

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

WAL-MART ASSOCIATES, INC., a Delaware Corporation;
BONOBOS, INC., a Delaware Corporation; and DOES 1 through 50,
Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LUCAS DELACRUZ, an individual, on behalf of himself, and on behalf
of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/01/2021 at 02:42:47 PM

Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2021-00046421-CU-0E-CTL

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):
Jean-Claude Lapuyade, Esq. SBN:2748767 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 11/02/2021
(Fecha)

Clerk, by _____
(Secretario)

M. Valdez
M. Valdez

_____, Deputy
(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

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
4. by personal delivery on *(date)*:

[SEAL]



11/01/2021 at 02:42:47 PM

Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

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Attorney for Plaintiff LUCAS DELACRUZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUCAS DELACRUZ, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

WAL-MART ASSOCIATES, INC., a Delaware
Corporation; BONOBOBOS, INC., a Delaware
Corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 37-2021-00046421-CU-DE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;



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- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246;
- 9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
- 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant WAL-MART ASSOCIATES, INC., (“Defendant Wal-Mart”) is a Delaware Corporation, that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, and owns, operates and/or manages Wal-Mart stores.

2. Defendant BONOBO INC. (“Defendant Bonobos) is a Delaware Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, and owns operates and/or manages an e-commerce retailer.

3. Defendant Wal-Mart and Defendant Bonobos were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and

1 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
2 believes, and based upon that information and belief allege, that the Defendants named in this
3 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or
4 “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that
5 proximately caused the injuries and damages hereinafter alleged.

6 5. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
7 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
8 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
9 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
10 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
11 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
12 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

13 6. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
14 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
15 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
16 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
17 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

18 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
19 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
20 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
21 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
22 for each underpaid employee.

23 8. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
24 hourly basis and entitled to certain bonuses, overtime pay and legally compliant meal and rest periods
25 from February 5, 2020 to present.

26 9. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
27 Defendant Wal-Mart’s current and former non-exempt California employees who worked at a
28 Defendant Bonobos store (the “CALIFORNIA CLASS”) at any time during the period beginning four



1 years from the date of the filing of this Complaint and ending on a date determined by the Court (the
2 “CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
3 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the
4 following class definitions before the Court determines whether class certification is appropriate, or
5 thereafter upon leave of Court.

6 10. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
7 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
8 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which
9 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
10 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
11 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
12 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
13 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to
14 reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California
15 Labor Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of
16 California Labor Code Sections 226 and 226.3.

17 11. DEFENDANTS’ uniform policies and practices alleged herein were unlawful, unfair and
18 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
19 PLAINTIFF and the other members of the CALIFORNIA CLASS.

20 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
21 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
22 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS’ past
23 and current unlawful conduct, and all other appropriate legal and equitable relief.

24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
27 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
28 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

1 of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS
2 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
3 duty meal break. PLAINTIFF was from time-to-time interrupted by work assignments while clocked
4 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were rarely days where
5 PLAINTIFF and other members of the CALIFORNIA CLASS would even receive a partial lunch.
6 Further, DEFENDANTS falsely deducted meal breaks for PLAINTIFF and other members of the
7 CALIFORNIA CLASS despite the fact that PLAINTIFF and other members of the CALIFORNIA
8 CLASS from time-to-time worked through their off-duty meal breaks. As a result, the PLAINTIFF and
9 other members of the CALIFORNIA CLASS forfeited minimum wage and overtime wages by
10 regularly working without their time being accurately recorded and without compensation at the
11 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
12 PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked is evidenced by
13 DEFENDANTS' business records.

14 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
15 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other members of the
16 CALIFORNIA CLASS were from time-to-time unable to take thirty (30) minute off duty meal breaks
17 and were not fully relieved of duty for their meal periods. PLAINTIFF and other members of the
18 CALIFORNIA CLASS were required from time-to-time to perform work as ordered by
19 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
20 Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and other members of the
21 CALIFORNIA CLASS with a second off-duty meal period for some workdays in which these
22 employees were required by DEFENDANTS to work ten (10) hours of work from time-to-time. The
23 nature of the work performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does
24 not qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and
25 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
26 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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1 **B. Rest Period Violations**

2 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other members of the
3 CALIFORNIA CLASS were also required from time-to-time to work in excess of four (4) hours
4 without being provided ten (10) minute rest periods as a result of their rigorous work schedules and
5 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
6 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
7 from time-to-time, a first and second rest period of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours from time-to-time, and a first, second and third rest period of at
9 least ten (10) minutes for some shifts worked of ten (10) hours or more from time-to-time. When they
10 were provided with rest breaks, PLAINTIFF and other members of the CALIFORNIA CLASS were
11 required to remain on the premises, on duty, and on call. PLAINTIFF and other members of the
12 CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their
13 rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS were from
14 time-to-time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

15 **C. Unreimbursed Business Expenses**

16 19. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
17 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the
18 CALIFORNIA CLASS or required business expenses they incurred in direct consequence of
19 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
20 employers are required to indemnify employees for all expenses incurred in the course and scope of
21 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
23 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
24 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
25 unlawful."

26 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
27 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as
28 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of

1 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not
2 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify
3 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their
4 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment
5 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
6 unreimbursed business expenses which included, but were not limited to, costs related to the use of
7 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

8 **D. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay**

9 21. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
10 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
11 their overtime compensation, meal and rest period premiums, and sick pay. As a result, PLAINTIFF
12 and the other members of the CALIFORNIA CLASS forfeited wages due them for working overtime
13 without compensation at the correct overtime compensation, meal and rest period premiums, and sick
14 pay rates. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members
15 the correct rate for all overtime compensation, meal and rest period premiums, and sick pay in
16 accordance with applicable law is evidenced by DEFENDANTS' business records.

17 22. State law provides that employees must be paid overtime at one-and-one-half times their
18 "regular rate of pay." PLAINTIFF and other members of the CALIFORNIA CLASS were
19 compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's
20 performance.

21 23. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
22 compensation was DEFENDANTS nondiscretionary incentive compensation, including but not limited
23 to, when the employees worked certain shifts, i.e., shift differentials. The nondiscretionary incentive
24 compensation provided all employees paid on an hourly basis with the incentive compensation when
25 the employees met various performance goals set by DEFENDANTS and/or worked certain shifts for
26 DEFENDANTS.

27 24. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
28 where PLAINTIFF and other members of the CALIFORNIA CLASS worked overtime, paid meal and



1 rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus,
2 DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the
3 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime
4 hours worked. As a matter of law, the incentive compensation received by PLAINTIFF and other
5 members of the CALIFORNIA CLASS must be included in the "regular rate of pay." The failure to
6 do so has resulted in a systematic underpayment of overtime compensation, meal and rest period
7 premiums, and sick pay to PLAINTIFF and other members of the CALIFORNIA CLASS by
8 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
9 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
10 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
11 that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
12 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
13 of Cal. Lab. Code § 246.

14 25. In violation of the applicable sections of the California Labor Code and the requirements
15 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
16 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
17 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked, meal
18 and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is
19 intended to purposefully avoid the payment of the correct overtime compensation, meal and rest period
20 premiums, and sick pay as required by California law which allowed DEFENDANTS to illegally profit
21 and gain an unfair advantage over competitors who complied with the law. To the extent equitable
22 tolling operates to toll claims by the members of the CALIFORNIA CLASS against DEFENDANTS,
23 the CLASS PERIOD should be adjusted accordingly.

24 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

25 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
26 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
27 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
28 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time

1 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
2 wages for performing work at DEFENDANTS' direction, request and benefit, while off-the clock pre-
3 shift, post-shift, on days off and during meal periods.

4 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
5 and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited
6 to, answering work-related questions, assisting customers before clocking in and answering health
7 screening questions.

8 26. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
9 and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited
10 to, answering work-related questions, assist customers after clocking out, and answering work calls on
11 weekends.

12 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
13 and other members of the CALIFORNIA CLASS to remain available for work calls and emails while
14 off-the-clock.

15 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
16 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
18 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
19 CLASS.

20 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
21 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
22 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
23 all the work they performed, including off-the-clock work.

24 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
25 employees, subject to the requirements of the California Labor Code.

26 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of
27 the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-clock work
28 activities and their required meal periods. Because PLAINTIFF and the other members of the



1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours
2 per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

3 33. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
4 the CALIFORNIA CLASS off-the-clock work was compensable under the law.

5 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
6 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
7 answering work related questions on days off, outside of work hours, pre-shift, post-shift and during meal
8 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
9 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by
10 DEFENDANTS' business records.

11 **F. Wage Statement Violations**

12 34. California Labor Code Section 226 requires an employer to furnish its employees an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
14 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of the employee's social security number or an employee
17 identification number other than a social security number, (8) the name and address of the legal entity
18 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee.

20 35. From time-to-time during the CLASS PERIOD, when PLAINTIFF and other members of
21 the CALIFORNIA CLASS missed meal and rest breaks, were paid inaccurate missed meal and rest
22 period premiums, were paid overtime in the same pay period where they earned a bonus, or were not
23 paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members
24 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
25 among other things, all applicable hourly rates in effect during the pay period and the corresponding
26 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal
27 and rest periods.

1 36. In addition to the violations described above, DEFENDANTS, from time-to-time, failed
2 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
3 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
4 of hours worked on the wage statements.

5 37. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
7 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
8 payroll error due to clerical or inadvertent mistake.

9 **G. Timekeeping Manipulation**

10 38. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
11 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the
12 CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA
13 CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a
14 result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded
15 in DEFENDANTS' timekeeping system for PLAINTIFF and other members of the CALIFORNIA
16 CLASS in order to avoid paying these employees for all hours worked, applicable overtime
17 compensation, applicable sick pay, missed meal breaks and missed rest breaks.

18 39. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time-
19 to-time, forfeited time worked by working without their time being accurately recorded and without
20 compensation at the applicable pay rates.

21 40. The mutability of the timekeeping system also allowed DEFENDANTS to alter
22 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
23 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
24 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were
25 not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's
26 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
27 breaks each day or otherwise compensate them for missed meal breaks
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1 41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
2 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
3 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
4 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance
5 with applicable law is evidenced by DEFENDANTS' business records.

6 **H. CLASS ACTION ALLEGATIONS**

7 42. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
8 California Code of Civil Procedure § 382 on behalf of all of Defendant Wal-Mart's current and former
9 non-exempt California employees who worked at a Defendant Bonobos store (the "CALIFORNIA
10 CLASS") during the period beginning four years prior to the filing of the Complaint and ending on a
11 date determined by the Court ("CLASS PERIOD").

12 43. PLAINTIFF and the other members of the CALIFORNIA CLASS have uniformly been
13 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
14 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
15 and rest period policies, failure to separately compensate rest periods, failure to reimburse business
16 expenses, failure to provide accurate itemized wage statements, failure to maintain required records,
17 and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

18 44. The members of the class are so numerous that joinder of all class members is impractical.

19 45. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
20 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
21 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
22 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
23 rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage
24 statements accurately, and failure to ensure they are paid at least minimum wage and overtime, exist as
25 to all members of the class and predominate over any questions affecting solely any individual members
26 of the class. Among the questions of law and fact common to the class are:

- 27 a. Whether DEFENDANTS maintained legally compliant meal period
28 policies and practices;

1 b. Whether DEFENDANTS maintained legally compliant rest period
2 policies and practices;

3 c. Whether DEFENDANTS failed to pay PLAINTIFF and members
4 of the CALIFORNIA CLASS accurate premium payments for missed meal
5 and rest periods;

6 d. Whether DEFENDANTS failed to pay PLAINTIFF and members
7 of the CALIFORNIA CLASS accurate overtime wages;

8 e. Whether DEFENDANTS failed to pay PLAINTIFF and members
9 of the CALIFORNIA CLASS accurate sick pay;

10 f. Whether DEFENDANTS failed to reimburse PLAINTIFF and
11 members of the CALIFORNIA CLASS for required business expenses;

12 g. Whether DEFENDANTS failed to pay PLAINTIFF and members
13 of the CALIFORNIA CLASS at least minimum wage for all hours worked;

14 h. Whether DEFENDANTS issued legally compliant wage statements;

15 i. Whether DEFENDANTS committed an act of unfair competition by
16 systematically failing to record and pay PLAINTIFF and the other members
17 of the CALIFORNIA CLASS for all time worked;

18 j. Whether DEFENDANTS committed an act of unfair competition by
19 systematically failing to record all meal and rest breaks missed by
20 PLAINTIFF and other CALIFORNIA CLASS Members, even though
21 DEFENDANTS enjoyed the benefit of this work, required employees to
22 perform this work and permits or suffers to permit this work; and

23 k. Whether DEFENDANTS committed an act of unfair competition in
24 violation of the UCL, by failing to provide the PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with the legally required meal and
26 rest periods.

27 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
28 of DEFENDANTS' conduct and actions alleged herein.

1 47. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
2 interests as the other members of the class.

3 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 49. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 50. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
8 of the other member of the CALIFORNIA CLASS.

9 51. There is a strong community of interest among PLAINTIFF and the members of the
10 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
11 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

12 52. The questions of law and fact common to and members of the CALIFORNIA CLASS
13 predominate over any questions affecting only individual members, including legal and factual issues
14 relating to liability and damages.

15 53. A class action is superior to other available methods for the fair and efficient adjudication
16 of this controversy because joinder of all class members is impractical. Moreover, since the damages
17 suffered by individual members of the class may be relatively small, the expense and burden of
18 individual litigation makes it practically impossible for the members of the class individually to redress
19 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
20 statutory and other legal questions within the class format, prosecution of separate actions by individual
21 members of the CALIFORNIA CLASS will create the risk of:

22 a. Inconsistent or varying adjudications with respect to individual members of the
23 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
24 parties opposing the CALIFORNIA CLASS; and/or,

25 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
26 which would as a practical matter be dispositive of the interests of the other members not
27 party to the adjudication or substantially impair or impeded their ability to protect their
28 interests.

1 the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

2 59. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in that
3 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
4 substantially injurious to employees, and were without valid justification or utility for which this Court
5 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
6 Professions Code, including restitution of wages wrongfully withheld.

7 60. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
8 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
9 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
10 overtime, double time, and minimum wages owed, provide accurate itemized wage statements, due to a
11 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
12 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
13 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
14 17203, including restitution of wages wrongfully withheld.

15 61. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
16 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
17 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

18 62. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
19 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
20 provide compensation for all hours worked, provide the legally mandated meal and rest periods, the
21 required accurate amount of compensation for missed meal and rest periods, overtime and minimum
22 wages owed, provide accurate itemized wage statements, reimburse employees for required business
23 expenses, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
24 Labor Code.

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

1 64. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
2 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
3 timely provided as required by law.

4 65. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
5 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
6 calculated overtime and double time and missed meal and rest periods premiums.

7 66. By and through the unlawful and unfair business practices described herein,
8 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
9 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
10 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
11 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
12 compete against competitors who comply with the law.

13 67. All the acts described herein as violations of, among other things, the Industrial Welfare
14 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
15 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
16 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
17 Bus. & Prof. Code §§ 17200, *et seq.*

18 68. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
19 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
20 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
21 deprived, by means of the above described unlawful and unfair business practices, including earned but
22 unpaid wages for all overtime worked.

23 69. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
24 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
25 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
26 unfair business practices in the future.

27 70. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
28 and/or adequate remedy at law that will end the unlawful and unfair business practices of



1 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
2 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
3 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
4 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
5 business practices.

6 **SECOND CAUSE OF ACTION**

7 **For Failure to Pay Overtime Compensation**

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

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

10 71. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 72. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
13 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a
14 claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the
15 Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for
16 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
17 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

20 74. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
21 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
22 receive additional compensation beyond their regular wages in amounts specified by law.

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

27 76. During the CLASS PERIOD, PLAINTIFF and members of the CALIFORNIA CLASS
28 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they

1 worked or were not accurately compensated for all overtime hours worked.

2 77. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
3 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
4 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and
5 members of the CALIFORNIA CLASS and denied accurate compensation to PLAINTIFF and the other
6 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
7 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
8 in any workweek.

9 78. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
10 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
11 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
12 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
13 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
14 applicable laws and regulations.

15 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
16 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
17 all overtime worked.

18 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
19 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
20 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
22 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
23 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
24 negotiable, non-waivable rights provided by the State of California.

25 81. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
26 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
27 wages.

28 82. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the

1 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
2 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
3 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
4 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
5 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

6 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
7 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
9 suffer an economic injury in amounts which are presently unknown to them and which will be
10 ascertained according to proof at trial.

11 84. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
12 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
13 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
14 employees for their labor as a matter of uniform company policy, practice and procedure, and
15 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
16 members of the CALIFORNIA CLASS for overtime worked.

17 85. In performing the acts and practices herein alleged in violation of California labor laws,
18 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
19 them with the requisite overtime compensation, DEFENDANTS acted and continue to act intentionally,
20 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
21 with a conscious of and utter disregard for 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 them injury
23 in order to increase company profits at the expense of these employees.

24 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
26 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
28 determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment,

1 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
2 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
3 herein on behalf of these members of the CALIFORNIA CLASS. DEFENDANTS' conduct as alleged
4 herein was willful, intentional and not in good faith. Further, PLAINTIFF and members of the
5 CALIFORNIA CLASS are entitled to seek and recover statutory costs.

6 **THIRD CAUSE OF ACTION**

7 **For Failure to Pay Minimum Wages**

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

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

10 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
15 minimum and reporting time wages to PLAINTIFF and members of the CALIFORNIA CLASS during
16 the CLASS PERIOD.

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

19 90. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
21 minimum so fixed is unlawful.

22 91. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
23 minimum wage compensation and interest thereon, together with the costs of suit.

24 92. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
25 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
26 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
27 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
28 compensation. Additionally, DEFENDANTS did not have an immutable timekeeping system to



1 accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual
2 time these employees worked each day. Further, as set forth herein, DEFENDANTS' uniform policy
3 and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and
4 the other members of the CALIFORNIA CLASS.

5 93. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
6 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
7 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
8 of the CALIFORNIA CLASS in regard to minimum wage pay.

9 94. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
10 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
11 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
12 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
13 Industrial Welfare Commission requirements and other applicable laws and regulations.

14 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
16 wage compensation for their time worked for DEFENDANTS.

17 96. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
18 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
19 wages.

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

25 98. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
26 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
27 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
28 employees for their labor as a matter of uniform company policy, practice and procedure, and

1 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
2 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

20 **FOURTH CAUSE OF ACTION**

21 **For Failure to Provide Required Meal Periods**

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

23 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

26 102. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to provide all the
27 legally required off-duty meal breaks to PLAINTIFF and other members of the CALIFORNIA CLASS
28 as required by the applicable Wage Order and Labor Code. The nature of the work performed by

1 PLAINTIFF and other members of the CALIFORNIA CLASS did not prevent these employees from
2 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
3 rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS were from
4 time-to-time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
5 DEFENDANTS' failure to provide PLAINTIFF and members of the CALIFORNIA CLASS with
6 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS'
7 business records from time-to-time. Further, DEFENDANTS failed to provide PLAINTIFF and
8 members of the CALIFORNIA CLASS with a second off-duty meal period in some workdays in which
9 these employees were required by DEFENDANTS to work ten (10) hours of work. As a result,
10 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
11 additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

12 103. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
13 Wage Order by failing to compensate PLAINTIFF and other members of the CALIFORNIA CLASS
14 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
15 hour of compensation at each employee's regular rate of compensation for each workday that a meal
16 period was not provided.

17 104. As a proximate result of the aforementioned violations, PLAINTIFF and members of the
18 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages
19 earned and due, interest, penalties, expenses and costs of suit.

20 **FIFTH CAUSE OF ACTION**

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

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

23 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

26 103. During the CLASS PERIOD, PLAINTIFF and other members of the CALIFORNIA
27 CLASS were from time-to-time required to work in excess of four (4) hours without being provided ten
28 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)

1 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
2 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
3 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
4 time-to-time. PLAINTIFF and other members of the CALIFORNIA CLASS were also not provided
5 with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
6 members of the CALIFORNIA CLASS were periodically denied their proper rest periods by
7 DEFENDANTS and DEFENDANTS' managers.

8 104. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
9 Wage Order by failing to compensate PLAINTIFF and members of the CALIFORNIA CLASS who
10 were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
11 compensation at each employee's regular rate of compensation for each workday that rest period was
12 not provided.

13 105. As a proximate result of the aforementioned violations, PLAINTIFF and members of the
14 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages
15 earned and due, interest, penalties, expenses and costs of suit.

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

19 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

20 106. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

28 108. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code

1 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
2 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
3 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
4 expenses which included, but were not limited to, costs related to using their personal cellular phone all
5 on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the
6 CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute
7 their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and
8 procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
9 expenses resulting from using their personal cellular phones for DEFENDANTS within the course and
10 scope of their employment for DEFENDANTS. These expenses were necessary to complete their
11 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of
12 their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
13 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
14 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
15 required to do under the laws and regulations of California.

16 109. PLAINTIFF therefore demands reimbursement on behalf of the members of the
17 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
18 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
19 rate and costs under Cal. Lab. Code § 2802.

20 **SEVENTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code §§ 226 and 226.2]**

23 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

26 111. Cal. Labor Code § 226 provides that an employer must furnish employees with an
27 "accurate itemized" statement in writing showing:

- 28 1. Gross wages earned;

1 2. Total hours worked by the employee, except for any employee
2 whose compensation is solely based on a salary and who is exempt from
3 payment of overtime under subdivision (a) of Section 515 or any applicable
4 order of the Industrial Welfare Commission;

5 3. The number of piece-rate units earned and any applicable piece rate
6 if the employee is paid on a piece-rate basis;

7 4. All deductions, provided that all deductions made on written orders
8 of the employee may be aggregated and shown as one item;

9 5. Net wages earned;

10 6. The inclusive dates of the period for which the employee is paid,

11 7. The name of the employee and his or her social security number,
12 except that by January 1, 2008, only the last four digits of his or her social
13 security number or an employee identification number other than a social
14 security number may be shown on the itemized statement;

15 8. The name and address of the legal entity that is the employer; and

16 9. All applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee.

18 112. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
19 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
20 to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)
21 gross wages earned and (4) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee in violation of California
23 Labor Code Section 226. Specifically, DEFENDANTS from time-to-time included remunerations for,
24 including but not limited to, meal break penalties and sick pay into the computation of total hours
25 worked, on wage statements issued to PLAINTIFF and the members of the CALIFORNIA CLASS.
26 DEFENDANTS' inclusion of meal break penalties and sick pay into the total hours worked violates
27 Cal. Lab. Code § 226(a)(2), as the foregoing items are not considered hours worked.

28 113. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §

1 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
2 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
3 the overtime worked and the amount of employment taxes which were not properly paid to state and
4 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
5 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
6 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
7 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
8 penalties available pursuant to Labor Code § 226.2(a)(6), all 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 and each respective
10 member of the CALIFORNIA CLASS herein.

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY**

13 **(Cal. Lab. Code § 246, *et seq.*)**

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

15 114. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

17 115. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
18 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
19 the employee uses paid sick time, whether or not the employee actually works overtime in that
20 workweek.”

21 116. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
22 CLASS were compensated at an hourly rate plus nondiscretionary incentive compensation. As a matter
23 of law, the bonus compensation received by PLAINTIFF and other members of the CALIFORNIA
24 CLASS must be included in the “regular rate of pay.”

25 117. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
26 and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary
27 incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular
28 rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay

1 from the regular rate of pay.

2 DEFENDANT's uniform policy and practice of omitting non-discretionary bonuses from the
3 regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay wages
4 to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other members of
5 the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick pay wages,
6 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
7 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To
8 the extent sick pay is determined to be owed to other members of the CALIFORNIA CLASS who have
9 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202,
10 and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203,
11 which penalties are sought herein on behalf of other members of the CALIFORNIA
12 CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
13 faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and
14 recover statutory costs

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

17 **(Cal Lab. Code §§201, 202, 203)**

18 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

19 118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 119. Cal. Lab. Code § 200 provides that:

22 As used in this article:(a) "Wages" includes all amounts for labor
23 performed by employees of every description, whether the amount
24 is fixed or ascertained by the standard of time, task, piece,
25 Commission basis, or other method of calculation. (b) "Labor"
26 includes labor, work, or service whether rendered or performed
under contract, subcontract, partnership, station plan, or other
agreement if the labor to be paid for is performed personally by the
person demanding payment.

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



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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an 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.

122. There was no definite term in PLAINTIFF’s or any member of the CALIFORNIA CLASS’ employment contract.

123. Cal. Lab. Code § 203 provides:

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

124. The employment of PLAINTIFF and many other members of the CALIFORNIA CLASS terminated and DEFENDANTS have not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

125. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

TENTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

126. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1 127. PAGA is a mechanism by which the State of California itself can enforce state labor laws
2 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
3 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
4 enforcement action designed to protect the public and not to benefit private parties. The purpose of
5 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
6 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
7 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
8 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
9 PAGA claims cannot be subject to arbitration.

10 128. PLAINTIFF, and such persons that may be added from time to time who satisfy the
11 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
12 this Representative Action on behalf of the State of California with respect to themselves and all
13 individuals who are or previously were employed by DEFENDANT and classified as non-exempt
14 employees in California during the time period of August 27, 2020 until the present (the "AGGRIEVED
15 EMPLOYEES").

16 129. On August 27, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
17 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
18 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
19 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these
20 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now
21 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
22 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

23 130. The policies, acts and practices heretofore described were and are an unlawful business
24 act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation
26 of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide
27 mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break premiums at the correct
28 rate, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in

1 Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
2 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
3 1198, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory
4 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed
5 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California
6 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

11 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
12 as a class action pursuant to Cal. Code of Civ. Proc. § 382;

13 B) An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

15 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
16 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;

17 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
18 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
19 members of the CALIFORNIA CLASS;

20 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth
21 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
22 Proc. § 382;

23 1. Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation due PLAINTIFF and the other members of the
25 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
26 interest thereon at the statutory rate;

27 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the



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CALIFORNIA CLASS 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. Lab. Code § 226;

3. Meal and rest period compensation pursuant to California Labor Code Sections 226.7 and 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

3. 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 Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: November 1, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.
By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: November 1, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

5
6 By: 
7 Jean-Claude Lapuyade
8 Attorneys for PLAINTIFF
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EXHIBIT 1



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Jean-Claude Lapuyade, Esq.
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August 27, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

WAL-MART ASSOCIATES, INC.

c/o CT Corporation System
330 N. Brand Blvd
Glendale, CA 91203

Via Certified Mail with Return Receipt No. 7021 0650 0000 8465 2830

BONOBOS, INC.

c/o CT Corporation System
330 N. Brand Blvd
Glendale, CA 91203

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 2847

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents LUCAS DELACRUZ (“Delacruz”) (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against WAL-MART ASSOCIATES, INC., BONOBOS, INC., and Does 1-50, who Plaintiff alleges were and/or are the joint employers of Plaintiff and the Aggrieved Employees, but who’s identity is currently unknown to Plaintiff (collectively “Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff has been employed by Defendant in California from February 2020 to the present. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Jackland K. Hom (State Bar #327243)
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JCL LAW FIRM, APC
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jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

LUCAS DELACRUZ, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; BONOBOBOS, INC., a
Delaware Corporation; and DOES 1 through
50, Inclusive;

DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;



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- 8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246;
- 9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant WAL-MART ASSOCIATES, INC., (“Defendant Wal-Mart”) is a Delaware Corporation, that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, and owns, operates and/or manages Wal-Mart stores.

2. Defendant BONOBO INC. (“Defendant Bonobos) is a Delaware Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, and owns operates and/or manages an e-commerce retailer.

3. Defendant Wal-Mart and Defendant Bonobos were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or

1 “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

3 5. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
4 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
5 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
6 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
7 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
8 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
9 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

10 6. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
11 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
12 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
13 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
14 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

15 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
16 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
17 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
18 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
19 for each underpaid employee.

20 8. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
21 hourly basis and entitled to certain bonuses, overtime pay and legally compliant meal and rest periods
22 from February 5, 2020 to present.

23 9. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
24 Defendant Wal-Mart’s current and former non-exempt California employees who worked at a
25 Defendant Bonobos store (the “CALIFORNIA CLASS”) at any time during the period beginning four
26 years from the date of the filing of this Complaint and ending on a date determined by the Court (the
27 “CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
28 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the



1 following class definitions before the Court determines whether class certification is appropriate, or
2 thereafter upon leave of Court.

3 10. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
4 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
5 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
6 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
7 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
8 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
9 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
10 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to
11 reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California
12 Labor Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of
13 California Labor Code Sections 226 and 226.3.

14 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and
15 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
16 PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
18 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
19 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past
20 and current unlawful conduct, and all other appropriate legal and equitable relief.

21 **JURISDICTION AND VENUE**

22 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
24 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
25 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

26 14. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
27 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS
28 (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or



1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
2 in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 15. In violation of the applicable sections of the California Labor Code and the requirements
5 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
6 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
7 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members
8 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
9 members of the CALIFORNIA CLASS for all time worked, failed to pay Plaintiff and other members
10 of the CALIFORNIA CLASS overtime, meal and rest period premiums, and sick pay at the regular
11 rate, failure to reimburse business expenses and failed to issue to PLAINTIFF and the members of the
12 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
13 applicable hourly rates in effect during the pay periods and the corresponding amount of time worked
14 at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid
15 the accurate and full payment for all time worked as required by California law which allows
16 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the
17 law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
18 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

19 **A. Meal Period Violations**

20 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
21 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
22 the time during which an employee is subject to the control of an employer, including all the time the
23 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
24 DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to work
25 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result
26 of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS
27 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
28 duty meal break. PLAINTIFF was from time-to-time interrupted by work assignments while clocked



1 out for what should have been PLAINTIFF’s off-duty meal break. Indeed, there were rarely days where
2 PLAINTIFF and other members of the CALIFORNIA CLASS would even receive a partial lunch.
3 Further, DEFENDANTS falsely deducted meal breaks for PLAINTIFF and other members of the
4 CALIFORNIA CLASS despite the fact that PLAINTIFF and other members of the CALIFORNIA
5 CLASS from time-to-time worked through their off-duty meal breaks. As a result, the PLAINTIFF and
6 other members of the CALIFORNIA CLASS forfeited minimum wage and overtime wages by
7 regularly working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice not to pay
9 PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked is evidenced by
10 DEFENDANTS’ business records.

11 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
12 schedules and DEFENDANTS’ inadequate staffing practices, PLAINTIFF and other members of the
13 CALIFORNIA CLASS were from time-to-time unable to take thirty (30) minute off duty meal breaks
14 and were not fully relieved of duty for their meal periods. PLAINTIFF and other members of the
15 CALIFORNIA CLASS were required from time-to-time to perform work as ordered by
16 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
17 Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and other members of the
18 CALIFORNIA CLASS with a second off-duty meal period for some workdays in which these
19 employees were required by DEFENDANTS to work ten (10) hours of work from time-to-time. The
20 nature of the work performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does
21 not qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and
22 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
23 compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

24 **B. Rest Period Violations**

25 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other members of the
26 CALIFORNIA CLASS were also required from time-to-time to work in excess of four (4) hours
27 without being provided ten (10) minute rest periods as a result of their rigorous work schedules and
28 DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees were denied their



1 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
2 from time-to-time, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours from time-to-time, and a first, second and third rest period of at
4 least ten (10) minutes for some shifts worked of ten (10) hours or more from time-to-time. When they
5 were provided with rest breaks, PLAINTIFF and other members of the CALIFORNIA CLASS were
6 required to remain on the premises, on duty, and on call. PLAINTIFF and other members of the
7 CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their
8 rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS were from
9 time-to-time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

10 **C. Unreimbursed Business Expenses**

11 19. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
12 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the
13 CALIFORNIA CLASS or required business expenses they incurred in direct consequence of
14 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
15 employers are required to indemnify employees for all expenses incurred in the course and scope of
16 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
18 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
19 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
20 unlawful."

21 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
22 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as
23 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of
24 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not
25 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify
26 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their
27 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment
28 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred



1 unreimbursed business expenses which included, but were not limited to, costs related to the use of
2 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

3 **D. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay**

4 21. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
5 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
6 their overtime compensation, meal and rest period premiums, and sick pay. As a result, PLAINTIFF
7 and the other members of the CALIFORNIA CLASS forfeited wages due them for working overtime
8 without compensation at the correct overtime compensation, meal and rest period premiums, and sick
9 pay rates. DEFENDANTS’ uniform policy and practice to not pay the CALIFORNIA CLASS members
10 the correct rate for all overtime compensation, meal and rest period premiums, and sick pay in
11 accordance with applicable law is evidenced by DEFENDANTS’ business records.

12 22. State law provides that employees must be paid overtime at one-and-one-half times their
13 “regular rate of pay.” PLAINTIFF and other members of the CALIFORNIA CLASS were
14 compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee’s
15 performance.

16 23. The second component of PLAINTIFF’S and other CALIFORNIA CLASS members’
17 compensation was DEFENDANTS nondiscretionary incentive compensation, including but not limited
18 to, when the employees worked certain shifts, i.e., shift differentials. The nondiscretionary incentive
19 compensation provided all employees paid on an hourly basis with the incentive compensation when
20 the employees met various performance goals set by DEFENDANTS and/or worked certain shifts for
21 DEFENDANTS.

22 24. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
23 where PLAINTIFF and other members of the CALIFORNIA CLASS worked overtime, paid meal and
24 rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus,
25 DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the
26 employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime
27 hours worked. As a matter of law, the incentive compensation received by PLAINTIFF and other
28 members of the CALIFORNIA CLASS must be included in the “regular rate of pay.” The failure to



1 do so has resulted in a systematic underpayment of overtime compensation, meal and rest period
2 premiums, and sick pay to PLAINTIFF and other members of the CALIFORNIA CLASS by
3 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
4 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
5 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
6 that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
7 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
8 of Cal. Lab. Code § 246.

9 25. In violation of the applicable sections of the California Labor Code and the requirements
10 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
11 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
12 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked, meal
13 and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is
14 intended to purposefully avoid the payment of the correct overtime compensation, meal and rest period
15 premiums, and sick pay as required by California law which allowed DEFENDANTS to illegally profit
16 and gain an unfair advantage over competitors who complied with the law. To the extent equitable
17 tolling operates to toll claims by the members of the CALIFORNIA CLASS against DEFENDANTS,
18 the CLASS PERIOD should be adjusted accordingly.

19 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

20 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
21 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
22 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
23 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
24 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
25 wages for performing work at DEFENDANTS' direction, request and benefit, while off-the clock pre-
26 shift, post-shift, on days off and during meal periods.

27 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
28 and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited



1 to, answering work-related questions, assisting customers before clocking in and answering health
2 screening questions.

3 26. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
4 and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited
5 to, answering work-related questions, assist customers after clocking out, and answering work calls on
6 weekends.

7 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
8 and other members of the CALIFORNIA CLASS to remain available for work calls and emails while
9 off-the-clock.

10 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
11 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
13 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
14 CLASS.

15 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
16 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
17 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
18 all the work they performed, including off-the-clock work.

19 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
20 employees, subject to the requirements of the California Labor Code.

21 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of
22 the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-clock work
23 activities and their required meal periods. Because PLAINTIFF and the other members of the
24 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours
25 per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

26 33. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
27 the CALIFORNIA CLASS off-the-clock work was compensable under the law.
28

1 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
2 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
3 answering work related questions on days off, outside of work hours, pre-shift, post-shift and during meal
4 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
5 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by
6 DEFENDANTS' business records.

7 **F. Wage Statement Violations**

8 34. California Labor Code Section 226 requires an employer to furnish its employees an
9 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
10 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and only the last four digits of the employee's social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal entity
14 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 35. From time-to-time during the CLASS PERIOD, when PLAINTIFF and other members of
17 the CALIFORNIA CLASS missed meal and rest breaks, were paid inaccurate missed meal and rest
18 period premiums, were paid overtime in the same pay period where they earned a bonus, or were not
19 paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, all applicable hourly rates in effect during the pay period and the corresponding
22 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal
23 and rest periods.

24 36. In addition to the violations described above, DEFENDANTS, from time-to-time, failed
25 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
26 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
27 of hours worked on the wage statements.

1 37. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
3 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
4 payroll error due to clerical or inadvertent mistake.

5 **G. Timekeeping Manipulation**

6 38. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
7 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the
8 CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA
9 CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a
10 result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded
11 in DEFENDANTS' timekeeping system for PLAINTIFF and other members of the CALIFORNIA
12 CLASS in order to avoid paying these employees for all hours worked, applicable overtime
13 compensation, applicable sick pay, missed meal breaks and missed rest breaks.

14 39. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time-
15 to-time, forfeited time worked by working without their time being accurately recorded and without
16 compensation at the applicable pay rates.

17 40. The mutability of the timekeeping system also allowed DEFENDANTS to alter
18 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
19 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
20 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were
21 not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's
22 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
23 breaks each day or otherwise compensate them for missed meal breaks

24 41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
25 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
26 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
27 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance
28 with applicable law is evidenced by DEFENDANTS' business records.



1 **H. CLASS ACTION ALLEGATIONS**

2 42. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
3 California Code of Civil Procedure § 382 on behalf of all of Defendant Wal-Mart’s current and former
4 non-exempt California employees who worked at a Defendant Bonobos store (the “CALIFORNIA
5 CLASS”) during the period beginning four years prior to the filing of the Complaint and ending on a
6 date determined by the Court (“CLASS PERIOD”).

7 43. PLAINTIFF and the other members of the CALIFORNIA CLASS have uniformly been
8 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
9 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
10 and rest period policies, failure to separately compensate rest periods, failure to reimburse business
11 expenses, failure to provide accurate itemized wage statements, failure to maintain required records,
12 and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

13 44. The members of the class are so numerous that joinder of all class members is impractical.

14 45. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not
15 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
16 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
17 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
18 rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage
19 statements accurately, and failure to ensure they are paid at least minimum wage and overtime, exist as
20 to all members of the class and predominate over any questions affecting solely any individual members
21 of the class. Among the questions of law and fact common to the class are:

- 22 a. Whether DEFENDANTS maintained legally compliant meal period
23 policies and practices;
- 24 b. Whether DEFENDANTS maintained legally compliant rest period
25 policies and practices;
- 26 c. Whether DEFENDANTS failed to pay PLAINTIFF and members
27 of the CALIFORNIA CLASS accurate premium payments for missed meal
28 and rest periods;

1 d. Whether DEFENDANTS failed to pay PLAINTIFF and members
2 of the CALIFORNIA CLASS accurate overtime wages;

3 e. Whether DEFENDANTS failed to pay PLAINTIFF and members
4 of the CALIFORNIA CLASS accurate sick pay;

5 f. Whether DEFENDANTS failed to reimburse PLAINTIFF and
6 members of the CALIFORNIA CLASS for required business expenses;

7 g. Whether DEFENDANTS failed to pay PLAINTIFF and members
8 of the CALIFORNIA CLASS at least minimum wage for all hours worked;

9 h. Whether DEFENDANTS issued legally compliant wage statements;

10 i. Whether DEFENDANTS committed an act of unfair competition by
11 systematically failing to record and pay PLAINTIFF and the other members
12 of the CALIFORNIA CLASS for all time worked;

13 j. Whether DEFENDANTS committed an act of unfair competition by
14 systematically failing to record all meal and rest breaks missed by
15 PLAINTIFF and other CALIFORNIA CLASS Members, even though
16 DEFENDANTS enjoyed the benefit of this work, required employees to
17 perform this work and permits or suffers to permit this work; and

18 k. Whether DEFENDANTS committed an act of unfair competition in
19 violation of the UCL, by failing to provide the PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with the legally required meal and
21 rest periods.

22 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
23 of DEFENDANTS' conduct and actions alleged herein.

24 47. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
25 interests as the other members of the class.

26 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
27 CALIFORNIA CLASS Members.

28 49. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 50. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
3 of the other member of the CALIFORNIA CLASS.

4 51. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
6 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

7 52. The questions of law and fact common to and members of the CALIFORNIA CLASS
8 predominate over any questions affecting only individual members, including legal and factual issues
9 relating to liability and damages.

10 53. A class action is superior to other available methods for the fair and efficient adjudication
11 of this controversy because joinder of all class members is impractical. Moreover, since the damages
12 suffered by individual members of the class may be relatively small, the expense and burden of
13 individual litigation makes it practically impossible for the members of the class individually to redress
14 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of separate actions by individual
16 members of the CALIFORNIA CLASS will create the risk of:

17 a. Inconsistent or varying adjudications with respect to individual members of the
18 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
19 parties opposing the CALIFORNIA CLASS; and/or,

20 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
21 which would as a practical matter be dispositive of the interests of the other members not
22 party to the adjudication or substantially impair or impeded their ability to protect their
23 interests.

24 54. Class treatment provides manageable judicial treatment calculated to bring an efficient
25 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
26 DEFENDANTS.

27 **FIRST CAUSE OF ACTION**

28 **For Unlawful Business Practices**

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

2 (By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

3 55. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
4 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

5 56. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
6 17021.

7 57. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
8 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
9 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

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

18 Cal. Bus. & Prof. Code § 17203.

19 58. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
20 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
22 “UCL”), by engaging and continuing to engage in business practices which violates California law,
23 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
24 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
25 551, 552, 1194, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other
26 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy
27 the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

28 59. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that

1 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
2 substantially injurious to employees, and were without valid justification or utility for which this Court
3 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
4 Professions Code, including restitution of wages wrongfully withheld.

5 60. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
6 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
7 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
8 overtime, double time, and minimum wages owed, provide accurate itemized wage statements, due to a
9 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
10 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
11 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
12 17203, including restitution of wages wrongfully withheld.

13 61. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
14 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
15 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

16 62. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
18 provide compensation for all hours worked, provide the legally mandated meal and rest periods, the
19 required accurate amount of compensation for missed meal and rest periods, overtime and minimum
20 wages owed, provide accurate itemized wage statements, reimburse employees for required business
21 expenses, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
22 Labor Code.

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

27 64. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
28 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not

1 timely provided as required by law.

2 65. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
3 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
4 calculated overtime and double time and missed meal and rest periods premiums.

5 66. By and through the unlawful and unfair business practices described herein,
6 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
7 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
8 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
9 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
10 compete against competitors who comply with the law.

11 67. All the acts described herein as violations of, among other things, the Industrial Welfare
12 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
13 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
14 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
15 Bus. & Prof. Code §§ 17200, *et seq.*

16 68. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
17 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
18 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
19 deprived, by means of the above described unlawful and unfair business practices, including earned but
20 unpaid wages for all overtime worked.

21 69. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
22 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
23 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
24 unfair business practices in the future.

25 70. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
26 and/or adequate remedy at law that will end the unlawful and unfair business practices of
27 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
28 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of

1 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
2 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
3 business practices.

4 **SECOND CAUSE OF ACTION**

5 **For Failure to Pay Overtime Compensation**

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

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

8 71. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

10 72. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
11 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a
12 claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for
14 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
15 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

18 74. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
19 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
20 receive additional compensation beyond their regular wages in amounts specified by law.

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

25 76. During the CLASS PERIOD, PLAINTIFF and members of the CALIFORNIA CLASS
26 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
27 worked or were not accurately compensated for all overtime hours worked.

28 77. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,



1 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
2 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and
3 members of the CALIFORNIA CLASS and denied accurate compensation to PLAINTIFF and the other
4 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
5 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
6 in any workweek.

7 78. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
8 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
9 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
10 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
11 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
12 applicable laws and regulations.

13 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
15 all overtime worked.

16 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
17 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
18 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
19 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
20 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
21 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
22 negotiable, non-waivable rights provided by the State of California.

23 81. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
24 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
25 wages.

26 82. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
28 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF

1 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
2 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
3 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

4 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
5 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
6 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
7 suffer an economic injury in amounts which are presently unknown to them and which will be
8 ascertained according to proof at trial.

9 84. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
10 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
11 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
12 employees for their labor as a matter of uniform company policy, practice and procedure, and
13 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
14 members of the CALIFORNIA CLASS for overtime worked.

15 85. In performing the acts and practices herein alleged in violation of California labor laws,
16 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
17 them with the requisite overtime compensation, DEFENDANTS acted and continue to act intentionally,
18 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
19 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
20 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
21 in order to increase company profits at the expense of these employees.

22 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
23 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
25 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
26 determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment,
27 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
28 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought

1 herein on behalf of these members of the CALIFORNIA CLASS. DEFENDANTS' conduct as alleged
2 herein was willful, intentional and not in good faith. Further, PLAINTIFF and members of the
3 CALIFORNIA CLASS are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **For Failure to Pay Minimum Wages**

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

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

8 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

10 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
11 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
12 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
13 minimum and reporting time wages to PLAINTIFF and members of the CALIFORNIA CLASS during
14 the CLASS PERIOD.

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

17 90. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
19 minimum so fixed is unlawful.

20 91. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
21 minimum wage compensation and interest thereon, together with the costs of suit.

22 92. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
23 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
24 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
25 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
26 compensation. Additionally, DEFENDANTS did not have an immutable timekeeping system to
27 accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual
28 time these employees worked each day. Further, as set forth herein, DEFENDANTS' uniform policy

1 and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and
2 the other members of the CALIFORNIA CLASS.

3 93. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
5 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
6 of the CALIFORNIA CLASS in regard to minimum wage pay.

7 94. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
8 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
9 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
10 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
11 Industrial Welfare Commission requirements and other applicable laws and regulations.

12 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
14 wage compensation for their time worked for DEFENDANTS.

15 96. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
16 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
17 wages.

18 97. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
19 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
20 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
21 suffer an economic injury in amounts which are presently unknown to them and which will be
22 ascertained according to proof at trial.

23 98. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
24 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
25 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
26 employees for their labor as a matter of uniform company policy, practice and procedure, and
27 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
28 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

1 rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS were from
2 time-to-time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
3 DEFENDANTS' failure to provide PLAINTIFF and members of the CALIFORNIA CLASS with
4 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS'
5 business records from time-to-time. Further, DEFENDANTS failed to provide PLAINTIFF and
6 members of the CALIFORNIA CLASS with a second off-duty meal period in some workdays in which
7 these employees were required by DEFENDANTS to work ten (10) hours of work. As a result,
8 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
9 additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

10 103. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
11 Wage Order by failing to compensate PLAINTIFF and other members of the CALIFORNIA CLASS
12 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
13 hour of compensation at each employee's regular rate of compensation for each workday that a meal
14 period was not provided.

15 104. As a proximate result of the aforementioned violations, PLAINTIFF and members of the
16 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages
17 earned and due, interest, penalties, expenses and costs of suit.

18 **FIFTH CAUSE OF ACTION**

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

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

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

22 102. 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 Complaint.

24 103. During the CLASS PERIOD, PLAINTIFF and other members of the CALIFORNIA
25 CLASS were from time-to-time required to work in excess of four (4) hours without being provided ten
26 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
27 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
28 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
2 time-to-time. PLAINTIFF and other members of the CALIFORNIA CLASS were also not provided
3 with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 members of the CALIFORNIA CLASS were periodically denied their proper rest periods by
5 DEFENDANTS and DEFENDANTS' managers.

6 104. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
7 Wage Order by failing to compensate PLAINTIFF and members of the CALIFORNIA CLASS who
8 were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
9 compensation at each employee's regular rate of compensation for each workday that rest period was
10 not provided.

11 105. As a proximate result of the aforementioned violations, PLAINTIFF and members of the
12 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages
13 earned and due, interest, penalties, expenses and costs of suit.

14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

18 106. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

26 108. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
27 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
28 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.

1 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
2 expenses which included, but were not limited to, costs related to using their personal cellular phone all
3 on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the
4 CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute
5 their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and
6 procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
7 expenses resulting from using their personal cellular phones for DEFENDANTS within the course and
8 scope of their employment for DEFENDANTS. These expenses were necessary to complete their
9 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of
10 their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
11 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
12 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
13 required to do under the laws and regulations of California.

14 109. PLAINTIFF therefore demands reimbursement on behalf of the members of the
15 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
16 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
17 rate and costs under Cal. Lab. Code § 2802.

18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code §§ 226 and 226.2]**

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

22 110. 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 Complaint.

24 111. Cal. Labor Code § 226 provides that an employer must furnish employees with an
25 "accurate itemized" statement in writing showing:

- 26 1. Gross wages earned;
- 27 2. Total hours worked by the employee, except for any employee
28 whose compensation is solely based on a salary and who is exempt from

1 payment of overtime under subdivision (a) of Section 515 or any applicable
2 order of the Industrial Welfare Commission;

3 3. The number of piece-rate units earned and any applicable piece rate
4 if the employee is paid on a piece-rate basis;

5 4. All deductions, provided that all deductions made on written orders
6 of the employee may be aggregated and shown as one item;

7 5. Net wages earned;

8 6. The inclusive dates of the period for which the employee is paid,

9 7. The name of the employee and his or her social security number,
10 except that by January 1, 2008, only the last four digits of his or her social
11 security number or an employee identification number other than a social
12 security number may be shown on the itemized statement;

13 8. The name and address of the legal entity that is the employer; and

14 9. All applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 112. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
17 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
18 to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)
19 gross wages earned and (4) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee in violation of California
21 Labor Code Section 226. Specifically, DEFENDANTS from time-to-time included renumerations for,
22 including but not limited to, meal break penalties and sick pay into the computation of total hours
23 worked, on wage statements issued to PLAINTIFF and the members of the CALIFORNIA CLASS.
24 DEFENDANTS' inclusion of meal break penalties and sick pay into the total hours worked violates
25 Cal. Lab. Code § 226(a)(2), as the foregoing items are not considered hours worked.

26 113. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
27 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
28 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for

1 the overtime worked and the amount of employment taxes which were not properly paid to state and
2 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
4 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
6 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
7 of trial, but in no event more than four thousand dollars (\$4,000.00), for PLAINTIFF and each respective
8 member of the CALIFORNIA CLASS herein.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY**

11 **(Cal. Lab. Code § 246, *et seq.*)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

13 114. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 115. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
16 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
17 the employee uses paid sick time, whether or not the employee actually works overtime in that
18 workweek.”

19 116. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
20 CLASS were compensated at an hourly rate plus nondiscretionary incentive compensation. As a matter
21 of law, the bonus compensation received by PLAINTIFF and other members of the CALIFORNIA
22 CLASS must be included in the “regular rate of pay.”

23 117. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
24 and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary
25 incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular
26 rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay
27 from the regular rate of pay.

28 DEFENDANT’s uniform policy and practice of omitting non-discretionary bonuses from the

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

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

15 **(Cal Lab. Code §§201, 202, 203)**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 119. Cal. Lab. Code § 200 provides that:

20 As used in this article:(a) "Wages" includes all amounts for labor
21 performed by employees of every description, whether the amount
22 is fixed or ascertained by the standard of time, task, piece,
23 Commission basis, or other method of calculation. (b) "Labor"
24 includes labor, work, or service whether rendered or performed
25 under contract, subcontract, partnership, station plan, or other
26 agreement if the labor to be paid for is performed personally by the
27 person demanding payment.
28

1 120. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

3 121. Cal. Lab. Code § 202 provides, in relevant part, that:

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

15 122. There was no definite term in PLAINTIFF’s or any member of the CALIFORNIA
16 CLASS’ employment contract.

17 123. Cal. Lab. Code § 203 provides:

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

24 124. The employment of PLAINTIFF and many other members of the CALIFORNIA CLASS
25 terminated and DEFENDANTS have not tendered payment of wages, to these employees who missed
26 meal and rest breaks, as required by law.

27 125. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
28 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty days of pay

1 as penalty for not paying all wages due at time of termination for all employees who terminated
2 employment during the CLASS PERIOD, and demands an accounting and payment of all wages due,
3 plus interest and statutory costs as allowed by law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

8 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
9 as a class action pursuant to Cal. Code of Civ. Proc. § 382;

10 B) An order temporarily, preliminarily and permanently enjoining and restraining
11 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

12 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
13 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;

14 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
15 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
16 members of the CALIFORNIA CLASS;

17 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth
18 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
19 Proc. § 382;

20 1. Compensatory damages, according to proof at trial, including compensatory
21 damages for overtime compensation due PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
23 interest thereon at the statutory rate;

24 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
25 which a violation occurs and one hundred dollars (\$100) per each member of the
26 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
27 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
28 of Cal. Lab. Code § 226;



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3. Meal and rest period compensation pursuant to California Labor Code Sections 226.7 and 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. 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 Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: November 1, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: November 1, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BOHOBOS, INC.
 410 LT CORP. SYSTEM
 330 N. BRAND BLVD
 GLENDALE, CA 91203



9590 9402 6744 1060 3014 79

2. Article Number (Transfer from service label)

7021 0350 0000 8465 2847

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed name)

NDS

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below No

SEP 2 2021

Delivery Service

DELIVERY 8.27.21

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Mail Restricted Delivery

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walmart Associates, Inc
 40 CT Corp. System
 330 N. Brand Blvd.
 Glendale, CA 91203



9590 9402 6744 1060 3014 93

2. Article Number (Transfer from service label)

7021 0350 0000 8465 2830

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

NDS

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

SEP 2 2021

Delivery Service

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Mail Restricted Delivery (0)