment
11 (within 72 hours for resigning employees and immediately for employees whose
12 employment ends involuntarily).

13 28. Plaintiffs allege that Walmart “had a consistent and uniform policy,
14 practice and procedure of willfully failing to pay the earned wages of [its] former
15 employees.” (Complaint ¶ 62.) Plaintiffs allege that Walmart “willfully failed to pay
16 the members of the LC 203 Class their entire wages due and owing at the time of their
17 termination or within seventy-two (72) hours of their resignation, and failed to pay
18 those sums for up to thirty (30) days thereafter.” (*Id.* ¶ 63.) Plaintiffs further allege
19 that Walmart’s “willful failure to pay wages to the members of the LC 203 Class
20 violates Labor Code §203” and that “the members of the LC 203 Class are entitled to
21 recovery pursuant to Labor Code § 203.” (*Id.* ¶¶ 64, 65.)

22 29. The statute of limitations for penalties under California Labor Code § 203
23 is three years. *See* Cal. Civ. Proc. Code § 338(a).

24 30. The total number of putative class members who stopped working at a
25 Walmart in California between June 29, 2017 and the present is approximately
26 105,351. (Kish Decl. ¶ 10.) Accordingly, based on the allegations of the Complaint
27 that Walmart failed to pay wages at separation and that Plaintiffs and the putative class
28 members are entitled to waiting time penalties under Labor Code Section 203, every

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1 putative class member who stopped working during the relevant time period is entitled
 2 to 30 days' continuation of wages as a penalty. *See Quintana v. Claire's Stores, Inc.*,
 3 2013 WL 1736671, *4-6 (N.D. Cal. 2013) ("As to the waiting time claims, the court
 4 finds that Defendants' calculations" of thirty-days of waiting time penalties for each
 5 putative class member terminated during the statute of limitations "are supported by
 6 Plaintiffs allegations and are a reasonable estimate of the potential value of the
 7 claims."). However, for purposes of removal, Walmart will conservatively assume
 8 that average shifts were only four hours long. Further, for purposes of removal,
 9 Walmart will conservatively assume that the average rate of pay is the lowest
 10 applicable minimum wage during the class period, *i.e.*, \$10.50 per hour.⁶ (Kish Decl.
 11 ¶ 11.)

12 31. Thus, according to Plaintiffs' allegation that Walmart "willfully failed to
 13 pay the members of the LC 203 Class their entire wages due and owing at the time of
 14 their termination or within seventy-two (72) hours of their resignation, and failed to
 15 pay those sums for up to thirty (30) days thereafter," Plaintiffs contend that former
 16 putative class members are entitled to recover **\$132,742,260**, calculated as follows:
 17 \$10.50 minimum wage x 4-hour work day x 30 days waiting time penalty x 105,351
 18 putative class members who stopped working for Walmart between June 29, 2017 and
 19 the present.

20 4. Attorneys' Fees

21 32. Plaintiffs' Complaint requests attorneys' fees, including pursuant to
 22 California Labor Code Sections 226 and 1194, California Code of Civil Procedure
 23 § 1021.5, and California Business and Professions Code § 17200 *et seq.* (Complaint,
 24 Prayer for Relief; *see also* Complaint ¶¶ 58, 69.)

25
 26
 27 _____
 28 ⁶ The minimum wage in the State of California in 2017 was \$10.50 per hour. *See*
<https://www.dir.ca.gov/iwc/minimumwagehistory.htm>.

1 33. Under Ninth Circuit precedent, 25% of the common fund is generally
 2 used as a benchmark for an award of attorney fees. *See Hanlon v. Chrysler Corp.*, 150
 3 F.3d 1011, 1029 (9th Cir. 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist.
 4 LEXIS 17119, at *15 (S.D. Cal., Mar. 6, 2009) (“In wage and hour cases, ‘[t]wenty-
 5 five percent is considered a benchmark for attorneys’ fees in common fund cases.’”) (citations omitted). Here, Defendant has shown that the claimed amount in
 6 controversy is in excess of **\$318,059,920**,² and Plaintiffs have not indicated that they
 7 will seek less than 25% of a common fund in attorneys’ fees. (*See generally*
 8 *Complaint, Prayer for Relief.*) Although Defendant has shown that the amount in
 9 controversy absent attorneys’ fees surpasses the jurisdictional threshold, this Court
 10 should nevertheless include the potential attorneys’ fees in evaluating jurisdiction.
 11 *Gugielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also*
 12 *Giannini v. Nw. Mut. Life Ins. Co.*, 2012 WL 1535196, at *4 (N.D. Cal. 2012) (holding
 13 that defendants’ inclusion of attorneys’ fees to satisfy amount in controversy was
 14 reasonable where defendants “base this amount by multiplying by twenty-five percent
 15 the sum of the amounts placed in controversy by the four claims” asserted by
 16 plaintiff.); *Jasso v. Money Mart Express, Inc.*, 2012 WL 699465, at *6-7 (N.D. Cal.
 17 2012) (holding that “it was not unreasonable for [Defendant] to rely on” an
 18 “assumption about the attorneys’ fees recovery as a percentage of the total amount in
 19 controversy” and noting that “it is well established that the Ninth Circuit ‘has
 20 established 25% of the common fund as a benchmark award for attorney fees.’”).

22 34. Defendant denies that attorneys’ fees are owed to Plaintiffs or putative
 23 class members, and Defendant further reserves the right to contest the application of
 24 the 25% benchmark in this case. However, for purposes of this jurisdictional analysis
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26 _____
 27 ² Plaintiffs also seek restitution of wages under their claim for violation of Business &
 28 Professions Code section 17200. (*Complaint* ¶¶ 83-84.) Although including these
 amounts would substantially increase the amount in controversy, in an effort to be
 conservative, Defendants will omit these amounts from the estimate.

1 only, Defendant relies on Plaintiffs’ allegations that attorneys’ fees are owed.
2 *Guglielmino*, 506 F.3d at 700; *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 579 F.3d 994,
3 1000 (9th Cir. 2007), *overruled on other grounds by Standard Fire Ins. Co. v.*
4 *Knowles*, 133 S. Ct. 1345 (2013).

5 35. Using a 25% benchmark figure for attorneys’ fees for Plaintiffs
6 allegations results in estimated attorneys’ fees of **\$79,514,980**.

7 **E. This Removal Satisfies The Procedural Requirements Of 28 U.S.C.**
8 **§ 1446**

9 36. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is filed
10 in the District in which the action is pending. The Los Angeles County Superior Court
11 is located within the Central District of California. Therefore, venue is proper in this
12 Court because it is the “district and division embracing the place where such action is
13 pending.” 28 U.S.C. § 1441(a).

14 37. In accordance with 28 U.S.C. § 1146(a), copies of all process, pleadings,
15 and orders served upon Defendant are attached as Exhibits to this Notice.

16 38. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being
17 served upon counsel for Plaintiffs, and a notice will be filed with the Clerk of the
18 Superior Court of California for the County of Los Angeles. Notice of Compliance
19 shall be filed promptly afterwards with this Court.

20 39. As required by Federal Rule of Civil Procedure 7.1, Defendant
21 concurrently filed its Certificate of Interested Parties.

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1 **II. CONCLUSION**

2 For the foregoing reasons, Defendant hereby removes the above-entitled action
3 to the United States District Court for the Central District of California.

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6 DATED: August 5, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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8

9 By: /s/ Paloma P. Peracchio
10 Paloma P. Peracchio
11 Mitchell A. Wrosch
12 Zachary Glantz
13 Attorneys for Defendant
14 Wal-Mart Associates, Inc.

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PROOF OF SERVICE

Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc., et al.
Case No. 2:20-cv-07045

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Orange in the office of a member of the bar of this court at whose direction the service was made. My business address is 695 Town Center Drive, Suite 1500, Costa Mesa, CA 92626.

On August 5, 2020, I served the following document(s):

NOTICE OF REMOVAL OF ACTION BY DEFENDANT WAL-MART ASSOCIATES, INC.

by placing (the original) (a true copy thereof) in a sealed envelope addressed as follows:

BY MAIL: I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY MAIL: I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at Park Tower, Fifteenth Floor, 695 Town Center Drive, Costa Mesa, CA 92626.

BY OVERNIGHT DELIVERY: I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Costa Mesa, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

BY MESSENGER SERVICE: (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

BY FACSIMILE: by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:

- the written confirmation of counsel in this action:
- [Federal Court]** the written confirmation of counsel in this action and order of the court:

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BY CM/ECF: With the Clerk of the United States District Court of California, using the CM/ECF System. The Court's CM/ECF System will send an e-mail notification of the foregoing filing to the parties and counsel of record who are registered with the Court's CM/ECF System.

(Federal) I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

(Federal) I declare that I am a **member** of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 5, 2020, at Costa Mesa, California.



Lisa Sles

SERVICE LIST

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Kevin T. Barnes, Esq.
Gregg Lander, Esq.
LAW OFFICES OF KEVIN T. BARNES
1635 Pontius Ave., Second Floor
Los Angeles, CA 90025-3661
Telephone: 323-549-9100
Facsimile: 323-549-0101
barnes@knarnes.com

Attorneys for Plaintiffs
Cecelia Rodriguez and Breana
Stewart, on behalf of themselves and
all others similarly situated

Raphael A. Katri, Esq.
LAW OFFICES OF RAPHAEL A. KATRI
8549 Wilshire Blvd., Suite 200
Beverly Hills, CA 90211-3104
Telephone: 310-940-2034
Facsimile: 310-733-5644
rkatri@socallaborlawyers.com

Attorneys for Plaintiffs
Cecelia Rodriguez and Breana
Stewart, on behalf of themselves and
all others similarly situated

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COPY

Process Server/Sheriff

SUMMONS (CITACION JUDICIAL)

JUL 06 2020

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SERVED

WAL-MART ASSOCIATES, INC., a Delaware limited liability company; and DOES 1 to 100, inclusive

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

CECELIA RODRIGUEZ and BREANA STEWART, on behalf of themselves and all others similarly situated

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

CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles

JUN 29 2020

Sherri R. Carter, Executive Officer/Clerk of Court By: Kristina Vargas, Deputy

BY FAX

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

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

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

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

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

The name and address of the court is (El nombre y dirección de la corte es): Stanley Mosk Courthouse 111 N. Hill Street Los Angeles, CA 90012-3014

CASE NUMBER (Número del caso) 20STCV24761

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Law Offices of Kevin T. Barnes, 1635 Pontius Ave., Second Floor, Los Angeles, CA 90025 - (323) 549-9100

DATE JUN 29 2020 (Fecha)

Clerk, by (Secretario) Kristina Vargas Deputy (Adjunto)

SHERRI R. CARTER

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).) (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify): WAL-MART ASSOCIATES, INC., A DELAWARE LIMITED LIABILITY COMPANY
under: CCP 416.10 (corporation)
CCP 416.20 (defunct corporation)
CCP 416.40 (association or partnership)
other (specify):
CCP 416.60 (minor)
CCP 416.70 (conservatee)
CCP 416.90 (authorized person)

- 4. by personal delivery on (date):

COPY

CM-010

DI 17A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Kevin T. Barnes, Esq. (SBN#138477) Law Offices of Kevin T. Barnes 1635 Pontius Avenue, Second Floor Los Angeles, California 90025-3361 TELEPHONE NO: (323) 549-9100 FAX NO: (323) 549-0101 ATTORNEY FOR Name: Cecelia Rodriguez and Breana Stewart		FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles JUN 29 2020 Sheriff R. Carter, Executive Officer/Clerk of Court By: Kristina Vargas, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, California 90012-3014 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 20STCV24761 JUDGE: CEP:

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

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

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other P/DP/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/D (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (25)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-P/DP/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/D tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

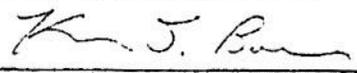
3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **Five (5)**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **June 29, 2020**
Kevin T. Barnes, Esq.
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

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

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint

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

Miscellaneous Civil Petition

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

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SHORT TITLE Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc.	CASE NUMBER 20STCV24761
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**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|---|---|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose
4. Mandatory personal injury filing in North District
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle | 7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly
9. Location where one or more of the parties reside
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
|---|---|

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1, 4, 11	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1, 4, 11	

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SHORT TITLE Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1, 2, 3
		<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case	1, 2, 3
		<input type="checkbox"/> A6109 Labor Commissioner Appeals	10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2, 5
		<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2, 5
		<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1, 2, 5
		<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	5, 6, 11
		<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	5, 11
Insurance Coverage (18)	<input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11	
	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8	
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1, 2, 3, 5	
	<input type="checkbox"/> A6031 Tortious Interference	1, 2, 3, 5	
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 8, 9	
Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2, 6
		<input type="checkbox"/> A6032 Quiet Title	2, 6
<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)		2, 6	
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9		
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 6
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
<input type="checkbox"/> A6100 Other Civil Petition	2, 9		

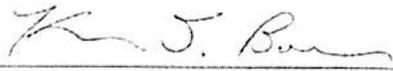
SHORT TITLE: Cecelia Rodriguez, et al. v. Wal-Mart Associates, Inc.	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.	ADDRESS: 44665 Valley Central Way			
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; padding: 2px;">CITY: Lancaster</td> <td style="width:33%; padding: 2px;">STATE: CA</td> <td style="width:33%; padding: 2px;">ZIP CODE: 93536</td> </tr> </table>	CITY: Lancaster	STATE: CA	ZIP CODE: 93536	
CITY: Lancaster	STATE: CA	ZIP CODE: 93536		

Step 5: Certification of Assignment: I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: June 29, 2020



 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 29 2020

Sherril R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

BY FAX

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14 Attorneys for Plaintiffs CECELIA RODRIGUEZ,
15 and BREANA STEWART, on behalf of themselves
16 and all others similarly situated

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

19 CECELIA RODRIGUEZ and BREANA
20 STEWART, on behalf of themselves and all
21 others similarly situated,
22 Plaintiffs,

23 v.

24 WAL-MART ASSOCIATES, INC., a
25 Delaware limited liability company; and
26 DOES 1 to 100, inclusive,
27 Defendants.

28 CLASS ACTION 20STCV24761

COMPLAINT FOR:

1. FAILURE TO PROVIDE ALL PAID OFF PREMISES REST PERIODS;
2. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;
3. VIOLATIONS OF LABOR CODE §203;
4. PENALTIES PURSUANT TO LABOR CODE §2699; AND
5. UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

Plaintiffs CECELIA RODRIGUEZ and BREANA STEWART, individuals on behalf of themselves and all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), hereby files this Complaint against Defendant WAL-MART ASSOCIATES, INC. and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

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I.

INTRODUCTION

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3 1. This is a civil action seeking recovery for Defendants' violations of the California
4 Labor Code ("Labor Code"), California Business and Professions Code ("B&PC"), the
5 applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the
6 "IWC Wage Orders") and related common law principles.

7 2. Plaintiffs' action seeks monetary damages, including full restitution from
8 Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

9 3. The acts complained of herein occurred, occur and will occur, at least in part,
10 within the time period from four (4) years preceding the filing of the original Complaint herein,
11 up to and through the time of trial for this matter although this should not automatically be
12 considered the statute of limitations for any cause of action herein.

13 RELEVANT JOB TITLES

14 4. For introductory and general information only (and not to be considered a
15 proposed class definition), the relevant individuals in this action are Defendants' hourly-paid,
16 non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and
17 Warehouses) who were subjected to Defendants' policies and practices as described herein. Any
18 differences in job activities between the different individuals in these positions were and are
19 legally insignificant to the issues presented by this action.

20 SUMMARY OF CLAIMS

21 5. With regard to Defendants' hourly-paid, non-exempt store employees, Defendants
22 have:

- 23 a. Failed to provide all paid off premises rest periods;
24 b. Failed to timely furnish accurate itemized wage statements;
25 c. Violated Labor Code §203;
26 d. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
27 e. Conducted unfair business practices.

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II.

PARTIES

PLAINTIFF CECELIA RODRIGUEZ

6. Plaintiff CECELIA RODRIGUEZ is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff CECELIA RODRIGUEZ worked for Defendants as an hourly-paid, non-exempt store employee in various of Defendants' store departments, including but not limited to Cashier, Customer Service, Task Office and Money Center from approximately March 11, 2014 to October 24, 2019 in the San Jacinto, California store.

8. Plaintiff CECELIA RODRIGUEZ seeks recovery herein from Defendants because with regard to Plaintiff CECELIA RODRIGUEZ, while acting for Defendants in her capacity as an hourly-paid, non-exempt store employee, Defendants have:

- a. Failed to provide all paid off premises rest periods;
- b. Failed to timely furnish accurate itemized wage statements;
- c. Violated Labor Code §203;
- d. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- e. Conducted unfair business practices.

PLAINTIFF BREANA STEWART

9. Plaintiff BREANA STEWART is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

10. Plaintiff BREANA STEWART worked for Defendants as an hourly-paid, non-exempt store employee from approximately September 2019 to December 19, 2019 in the Lancaster, California store, which is in Los Angeles County, California.

11. Plaintiff BREANA STEWART seeks recovery herein from Defendants because with regard to Plaintiff BREANA STEWART, while acting for Defendants in her capacity as an hourly-paid, non-exempt store employee, Defendants have:

- a. Failed to provide all paid off premises rest periods;
- b. Failed to timely furnish accurate itemized wage statements;

- 1 c. Violated Labor Code §203;
- 2 d. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- 3 e. Conducted unfair business practices.

4 DEFENDANT, WAL-MART ASSOCIATES, INC.

5 12. Defendant WAL-MART ASSOCIATES, INC. is now and/or at all times
6 mentioned in this Complaint was a Delaware corporation and the owner and operator of an
7 industry, business and/or facility(/ies) licensed to do business and actually doing business in the
8 State of California.

9 DOES 1 TO 100, INCLUSIVE

10 13. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this
11 Complaint were licensed to do business and/or actually doing business in California.

12 14. Plaintiffs do not know the true names or capacities, whether individual, partner or
13 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
14 fictitious names pursuant to California Code of Civil Procedure (“CCP”) §474.

15 15. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
16 capacities as soon as they are ascertained.

17 ALL DEFENDANTS

18 16. Defendants, and each of them, are now and/or at all times mentioned in this
19 Complaint were in some manner legally responsible for the events, happenings and circumstances
20 alleged in this Complaint.

21 17. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
22 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

23 18. Defendants, and each of them, are now and/or at all times mentioned in this
24 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
25 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
26 mentioned in this Complaint were acting within the course and scope of that agency, servitude
27 and/or employment.

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1 19. Defendants, and each of them, are now and/or at all times mentioned in this
2 Complaint were members of and/or engaged in a joint venture, partnership and common
3 enterprise, and were acting within the course and scope of, and in pursuance of said joint
4 venture, partnership and common enterprise.

5 20. Defendants, and each of them, at all times mentioned in this Complaint concurred
6 and contributed to the various acts and omissions of each and every one of the other Defendants
7 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

8 21. Defendants, and each of them, at all times mentioned in this Complaint approved
9 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
10 this Complaint.

11 22. Defendants, and each of them, at all times mentioned in this Complaint aided and
12 abetted the acts and omissions of each and every one of the other Defendants thereby
13 proximately causing the damages alleged in this Complaint.

14 **III.**

15 **JURISDICTION AND VENUE**

16 23. The California Superior Court has jurisdiction in this matter due to Defendants'
17 aforementioned violations of California statutory law and/or related common law principles.

18 24. The California Superior Court also has jurisdiction in this matter because both the
19 individual and aggregate monetary damages and restitution sought herein exceed the minimal
20 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

21 25. The California Superior Court also has jurisdiction in this matter because during
22 their employment with Defendants, Plaintiffs CECELIA RODRIGUEZ and BREANA STEWART
23 and the members of the putative Classes herein were all California citizens. Further, there is no
24 federal question at issue, as the issues herein are based solely on California statutes and law.

25 26. Venue is proper in Los Angeles County pursuant to CCP §395(a) and CCP §395.5
26 in that liability arose there because at least some of the transactions that are the subject matter of
27 this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts
28 business, and/or has an agent therein.

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IV.

CLASS ACTION ALLEGATIONS

27. CCP §382 provides in pertinent part: "...[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a class action pursuant to CCP §382.

28. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

- a. All California citizens employed by Defendants as hourly-paid non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and Warehouses) during the appropriate time period who were subjected to Defendants' policies and practices regarding providing all paid off premises rest periods as specifically described herein (hereinafter, the "Rest Period Class");
- b. All California citizens employed by Defendants as hourly-paid non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and Warehouses) during the appropriate time period who were subjected to Defendants' policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the "Wage Statement Class");
- c. All formerly-employed California citizens employed by Defendants as hourly-paid non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and Warehouses) during the appropriate time period who were subjected to Defendants' policies and practices regarding Labor Code §203 and the payment of final wages as specifically described herein (hereinafter, the "LC 203 Class"); and
- d. All California citizens employed by Defendants as hourly-paid non-exempt store employees (excluding Distribution Centers, Fulfillment Centers and Warehouses) during the appropriate time period regarding whom Defendants

1 have engaged in unlawful, unfair and/or fraudulent business acts or practices
2 prohibited by B&PC §17200, et seq. as specifically described herein
3 (hereinafter, the “17200 Class”).

4 29. The Rest Period Class, Wage Statement Class, LC 203 Class and 17200 Class are
5 herein collectively referred to as the “Classes.”

6 30. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
7 necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a
8 class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

9 31. Numerosity (CCP §382):

- 10 a. The potential quantity of members of the Classes as defined is so numerous
- 11 that joinder of all members is unfeasible and impractical;
- 12 b. The disposition of the claims of the members of the Classes through this class
- 13 action will benefit both the parties and this Court;
- 14 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
- 15 however, it is estimated that the membership of the Classes numbers greater
- 16 than 100 individuals; and
- 17 d. The quantity and identity of such membership is readily ascertainable via
- 18 inspection of Defendants’ records.

19 32. Superiority (CCP §382): The nature of this action and the nature of the laws
20 available to Plaintiffs make the use of the class action format particularly efficient and the
21 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- 22 a. California has a public policy which encourages the use of the class action
- 23 device;
- 24 b. By establishing a technique whereby the claims of many individuals can be
- 25 resolved at the same time, the class suit both eliminates the possibility of
- 26 repetitious litigation and provides small claimants with a method of obtaining
- 27 redress for claims which would otherwise be too small to warrant individual
- 28 litigation;

- 1 c. This case involves large corporate Defendants and a large number of
2 individual Class members with many relatively small claims and common
3 issues of law and fact;
- 4 d. If each individual member of the Classes was required to file an individual
5 lawsuit, the large corporate Defendants would necessarily gain an
6 unconscionable advantage because Defendants would be able to exploit and
7 overwhelm the limited resources of each individual member of the Classes
8 with Defendants' vastly superior financial and legal resources;
- 9 e. Requiring each individual member of the Classes to pursue an individual
10 remedy would also discourage the assertion of lawful claims by the members
11 of the Classes who would be disinclined to pursue an action against
12 Defendants because of an appreciable and justifiable fear of retaliation and
13 permanent damage to their lives, careers and well-being;
- 14 f. Proof of a common business practice or factual pattern, of which the members
15 of the Classes experienced, is representative of the Classes herein and will
16 establish the right of each of the members of the Classes to recover on the
17 causes of action alleged herein;
- 18 g. Absent class treatment, the prosecution of separate actions by the individual
19 members of the Classes, even if possible, would likely create:
- 20 i) a substantial risk of each individual plaintiff presenting in separate,
21 duplicative proceedings the same or essentially similar arguments and
22 evidence, including expert testimony;
- 23 ii) a multiplicity of trials conducted at enormous expense to both the
24 judicial system and the litigants;
- 25 iii) inconsistent or varying verdicts or adjudications with respect to the
26 individual members of the Classes against Defendants;
- 27 iv) potentially incompatible standards of conduct for Defendants; and

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v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;

i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and

j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

33. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096), as follows:

a. Typicality: The claims of Plaintiffs CECELIA RODRIGUEZ and BREANA STEWART are typical of the claims of all members of the Classes he seeks to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

b. Adequacy: Plaintiffs CECELIA RODRIGUEZ and BREANA STEWART:

- i) are adequate representatives of the Classes they seek to represent;
- ii) will fairly protect the interests of the members of the Classes;
- iii) have no interests antagonistic to the members of the Classes; and

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- iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
- c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:
 - i) Whether Defendants failed and continue to fail to provide all paid off premises rest periods to the members of the Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;
 - ii) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to the members of the Wage Statement Class;
 - iii) Whether Defendants are liable pursuant to Labor Code §203 to the members of the LC 203 Class;
 - iv) Whether Defendants' conduct constitutes unfair competition within the meaning of B&PC §17200, et seq.;
 - v) Whether Defendants' conduct constitutes unfair business practices within the meaning of B&PC §17200, et seq.;
 - vi) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
 - vii) Whether the members of the Classes are entitled to injunctive relief;
 - viii) Whether the members of the Classes are entitled to restitution; and
 - ix) Whether Defendants are liable for attorneys' fees and costs.

34. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE ALL PAID OFF PREMISE REST PERIODS

(On Behalf of the Rest Period Class)

(Against All Defendants)

35. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

36. Labor Code §226.7(b) provides that “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant 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.”

37. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

38. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

39. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

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1 40. The members of the Rest Period Class sometimes worked over four (4) hours per
2 shift. Further, the members of the Rest Period Class sometimes worked over six (6) hours per
3 shift, and in some cases over ten (10) hours per shift.

4 41. The members of the Rest Period Class were entitled to a rest period of not less
5 than ten (10) minutes prior to exceeding four (4) hours of employment.

6 42. Defendants' rest break policy states: "Location of Rest Breaks. You should take
7 your rest breaks in the facility's break/meeting room or in another area of the premises
8 designated for associate rest breaks or meal periods. You are encouraged not to leave Walmart
9 property during your rest breaks without management approval."

10 43. As such, the members of the Rest Period Class were not allowed to leave
11 Defendants' premises for their rest breaks, in violation of Augustus v ABM Security Services,
12 Inc. (2016) 2 Cal.5th 257, as Defendants failed to relinquish all control over how the members of
13 the Rest Period Class spent their rest breaks.

14 44. As such, as a matter of Defendants' established company policy, Defendants
15 failed to authorize and permit required paid off premise rest periods established by Labor Code
16 §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s).

17 45. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b)
18 which states "if an employer fails to provide an employee a meal or rest period in accordance
19 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
20 employee one additional hour of pay at the employee's regular rate of compensation for each
21 work day that the meal or rest period is not provided," the members of the Rest Period Class are
22 entitled to damages in an amount equal to one (1) additional hour of pay at each employee's
23 regular rate of compensation for each work day that the rest period was not so provided.

24 46. Pursuant to Labor Code §218.6 and CC §3287, the members of the Rest Period
25 Class seek recovery of pre-judgment interest on all amounts recovered herein.

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SECOND CAUSE OF ACTION
FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(On Behalf of the Wage Statement Class)
(Against All Defendants)

47. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

48. Labor Code §226(a) states in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, 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....”.

49. Further, the IWC Wage Orders §7(A) states in pertinent part: “(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay....”

50. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by the members of the Wage Statement Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

51. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each of the members of the Wage

1 Statement Class with an accurate itemized statement in writing showing (1) gross wages earned,
2 (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all
3 applicable hourly rates in effect during each respective pay period and the corresponding number
4 of hours worked at each hourly rate by each respective individual and/or pertaining to the total
5 hours worked for Defendants by the members of the Wage Statement Class, including but not
6 limited to rest periods, rest period premium payments and applicable rates of pay for each.

7 52. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
8 employee suffers injury if the employer fails to provide accurate and complete information as
9 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
10 promptly and easily ascertain requisite information without reference to other documents or
11 information.

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13 53. Here, the members of Wage Statement Class suffered injury because Defendants
14 failed to provide accurate and complete information as required by one or more items listed in
15 Labor Code §226(a)(1)-(9) and the Wage Statement Class members could not and cannot
16 promptly and easily ascertain requisite information without reference to other documents or
17 information.

18 54. In addition, the members of the Wage Statement Class have suffered injury as a
19 result of Defendants' failure to maintain accurate records for the members of the Wage
20 Statement Class in that the members of the Wage Statement Class were not timely provided
21 written accurate itemized statements showing all requisite information, including but not limited
22 to total hours worked by the employee, net wages earned and all applicable hourly rates in effect
23 during the pay period, rest period premiums and the corresponding number of hours worked at
24 each hourly rate in violation of Labor Code §226 and the IWC Wage Orders §7(A), such that the
25 members of the Wage Statement Class were misled by Defendants as to the correct information
26 regarding various items, including but not limited to total hours worked by the employee, net
27 wages earned, rest periods premiums and all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate.

1 55. The actual injuries suffered by the members of the Wage Statement Class as a
2 result of Defendants' knowing and intentional failure to maintain accurate records for the
3 members of the Wage Statement Class include but are not limited to:

- 4 a. Confusion over whether they received all wages owed them by Defendants;
5 b. The difficulty and expense of attempting to reconstruct time and pay records;
6 c. Being forced to engage in mathematical computations to analyze whether
7 Defendants' wages in fact compensated for all hours worked;
8 d. The inability to accurately calculate wage rates complicated by the fact that
9 wage statement information required by Labor Code §226 is missing;
10 e. That such practice prevents the members of the Wage Statement Class from
11 being able to effectively challenge information on their wage statements;
12 and/or
13 f. The difficulty and expense of filing and maintaining this lawsuit, and the
14 discovery required to collect and analyze the very information that California
15 law requires.

16 56. Pursuant to Labor Code §226(e), the members of the Wage Statement Class are
17 entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation
18 hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a
19 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

20 57. Pursuant to Labor Code §226(g), the currently-employed members of the Wage
21 Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor
22 Code §226.

23 58. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Wage
24 Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

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THIRD CAUSE OF ACTION
VIOLATIONS OF LABOR CODE §203
(On Behalf of the LC 203 Class)
(Against All Defendants)

59. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

60. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

61. The members of the LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

62. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, according to amendment or proof.

63. Defendants willfully failed to pay the members of the LC 203 Class their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

64. Defendants' willful failure to pay wages to the members of the LC 203 Class violates Labor Code §203 because Defendants knew or should have known wages were due to the members of the LC 203 Class, but Defendants failed to pay them.

65. Thus, the members of the LC 203 Class are entitled to recovery pursuant to Labor Code §203.

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FOURTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE §2699
(On Behalf of the Aggrieved Employees)
(Against All Defendants)

66. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

67. Pursuant to Labor Code §2699(a) (which provides that 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, board agencies or employees, such civil penalties 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) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

- a. As applicable, for civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount 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;
- b. As applicable, for civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- c. As applicable, for civil penalties pursuant to Labor Code §552, in addition to and entirely independent and apart from any other penalties in the Labor Code

1 (which states “No employer of labor shall cause his employees to work more
2 than six days in seven” because Defendants did in fact cause Plaintiff and the
3 similarly situated aggrieved employees to work more than six days in seven),
4 in the amount of \$250 for each aggrieved employee per pay period for each
5 violation and \$1,000 for each aggrieved employee per pay period for each
6 subsequent violation; and

7 d. As applicable, for any and all additional civil penalties and sums as provided
8 by the Labor Code and/or other relevant statutes.

9 68. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all
10 penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of
11 employers and employees about their rights and responsibilities under the Labor Code, and
12 twenty-five percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

13 69. Further, Plaintiff is entitled to recover reasonable attorneys’ fees and costs
14 pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

15 70. Labor Code §2699.3(a) states in pertinent part: “A civil action by an aggrieved
16 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
17 listed in Section 2699.5 shall commence only after the following requirements have been met:
18 (1) (A) The aggrieved employee or representative shall give written notice by online filing with
19 the Labor and Workforce Development Agency and by certified mail to the employer of the
20 specific provisions of this code alleged to have been violated, including the facts and theories to
21 support the alleged violation.”

22 71. Labor Code §2699.3(c)(1) states in pertinent part: “A civil action by an aggrieved
23 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
24 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
25 commence only after the following requirements have been met: (1) (A) The aggrieved
26 employee or representative shall give written notice by online filing with the Labor and
27 Workforce Development Agency and by certified mail to the employer of the specific provisions
28 of this code alleged to have been violated, including the facts and theories to support the alleged

1 violation.”

2 72. Here, Plaintiffs’ civil action alleges violations of provisions listed in Labor Code
3 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such,
4 Labor Code §2699.3(a) and §2699.3(c) apply to this action.

5 73. On April 23, 2020, Plaintiffs complied with Labor Code §2699.3(a) and Labor
6 Code §2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by
7 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. Attached hereto as
9 Exhibit “1” is Plaintiffs’ April 23, 2020 LWDA letter.

10 74. Labor Code §2699.3(a) further states in pertinent part: “(2)(A) The agency shall
11 notify the employer and the aggrieved employee or representative by certified mail that it does
12 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
13 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
14 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
15 aggrieved employee may commence a civil action pursuant to Section 2699.”

16 75. As of June 29, 2020 (65 calendar days after Plaintiffs’ April 23, 2020 LWDA
17 letter was filed online), Plaintiffs had not received any notification that the LWDA intended to
18 investigate the alleged violations. As such, Plaintiffs have complied with Labor Code §2699.3(a)
19 and have been given authorization therefrom to commence a civil action which includes a cause
20 of action pursuant to Labor Code §2699.

21 76. Further, as of May 26, 2020 (33 calendar days after Plaintiffs’ April 23, 2020
22 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from
23 Defendants written notice by certified mail that the alleged violations have been cured, including
24 a description of actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c)
25 and have been given authorization therefrom to commence a civil action which includes a cause
26 of action pursuant to Labor Code §2699.

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FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(On Behalf of the 17200 Class)
(Against All Defendants)

77. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

78. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act...".

79. B&PC §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

80. B&PC §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

81. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

82. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

83. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

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1 84. Plaintiffs seek full restitution from Defendants, as necessary and according to
2 proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means
3 of the unfair practices complained of herein.

4 85. Further, if Defendants are not enjoined from the conduct set forth above,
5 Defendants will continue to practice, employ and utilize the employment practices outlined in the
6 preceding paragraphs.

7 86. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
8 injunction prohibiting Defendants from engaging in the foregoing conduct.

9 87. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
10 monetary relief sought from Defendants.

11 VI.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiffs pray:

14 a. That the Court issue an Order certifying the Classes herein, appointing all named
15 Plaintiffs as representative of all others similarly situated, and appointing all law firms
16 representing all named Plaintiffs as counsel for the members of the Classes;

17 As to the First Cause of Action for Failure to Provide All Paid Off Premise Rest Periods:

18 b. For one (1) hour of pay at the regular rate of compensation for each member of
19 the Rest Period Class for each workday that a legal paid off premise rest period was not
20 provided;

21 c. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

22 As to the Second Cause of Action for Failure to Timely Furnish Accurate Itemized Wage

23 Statements:

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

25 e. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
26 §226(e) and/or §226(g);

27 As to the Third Cause of Action for Violations of Labor Code §203:

28 f. For recovery as authorized by Labor Code §203;

1 As to the Fourth Cause of Action for Penalties Pursuant to Labor Code §2699:

2 g. As applicable, for civil penalties pursuant to Labor Code §2699(f), in addition to
3 and entirely independent and apart from other penalties in the Labor Code and for Labor Code
4 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
5 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
6 subsequent violation;

7 h. As applicable, for civil penalties pursuant to Labor Code §226.3, in addition to
8 and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250
9 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
10 employee per pay period for each subsequent violation;

11 i. As applicable, for reasonable attorneys' fees and costs incurred pursuant to Labor
12 Code §§2699(g)(1) and any other applicable statute; and

13 j. For such relief as this Court may deem just and proper;

14 As to the Fifth Cause of Action for Unfair Business Practices:

15 k. For an accounting, under administration of Plaintiffs and/or the receiver and
16 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
17 to be refunded to members of the Classes who are owed monies by Defendants;

18 l. For an Order requiring Defendants to identify each of the members of the Classes
19 by name, home address, home telephone number and, if available, email address;

20 m. For an Order requiring Defendants to make full restitution and payment pursuant
21 to California law;

22 n. For an Order for a preliminary and/or permanent injunction prohibiting
23 Defendants from engaging in the acts complained of herein;

24 o. For the creation of an administrative process wherein each injured member of the
25 Classes may submit a claim in order to receive his/her money;

26 p. For all other appropriate injunctive, declaratory and equitable relief;

27 q. For interest to the extent permitted by law;

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1 r. For an award of attorneys' fees and costs incurred in the investigation, filing and
2 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194
3 and/or any other applicable provision of law;

4 As to All Causes of Action:

5 s. For such relief as this Court may deem just and proper, including reasonable
6 attorneys' fees and costs incurred.

7 VII.

8 DEMAND FOR JURY TRIAL

9 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

10 Dated: June 29, 2020

LAW OFFICES OF KEVIN T. BARNES

11
12 By: 

13 Kevin T. Barnes, Esq.
14 Gregg Lander, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT 1



LAW OFFICES OF RAPHAEL A. KATRI

8519 Wilshire Blvd., Ste. 200
Beverly Hills, CA 90211
Tel: 310-940-2034
Fax: 310-733-5644

April 23, 2020

VIA ELECTRONIC MAIL (\$75 filing fee to follow by mail)

PAGA Administrator
California Labor and Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: WAL-MART ASSOCIATES, INC. (hereafter, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: CECILIA RODRIGUEZ and BREANA STEWART (the "Employees"), who were subjected to the wage and hour practices set forth below

The Employees, by way of the above-named counsel, submit this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and allege the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employees and all others similarly aggrieved as hourly-paid non-exempt employees, and utilized consistent policies and procedures regarding the Employees and all other similarly aggrieved employees, as follows:

The Employer failed to provide legally requisite paid off premises rest breaks to the Employees and all other similarly aggrieved employees. Here, the Employer's rest break policy states in pertinent part: "Location of rest breaks - You should take your rest breaks in the facility's break/meeting room or in another area of the premises designated for associate rest breaks or meal periods. You are encouraged not to leave Walmart property during your rest breaks without management approval." Because the Employees and all other similarly aggrieved employees were not allowed to leave the premises for their rest breaks, the Employees and all other similarly aggrieved employees were not always provided legally compliant rest breaks. Augustus v ABM Security Services, Inc. (2016) 2 Cal 5th 257. Because the Employer did not pay a rest period penalty for these violations, the Employer violated Labor Code §§226.7 and 516 and the applicable Industrial Wage Order, ¶12(A)/(B), and owes rest period wages and penalties pursuant to Labor Code §§2699(f) and/or 558.

As a derivative result of some or all of the above claim(s), the Employer has also allegedly violated Labor Code §226 and §§201-203, as follows:

Regarding wage statements, pursuant to Labor Code §226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because the Employer allegedly failed to pay all wages as set forth above, improper paystubs were issued by the Employer to the Employees and all other similarly aggrieved employees, and the Employees allege that the Employer has derivatively violated Labor Code §226, and owes penalties pursuant to Labor Code §§2699(f) and/or 226.3.

PAGA Administrator
Re: Wal-Mart Associates, Inc.
April 23, 2020
Page 2

Regarding waiting time penalties, pursuant to Labor Code §203, the Employees and all other similarly aggrieved employees are entitled to thirty day of wages at their regular rate of pay for the Employer's alleged failure to pay all wages due upon separation of employment. Here, because the Employer allegedly failed to pay all wages as set forth above, the Employees allege that the Employer has derivatively violated Labor Code §§201-203, and owes penalties pursuant to Labor Code §§2699(f) and/or 203.

Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

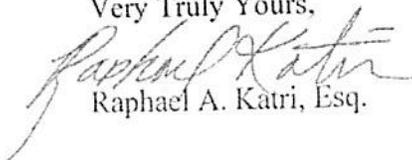
Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, pursuant to the Labor Code, PAGA and otherwise, as set forth above. The Employees would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employees gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employees may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,



Raphael A. Katri, Esq.

cc: (via Certified Mail)
Wal-Mart Associates, Inc.
702 S.W. 8th Street
Bentonville, AR 72716

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested form jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

*Provisionally Complex Cases

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ex-Walmart Employees Claim Retailer Overstepped California Labor Laws](#)
