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9 Attorneys for Defendant
 Wal-Mart Associates, Inc.

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

13 KELLY WELCH, PRISCILLA MACKSOUD,
 JON WUNDERLIN, CHRISTOPHER
 14 BRIXEY, DAVID LEDWITH, LISA
 GRESHAM, GUILLERMINA AVITIA,
 15 CLAUDIA SOTO, TAMMY SANCHEZ,
 RANDY GIEFER, GERALD LALONDE,
 16 DIANE HOLLAND, JENNIE KEEN,
 GABRIEL SUCRE, JOHN KENYON, KURT
 17 JOHNSON, ROSA TREVINO, RHONDA
 JACKSON, MATTHEW BENCE, KISHON
 18 MONTEZ, LORAIN MCWHORTER,
 ARTURO CASTANEDA, ROD COUTURE,
 19 FRANCINE GIARDINO, BLONDELL
 ROBERTSON, KEVIN RYERSON, STEVEN
 20 CHAPMAN, ROSA TORRES, TERRIE
 WALKER, JUDY BALSAVICH, AMBER
 21 DOLAN AND MICHELLE HUMPHREYS,
 22 individuals,

23 Plaintiffs,

24 v.

25 WAL-MART ASSOCIATES, INC., a
 corporation; and DOES 1-50, inclusive,

26 Defendants.

VC
 CASE NO.: 2:16-CV-02202-MCE-DB

**STIPULATION AND [PROPOSED]
 ORDER TO FILE FIRST AMENDED
 COMPLAINT**

Removed from Superior Court of the State
 of California for the County of San Joaquin
 Case No.: STK-CV-UOE-2016-6739

Action Removed: September 15, 2016
 State Court Action Filed: July 11, 2016

1 Plaintiffs Kelly Welch, Priscilla Macksoud, Jon Wunderlin, Christopher Brixey, David
2 Ledwith, Lisa Gresham, Guillermina Avitia, Claudia Soto, Tammy Sanchez, Randy Giefer, Gerald
3 Lalonde, Diane Holland, Jennie Keen, Gabriel Sucre, John Kenyon, Kurt Johnson, Rosa Trevino,
4 Rhonda Jackson, Matthew Bence, Kishon Montez, Loraine McWhorter, Arturo Castaneda, Rod
5 Couture, Francine Giardino, Blondell Robertson, Kevin Ryerson, Steven Chapman, Rosa Torres,
6 Terrie Walker, Judy Balsavich, Amber Dolan and Michelle Humphreys (collectively, "Plaintiffs")
7 and Defendant Wal-Mart Associates, Inc. ("Defendant") state as follows:

8 WHEREAS, Plaintiffs filed their Complaint in the Superior Court of the State of California,
9 County of San Joaquin, on July 11, 2016;

10 WHEREAS, Defendant's counsel signed the Notice and Acknowledgment of Receipt of the
11 Summons and Complaint on August 16, 2016;

12 WHEREAS, Defendant filed its Answer to Plaintiffs' Complaint in the Superior Court of the
13 State of California, County of San Joaquin, on September 15, 2016;

14 WHEREAS, after Defendant filed its Answer to Plaintiffs' Complaint, it filed a Notice of
15 Removal in this Court on September 15, 2016 [Dkt. No. 1];

16 WHEREAS, Plaintiffs now seek to file a First Amended Complaint to add a cause of action
17 pursuant to the Private Attorneys General Act ("PAGA") and allegations pursuant to California
18 Business & Professions Code §§ 17200 *et seq.* for Defendant's alleged failure to pay reporting time
19 wages; and

20 WHEREAS, Defendant does not oppose Plaintiffs' request to file a First Amended
21 Complaint.

22 IT IS HEREBY AGREED AND STIPULATED by and between the Plaintiffs and Defendant
23 through their respective counsel of record, that:

- 24 1. Plaintiff may file a First Amended Complaint, a copy of which is attached hereto as
25 Exhibit 1; and
- 26 2. Defendant's response to the First Amended Complaint shall be filed within 30 days after
27 the filing and service of the First Amended Complaint.

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DATED: September 29, 2016

GREENBERG TRAURIG, LLP

By /s/William J. Goines
William J. Goines
Robert J. Herrington

Attorneys for Defendant Wal-Mart Associates, Inc.

DATED: September 29, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By /s/Victoria B. Rivapalacio
Victoria B. Rivapalacio

Attorneys for Plaintiffs

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IT IS SO ORDERED.

Dated: November 3, 2016



HONORABLE VINCE CHHABRIA
UNITED STATES DISTRICT JUDGE

LA 132751773v1

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EXHIBIT NO. 1.

1 **BLUMENTHAL, NORDREHAUG & BHOWMIK**

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7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 KELLY WELCH, PRISCILLA
MACKSOUD, JON WUNDERLIN,
12 CHRISTOPHER BRIXEY, DAVID
LEDWITH, LISA GRESHAM,
13 GUILLERMINA AVITIA, CLAUDIA
SOTO, TAMMY SANCHEZ, RANDY
14 GIEFER, GERALD LALONDE, DIANE
HOLLAND, JENNIE KEEN, GABRIEL
15 SUCRE, JOHN KENYON, KURT
JOHNSON, ROSA TREVINO, RHONDA
16 JACKSON, MATTHEW BENCE,
KISHON MONTEZ, LORAINÉ
17 MCWHORTER, ARTURO
CASTANEDA, ROD COUTURE,
18 FRANCINE GIARDINO, BLONDELL
ROBERSTON, KEVIN RYERSON,
19 STEVEN CHAPMAN, ROSA TORRES,
TERRIE WALKER, JUDY
20 BALSAVICH, AMBER DOLAN, and
MICHELLE HUMPHREYS, individuals,

21 Plaintiffs,

22 vs.

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

25 Defendants.

Case No. **2:16-CV-02202-MCE-DB**

FIRST AMENDED COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 and 1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
4. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
5. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiffs Kelly Welch, Priscilla Macksoud, Jon Wunderlin, Christopher Brixey, David
2 Ledwith, Lisa Gresham, Guillermina Avitia, Claudia Soto, Tammy Sanchez, Randy Giefer,
3 Gerald Lalonde, Diane Holland, Jennie Keen, Gabriel Sucre, John Kenyon, Kurt Johnson, Rosa
4 Trevino, Rhonda Jackson, Matthew Bence, Kishon Montez, Loraine McWhorter, Arturo
5 Castaneda, Rod Couture, Francine Giardino, Blondell Robertson, Kevin Ryerson, Steven
6 Chapman, Rosa Torres, Terrie Walker, Judy Balsavich, Amber Dolan and Michelle Humphreys
7 ("PLAINTIFFS"), allege on information and belief, except for their own acts and knowledge
8 which are based on personal knowledge, the following:

9
10 **THE PARTIES**

11 1. Defendant Wal-Mart Associates, Inc. ("DEFENDANT") is a corporation that all
12 relevant times mentioned herein conducted and continues to conduct substantial and regular
13 business throughout the State of California.

14 2. WAL-MART operates more than 11,000 stores in 27 countries around the world.
15 The company employs approximately 2.2 million associates and for the fiscal year ending in
16 January 2013, the company reported a net sales of \$466.1 billion

17 3. Plaintiff Kelly Welch was employed by DEFENDANT in California as an
18 Assistant Store Manager from March of 2005 to January of 2015. At all times relevant during
19 her employment with DEFENDANT, Plaintiff Welch was classified as a salaried employee
20 exempt from overtime wages and other related benefits.

21 4. Plaintiff Priscilla Macksoud was employed by DEFENDANT in California as an
22 Assistant Store Manager from January of 2011 to September of 2013. At all times relevant
23 during her employment with DEFENDANT, Plaintiff Macksoud was classified as a salaried
24 employee exempt from overtime wages and other related benefits.

25 5. Plaintiff Jon Wunderlin has been employed by DEFENDANT in California as an
26 Assistant Store Manager from May of 2010. At all times relevant during his employment with
27 DEFENDANT, Plaintiff Wunderlin has been classified as a salaried employee exempt from
28 overtime wages and other related benefits.

1 6. Plaintiff Christopher Brixey was employed by DEFENDANT in California as an
2 Assistant Store Manager from 1993 to August of 2012. At all times relevant during his
3 employment with DEFENDANT, Plaintiff Brixey was classified as a salaried employee exempt
4 from overtime wages and other related benefits.

5 7. Plaintiff David Ledwith has been employed by DEFENDANT in California as an
6 Assistant Store Manager since March of 2009. At all times relevant during his employment
7 with DEFENDANT, Plaintiff Ledwith has been classified as a salaried employee exempt from
8 overtime wages and other related benefits.

9 8. Plaintiff Lisa Gresham was employed by DEFENDANT in California as an
10 Assistant Store Manager from August of 2012 to March of 2014. At all times relevant during
11 her employment with DEFENDANT, Plaintiff Gresham was classified as a salaried employee
12 exempt from overtime wages and other related benefits.

13 9. Plaintiff Guillermina Avitia was employed by DEFENDANT in California as an
14 Assistant Store Manager from May of 2005 to February of 2014. At all times relevant during
15 her employment with DEFENDANT, Plaintiff Avitia was classified as a salaried employee
16 exempt from overtime wages and other related benefits.

17 10. Plaintiff Claudia Soto was employed by DEFENDANT in California as an
18 Assistant Store Manager from 2014 to January of 2016. At all times relevant during her
19 employment with DEFENDANT, Plaintiff Soto was classified as a salaried employee exempt
20 from overtime wages and other related benefits.

21 11. Plaintiff Tammy Sanchez was employed by DEFENDANT in California as an
22 Assistant Store Manager from May of 2008 to June of 2015. At all times relevant during her
23 employment with DEFENDANT, Plaintiff Sanchez was classified as a salaried employee
24 exempt from overtime wages and other related benefits.

25 12. Plaintiff Randy Giefer was employed by DEFENDANT in California as an
26 Assistant Store Manager from June of 2013 to July of 2015. At all times relevant during his
27 employment with DEFENDANT, Plaintiff Giefer was classified as a salaried employee exempt
28 from overtime wages and other related benefits.

1 13. Plaintiff Gerald Lalonde was employed by DEFENDANT in California as an
2 Assistant Store Manager from 2011 to January of 2013. At all times relevant during his
3 employment with DEFENDANT, Plaintiff Lalonde was classified as a salaried employee
4 exempt from overtime wages and other related benefits.

5 14. Plaintiff Diane Holland was employed by DEFENDANT in California as an
6 Assistant Store Manager from 2006 to July of 2015. At all times relevant during her
7 employment with DEFENDANT, Plaintiff Holland was classified as a salaried employee
8 exempt from overtime wages and other related benefits.

9 15. Plaintiff Jennie Keen was employed by DEFENDANT in California as an
10 Assistant Store Manager from January of 2011 to February of 2013. At all times relevant during
11 her employment with DEFENDANT, Plaintiff Keen was classified as a salaried employee
12 exempt from overtime wages and other related benefits.

13 16. Plaintiff Gabriel Sucre was employed by DEFENDANT in California as an
14 Assistant Store Manager from 2007 to October of 2014. At all times relevant during his
15 employment with DEFENDANT, Plaintiff Sucre was classified as a salaried employee exempt
16 from overtime wages and other related benefits.

17 17. Plaintiff John Kenyon was employed by DEFENDANT in California as an
18 Assistant Store Manager from August of 2015 to November of 2015. At all times relevant
19 during his employment with DEFENDANT, Plaintiff Kenyon was classified as a salaried
20 employee exempt from overtime wages and other related benefits.

21 18. Plaintiff Kurt Johnson was employed by DEFENDANT in California as an
22 Assistant Store Manager from January of 2014 to June of 2015. At all times relevant during his
23 employment with DEFENDANT, Plaintiff Johnson was classified as a salaried employee
24 exempt from overtime wages and other related benefits.

25 19. Plaintiff Rosa Trevino has been employed by DEFENDANT in California as an
26 Assistant Store Manager since 2011. At all times relevant during her employment with
27 DEFENDANT, Plaintiff Trevino has been classified as a salaried employee exempt from
28 overtime wages and other related benefits.

1 20. Plaintiff Rhonda Jackson has been employed by DEFENDANT in California as
2 an Assistant Store Manager since August of 2007. At all times relevant during her employment
3 with DEFENDANT, Plaintiff Jackson has been classified as a salaried employee exempt from
4 overtime wages and other related benefits.

5 21. Plaintiff Matthew Bence has been employed by DEFENDANT in California as
6 an Assistant Store Manager since June of 2012. At all times relevant during his employment
7 with DEFENDANT, Plaintiff Bence has been classified as a salaried employee exempt from
8 overtime wages and other related benefits.

9 22. Plaintiff Kishon Montez was employed by DEFENDANT in California as an
10 Assistant Store Manager from October of 2012 to July of 2014. At all times relevant during his
11 employment with DEFENDANT, Plaintiff Montez was classified as a salaried employee exempt
12 from overtime wages and other related benefits.

13 23. Plaintiff Loraine McWhorter has been employed by DEFENDANT in California
14 as an Assistant Store Manager since 2008. At all times relevant during her employment with
15 DEFENDANT, Plaintiff McWhorter has been classified as a salaried employee exempt from
16 overtime wages and other related benefits.

17 24. Plaintiff Arturo Castaneda has been employed by DEFENDANT in California
18 as an Assistant Store Manager since 2003. At all times relevant during his employment with
19 DEFENDANT, Plaintiff Castaneda has been classified as a salaried employee exempt from
20 overtime wages and other related benefits.

21 25. Plaintiff Rod Couture was employed by DEFENDANT in California as an
22 Assistant Store Manager from April of 1998 to April 2016. At all times relevant during his
23 employment with DEFENDANT, Plaintiff Couture was classified as a salaried employee
24 exempt from overtime wages and other related benefits.

25 26. Plaintiff Francine Giardino was employed by DEFENDANT in California as an
26 Assistant Store Manager from April of 2009 to September 2015. At all times relevant during
27 her employment with DEFENDANT, Plaintiff Giardino was classified as a salaried employee
28 exempt from overtime wages and other related benefits. Plaintiff Giardino has unused, accrued

1 and vested vacation time when she left employment with DEFENDANT. DEFENDANT failed
2 to pay Plaintiff Giardino all of her unused, accrued and vested vacation wages upon termination
3 with DEFENDANT in violation of Cal. Lab. Code Section 203.

4 27. Plaintiff Blondell Robertson was employed by DEFENDANT in California as
5 an Assistant Store Manager from August of 2012 to February of 2016. At all times relevant
6 during her employment with DEFENDANT, Plaintiff Robertson was classified as a salaried
7 employee exempt from overtime wages and other related benefits.

8 28. Plaintiff Kevin Ryerson was employed by DEFENDANT in California as an
9 Assistant Store Manager from October of 2012 to March of 2016. At all times relevant during
10 his employment with DEFENDANT, Plaintiff Ryerson was classified as a salaried employee
11 exempt from overtime wages and other related benefits.

12 29. Plaintiff Steven Chapman was employed by DEFENDANT in California as an
13 Assistant Store Manager from July of 2013 to July of 2015. At all times relevant during his
14 employment with DEFENDANT, Plaintiff Chapman was classified as a salaried employee
15 exempt from overtime wages and other related benefits.

16 30. Plaintiff Rosa Torres has been employed by DEFENDANT in California as an
17 Assistant Store Manager from May of 2003. At all times relevant during her employment with
18 DEFENDANT, Plaintiff Torres has been classified as a salaried employee exempt from
19 overtime wages and other related benefits.

20 31. Plaintiff Terrie Walker was employed by DEFENDANT in California as an
21 Assistant Store Manager from February of 2005 to March 2016. At all times relevant during
22 her employment with DEFENDANT, Plaintiff Walker was classified as a salaried employee
23 exempt from overtime wages and other related benefits.

24 32. Plaintiff Judy Balsavich was employed by DEFENDANT in California as an
25 Assistant Store Manager from November of 2011 to May of 2016. At all times relevant during
26 her employment with DEFENDANT, Plaintiff Balsavich was classified as a salaried employee
27 exempt from overtime wages and other related benefits.

28 33. Plaintiff Amber Dolan was employed by DEFENDANT in California as an

1 Assistant Store Manager from September of 2014 to May of 2016. At all times relevant during
2 her employment with DEFENDANT, Plaintiff Dolan was classified as a salaried employee
3 exempt from overtime wages and other related benefits.

4 34. Plaintiff Michelle Humphreys was employed by DEFENDANT in California as
5 an Assistant Store Manager from May of 2013 to February of 2015. At all times relevant during
6 her employment with DEFENDANT, Plaintiff Humphreys was classified as a salaried employee
7 exempt from overtime wages and other related benefits.

8 35. The statute of limitations on the claims of all PLAINTIFFS alleged herein have
9 been tolled since January 29, 2015 as a result of the filing of the class action complaint in
10 *Cardoza v. Wal-Mart Associates, Inc.*, United State District Court Northern District of
11 California, Case No. 15-CV-01634-SBA, and continue to be tolled to April 8, 2016.

12 36. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to the PLAINTIFFS who therefore sue these Defendants by such fictitious names
15 pursuant to Fed. Rl. Civ. Proc. 17. PLAINTIFFS will seek leave to amend this Complaint to
16 allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFFS are informed and believe, and based upon that information and belief allege, that
18 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
19 responsible in some manner for one or more of the events and happenings that proximately
20 caused the injuries and damages hereinafter alleged.

21 37. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
26 all Defendants are jointly and severally liable to PLAINTIFFS, for the loss sustained as a
27 proximate result of the conduct of the Defendants' agents, servants and/or employees.

1 **THE CONDUCT**

2 38. The position of an Assistant Store Manager was represented by DEFENDANT
3 to PLAINTIFFS and the other Assistant Store Managers as an exempt and a salaried position.

4 39. To perform their finite set of tasks, PLAINTIFFS did not engage in a supervisory
5 role given the constraints placed upon them by company policy. PLAINTIFFS had little, if any,
6 responsibility in determining what work was to be done by other employees or in what time
7 frame. Furthermore, PLAINTIFFS also did not have a distinct role in training other employees
8 or determining what training they were to receive. Lastly, PLAINTIFF and other Assistant
9 Store Managers did not have the ultimate authority to hire, fire, or promote employees,
10 determine their pay rates or benefits, or give raises as they were unable unilaterally make
11 employment-related, personnel decisions. Consequently, PLAINTIFFS did not have the
12 authority to decide whether or not an employee should be disciplined for an infraction without
13 first notifying upper management at DEFENDANT. Disciplinary decisions were made by the
14 human resources department or dictated by company policies. Overall, PLAINTIFFS’
15 recommendations were given little, if any, weight on all the above issues. As a result,
16 PLAINTIFFS were engaged in a type of work that required no exercise of independent
17 judgment or discretion as to any matter of significance. Therefore, PLAINTIFFS were
18 "managers" in name only because they did not have managerial duties or authority and should
19 therefore have been properly classified as non-exempt employees.

20 40. PLAINTIFFS performed the finite set of tasks of greeting customers, handling
21 customer service requests and customer service complaints, answering phone calls, taking
22 inventory, receiving product shipments, assisting in the merchandising operation, printing out
23 reports and providing the reports to upper management, unlocking safes, counting money for
24 the cash register, conducting safety inspections by walking the store aisles, processing
25 merchandise returns, operating the customer care center, return desks and self-check-out areas
26 all in strict accordance with DEFENDANT’s company policies. PLAINTIFFS performed all
27 of their job functions according to established company policies, protocols and procedures.
28 PLAINTIFFS spent the vast majority of their day directly engaging with customers and dealing

1 with customer service related issues. As Assistant Store Managers, PLAINTIFFS spent the
2 majority of their time performing the same job tasks as DEFENDANT's hourly employees who
3 were paid overtime wages.

4 41. According to DEFENDANT's company policy, while performing the job
5 functions of an Assistant Store Manager, PLAINTIFFS were and are required to work in excess
6 of eight (8) hours each workday and more than forty (40) hours each workweek.

7 42. PLAINTIFFS were not provided overtime compensation and other benefits
8 required by law as a result of being classified as "exempt" by DEFENDANT.

9 43. As a matter of company policy, practice, and procedure, DEFENDANT has
10 unlawfully, unfairly and/or deceptively classified PLAINTIFFS as exempt based on job title
11 alone, failed to pay required overtime compensation and otherwise failed to comply with all
12 applicable labor laws with respect to PLAINTIFFS.

13 44. Although PLAINTIFFS primarily performed non-exempt clerical labor,
14 DEFENDANT instituted a blanket classification policy, practice and procedure by which
15 PLAINTIFFS were classified as exempt from overtime compensation and other related benefits.
16 By reason of this uniform exemption practice, policy and procedure applicable to PLAINTIFFS
17 who performed this non-exempt labor, DEFENDANT committed acts of unfair competition in
18 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
19 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to
20 properly classify PLAINTIFFS and thereby failed to pay them overtime wages for documented
21 overtime hours worked. The proper classification of these employees is DEFENDANT's legal
22 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
23 burden, DEFENDANT failed to pay all required overtime compensation for work performed
24 by PLAINTIFFS and other Assistant Store Managers and violated the California Labor Code
25 and regulations promulgated thereunder as herein alleged. In addition, DEFENDANT failed to
26 provide all the legally required off-duty meal and rest breaks to PLAINTIFFS as required by
27 the applicable Wage Order and Labor Code. DEFENDANT does not have a policy or practice
28 which provided meal and rest breaks to PLAINTIFFS. As a result, DEFENDANT's failure to

1 provide PLAINTIFFS with legally required meal and rest breaks is evidenced by
2 DEFENDANT's business records which contain no record of these breaks.

3 45. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
4 are properly classified as exempt and that (b) DEFENDANT otherwise complied with
5 applicable laws. Other than the initial classification of PLAINTIFFS as exempt from being paid
6 overtime based on job title alone, DEFENDANT had no business policy, practice, or procedure
7 to ensure that PLAINTIFFS were properly classified as exempt, and in fact, as a matter of
8 corporate policy erroneously and unilaterally classified PLAINTIFFS as exempt based on job
9 title alone.

10 46. PLAINTIFFS employed by DEFENDANT were not primarily engaged in work
11 of a type that was or now is directly related to the management or general business operation
12 of the employer's customers, when giving these words a fair but narrow construction.
13 PLAINTIFFS employed by DEFENDANT were also not primarily engaged in work of a type
14 that was or now is performed at the level of the policy or management of DEFENDANT.
15 PLAINTIFFS employed by DEFENDANT were also not primarily engaged in work requiring
16 knowledge of an advanced type in a field or science or learning customarily acquired by a
17 prolonged course of specialized intellectual instruction and study, but rather their work
18 primarily involves the performance of routine mental, manual, and/or physical processes.
19 PLAINTIFFS employed by DEFENDANT were also not primarily engaged in work that was
20 predominantly intellectual and varied in character, but rather was routine mental, manual,
21 mechanical, and/or physical work that was of such character that the output produced or the
22 result accomplished could be standardized in relation to a given period of time.

23 47. PLAINTIFFS were classified as exempt from California overtime and related laws
24 by DEFENDANT, however, these employees did not have managerial duties or authority.
25 PLAINTIFFS performed ongoing day-to-day non-exempt activities. Furthermore,
26 PLAINTIFFS were tightly controlled by company policy and by their managers, did not
27 exercise discretion or independent judgment as to matters of significance, and their job duties
28 were not directly related to DEFENDANT's management policies or general business operation.

1 48. PLAINTIFFS are and were uniformly classified and treated by DEFENDANT as
2 exempt at the time of hire and thereafter, DEFENDANT failed to take the proper steps to
3 determine whether PLAINTIFFS, were properly classified under the applicable Industrial
4 Welfare Commission Wage Order(s) and Cal. Lab. Code §§ 510, *et seq.* as exempt from
5 applicable California labor laws. Since DEFENDANT affirmatively and wilfully misclassified
6 PLAINTIFFS in compliance with California labor laws, DEFENDANT’s practices violated and
7 continue to violate California law. In addition, DEFENDANT acted deceptively by falsely and
8 fraudulently telling PLAINTIFFS that they were exempt from overtime pay when
9 DEFENDANT knew or should have known that this statement was false and not based on
10 known facts. DEFENDANT also acted unfairly by violating the California labor laws, and as
11 a result of this policy and practice, DEFENDANT also violated the UCL. In doing so,
12 DEFENDANT cheated the competition by paying PLAINTIFFS less than the amount
13 competitors paid who complied with the law and cheated PLAINTIFFS by not paying them in
14 accordance with California law.

15 49. When DEFENDANT required PLAINTIFFS to respond to work communications
16 after their scheduled workday, this results in a second reporting for work in a single workday.
17 In such a circumstance of a second reporting for work in a single workday, DEFENDANT fails
18 to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040.
19 Subdivision 5(B) states: “If an employee is required to report for work a second time in any one
20 workday and is furnished less than two (2) hours of work on the second reporting, said
21 employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not
22 be less than the minimum wage.” Cal. Code Regs., tit. 8, § 11040, subd. 5(B). DEFENDANT
23 failed to pay PLAINTIFFS reporting time wages due to them.

24 50. DEFENDANT also failed to provide PLAINTIFFS with a wage statement in
25 writing that accurately sets forth gross wages earned, all applicable hourly rates in effect during
26 the pay period and the corresponding number of hours worked at each hourly rate by
27 PLAINTIFFS. This conduct violated California Labor Code § 226. The pay stub also did not
28 accurately display anywhere the PLAINTIFFS’ overtime hours and applicable rates of overtime

1 pay for the pay period.

2 51. By reason of this uniform conduct applicable to PLAINTIFFS, DEFENDANT
3 committed acts of unfair competition in violation of the California Unfair Competition law, Cal.
4 Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy and
5 procedure which failed to correctly classify PLAINTIFFS as non-exempt. The proper
6 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
7 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
8 calculate and/or pay all required overtime compensation for work performed by PLAINTIFFS
9 and violated the applicable Wage Order, the California Labor Code and the regulations
10 promulgated thereunder as herein alleged.

11
12 **JURISDICTION AND VENUE**

13 52. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. § 1391
14 because DEFENDANT (i) currently maintains and at all relevant times maintained offices and
15 facilities in this judicial district and/or conducts substantial business in this judicial district, and
16 (ii) committed the wrongful conduct herein alleged in this judicial district against PLAINTIFFS.
17 Venue is also proper in this district because the complaint was initially filed in the Superior
18 Court of California, County of San Juaquin, but was later removed by DEFENDANT to this
19 Court.

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

24 **(By PLAINTIFFS and Against All Defendants)**

25 53. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
26 herein, paragraphs 1 through 53 of this Complaint.

27 54. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
28

1 Code § 17021.

2 55. California Business & Professions Code §§ 17200 *et seq.* (the "UCL") defines
3 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
4 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
5 competition as follows:

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

10 California Business & Professions Code § 17203.

11 56. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 226.7, 510, 512, 1194 & 1198, for which this Court
15 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203
16 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
17 including restitution of wages wrongfully withheld. DEFENDANT's practices alleged herein
18 were also unfair within the meaning of the UCL because the DEFENDANT's conduct was
19 contrary to important public policies of California, was immoral, unethical, oppressive,
20 unscrupulous, and the utility of which was outweighed to the harm of the conduct to
21 PLAINTIFFS. DEFENDANT's practices alleged herein were deceptive within the meaning of
22 the UCL because PLAINTIFFS were likely to be deceived by DEFENDANT's representations
23 that these employees were properly classified as exempt, were not entitled to overtime
24 compensation, and were paid in full for their work because such representations were not true.

25 57. By the conduct alleged herein DEFENDANT has obtained valuable property,
26 money, and services from PLAINTIFFS, and has deprived them of valuable rights and benefits
27 guaranteed by law, all to their detriment and to the benefit of DEFENDANT so as to allow
28 DEFENDANT to unfairly compete. Declaratory and injunctive relief is necessary to prevent

1 and remedy this unfair competition, and pecuniary compensation alone would not afford
2 adequate and complete relief.

3 58. All the acts described herein as violations of, among other things, the California
4 Labor Code, California Code of Regulations, and the Industrial Welfare Commission Wage
5 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
6 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,
7 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

8 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
9 fraudulent in that DEFENDANT's uniform policy and practice was to improperly classify as
10 exempt PLAINTIFFS, and DEFENDANT's uniform policy and practice also failed to
11 accurately record all hours worked, and failed to provide the required amount of overtime
12 compensation and reporting time wages due to a systematic misclassification that cannot be
13 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code Section 17200 *et seq.*, and for which this Court
15 should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
16 including restitution of wages wrongfully withheld.

17 60. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
18 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS to be
19 underpaid during their employment with DEFENDANT.

20 61. By the conduct alleged herein, DEFENDANT's practices were also unfair and
21 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
22 mandatory meal and/or rest breaks to PLAINTIFFS.

23 62. Therefore, PLAINTIFFS demand one (1) hour of pay for each workday in which
24 an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
25 hour of pay for each workday in which a second off-duty meal period was not timely provided
26 for each ten (10) hours of work.

27 63. PLAINTIFFS further demand one (1) hour of pay for each workday in which a
28 rest period was not timely provided as required by law.

1 64. PLAINTIFFS are entitled to, and do, seek such relief as may be necessary to
2 restore to them the money and property which DEFENDANT has acquired, or of which the
3 PLAINTIFFS have been deprived, by means of the above described unlawful and unfair
4 business practices, including earned but unpaid wages for all hours worked.

5 65. PLAINTIFFS, have no plain, speedy, and/or adequate remedy at law that will end
6 the unfair and unlawful business practices of DEFENDANT. Further, the practices herein
7 alleged presently continue to occur unabated. As a result of the unfair and unlawful business
8 practices described above, PLAINTIFFS have suffered and will continue to suffer irreparable
9 harm unless DEFENDANT is restrained from continuing to engage in these unfair and unlawful
10 business practices. In addition, DEFENDANT should be required to disgorge the unpaid
11 moneys, penalties and interest as required by law and make restitution to PLAINTIFFS.

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Overtime Compensation**

15 **[Cal. Lab. Code §§ 510, 515, 1194 and 1198]**

16 **(By PLAINTIFFS and Against All Defendants)**

17 66. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
18 herein, paragraphs 1 through 66 of this Complaint.

19 67. Cal. Lab. Code § 510 states in relevant part:

20 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
21 in one workday and any work in excess of 40 hours in any one workweek and the
22 first eight hours worked on the seventh day of work in any one workweek shall
23 be compensated at the rate of no less than one and one-half times the regular rate
24 of pay for an employee. Any work in excess of 12 hours in one day shall be
25 compensated at the rate of no less than twice the regular rate of pay for an
26 employee. In addition, any work in excess of eight hours on any seventh day of
27 a workweek shall be compensated at the rate of no less than twice the regular rate
28 of pay of an employee.

25 68. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of
26 labor is entitled to one day's rest therefrom in seven."

27 69. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees
28 to work more than six days in seven."

1 70. Cal. Lab. Code § 515(d) provides: “For the purpose of computing the overtime
2 rate of compensation required to be paid to a nonexempt full-time salaried employee, the
3 employee's regular hourly rate shall be 1/40th of the employee's weekly salary.”

4 71. Cal. Lab. Code § 1194 states:

5 Notwithstanding any agreement to work for a lesser wage, any employee
6 receiving less than the legal minimum wage or the legal overtime compensation
7 applicable to the employee is entitled to recover in a civil action the unpaid
8 balance of the full amount of this minimum wage or overtime compensation,
9 including interest thereon, reasonable attorney's fees, and costs of suit.

10 72. Cal. Lab. Code § 1198 provides: “The maximum hours of work and the standard
11 conditions of labor fixed by the commission shall be the maximum hours of work and the
12 standard conditions of labor for employees. The employment of any employee for longer hours
13 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

14 73. DEFENDANT has intentionally and uniformly designated certain employees as
15 “exempt” employees, by their job title and without regard to DEFENDANT’s realistic
16 expectations and actual overall requirements of the job, including PLAINTIFFS who worked
17 on the production side of the DEFENDANT’s business. This was done in an illegal attempt to
18 avoid payment of overtime wages and other benefits in violation of the California Labor Code
19 and Industrial Welfare Commission requirements.

20 74. For an employee to be exempt as a bona fide “executive,” all the following criteria
21 must be met and DEFENDANT has the burden of proving that:

- 22 (a) The employee’s primary duty must be management of the enterprise, or of a
23 customarily recognized department or subdivision; and,
- 24 (b) The employee must customarily and regularly direct the work of at least two (2)
25 or more other employees; and,
- 26 (c) The employee must have the authority to hire and fire, or to command
27 particularly serious attention to his or his recommendations on such actions
28 affecting other employees; and,
- (d) The employee must customarily and regularly exercise discretion and
independent judgment; and,

1 (e) The employee must be primarily engaged in duties which meet the test of
2 exemption.

3 None of PLAINTIFFS were or are an executive because they all fail to meet the requirements
4 of being an “executive” within the meaning of Order No. 4-2001.

5 75. For an employee to be exempt as a bona fide “administrator,” all of the following
6 criteria must be met and DEFENDANT has the burden of proving that:

7 (a) The employee must perform office or non-manual work directly related to
8 management policies or general business operation of the employer; and,

9 (b) The employee must customarily and regularly exercise discretion and
10 independent judgment; and,

11 (c) The employee must regularly and directly assist a proprietor or an exempt
12 administrator; or,

13 (d) The employee must perform, under only general supervision, work requiring
14 special training, experience, or knowledge, or,

15 (e) The employee must execute special assignments and tasks under only general
16 supervision; and,

17 (f) The employee must be primarily engaged in duties which meet the test of
18 exemption.

19 None of PLAINTIFFS were or are an administrator because they all fail to meet the
20 requirements for being an “administrator” under Order No. 4-2001.

21 76. The Industrial Welfare Commission, in Wage Order 4-2001, at section (1)(A)(3),
22 and Labor Code § 515, also set forth the requirements which must be complied with to place
23 an employee in the “professional” exempt category. For an employee to be “exempt” as a bona
24 fide “professional”, all the following criteria must be met and DEFENDANT has the burden of
25 proving that:

26 (a) The employee is primarily engaged in an occupation commonly recognized as a
27 learned or artistic profession. For the purposes of this subsection, “learned or
28 artistic profession” means an employee who is primarily engaged in the

1 performance of:

- 2 1) Work requiring knowledge of an advanced type in a field or science or
3 learning customarily acquired by a prolonged course of specialized
4 intellectual instruction and study, as distinguished from a general
5 academic education and from an apprenticeship, and from training in the
6 performance of routine mental, manual, or physical processes, or work that
7 is an essential part or necessarily incident to any of the above work; or,
8 2) Work that is original and creative in character in a recognized field of
9 artistic endeavor, and the result of which depends primarily on the
10 invention, imagination or talent of the employee or work that is an
11 essential part of or incident to any of the above work; and,
12 3) Whose work is predominately intellectual and varied in character (as
13 opposed to routine mental, manual, mechanical, or physical work) and is
14 of such character cannot be standardized in relation to a given period of
15 time.

16 (b) The employee must customarily and regularly exercise discretion and
17 independent judgment; and.

18 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
19 state minimum wage for full-time employment.

20 77. None of PLAINTIFFS were or are a professional because they all fail to meet the
21 requirements of being a “professional” within the meaning of the applicable Wage Order.

22 78. PLAINTIFFS do not fit the definition of an exempt executive, administrative, or
23 professional employee because:

24 (a) They did not work as executives or administrators; and,

25 (b) The professional exemption does not apply to the PLAINTIFFS because they did
26 not meet all the applicable requirements to work under the professional
27 exemption for the reasons set forth above in this Complaint.

28 79. During the class period, PLAINTIFFS worked more than eight (8) hours in a

1 workday and in excess of forty (40) hours in a work week.

2 80. At all relevant times, DEFENDANT failed to pay PLAINTIFFS overtime
3 compensation for the hours they have worked in excess of the maximum hours permissible by
4 law as required by Cal. Lab. Code §§ 510 and 1198, even though PLAINTIFFS are regularly
5 required to work, and do in fact work, overtime hours.

6 81. By virtue of DEFENDANT’s unlawful failure to pay additional compensation to
7 PLAINTIFFS, for their regular and overtime hours, PLAINTIFFS have suffered, and will
8 continue to suffer, an economic injury in amounts which are presently unknown to them and
9 which will be ascertained according to proof at trial.

10 82. DEFENDANT knew or should have known that PLAINTIFFS were misclassified
11 as exempt and DEFENDANT systematically elected, either through intentional malfeasance or
12 gross nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
13 policy, practice and procedure.

14 83. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
15 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
16 Code § 1198 further states that the employment of an employee for longer hours than those
17 fixed by the Industrial Welfare Commission is unlawful.

18 84. In performing the acts and practices herein alleged in violation of labor laws and
19 refusing to provide the requisite regular and overtime compensation, the DEFENDANT acted
20 and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS, with a
21 conscious and utter disregard of their legal rights, or the consequences to them, and with the
22 despicable intent of depriving them of their property and legal rights and otherwise causing
23 them injury in order to increase corporate profits at the expense of PLAINTIFFS.

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1 **THIRD CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

4 **(By Plaintiff Wunderlin, Plaintiff Soto, Plaintiff Sucre, Plaintiff Trevino, Plaintiff**
5 **Jackson, Plaintiff Bence, Plaintiff Kenyon, Plaintiff McWhorter, Plaintiff Couture,**
6 **Plaintiff Giardino, Plaintiff Robertson, Plaintiff Ryerson, Plaintiff Torres, Plaintiff**
7 **Balsavich and Plaintiff Dolan and Against All Defendants)**

8 85. Plaintiff Wunderlin, Plaintiff Soto, Plaintiff Sucre, Plaintiff Trevino, Plaintiff
9 Jackson, and Plaintiff Bence, Plaintiff Kenyon, Plaintiff McWhorter, Plaintiff Couture,
10 Plaintiff Giardino, Plaintiff Robertson, Plaintiff Ryerson, Plaintiff Torres, Plaintiff Balsavich
11 and Plaintiff Dolan reallege and incorporate by this reference, as though fully set forth
12 herein, paragraphs 1 through 85 of this Complaint.

13 86. Cal. Lab. Code § 226 provides that an employer must furnish employees with
14 an "accurate itemized" statement in writing showing:

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

1 the itemized statement,

2 (8) the name and address of the legal entity that is the employer, and

3 (9) all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate by the employee.

5 87. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226, in
6 that DEFENDANT failed to provide an accurate wage statement in writing that properly and
7 accurately itemized the number of hours worked by Plaintiff Wunderlin, Plaintiff Soto,
8 Plaintiff Sucre, Plaintiff Trevino, Plaintiff Jackson, and Plaintiff Bence, Plaintiff Kenyon,
9 Plaintiff McWhorter, Plaintiff Couture, Plaintiff Giardino, Plaintiff Robertson, Plaintiff
10 Ryerson, Plaintiff Torres, Plaintiff Balsavich and Plaintiff Dolan at the effective regular
11 rates of pay and the effective overtime rates of pay.

12 88. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
13 Code § 226, causing injury and damages to Plaintiff Wunderlin, Plaintiff Soto, Plaintiff
14 Sucre, Plaintiff Trevino, Plaintiff Jackson, and Plaintiff Bence, Plaintiff Kenyon, Plaintiff
15 McWhorter, Plaintiff Couture, Plaintiff Giardino, Plaintiff Robertson, Plaintiff Ryerson,
16 Plaintiff Torres, Plaintiff Balsavich and Plaintiff Dolan. These injuries and damages
17 include, but are not limited to, costs expended calculating the true hours worked and the
18 amount of employment taxes which were not properly paid to state and federal tax
19 authorities. These damages are difficult to estimate. Therefore, Plaintiff Wunderlin,
20 Plaintiff Soto, Plaintiff Sucre, Plaintiff Trevino, Plaintiff Jackson, and Plaintiff Bence,
21 Plaintiff Kenyon, Plaintiff McWhorter, Plaintiff Couture, Plaintiff Giardino, Plaintiff
22 Robertson, Plaintiff Ryerson, Plaintiff Torres, Plaintiff Balsavich and Plaintiff Dolan may
23 elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation
24 occurred, and \$100.00 for each violation in subsequent pay period pursuant to Cal. Lab.
25 Code § 226, in an amount according to proof at the time of trial (but in no event more than
26 \$4,000.00 for Plaintiff Wunderlin, Plaintiff Soto, Plaintiff Sucre, Plaintiff Trevino, Plaintiff
27 Jackson, and Plaintiff Bence, Plaintiff Kenyon, Plaintiff McWhorter, Plaintiff Couture,
28 Plaintiff Giardino, Plaintiff Robertson, Plaintiff Ryerson, Plaintiff Torres, Plaintiff Balsavich

1 and Plaintiff Dolan individually herein).

2
3 **FOURTH CAUSE OF ACTION**

4 **For Failure to Pay Wages When Due**

5 **[Cal. Lab. Code §§ 201, 202, 203]**

6 **(By PLAINTIFFS Whose Employment Have Been Terminated with DEFENDANT and**
7 **Against All Defendants)**

8 89. PLAINTIFFS whose employment have been terminated with DEFENDANT
9 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through
10 89 of this Complaint.

11 90. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (a) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (b) "Labor" includes labor, work, or service whether rendered or performed
17 under contract, subcontract, partnership, station plan, or other agreement if the
18 labor to be paid for is performed personally by the person demanding payment.

19 91. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
20 discharges an employee, the wages earned and unpaid at the time of discharge are due and
21 payable immediately."

22 92. Cal. Lab. Code § 202 provides, in relevant part, that:

23 If an employee not having a written contract for a definite period quits his or
24 her employment, his or her wages shall become due and payable not later than
25 72 hours thereafter, unless the employee has given 72 hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her
27 wages at the time of quitting. Notwithstanding any other provision of law, an
28 employee who quits without providing a 72-hour notice shall be entitled to
receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

93. There was no definite term in PLAINTIFFS' employment contracts whose
employment have been terminated with DEFENDANT.

94. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until paid or
5 until an action therefor is commenced; but the wages shall not continue for
6 more than 30 days.

7 95. DEFENDANT has not tendered payment of all overtime wages owed as
8 required by law to PLAINTIFFS whose employment have been terminated with
9 DEFENDANT. DEFENDANT willfully and intentionally failed to pay overtime wages as
10 alleged herein, in violation of California Labor Code §§ 201& 202.

11 96. Therefore, as provided by Cal Lab. Code § 203, PLAINTIFFS whose
12 employment have been terminated with DEFENDANT demand thirty days of pay as penalty
13 for not paying all wages due at time of termination for all employees who terminated
14 employment and demands an accounting and payment of all overtime wages due, plus
15 interest and statutory costs as allowed by law.

16 **FIFTH CAUSE OF ACTION**

17 **For Violation of the Private Attorneys General Act**

18 **[Cal. Lab. Code §§ 2698, et seq.]**

19 **(By Plaintiffs Wunderlin, Soto, Sucre, Trevino, Jackson, Bence, Kenyon, McWhorter,**
20 **Couture, Giardino, Robertson, Ryerson, Torres, Blasavich, Dolan and Against All**
21 **Defendants)**

22 97. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-97,
23 supra, as though fully set forth at this point.

24 98. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
26 the state's labor law enforcement agencies. An action to recover civil penalties under
27 PAGA is fundamentally a law enforcement action designed to protect the public and not to
28 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
but to create a means of "deputizing" citizens as private attorneys general to enforce the

1 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
2 public interest to allow aggrieved employees, acting as private attorneys general to recover
3 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
4 claims cannot be subject to arbitration.

5 99. Plaintiffs , and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney
7 General Act, brings this Representative Action on behalf of the State of California with
8 respect to themselves and all individuals who are or previously were employed by
9 DEFENDANT as Assistant Store Managers and were classified as exempt employees in
10 California during the time period of July 11, 2015 until the present (the "AGGRIEVED
11 EMPLOYEES").

12 100. As part of their business, DEFENDANT employs a fleet of "Warehouse
13 Supervisors." PLAINTIFFS and other AGGRIEVED EMPLOYEES, as Warehouse
14 Supervisors, were primarily engaged in the core, day-to-day business activities of
15 DEFENDANT. The finite set of tasks required to be performed by the PLAINTIFFS and
16 other AGGRIEVED EMPLOYEES were greeting customers, handling customer service
17 requests and customer service complaints, answering phone calls, taking inventory,
18 receiving product shipments, assisting in the merchandising operation, printing out reports
19 and providing the reports to upper management, unlocking safes, counting money for the
20 cash register, conducting safety inspections by walking the store aisles, processing
21 merchandise returns, operating the customer care center, return desks and self-check-out
22 areas all in accordance with DEFENDANT's established specific procedures and protocols
23 which governed and controlled every aspect of the work performed by the PLAINTIFFS and
24 other AGGRIEVED EMPLOYEES.

25 101. To perform their finite set of tasks, PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES did not engage in a supervisory or managerial role given the constraints
27 placed upon them by company policy. PLAINTIFFS and other AGGRIEVED
28 EMPLOYEES did not determine what work was to be done by other employees or in what

1 time frame. Furthermore, PLAINTIFFS and other AGGRIEVED EMPLOYEES also did
2 not have a distinct role in training other employees or determining what training they were
3 to receive. Lastly, PLAINTIFFS and other AGGRIEVED EMPLOYEES did not have the
4 authority to hire, fire, or promote employees, determine their pay rates or benefits, or give
5 raises as they were unable to make employment-related, personnel decisions. Consequently,
6 PLAINTIFFS and other AGGRIEVED EMPLOYEES did not have the authority to decide
7 whether or not an employee should be disciplined for an infraction. PLAINTIFFS and other
8 AGGRIEVED EMPLOYEES were not engaged in work of a type that was or now is directly
9 related to the management or general business operations of the DEFENDANT's customers,
10 when giving these words a fair but narrow construction. PLAINTIFFS and other
11 AGGRIEVED EMPLOYEES were also not engaged in work of a type that was or now is
12 performed at the level of the policy or management of DEFENDANT. PLAINTIFFS and
13 other AGGRIEVED EMPLOYEES were also not engaged in work requiring knowledge of
14 an advanced type in a field or science or learning customarily acquired by a prolonged
15 course of specialized intellectual instruction and study, but rather their work involved the
16 performance of routine mental, clerical, and/or physical processes. PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES were also not engaged in work that was intellectual and varied
18 in character, but rather was routine mental, clerical, and/or physical work that was of such
19 character that the output produced or the result accomplished can be standardized in relation
20 to a given period of time. The work of a Warehouse Supervisor of DEFENDANT was work
21 wherein the PLAINTIFFS and other AGGRIEVED EMPLOYEES were engaged in the day-
22 to-day business of DEFENDANT. Therefore, the PLAINTIFFS and other AGGRIEVED
23 EMPLOYEES should have been properly classified as non-exempt employees.

24 102. On July 20, 2016, Plaintiffs gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
27 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory
28 waiting period for Plaintiffs to add these allegations to the Complaint has expired. As a

1 result, pursuant to Section 2699.3, Plaintiffs may now commence a representative civil
2 action under PAGA pursuant to Section 2699 as the proxy of the State of California with
3 respect to all AGGRIEVED EMPLOYEES as herein defined.

4 103. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because Defendant (a) failed to properly record and pay Plaintiffs
6 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
7 overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage
8 statements, and (c) failed to timely pay wages, all in violation of the applicable Labor Code
9 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202,
10 203, 204, 226(a), 226.7, 256, 510, 512, 1194, 1198 and the applicable Industrial Wage
11 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. Plaintiffs
12 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
13 General Act of 2004 as the representative of the State of California for the illegal conduct
14 perpetrated on Plaintiffs and the other AGGRIEVED EMPLOYEES.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of PLAINTIFFS:

- 20 A) An order requiring DEFENDANT to correctly calculate and pay all wages and
21 all sums unlawfully withheld from compensation due to PLAINTIFFS;
22 B) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution
23 of the sums incidental to DEFENDANT's violations due to PLAINTIFFS; and,
24 C) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

26 2. On behalf of PLAINTIFFS:

- 27 A) Compensatory damages, according to proof at trial, including compensatory
28 damages for overtime compensation due PLAINTIFFS plus interest thereon at the

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statutory rate;

- B) The wages of all terminated PLAINTIFFS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Labor Code § 203; and,
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) of each PLAINTIFFS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Labor Code § 226.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:


- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Cal. Labor Code §218.5, §226 and/or §1194.

Dated: September 29, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 
Norman B. Blumenthal
Attorneys for Plaintiffs

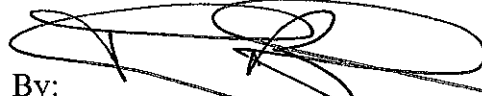
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DEMAND FOR JURY TRIAL

PLAINTIFFS demand jury trial on issues triable to a jury.

Dated: September 29, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK


By: _____
Norman B. Blumenthal
Attorneys for Plaintiffs

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EXHIBIT #1

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July 20, 2016
CA1270

VIA EMAIL TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Wal-Mart Associates, Inc.
Certified Mail # 70142120000378195895
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1198, Violation of Industrial Wage Order 7(A)(3), Violation of the Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Jon Wunderlin, Claudia Soto, Gabriel Sucre, Rosa Trevino, Rhonda Jackson, Matthew Bence, John Kenyon, Lorraine McWhorter, Rod Couture, Francine Giardino, Blondell Robertson, Kevin Ryerson, Rosa Torres, Judy Blasavich and Amber Dolan (“Plaintiffs”), and other aggrieved employees in a lawsuit against Wal-Mart Associates, Inc. (“Defendant”). Plaintiffs were employed and suffered violations of the California Labor Code during the Private Attorney General Act period as described in the Complaint that is attached hereto. At all times relevant during their employment with Defendant, Plaintiffs were classified as salaried employees exempt from receiving overtime wages and the legally required meal and rest periods. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of the time they worked, including overtime worked. To date, Defendant has not fully paid Plaintiffs for all their overtime wages still owed to them or any penalty wages owed to them under California Labor Code § 203. As a consequence of the aforementioned violations, Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code § 226(a). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1198, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

A true and correct copy of the Complaint filed by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the

alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint filed in the San Joaquin County Superior Court Case No. STK-CV-VOE-2016-6739, against Defendant as authorized by California Labor Code § 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting Unit with an identification of the Plaintiff, the Defendant and the attached notice. The pending lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.