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15 Attorneys for Defendant  
16 Wal-Mart Associates, Inc.

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

19 DEAN WALTZ an individual, on  
20 behalf of himself and on behalf of all  
persons similarly situated,

21 Plaintiff,

22 v.

23 WAL-MART ASSOCIATES, INC., a  
24 Corporation ; and DOES 1 through 50,  
inclusive,

25 Defendants.

Case No. 5:21-cv-01538

**DEFENDANT WAL-MART  
ASSOCIATES, INC.’S NOTICE OF  
REMOVAL OF CIVIL ACTION**

*[Filed Concurrently with Civil Cover  
Sheet; Certificate of Interested Parties;  
Corporate Disclosure Statement;  
Declaration of Mitchell A. Wrosch; and  
Notice of Related Cases]*

Complaint Filed: June 11, 2021  
Trial Date: None Set  
District Judge: Hon. TBD  
Magistrate Judge: Hon. TBD

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1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**  
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF DEAN WALTZ AND HIS**  
3 **COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE THAT**, pursuant to the Class Action Fairness Act  
5 of 2005, 28 U.S.C. §§ 1332(d), 1453, 1711, Defendant Wal-Mart Associates, Inc.  
6 hereby removes this action, originally filed as Case No. CIV-CB-2117018 in the  
7 Superior Court of the State of California for the County of San Bernardino to the United  
8 States District Court for the Central District of California. Defendant denies the  
9 allegations and relief sought in the Complaint and file this Notice without waiving any  
10 defenses, exceptions, or obligations that may exist in Defendant’s favor. Defendant  
11 does not concede, and specifically reserves, its right to contest the suitability of this  
12 lawsuit for certification as a class action. Defendant will provide evidence to support  
13 the allegations of this pleading as required in the event a challenge is raised to the  
14 Court’s jurisdiction.<sup>1</sup> Removal is proper for the reasons explained below.

15 **TIMELINESS OF REMOVAL**

16 1. Plaintiff Dean Waltz filed a putative Class Action Complaint against Wal-  
17 Mart Associates, Inc. (“Walmart”) on June 11, 2021 in the Superior Court of the State  
18 of California for the County of San Bernardino. (See Declaration of Mitchell Wrosch  
19 (“Wrosch Decl.”), ¶ 2.) Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of any  
20 and all process, pleadings and orders served upon Walmart are attached as Exhibit A  
21 to the Wrosch Declaration, filed concurrently herewith. This notice of removal is timely  
22

23 <sup>1</sup> A removing defendant is only required to provide a “short and plain statement” of the  
24 bases for removal and need not present or plead evidentiary detail. *Dart Cherokee Basin*  
25 *Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014); see also *Janis v. Health Net,*  
26 *Inc.*, 472 F. App’x 533, 534 (9th Cir. 2012) (“Nothing in 28 U.S.C. § 1446 requires a  
27 removing defendant to attach evidence of the federal court’s jurisdiction to its notice  
28 of removal. Section 1446(a) requires merely a ‘short and plain statement of the grounds  
of the [jurisdictional requirements].’”); *Hertz Corp. v. Friend*, 559 U.S. 77, 96–97  
(2010) (“When challenged on allegations of jurisdictional facts, the parties [who assert  
jurisdiction] must support their allegations by competent proof.”)

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1 pursuant to 28 U.S.C. § 1446(b) because Defendant has removed this action within 30  
2 days of being served.

3 **GROUND FOR REMOVAL**

4 2. Defendant is authorized to remove this action to this Court pursuant to the  
5 Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711 (“CAFA”)  
6 and since Plaintiff has filed a class action complaint where the amount in controversy  
7 exceeds five million dollars and Defendant is a citizen of a state different from the  
8 Plaintiff.

9 **A. Plaintiff Brings This Case As A Class Action Against Defendant**

10 3. Plaintiff’s Complaint is titled “CLASS ACTION COMPLAINT.” (*See*  
11 Complaint (“Compl.”), Caption) (emphasis in original).

12 4. Plaintiff’s Complaint identifies the putative classes he seeks to represent  
13 as the “CALIFORNIA CLASS” and the “CALIFORNIA LABOR SUB-CLASS.” The  
14 CALIFORNIA CLASS is defined as “all individuals who are or previously were  
15 employed by DEFENDANT in a California distribution center and classified as non-  
16 exempt employees at any time during the period beginning four (4) years prior to the  
17 filing of this Complaint and ending on the date as determined by the Court (the  
18 ‘CALIFORNIA CLASS PERIOD’).” (Compl. ¶ 4.) The CALIFORNIA LABOR SUB-  
19 CLASS is defined as “all members of the CALIFORNIA CLASS who are or previously  
20 were employed by DEFENDANT in a California distribution center at any time during  
21 the period three (3) years prior to the filing of the complaint and ending on the date as  
22 determined by the Court (the ‘CALIFORNIA LABOR SUB-CLASS PERIOD’)  
23 pursuant to Cal. Code of Civ. Proc. § 382.” (Compl. ¶ 34.)

24 5. On behalf of CALIFORNIA CLASS, the Complaint alleges one cause of  
25 action under California’s Unfair Competition Law (Cal. Bus. and Prof. Code §§ 17200,  
26 *et seq.*) (Compl. ¶¶ 24, 43-57.)

27 6. On behalf of the CALIFORNIA LABOR SUB-CLASS, the Complaint  
28 alleges six causes of action: (1) For Failure to Pay Minimum Wages [Cal. Lab. Code

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1 §§ 1194, 1197, and 1197.1]; (2) For Failure to Pay Overtime Compensation [Cal. Lab.  
2 Code §§ 510, *et seq.*]; (3) For Failure to Provide Required Meal Periods [Cal. Lab.  
3 Code §§ 226.7 & 512]; (4) For Failure to Provide Required Rest Periods [Cal. Lab.  
4 Code §§ 226.7 & 512]; (5) For Failure to Provide Accurate Itemized Statements [Cal.  
5 Lab. Code § 226]; and (6) For Failure to Reimburse Employees for Required Expenses  
6 [Cal. Lab. Code § 2802]. (Compl. ¶¶ 58-103.)

7 7. Defendant denies any liability in this case, as to Plaintiff's individual and  
8 class claims, and will present compelling defenses to these claims on the merits.  
9 Defendant intends to oppose class certification. Defendant expressly reserves all rights  
10 in this regard. However, for purposes of the jurisdictional requirements for removal  
11 only, Defendant states that, as set forth in more detail below, the allegations in  
12 Plaintiff's Complaint that he seeks to represent Walmart non-exempt employees who  
13 worked in California distribution centers at any time during the period four (4) years  
14 prior to the filing of this Complaint and ending on the date as determined by the Court,  
15 puts in controversy an amount that exceeds \$5 million. *See* 28 U.S.C. § 1332(d)(6).

16 **B. There Are More than 100 Members In The Proposed Class**

17 8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in  
18 addition to the other requirements of § 1332(d), the action involves a putative class of  
19 at least 100 persons.

20 9. Plaintiff alleges that this action is brought on behalf of all individuals who  
21 are or previously were employed by Walmart in a California distribution center and  
22 classified as non-exempt employees at any time during the period beginning four (4)  
23 years prior to the filing of this Complaint. (Compl. ¶¶ 4, 24.)

24 10. Walmart has employed more than 100 individuals at its California  
25 distribution centers who were classified as non-exempt employees at any time during  
26 the period beginning June 11, 2017. Although Defendant denies that class treatment is  
27 appropriate, Plaintiff's proposed class, if certified, would consist of more than 100  
28 members.

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

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

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

9           13. Plaintiff began his Walmart employment on September 21, 2020. (Compl.  
10 ¶ 4.) Plaintiff’s employment was terminated on June 29, 2021. Throughout his  
11 employment, Plaintiff worked for Walmart in Chino, California. As such, and based on  
12 Plaintiff’s California address of record in Walmart’s business records, Plaintiff is now  
13 and/or at all times relevant to the Complaint was a citizen of the State of California.<sup>2</sup>

14           14. A corporation is a citizen of its state of incorporation and the state of its  
15 principal place of business. 28 U.S.C. § 1332(c)(1). Defendant Walmart is  
16 incorporated in the State of Delaware has its principal place of business in Bentonville,  
17 Arkansas.

18           15. Defendant’s “principal place of business,” which the Supreme Court has  
19 interpreted to mean “the place where a corporation’s officers direct, control, and  
20 coordinate the corporation’s activities” (*Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192  
21 (2010); 28 U.S.C. § 1332(c)(1)) is Bentonville, Arkansas. Thus, Defendant is a citizen  
22 of Delaware and Arkansas – not California, and there is accordingly minimal  
23 jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d)(2)(A); *Hertz*, 130 S. Ct. at 1192;  
24 *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1230 n.2 (9th Cir. 2011).

25  
26  
27 <sup>2</sup> In alleging that the requirements of CAFA are satisfied, Defendant does not concede  
28 in any way the allegations in the Complaint are true and accurate.

1           **D. The Amount in Controversy Exceeds \$5 Million**

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

5                   **1. Alleged Minimum Wage Violations**

6           17. California Labor Code Section 1197 states that it is unlawful for an  
7 employee to pay its employees a wage lower than the minimum wage fixed by the  
8 commission, or by any applicable state or local law. Labor Code Section 1194 states  
9 that “any employee receiving less than the legal minimum wage or the legal overtime  
10 compensation applicable to the employee is entitled to recover in a civil action the  
11 unpaid balance of the full amount of this minimum wage or overtime compensation....”

12           18. Plaintiff alleges that Defendant requires Plaintiff and the putative class  
13 members to “work without paying them for all the time they are under DEFENDANT’S  
14 control. Among other things DEFENDANT requires PLAINTIFF to work while  
15 clocked out...to wait for and submit to loss prevention inspections...[and] to wait in  
16 line and submit to mandatory temperature checks for COVID-19 screening.” (Compl.  
17 ¶ 8.)

18           19. Plaintiff further alleges that Defendant “maintained a wage practice of  
19 paying PLAINTIFF and the other members” of the putative class “without regard to  
20 the correct amount of time they work.” (Compl. ¶ 63.)

21           20. Plaintiff also alleges that “DEFENDANT, as a matter of established  
22 company policy and procedure, administers a uniform practice of rounding the actual  
23 time worked and recorded by PLAINTIFF ... always to the benefit of DEFENDANT,  
24 so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS  
25 Members are paid less than they would have been paid....” (Compl. ¶ 8.)

26           21. Plaintiff contends that Defendant’s failure to pay minimum wage was “a  
27 result of implementing a policy and practice that denies accurate compensation to  
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1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in  
2 regards to minimum wage pay.” (Compl. ¶ 64.)

3 22. Plaintiff also contends that Defendant is required to pay him and the  
4 putative class “all unpaid wages, according to proof, interest, statutory costs, as well as  
5 the assessment of any statutory penalties.” (Compl. ¶ 71.)

6 23. Plaintiff also seeks attorneys’ fees and costs in connection with his claim  
7 for failure to pay minimum wage. (Prayer for Relief, ¶ 3.)

8 24. Defendant denies that it failed to compensate Plaintiff or the putative class  
9 members for all hours worked. However, because Plaintiff has alleged that for the time  
10 period of June 11, 2017 to the present, Defendant failed to pay wages to Plaintiff and  
11 the putative class, the Court should apply to the amount in controversy requirement an  
12 *extremely conservative* assumption of one (1) hour of unpaid time for each putative  
13 class member during each pay period worked by the putative class.

14 25. Estimating conservatively, the amount in controversy for Plaintiff’s  
15 unpaid wages claim is in excess of **\$7,641,480** (\$10.50 [assuming that each employee  
16 was not compensated for one (1) hour each pay period and earned \$10.50 per hour<sup>3</sup>] x  
17 727,760 [total number of pay periods worked collectively by putative class members  
18 from June 11, 2017 to September 3, 2021]).

19 **2. Alleged Overtime Violations**

20 26. Labor Code § 510 provides that any work in excess of eight hours in a  
21 workday or 40 hours in a workweek shall be compensated at one and one-half times an  
22 employee’s regular rate of pay. Labor Code § 1194 (a) provides “Notwithstanding any  
23 agreement to work for a lesser wage, an employee receiving less than the legal  
24 minimum wage or the legal overtime compensation applicable to the employee is  
25

26  
27  
28 

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<sup>3</sup> 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 entitled to recover in a civil action the unpaid balance of the full amount of this  
2 minimum wage or overtime compensation...”

3 27. Plaintiff alleges “PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
4 Members were required, permitted or suffered by DEFENDANT to work for  
5 DEFENDANT and were not paid for all the time they worked, including overtime  
6 work.” (Compl. ¶ 77.) Further, Plaintiff alleges that “DEFENDANT’S unlawful wage  
7 and hour practice manifested, without limitation, applicable to the CALIFORNIA  
8 LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice  
9 that failed to accurately record overtime worked....” (Compl. ¶ 78.)

10 28. Additionally, Plaintiff alleges that Defendant “denied accurate  
11 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR  
12 SUB-CLASS for overtime worked, including, the overtime work performed in excess  
13 of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty  
14 (40) hours in any workweek.” (Compl. ¶ 78.)

15 29. Thus, Plaintiff alleges that he and the CALIFORNIA LABOR SUB-  
16 CLASS members are entitled to “recovery of all overtime wages...interest, statutory  
17 costs, as well as the assessment of any statutory penalties.” Plaintiff also seeks  
18 attorneys’ fees and costs in connection with his claim for failure to pay overtime.  
19 (Prayer for Relief, ¶ 3.)

20 30. Defendant denies that it failed to pay overtime wages to Plaintiff or the  
21 CALIFORNIA LABOR SUB-CLASS members. However, because Plaintiff has  
22 alleged the Defendant maintained a “policy and practice” of inaccurately recording  
23 overtime and that the Plaintiff and the CALIFORNIA LABOR SUB-CLASS members  
24 were “require[d]” to wait for and submit to “loss prevention inspections ... after  
25 clocking out at the end of each scheduled shift” and that this resulted in a failure to pay  
26 overtime wages during the period “three (3) years prior to the filing of the complaint  
27 [plus the additional one year provided by the UCL claim]” to current and former non-  
28 exempt employees of Defendant who worked in Defendant’s California distribution

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1 centers in the State of California, the Court should apply to the amount in controversy  
2 requirement an *extremely conservative* assumption of one hour of unpaid overtime  
3 wages during each pay period. (Compl. ¶¶ 8, 34, 78.) *See, e.g., Soto v. Grief Packaging,*  
4 *LLC*, 2018 WL 1224425, \*3 (C.D. Cal. Mar. 8, 2018) (finding it reasonable to assume  
5 one hour of unpaid wages per employee per workweek where plaintiff alleged that  
6 defendant failed to pay him and the class members for all hours worked on a consistent  
7 and regular basis”); *Reyes v. Carehouse Healthcare Center, LLC*, 2017 WL 2869499,  
8 \*4 (C.D. Cal. July 5, 2017) (defendant’s estimate of one hour of unpaid overtime wages  
9 per workweek was reasonable where plaintiff alleged that defendants engaged in a  
10 “regular practice of willfully, unfairly and unlawfully” depriving plaintiff and the class  
11 members of compensation).

12 31. Estimating conservatively, the amount in controversy for Plaintiff’s  
13 unpaid overtime claim is in excess of **\$5,731,110** ( $\$15.75^4 \times 727,760$  [total number of  
14 pay periods worked collectively by putative class members from June 11, 2017 to  
15 September 3, 2021] x 0.5 hours per pay period).

### 16 3. Alleged Unpaid Meal and Rest Premiums

17 32. Plaintiff alleges that “PLAINTIFF and other CALIFORNIA CLASS  
18 Members are from time to time unable to take thirty (30) minute off duty meal breaks  
19 and are not fully relieved of duty for their meal periods.” (Compl. ¶11.)

20 33. Plaintiff also contends that “PLAINTIFF, like all the other members of the  
21 CALIFORNIA CLASS,... was subjected to the DEFENDANT’S deceptive practice  
22 and policy which failed to provide the legally required meal and rest periods.” (Compl.  
23 ¶ 30(c).)

24 34. Plaintiff further alleges that “DEFENDANT’S practices were deceptive  
25 and fraudulent in that DEFENDANT’S policy and practice failed to provide the legally  
26

27  
28 <sup>4</sup> This figure is 1.5 times the \$10.50 minimum wage in the State of California in 2017.

1 mandated meal and rest periods, the required amount of compensation for missed meal  
2 and rest periods.” (Compl. ¶ 48.)

3 35. Plaintiff further alleges that Defendant’s “practices were also unlawful,  
4 unfair, and deceptive in that DEFENDANT’S policies, practices and procedures failed  
5 to provide all legally required meal breaks to PLAINTIFF and the other members of  
6 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.” (Compl.  
7 ¶ 50.)

8 36. Plaintiff also alleges that “DEFENDANT’S practices were deceptive and  
9 fraudulent in that DEFENDANT’S policy and practice failed to provide the legally  
10 mandated meal and rest periods...” (Compl. ¶ 48.)

11 37. Plaintiff additionally alleges that “DEFENDANT’S policy restricts  
12 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks is  
13 unlawful based on DEFENDANT’S rule which states PLAINTIFF and other  
14 CALIFORNIA CLASS Members cannot leave the work premises during their rest  
15 period.” (Compl. ¶ 12.)

16 38. Plaintiff further alleges that Defendant failed to pay “one additional hour  
17 of compensation at each employee’s regular rate of pay for each workday that a meal  
18 period was not provided” and that Defendant failed to pay “one additional hour of  
19 compensation at each employee’s regular rate of pay for each workday that a rest period  
20 was not provided.” (Compl. ¶¶ 90, 94.)

21 39. Defendant denies that any such violations occurred or that compensation  
22 is owed to Plaintiff or putative class members. However, for purposes of this  
23 jurisdictional analysis *only*, Defendant relies on Plaintiff’s allegation that violations  
24 occurred and compensation is owed. *See Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d  
25 395, 399 (9th Cir. 2010) (“In determining the amount [in controversy], we first look to  
26 the complaint.”); *Heejin Lim v. Helio, LLC*, No. CV 11-9183 PSG, 2012 WL 359304,  
27 at \*2 (C.D. Cal. Feb. 2, 2012) (“The ultimate inquiry is, therefore, what amount is put  
28 ‘in controversy’ by the plaintiff’s complaint or other papers, not what the defendant

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1 will actually owe for the actual number of violations that occurred, if any.”) (Citations  
2 omitted).

3 40. Under California law, employees who are denied the opportunity to take  
4 proper meal and rest periods are entitled to one hour of premium pay for each day that  
5 a meal period is missed and one hour of premium pay for each day that a rest period is  
6 missed, *i.e.*, two hours of premium pay for each day that both a meal and rest period  
7 are missed. *See Marlo v. United Parcel Service, Inc.*, 2009 WL 1258491, \*7 (C.D. Cal.  
8 2009). Meal and rest period claims are properly considered in determining the amount  
9 in controversy. *See Muniz v. Pilot Travel Ctr. LLC*, 2007 WL 1302504, \*4 (E.D. Cal.  
10 2007); *Helm v. Alderwoods Group, Inc.*, 2008 WL 2002511, \*8 (N.D. Cal. 2008).

11 41. Numerous courts have held that a conservative estimate is proper when  
12 the complaint does not provide the number of alleged meal and rest period violations  
13 at issue. *See Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648-649 (9th Cir.  
14 2012) (finding that the amount in controversy was satisfied based on an estimate of one  
15 meal break and one rest break per week because Plaintiff alleged that defendants  
16 “regularly and consistently” failed to provide proper breaks); *Jasso v. Money Mart*  
17 *Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at \*5 (N.D. Cal. Mar. 1, 2012)  
18 (accepting defendant’s “reasonable and conservative estimate” of one missed meal  
19 break and one missed rest break per week); *Long v. Destination Maternity Corp*, No.  
20 15-CV-2836 WQH, 2016 WL 1604968, at \*8 (S.D. Cal. April 21, 2016) (“Because  
21 Plaintiff does not include fact-specific allegations regarding the circumstances of the  
22 alleged missed meal and rest periods, it is reasonable for Defendant to estimate  
23 damages sought based on one meal period or rest period violation per employee per  
24 week.”).

25 42. During the period of June 11, 2017 to September 3, 2021, there were  
26 approximately 26,886 associates within the putative class who collectively worked  
27 approximately 727,760 total pay periods during that period. For purposes of removal,  
28 Walmart will conservatively assume that the average rate of pay is the lowest applicable

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1 minimum wage during the class period, *i.e.*, \$10.50 per hour. If, on average, the putative  
2 class members missed only one meal break per pay period, the amount in controversy  
3 with respect to this claim would be **\$7,641,480** (\$10.50 x 1 meal period x 727,760 pay  
4 periods). This assumption is extremely conservative, given Plaintiff’s allegations that  
5 meal period violations resulted from Walmart’s “practices” and “policies.” (*See*  
6 Compl. ¶¶ 30(c), 48, 50.)

7 43. A conservative estimate is unnecessary for Plaintiff’s rest period claim, as  
8 he alleges that Defendant’s “policy” and “rule” denied him and the putative class  
9 members rest breaks (*i.e.*, daily).<sup>5</sup> Nevertheless, if, on average, the putative class  
10 members missed only one rest break per pay period, the amount in controversy with  
11 respect to this claim would also be **\$7,641,480** (\$10.50 x 1 rest period x 727,760 pay  
12 periods).

13 44. Therefore, based on Plaintiff’s allegations, the amount placed in  
14 controversy on his meal and rest period claims is in excess of **\$15,282,960**.

15 **4. Wage Statements**

16 45. California Labor Code section 226(a) states that every employer shall  
17 furnish his or her employees an accurate itemized wage statement in writing showing  
18 nine specific categories of information. Plaintiff alleges that Defendant “failed to  
19 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with  
20 complete and accurate wage statements which failed to show, among other things, the  
21 correct gross and net wages earned.” (Compl. ¶ 98.) The Complaint also alleges that  
22

23 \_\_\_\_\_  
24 <sup>5</sup> *See Stevenson v. Dollar Tree Stores, Inc.*, 2011 WL 4928753, \*3-4 (E.D. Cal.  
25 2011) (defendant’s calculation of potential missed meal period damages at 100% of the  
26 shifts was appropriate where plaintiff alleged that class members were routinely denied  
27 meal periods or were not compensated for meal periods.); *Duberry v. J. Crew Grp.,*  
28 *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”).

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1 the Plaintiff and putative class’s wage statements “fail to identify the accurate total  
2 hours worked each period. More specifically, the wage statements fail to identify the  
3 accurate total hours worked each pay period.” (Compl. ¶ 98.)

4 46. The Complaint additionally states that “PLAINTIFF and the other  
5 members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated  
6 damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
7 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay  
8 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time  
9 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF  
10 and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).”  
11 (Compl. ¶ 99.)

12 47. The Complaint also states that Plaintiff is entitled to interest and “an award  
13 of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but  
14 not limited to, pursuant to Labor Code § 21, §226, §1194, and/or §2802.” (Prayer for  
15 Relief ¶ 3.)

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

20 49. Plaintiff alleges that “DEFENDANT failed to issue to PLAINTIFF an  
21 itemized wage statement that lists all the requirements under California Labor Code  
22 226 *et seq.*” (Compl. ¶ 98.) Plaintiff further alleges that Defendant’s wage statements  
23 failed to “identify the accurate total hours worked each pay period.” (Compl. ¶ 98.)  
24 Plaintiff also alleges that “From time to time, DEFENDANT also fails to provide  
25 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and  
26 accurate wage statements.” (Compl. ¶ 14.)

27 50. Plaintiff’s allegation that Defendant failed to provide accurate wage  
28 statements in violation of California Labor Code 226 applies uniformly to every wage

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1 statement issued during this time period. Therefore, utilizing an alleged violation rate  
2 of 100% is proper here because Plaintiff has alleged a 226 violation that occurred on  
3 every wage statement. However, for purposes of removal, Defendant will use a 25%  
4 violation rate.

5 51. Defendant has issued more than 302,606 wage statements to putative class  
6 members during the applicable one-year statute of limitations. Based on the initial  
7 violation rate of \$50 penalty per wage statement and a 25% violation rate, the total  
8 amount in controversy for this cause of action is **\$3,782,575**.

9 **5. Attorneys' Fees**

10 52. Plaintiff's Complaint requests attorneys' fees pursuant to California Labor  
11 Code Section 226. (Compl. ¶ 18, Prayer for Relief ¶ 3.)

12 53. Under Ninth Circuit precedent, 25% of the common fund is generally used  
13 as a benchmark for an award of attorney fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d  
14 1011, 1029 (9th Cir. 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS  
15 17119, at \*15 (S.D. Cal., Mar. 6, 2009) ("In wage and hour cases, '[t]wenty-five percent  
16 is considered a benchmark for attorneys' fees in common fund cases.") (citations  
17 omitted). Here, Defendant has shown that the claimed amount in controversy is  
18 conservatively in excess of **\$32,438,125**, and Plaintiff has not indicated that he will  
19 seek less than 25% of a common fund in attorneys' fees. (*See generally* Compl., Prayer  
20 for Relief.) Although Defendant has shown that the amount in controversy absent  
21 attorneys' fees surpasses the jurisdictional threshold, this Court should nevertheless  
22 include the potential attorneys' fees in evaluating jurisdiction. *Gugielmino v. McKee*  
23 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Giannini v. Nw. Mut. Life Ins.*  
24 *Co.*, 2012 WL 1535196, at \*4 (N.D. Cal. 2012) (holding that defendants' inclusion of  
25 attorneys' fees to satisfy amount in controversy was reasonable where defendants "base  
26 this amount by multiplying by twenty-five percent the sum of the amounts placed in  
27 controversy by the four claims" asserted by plaintiff.); *Jasso v. Money Mart Express,*  
28 *Inc.*, 2012 WL 699465, at \*6-7 (N.D. Cal. 2012) (holding that "it was not unreasonable

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1 for [Defendant] to rely on” an “assumption about the attorneys’ fees recovery as a  
2 percentage of the total amount in controversy” and noting that “it is well established  
3 that the Ninth Circuit ‘has established 25% of the common fund as a benchmark award  
4 for attorney fees.’”).

5 54. Defendant denies that attorneys’ fees are owed to Plaintiff or putative class  
6 members, and Defendant further reserves the right to contest the application of the 25%  
7 benchmark in this case. However, for purposes of this jurisdictional analysis only,  
8 Defendant relies on Plaintiff’s allegations that attorneys’ fees are owed. *Guglielmino*,  
9 506 F.3d at 700; *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 579 F.3d 994, 1000 (9th Cir.  
10 2007), *overruled on other grounds by Standard Fire Ins. Co. v. Knowles*, 133 S. Ct.  
11 1345 (2013).

12 55. Using a 25% benchmark figure for attorneys’ fees for Plaintiff’s  
13 allegations results in estimated attorneys’ fees of **\$8,109,531.25**.

14 **E. Summary Of Amount In Controversy**

15 56. Defendant denies any liability in this case, as to Plaintiff’s individual, and  
16 class claims, and will present compelling defenses to these claims on the merits.  
17 Defendant intends to oppose class certification. Accordingly, as set forth above, the  
18 Complaint places in actual controversy more than the required \$5 million for purposes  
19 of removal under CAFA, even without considering the amounts placed in controversy  
20 by attorney fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)  
21 (attorneys’ fees may properly be included in calculation of the amount of controversy  
22 where an underlying statute authorizes an award of attorneys’ fees). This calculation is  
23 a conservative estimate of the wage statement violation rate and does not include the  
24 Plaintiff’s claim for Failure to Reimburse Employees for Required Expenses [Cal. Lab.  
25 Code § 2802.

26 ///

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**F. This Removal Satisfies The Procedural Requirements Of 28 U.S.C. § 1446**

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

58. In accordance with 28 U.S.C. § 1146(a), copies of all process, pleadings, and orders served upon Defendant are attached as **Exhibit A** to the Wrosch Declaration.

59. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the Superior Court of California for the County of San Bernardino. Notice of Compliance shall be filed promptly afterwards with this Court.

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

**II. CONCLUSION**

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

DATED: September 9, 2021

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

By: /s/ Mitchell A. Wrosch  
Paloma P. Peracchio  
Mitchell A. Wrosch  
Andrew B. Levin

Attorneys for Defendant  
Wal-Mart Associates, Inc.

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**PROOF OF SERVICE**

*Dean Waltz v. Wal-Mart Associates, Inc., et al.*  
Case No. 5:21-cv-01538

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 September 9, 2021, I served the following document(s):

**DEFENDANT WAL-MART ASSOCIATES, INC.’S  
NOTICE OF REMOVAL OF CIVIL ACTION**

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.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**(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 September 9, 2021, at Costa Mesa, California.



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Lisa Sles

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**SERVICE LIST**

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Facsimile: 562-461-0998

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**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

WAL-MART ASSOCIATES, INC., a Corporation ; and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**


**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DEAN WALTZ an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

JUN 22 2021

BY   
JUSTIN MANASSEE, DEPUTY

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
San Bernardino District - Civil Division  
247 W. Third St., San Bernardino, CA 92415

CASE NUMBER:  
(Número del caso)

**CIV SB 2117018**

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):

Norman Blumenthal (Bar # 68687)  
Blumenthal Nordrehaug Bhowmik De Blouw LLP  
2255 Calle Clara, La Jolla, CA 92037

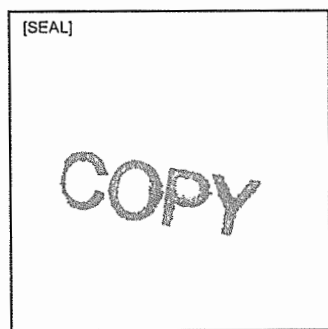
Fax No.: (858) 551-1232  
Phone No.: (858) 551-1223

DATE:  
(Fecha) JUN 22 2021

Clerk, by Justin Manassee, Deputy  
(Secretario) (Adjunto)

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

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



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **WAL-MART ASSOCIATES, INC.**

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):

- by personal delivery on (date):

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)  
Kyle R. Nordrehaug (State Bar #205975)  
Aparajit Bhowmik (State Bar #248066)  
Nicholas J. De Blouw (State Bar #280922)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232

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

JUN 11 2021

BY   
JUSTIN MANASSEE, DEPUTY

**ELDESSOUKY LAW**

Mohamed Eldessouky (State Bar# 289955)  
2400 E. Katella Ave., Suite 800  
Anaheim, CA 92806  
Telephone: (714) 409-8991  
Facsimile: (562) 461-0998

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN BERNARDINO**

DEAN WALTZ an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC., a  
Corporation ; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. **CIV SB 2117018**

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Dean Waltz (“PLAINTIFF”), an individual, on behalf of himself and all other  
2 similarly situated current and former employees alleges on information and belief, except for  
3 his own acts and knowledge which are based on personal knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Wal-Mart Associates, Inc. (“DEFENDANT”) is a corporation that at  
7 all relevant times mentioned herein conducted and continues to conduct substantial business in  
8 the state of California.

9 2. DEFENDANT is an American multinational retail corporation that operates a  
10 chain of hypermarkets, discount department stores and distribution centers in California.

11 3. PLAINTIFF has been employed by DEFENDANT in California since September  
12 of 2020 and has been at all times classified by DEFENDANT as a non-exempt employee, paid  
13 on an hourly basis, and entitled to the legally required meal and rest periods and payment of  
14 minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
16 defined as all individuals who are or previously were employed by DEFENDANT in a  
17 California distribution center and classified as non-exempt employees (the “CALIFORNIA  
18 CLASS”) at any time during the period beginning four (4) years prior to the filing of this  
19 Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS  
20 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
21 Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which  
25 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged  
26 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained  
27 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA  
28 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and  
2 the other members of the CALIFORNIA CLASS who have been economically injured by  
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and  
4 equitable relief.

5 6. The true names and capacities, whether individual, corporate, subsidiary,  
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
7 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
8 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
9 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
10 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
11 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are  
12 responsible in some manner for one or more of the events and happenings that proximately  
13 caused the injuries and damages hereinafter alleged.

14 7. The agents, servants and/or employees of the Defendants and each of them acting  
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and  
19 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
21 Defendants' agents, servants and/or employees.

22  
23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
26 meaning the time during which an employee is subject to the control of an employer, including  
27 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF  
28 and CALIFORNIA CLASS Members to work without paying them for all the time they are

1 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to  
2 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.  
3 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what  
4 should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established  
5 company policy and procedure, administers a uniform practice of rounding the actual time  
6 worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the  
7 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and  
8 CALIFORNIA CLASS Members are paid less than they would have been paid had they been  
9 paid for actual recorded time rather than "rounded" time. Additionally, during the  
10 CALIFORNIA CLASS PERIOD, DEFENDANT engages in the practice of requiring  
11 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock after clocking  
12 out of DEFENDANT's timekeeping system, in that DEFENDANT, as a condition of  
13 employment, requires these employees to wait for and submit to loss prevention inspections,  
14 waiting in line in order to pass through DEFENDANT's security checkpoints after clocking out  
15 at the end of each scheduled shift for which DEFENDANT does not provide compensation for  
16 time spent waiting for and submitting to DEFENDANT's loss prevention inspections off the  
17 clock. Additionally, DEFENDANT requires PLAINTIFF and other CALIFORNIA CLASS  
18 Members to wait in line and submit to mandatory temperature checks for COVID-19 screening  
19 prior to passing through DEFENDANT's security checkpoint and prior to clocking into  
20 DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and other  
21 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-  
22 duty meal breaks by working without their time being correctly recorded and without  
23 compensation at the applicable rates. DEFENDANT's policy and practice not to pay  
24 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by  
25 DEFENDANT's business records.

26 9. State and federal law provides that employees must be paid overtime at one-and-  
27 one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS  
28 Members are compensated at an hourly rate plus incentive pay that is tied to specific elements



1 of an employee's performance.

2 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
3 Members' compensation is DEFENDANT's non-discretionary incentive program that paid  
4 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
5 performance for DEFENDANT. The non-discretionary incentive program provided all  
6 employees paid on an hourly basis with incentive compensation when the employees met the  
7 various performance goals set by DEFENDANT. However, when calculating the regular rate  
8 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
9 DEFENDANT failed to include the incentive compensation as part of the employees' "regular  
10 rate of pay" for purposes of calculating overtime pay. Management and supervisors described  
11 the incentive program to potential and new employees as part of the compensation package. As  
12 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
13 CLASS Members must be included in the "regular rate of pay." The failure to do so has  
14 resulted in a underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA  
15 CLASS Members by DEFENDANT.

16 11. As a result of their rigorous work schedules, PLAINTIFF and other  
17 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off  
18 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and  
19 other CALIFORNIA CLASS Members are required from time to time to perform work as  
20 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a  
21 meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and  
22 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in  
23 which these employees are required by DEFENDANT to work ten (10) hours of work.  
24 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks  
25 without additional compensation and in accordance with DEFENDANT's corporate policy and  
26 practice.

27 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
28 CALIFORNIA CLASS Members are also required from time to time to work in excess of four

1 (4) hours without being provided ten (10) minute rest periods. Further, these employees are  
2 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two  
3 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
4 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
6 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members are also  
7 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage  
8 Order requires employers to provide employees with off-duty rest periods, which the California  
9 Supreme Court defined as time during which an employee is relieved from all work related  
10 duties and free from employer control. In so doing, the Court held that the requirement under  
11 California law that employers authorize and permit all employees to take rest period means that  
12 employers must relieve employees of all duties and relinquish control over how employees  
13 spend their time which includes control over the locations where employees may take their rest  
14 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -  
15 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and  
16 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on  
17 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members  
18 cannot leave the work premises during their rest period.

19 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately  
20 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount  
21 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,  
22 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for  
23 all time worked, meaning the time during which an employee was subject to the control of an  
24 employer, including all the time the employee was permitted or suffered to permit this work.  
25 DEFENDANT requires these employees to work off the clock without paying them for all the  
26 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have  
27 known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under  
28 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeit time worked by working without their time being accurately recorded and  
2 without compensation at the applicable minimum wage and overtime wage rates. To the extent  
3 that the time worked off the clock does not qualify for overtime premium payment,  
4 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of  
5 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

6 14. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which  
8 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §  
9 226 provides that every employer shall furnish each of his or her employees with an accurate  
10 itemized wage statement in writing showing, among other things, gross wages earned and all  
11 applicable hourly rates in effect during the pay period and the corresponding amount of time  
12 worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members are paid on an  
13 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the  
14 pay period and the total hours worked, and the applicable pay period in which the wages are  
15 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT  
16 provides to PLAINTIFF and other CALIFORNIA CLASS Members fail to identify such  
17 information. Aside, from the violations listed above in this paragraph, DEFENDANT fails to  
18 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California  
19 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and  
20 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
21 Code § 226.

22 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
23 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the  
24 wages are paid not more than seven calendar days following the close of the payroll period.  
25 Cal. Lab. Code § 210 provides:

26 [I]n addition to, and entirely independent and apart from, any other penalty provided in  
27 this article, every person who fails to pay the wages of each employee as provided in  
28 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial  
violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)

1 for each failure to pay each employee, plus 25 percent of the amount unlawfully  
withheld.

2 16. DEFENDANT from time to time fails to pay PLAINTIFF and members of the  
3 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll  
4 period in accordance with Cal. Lab. Code § 204(d).

5 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other  
6 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.  
7 Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary  
8 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.  
9 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to  
10 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

11 18. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
12 to collect or receive from an employee any part of wages theretofore paid by said employer to  
13 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other  
14 CALIFORNIA LABOR SUB-CLASS Members, makes unlawful deductions from  
15 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,  
16 fails to disclose all aspects of the deductions from compensation payable to PLAINTIFF and  
17 CALIFORNIA LABOR SUB-CLASS Members, and thereby fails to pay these employees all  
18 wages due at each applicable pay period and upon termination. PLAINTIFF and members of  
19 the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages  
20 according to proof, related penalties, interest, attorney fees and costs.

21 19. DEFENDANT intentionally and knowingly fails to reimburse and indemnify  
22 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses  
23 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence  
24 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
25 2802, employers are required to indemnify employees for all expenses incurred in the course  
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall  
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
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1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying  
3 the directions, believed them to be unlawful."

4 20. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
5 Members as a business expense, are required by DEFENDANT to use their own personal  
6 cellular phones as a result of and in furtherance of their job duties as employees for  
7 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated  
8 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,  
9 PLAINTIFF and other CALIFORNIA CLASS Members are required by DEFENDANT to use  
10 their personal cellular phones to for work related issues, including but not limited downloading  
11 applications on their cellular phone to sue fort work purposes.. As a result, in the course of their  
12 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA  
13 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
14 related to the use of their personal cellular phones all on behalf of and for the benefit of  
15 DEFENDANT.

16 21. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally  
17 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
18 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT  
19 does not have a policy or practice which provided timely off-duty meal and rest breaks to  
20 PLAINTIFF and also fails to compensate PLAINTIFF for his missed meal and rest breaks. The  
21 nature of the work performed by the PLAINTIFF does not prevent him from being relieved of  
22 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's  
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by  
24 DEFENDANT's business records. The amount in controversy for PLAINTIFF individually  
25 does not exceed the sum or value of \$75,000.

26  
27 **JURISDICTION AND VENUE**

28 22. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
2 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees  
3 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

4 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
5 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
6 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
7 in this County and/or conducts substantial business in this County, and (ii) committed the  
8 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

9  
10 **THE CALIFORNIA CLASS**

11 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
13 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as  
14 all individuals who are or previously were employed by DEFENDANT in a California  
15 distribution center and classified as non-exempt employees (the "CALIFORNIA CLASS") at  
16 any time during the period beginning four (4) years prior to the filing of this Complaint and  
17 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The  
18 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five  
19 million dollars (\$5,000,000.00).

20 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
21 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
22 accordingly.

23 26. DEFENDANT, as a matter of company policy, practice and procedure, and in  
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
26 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks  
27 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT  
28 enjoyed the benefit of this work, required employees to perform this work and permits or suffers

1 to permit this work.

2 27. DEFENDANT has the legal burden to establish that each and every  
3 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as  
4 required by California laws. The DEFENDANT, however, as a matter of policy and procedure  
5 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in  
6 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid  
7 as required by law. This common business practice is applicable to each and every  
8 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,  
9 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as  
10 causation, damages, and reliance are not elements of this claim.

11 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
12 CLASS Members is impracticable.

13 29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
14 law by:

15 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.  
16 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or  
17 deceptively having in place company policies, practices and procedures  
18 that failed to record and pay PLAINTIFF and the other members of the  
19 CALIFORNIA CLASS for all time worked, including minimum wages  
20 owed and overtime wages owed for work performed by these employees;  
21 and,

22 (b) Committing an act of unfair competition in violation of the UCL, by  
23 failing to provide the PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS with the legally required meal and rest periods.

25 30. This Class Action meets the statutory prerequisites for the maintenance of a Class  
26 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

27 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
28 that the joinder of all such persons is impracticable and the disposition of

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their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT’s deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

31. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of



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separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class

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Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
  - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment

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will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

32. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of

1 the CALIFORNIA CLASS for the injuries sustained;

2 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
3 to the CALIFORNIA CLASS, thereby making final class-wide relief  
4 appropriate with respect to the CALIFORNIA CLASS as a whole;

5 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
6 the business records of DEFENDANT; and,

7 (i) Class treatment provides manageable judicial treatment calculated to bring  
8 a efficient and rapid conclusion to all litigation of all wage and hour  
9 related claims arising out of the conduct of DEFENDANT as to the  
10 members of the CALIFORNIA CLASS.

11 33. DEFENDANT maintains records from which the Court can ascertain and identify  
12 by job title each of DEFENDANT's employees who have been intentionally subjected to  
13 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will  
14 seek leave to amend the Complaint to include any additional job titles of similarly situated  
15 employees when they have been identified.

16  
17 **THE CALIFORNIA LABOR SUB-CLASS**

18 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh  
19 causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
20 CLASS who are or previously were employed by DEFENDANT in a California distribution  
21 center (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3)  
22 years prior to the filing of the complaint and ending on the date as determined by the Court (the  
23 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.  
24 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS  
25 Members is under five million dollars (\$5,000,000.00).

26 35. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
27 Commission ("IWC") Wage Order requirements, and the applicable provisions of California  
28 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed

1 to correctly calculate compensation for the time worked by PLAINTIFF and the other members  
2 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these  
3 employees, even though DEFENDANT enjoyed the benefit of this work, required employees  
4 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied  
5 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are  
6 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable  
7 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
8 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
9 accordingly.

10 36. DEFENDANT maintains records from which the Court can ascertain and identify  
11 by name and job title, each of DEFENDANT's employees who have been intentionally  
12 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.  
13 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of  
14 similarly situated employees when they have been identified.

15 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

17 38. Common questions of law and fact exist as to members of the CALIFORNIA  
18 LABOR SUB-CLASS, including, but not limited, to the following:

- 19 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
20 compensation due to members of the CALIFORNIA LABOR SUB-  
21 CLASS for missed meal and rest breaks in violation of the California  
22 Labor Code and California regulations and the applicable California Wage  
23 Order;
- 24 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate  
26 itemized wage statements;
- 27 (c) Whether DEFENDANT has engaged in unfair competition by the  
28 above-listed conduct;

1 (d) The proper measure of damages and penalties owed to the members of the  
2 CALIFORNIA LABOR SUB-CLASS; and,

3 (e) Whether DEFENDANT's conduct was willful.

4 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
5 under California law by:

6 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the  
7 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-  
8 CLASS all wages due for overtime worked, for which DEFENDANT is  
9 liable pursuant to Cal. Lab. Code § 1194;

10 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to  
11 accurately pay PLAINTIFF and the members of the CALIFORNIA  
12 LABOR SUB-CLASS the correct minimum wage pay for which  
13 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
15 members of the CALIFORNIA LABOR SUB-CLASS with an accurate  
16 itemized statement in writing showing the corresponding correct amount  
17 of wages earned by the employee;

18 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
20 CLASS with all legally required off-duty, uninterrupted thirty (30) minute  
21 meal breaks and the legally required off-duty rest breaks;

22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
23 when an employee is discharged or quits from employment, the employer  
24 must pay the employee all wages due without abatement, by failing to  
25 tender full payment and/or restitution of wages owed or in the manner  
26 required by California law to the members of the CALIFORNIA LABOR  
27 SUB-CLASS who have terminated their employment; and,

28 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and

1 the CALIFORNIA LABOR SUB-CLASS members with necessary  
2 expenses incurred in the discharge of their job duties.

3 40. This Class Action meets the statutory prerequisites for the maintenance of a Class  
4 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

5 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are  
6 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS  
7 Members is impracticable and the disposition of their claims as a class  
8 will benefit the parties and the Court;

9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
10 that are raised in this Complaint are common to the CALIFORNIA  
11 LABOR SUB-CLASS and will apply to every member of the  
12 CALIFORNIA LABOR SUB-CLASS;

13 (c) The claims of the representative PLAINTIFF are typical of the claims of  
14 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,  
15 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
16 was a non-exempt employee paid on an hourly basis who was subjected  
17 to the DEFENDANT's practice and policy which failed to pay the correct  
18 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.  
19 PLAINTIFF sustained economic injury as a result of DEFENDANT's  
20 employment practices. PLAINTIFF and the members of the  
21 CALIFORNIA LABOR SUB-CLASS were and are similarly or  
22 identically harmed by the same unlawful, deceptive, and unfair  
23 misconduct engaged in by DEFENDANT; and,

24 (d) The representative PLAINTIFF will fairly and adequately represent and  
25 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has  
26 retained counsel who are competent and experienced in Class Action  
27 litigation. There are no material conflicts between the claims of the  
28 representative PLAINTIFF and the members of the CALIFORNIA

1 LABOR SUB-CLASS that would make class certification inappropriate.  
2 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously  
3 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

4 41. In addition to meeting the statutory prerequisites to a Class Action, this action is  
5 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 (a) Without class certification and determination of declaratory, injunctive,  
7 statutory and other legal questions within the class format, prosecution of  
8 separate actions by individual members of the CALIFORNIA LABOR  
9 SUB-CLASS will create the risk of:

10 1) Inconsistent or varying adjudications with respect to individual  
11 members of the CALIFORNIA LABOR SUB-CLASS which  
12 would establish incompatible standards of conduct for the parties  
13 opposing the CALIFORNIA LABOR SUB-CLASS; or,

14 2) Adjudication with respect to individual members of the  
15 CALIFORNIA LABOR SUB-CLASS which would as a practical  
16 matter be dispositive of interests of the other members not party to  
17 the adjudication or substantially impair or impede their ability to  
18 protect their interests.

19 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
20 or refused to act on grounds generally applicable to the CALIFORNIA  
21 LABOR SUB-CLASS, making appropriate class-wide relief with respect  
22 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
23 DEFENDANT fails to pay all wages due. Including the correct wages for  
24 all time worked by the members of the CALIFORNIA LABOR SUB-  
25 CLASS as required by law;

26 (c) Common questions of law and fact predominate as to the members of the  
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
28 violations of California Law as listed above, and predominate over any



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question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
  - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a

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representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

42. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- 1 (f) There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of  
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
5 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-  
6 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-  
7 CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
9 ascertainable from the business records of DEFENDANT. The  
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
11 CLASS Members who worked for DEFENDANT in California at any  
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to bring  
14 a efficient and rapid conclusion to all litigation of all wage and hour  
15 related claims arising out of the conduct of DEFENDANT as to the  
16 members of the CALIFORNIA LABOR SUB-CLASS.

17  
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

20 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

22 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
24 Complaint.

25 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.  
26 Code § 17021.

27 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair  
4 competition may be enjoined in any court of competent jurisdiction. The court  
5 may make such orders or judgments, including the appointment of a receiver, as  
6 may be necessary to prevent the use or employment by any person of any practice  
7 which constitutes unfair competition, as defined in this chapter, or as may be  
8 necessary to restore to any person in interest any money or property, real or  
9 personal, which may have been acquired by means of such unfair competition.

7 Cal. Bus. & Prof. Code § 17203.

8 46. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Industrial Wage Order(s), the California Code of Regulations and the California  
11 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,  
12 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for  
13 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &  
14 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
15 unfair competition, including restitution of wages wrongfully withheld.

16 47. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,  
18 unscrupulous or substantially injurious to employees, and were without valid justification or  
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
21 withheld.

22 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
23 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated  
24 meal and rest periods, the required amount of compensation for missed meal and rest periods  
25 and overtime and minimum wages owed, failed to timely pay wages, failed to reimburse all  
26 necessary business expenses incurred, and Fair Labor Standards Act overtime wages due for  
27 overtime worked as a result of failing to include non-discretionary incentive compensation into  
28 their regular rate for purposes of computing the proper overtime pay, due to a business practice

1 that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
2 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
3 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,  
4 including restitution of wages wrongfully withheld.

5 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
8 DEFENDANT.

9 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
10 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide  
11 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA  
12 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

13 51. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
14 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty  
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
16 for each workday in which a second off-duty meal period was not timely provided for each ten  
17 (10) hours of work.

18 52. PLAINTIFF further demands on behalf of himself and each member of the  
19 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off  
20 duty paid rest period was not timely provided as required by law.

21 53. By and through the unlawful and unfair business practices described herein,  
22 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
23 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
24 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
25 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
26 to unfairly compete against competitors who comply with the law.

27 54. All the acts described herein as violations of, among other things, the Industrial  
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,  
2 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and  
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
5 and do, seek such relief as may be necessary to restore to them the money and property which  
6 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
8 unfair business practices, including earned but unpaid wages for all time worked.

9 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
10 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
12 engaging in any unlawful and unfair business practices in the future.

13 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
16 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
18 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
19 engage in these unlawful and unfair business practices.

20  
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

23 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**  
25 **and Against All Defendants)**

26 58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
28 paragraphs of this Complaint.

1           59.     PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor  
3 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to  
4 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
5 Members.

6           60.     Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
7 public policy, an employer must timely pay its employees for all hours worked.

8           61.     Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
10 the minimum so fixed is unlawful.

11          62.     Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
12 including minimum wage compensation and interest thereon, together with the costs of suit.

13          63.     DEFENDANT maintained a wage practice of paying PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of  
15 time they work. As set forth herein, DEFENDANT’s policy and practice was to unlawfully and  
16 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
17 CALIFORNIA LABOR SUB-CLASS.

18          64.     DEFENDANT’s unlawful wage and hour practices manifested, without  
19 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of  
20 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the  
21 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

22          65.     In committing these violations of the California Labor Code, DEFENDANT  
23 inaccurately calculated the correct time worked and consequently underpaid the actual time  
24 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
25 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
26 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
27 requirements and other applicable laws and regulations.

28          66.     As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
2 receive the correct minimum wage compensation for their time worked for DEFENDANT.

3 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
4 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
5 Members to work without paying them for all the time they were under DEFENDANT's  
6 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other  
7 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they  
8 were entitled to, constituting a failure to pay all earned wages.

9 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
10 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
11 CLASS for the true time they worked, PLAINTIFF and the other members of the  
12 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
13 injury in amounts which are presently unknown to them and which will be ascertained  
14 according to proof at trial.

15 69. DEFENDANT knew or should have known that PLAINTIFF and the other  
16 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time  
17 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,  
18 to not pay employees for their labor as a matter of company policy, practice and procedure, and  
19 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members  
20 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

21 70. In performing the acts and practices herein alleged in violation of California labor  
22 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
23 all time worked and provide them with the requisite compensation, DEFENDANT acted and  
24 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for  
26 their legal rights, or the consequences to them, and with the despicable intent of depriving them  
27 of their property and legal rights, and otherwise causing them injury in order to increase  
28 company profits at the expense of these employees.



1           71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
3 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
4 by the California Labor Code and/or other applicable statutes. To the extent minimum wage  
5 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
6 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§  
7 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
8 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
9 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT’s conduct as alleged herein  
10 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA  
11 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

12  
13                                   **THIRD CAUSE OF ACTION**

14                                   **For Failure To Pay Overtime Compensation**

15                                   **[Cal. Lab. Code §§ 510, *et seq.*]**

16                   **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
17                                   **Defendants)**

18           72. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
19 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs  
20 of this Complaint.

21           73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
22 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor  
23 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to pay  
24 these employees for all overtime worked, including, work performed in excess of eight (8)  
25 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any  
26 workweek.

27           74. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
28 public policy, an employer must timely pay its employees for all hours worked.

1           75. Cal. Lab. Code § 510 further provides that employees in California shall not be  
2 employed more than eight (8) hours per workday and more than forty (40) hours per workweek  
3 unless they receive additional compensation beyond their regular wages in amounts specified  
4 by law.

5           76. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
6 including minimum wage and overtime compensation and interest thereon, together with the  
7 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for  
8 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

9           77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
10 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by  
11 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,  
12 including overtime work.

13           78. DEFENDANT’s unlawful wage and hour practices manifested, without  
14 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of  
15 implementing a policy and practice that failed to accurately record overtime worked by  
16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate  
17 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
18 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)  
19 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any  
20 workweek.

21           79. In committing these violations of the California Labor Code, DEFENDANT  
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
23 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted  
24 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation  
25 of the California Labor Code, the Industrial Welfare Commission requirements and other  
26 applicable laws and regulations.

27           80. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
28 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for overtime worked.

2 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
3 from the overtime requirements of the law. None of these exemptions are applicable to the  
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not  
6 subject to a valid collective bargaining agreement that would preclude the causes of action  
7 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself  
8 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-  
9 negotiable, non-waiveable rights provided by the State of California.

10 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
11 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime  
12 worked that they are entitled to, constituting a failure to pay all earned wages..

13 83. DEFENDANT failed to accurately pay the PLAINTIFF and the other members  
14 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which  
15 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,  
16 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR  
17 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT  
18 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
19 witnessed by employees.

20 84. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the  
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
24 injury in amounts which are presently unknown to them and which will be ascertained  
25 according to proof at trial.

26 85. DEFENDANT knew or should have known that PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime  
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and  
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members  
3 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

4 86. In performing the acts and practices herein alleged in violation of California labor  
5 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
6 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT  
7 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
8 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter  
9 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
10 depriving them of their property and legal rights, and otherwise causing them injury in order  
11 to increase company profits at the expense of these employees.

12 87. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
13 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,  
14 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
15 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or  
16 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS  
17 Members who have terminated their employment, DEFENDANT's conduct also violates Labor  
18 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time  
19 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
20 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
21 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA  
22 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

23 ///  
24 ///  
25 ///  
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28 ///

**FOURTH CAUSE OF ACTION**

**For Failure to Provide Required Meal Periods**

**[Cal. Lab. Code §§ 226.7 & 512 ]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

88. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

90. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for

1 each workday that a meal period was not provided.

2 91. As a proximate result of the aforementioned violations, PLAINTIFF and  
3 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
4 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
5 suit.

6 **FIFTH CAUSE OF ACTION**

7 **For Failure to Provide Required Rest Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512 ]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
10 **Defendants)**

11 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
12 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs  
13 of this Complaint.

14 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
15 time to time required to work in excess of four (4) hours without being provided ten (10) minute  
16 rest periods. Further, these employees from time to time were denied their first rest periods of  
17 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and  
18 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and  
19 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some  
20 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other  
21 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages  
22 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
23 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest  
24 periods by DEFENDANT and DEFENDANT's managers.

25 94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-  
27 CLASS Members who were not provided a rest period, in accordance with the applicable Wage  
28 Order, one additional hour of compensation at each employee's regular rate of pay for each

1 workday that rest period was not provided.

2 95. As a proximate result of the aforementioned violations, PLAINTIFF and  
3 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
4 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
5 suit.

6 **SIXTH CAUSE OF ACTION**

7 **For Failure to Provide Accurate Itemized Statements**

8 **[Cal. Lab. Code § 226]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
10 **Defendants)**

11 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
12 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
13 paragraphs of this Complaint.

14 97. Cal. Labor Code § 226 provides that an employer must furnish employees with  
15 an “accurate itemized” statement in writing showing:

- 16 (1) gross wages earned,  
17 (2) total hours worked by the employee, except for any employee whose  
18 compensation is solely based on a salary and who is exempt from payment of  
19 overtime under subdivision (a) of Section 515 or any applicable order of the  
20 Industrial Welfare Commission,  
21 (3) the number of piecerate units earned and any applicable piece rate if the employee  
22 is paid on a piece-rate basis,  
23 (4) all deductions, provided that all deductions made on written orders of the  
24 employee may be aggregated and shown as one item,  
25 (5) net wages earned,  
26 (6) the inclusive dates of the period for which the employee is paid,  
27 (7) the name of the employee and his or her social security number, except that by  
28 January 1, 2008, only the last four digits of his or her social security number or an  
employee identification number other than a social security number may be shown on  
the itemized statement,  
(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.

98. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate  
wage statements which failed to show, among other things, the correct gross and net wages

1 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her  
2 employees with an accurate itemized wage statement in writing showing, among other  
3 things, gross wages earned and all applicable hourly rates in effect during the pay period and  
4 the corresponding amount of time worked at each hourly rate. PLAINTIFF and  
5 CALIFORNIA LABOR SUB-CLASS Members are paid on an hourly basis. As such, the  
6 wage statements should reflect all applicable hourly rates during the pay period and the total  
7 hours worked, and the applicable pay period in which the wages are earned pursuant to  
8 California Labor Code Section 226(a). The wage statements DEFENDANT provides to  
9 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members fail to identify such  
10 information. More specifically, the wage statements fail to identify the accurate total hours  
11 worked each pay period. When the hours shown on the wage statements are added up, they  
12 do not equal the actual total hours worked during the pay period. Aside, from the violations  
13 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized  
14 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a  
15 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code  
17 § 226.

18 99. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.  
19 Code § 226, causing injury and damages to PLAINTIFF and the other members of the  
20 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
21 expended calculating the correct wages for all missed meal and rest breaks and the amount  
22 of employment taxes which were not properly paid to state and federal tax authorities.  
23 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty  
25 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred  
26 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §  
27 226, in an amount according to proof at the time of trial (but in no event more than four  
28 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the



1 CALIFORNIA LABOR SUB-CLASS herein).

2

3

**SEVENTH CAUSE OF ACTION**

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**For Failure to Reimburse Employees for Required Expenses**

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**[Cal. Lab. Code § 2802]**

6

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**

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**Defendants)**

8

100. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members

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re allege and incorporate by this reference, as though fully set forth herein, the prior

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paragraphs of this Complaint.

11

101. Cal. Lab. Code § 2802 provides, in relevant part, that:

12

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

14

15

102. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,

16

by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

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CLASS members for required expenses incurred in the discharge of their job duties for

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DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the

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CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not

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limited to, costs related to using their personal cellular phones on behalf of and for the

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benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR

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SUB-CLASS Members were required by DEFENDANT to use their personal cellular

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phones in order to perform work related job tasks. DEFENDANT's policy and practice was

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to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for

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expenses resulting from using their personal cellular phones for DEFENDANT within the

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course and scope of their employment for DEFENDANT. These expenses were necessary

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to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's

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1 conduct to assert any waiver of this expectation. Although these expenses were necessary  
2 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,  
3 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
4 LABOR SUB-CLASS members for these expenses as an employer is required to do under  
5 the laws and regulations of California.

6 103. PLAINTIFF therefore demands reimbursement for expenditures or losses  
7 incurred by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge  
8 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,  
9 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

10  
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

- 15 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
16 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
17 B) An order temporarily, preliminarily and permanently enjoining and restraining  
18 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
19 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully  
20 withheld from compensation due to PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS; and,  
22 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
23 for restitution of the sums incidental to DEFENDANT's violations due to  
24 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

25 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 26 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes  
27 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
28 pursuant to Cal. Code of Civ. Proc. § 382;

- 1 B) Compensatory damages, according to proof at trial, including compensatory  
2 damages for minimum and overtime compensation due PLAINTIFF and the other  
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
5 statutory rate;
- 6 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
7 in which a violation occurs and one hundred dollars (\$100) per each member of  
8 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
9 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
10 an award of costs for violation of Cal. Lab. Code § 226;
- 11 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
12 the applicable IWC Wage Order;
- 13 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
14 1197; and,
- 15 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA  
16 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
17 costs of suit;
- 18 3. On all claims:
- 19 A) An award of interest, including prejudgment interest at the legal rate;
- 20 B) Such other and further relief as the Court deems just and equitable; and,
- 21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the  
22 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,  
23 and/or §2802.

24 Dated: May 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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26  
27 By: 

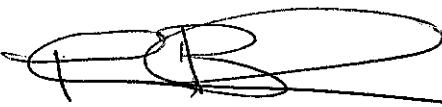
Norman B. Blumenthal  
Attorneys for Plaintiff

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**DEMAND FOR A JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: May 25, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By:   
Norman B. Blumenthal  
Attorneys for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Walmart Underpaid California Distribution Center Employees](#)

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