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**FILED**  
ALAMEDA COUNTY

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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF ALAMEDA**

**UNLIMITED JURISDICTION**

ANDREA SAVAGLIO, JAMES  
DAVIS, JERRILYN NEWLAND,  
and CHARLOTTE JOHNSON, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

WAL-MART STORES, INC., a  
Delaware corporation, SAM'S  
WEST, INC., a California  
corporation, and DOES 1 through  
100,

Defendants.

) Case No. C-835687-7

) **THIRD AMENDED CLASS ACTION COMPLAINT:**

- ) 1) **BREACH OF CONTRACT FOUNDED UPON**  
) **AN INSTRUMENT IN WRITING: WORKING**  
) **OFF-THE-CLOCK;**  
) 2) **BREACH OF IMPLIED CONTRACT FORMED**  
) **BY CONDUCT: WORKING OFF-THE-CLOCK;**  
) 3) **BREACH OF CONTRACT FOUNDED UPON**  
) **AN INSTRUMENT IN WRITING: FAILURE TO**  
) **PROVIDE MEAL AND REST BREAKS;**  
) 4) **BREACH OF IMPLIED CONTRACT FORMED**  
) **BY CONDUCT: FAILURE TO PROVIDE MEAL**  
) **AND REST BREAKS;**  
) 5) **FAILURE TO PAY OVERTIME WAGES (CAL.**  
) **LABOR CODE §§510, 1194 ET SEQ., 1198);**  
) 6) **UNJUST ENRICHMENT/QUANTUM MERUIT;**  
) 7) **CONVERSION;**  
) 8) **BREACH OF THE IMPLIED COVENANT OF**  
) **GOOD FAITH AND FAIR DEALING;**  
) 9) **FAILURE TO PAY MINIMUM WAGE: CAL.**  
) **LABOR CODE §§1194 ET SEQ., 1194.2, 1197);**  
) 10) **FAILURE TO PROVIDE MANDATED REST**  
) **AND MEAL PERIODS: CAL. LABOR CODE**  
) **§§226.7, 512;**  
) 11) **FAILURE TO MAKE PAYMENT WITHIN THE**  
) **REQUIRED TIME (CAL. LABOR CODE §§201-**  
) **203, 226);**  
) 12) **PROMISSORY ESTOPPEL; AND**  
) 13) **UNFAIR/UNLAWFUL/FRAUDULENT**  
) **BUSINESS PRACTICES: CAL. BUS. & PROF.**  
) **CODE §17200.**

1 Plaintiffs, by their undersigned attorneys, for their Third Amended Class  
2 Action Complaint against Wal-Mart Stores, Inc., Sam's West, Inc., and DOES 1-100  
3 (collectively "Defendants"), allege the following upon information and belief, except as to  
4 the allegations that pertain to the named Plaintiffs and their counsel, which are based upon  
5 personal knowledge:

#### 6 NATURE OF ACTION

7 1. Plaintiffs Andrea Savaglio, James Davis, Jerrilyn Newland, and  
8 Charlotte Johnson ("Plaintiffs") bring this action on behalf of themselves, as a class action  
9 and on behalf of the California general public, against Wal-Mart Stores, Inc. (including all  
10 California Wal-Mart stores and Supercenters) (collectively, "Wal-Mart") and Sam's West,  
11 Inc. for engaging in a systematic scheme of wage abuse against their hourly-paid employees  
12 in California. This scheme involved, inter alia, failing to record and pay for hourly-paid  
13 employees' off-the-clock work and overtime, altering hourly-paid employees' time records,  
14 and failing to pay such employees for missed and/or interrupted meal and rest breaks. As a  
15 result of Defendants' systematic and clandestine scheme of failing to properly pay their  
16 hourly-paid employees throughout California, Defendants have violated California common  
17 and statutory laws as described more particularly below.

#### 18 JURISDICTION AND VENUE

19 2. Venue is proper in this county under California Business and  
20 Professions Code §17203 and California Code of Civil Procedure §§395(a) and 395.5.  
21 Defendants transact business and may be found within Alameda County. Many of the acts,  
22 as well as the course of conduct charged herein, occurred in Alameda County.

23 3. Defendants are within the jurisdiction of this Court. Defendants  
24 transact tens of millions of dollars of business in the State of California and operate several  
25 stores in Alameda County. Thus, Defendants have obtained the benefits of the laws of the  
26 State of California and the California retail and labor markets.

27 4. The total amount in controversy for each of the named Plaintiffs'  
28 claims is less than seventy-five thousand dollars (\$75,000). In addition, Plaintiffs assert no

1 claims arising from federal law. Rather, Plaintiffs bring causes of action based solely on,  
2 and arising from, California law. The claims of Plaintiffs and the Class are individual  
3 claims for violations of California law described herein. These claims do not unite or  
4 enforce a single title or right to which Plaintiffs have a common and undivided interest, but  
5 rather arise from Defendants' systematic scheme of wage abuse against their hourly-paid  
6 employees in California.

#### 7 THE PARTIES

8 5. Plaintiff Andrea Savaglio ("Savaglio") was a California resident for  
9 part of the Class Period who worked from approximately January through July of 2000 at  
10 the Wal-Mart Store in Pleasanton, California, in Alameda County. On multiple occasions  
11 during her employment as an overnight stocker, Savaglio worked off-the-clock for which  
12 she was never paid, worked overtime for which she was not paid, and was not properly  
13 compensated for missed and/or interrupted meal and rest breaks.

14 6. Plaintiff James Davis ("Davis") is a California resident who, during  
15 the Class Period, worked at the Wal-Mart Store in San Leandro, California, in Alameda  
16 County. On multiple occasions during his employment with Wal-Mart, Plaintiff Davis  
17 worked off-the-clock for which he was never paid, worked overtime for which he was not  
18 paid, and was not properly compensated for missed and/or interrupted meal and rest breaks.

19 7. Plaintiff Jerrilyn Newland ("Newland") is a California resident who,  
20 during the Class Period, worked at the Wal-Mart Store in Clovis, California. On multiple  
21 occasions during her employment with Wal-Mart, Plaintiff Newland worked off-the-clock  
22 for which she was never paid, worked overtime for which she was not paid, and was not  
23 properly compensated for missed and/or interrupted meal and rest breaks.

24 8. Plaintiff Charlotte Johnson ("Johnson") is a California resident who,  
25 during the Class Period, worked at Sam's Clubs in California. On multiple occasions  
26 during her employment with Sam's Club, Plaintiff Johnson worked off-the-clock for which  
27 she was never paid, worked overtime for which she was not paid, and was not properly  
28 compensated for missed and/or interrupted meal and rest breaks.

1                   9. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its  
2 headquarters in Bentonville, Arkansas. Wal-Mart Stores, Inc. is a corporation transacting  
3 hundreds of millions of dollars of business—if not more—within the State of California.  
4 Wal-Mart Stores, Inc. operates approximately 140 retail stores in California. Wal-Mart  
5 Stores, Inc. is an employer of approximately 40,000 employees in the State of California.

6                   10. Sam's West, Inc., as a California corporation and wholly-owned  
7 subsidiary of defendant Wal-Mart Stores, Inc., transacts hundreds of millions of dollars of  
8 business—if not more—within the State of California. Sam's West, Inc. (hereinafter  
9 "Sam's Club") operates approximately 30 Sam's Clubs in California. Sam's Club is an  
10 operating segment of Wal-Mart Stores, Inc.

11                  11. The true names and capacities, whether individual, corporate,  
12 associate, representative, or otherwise, of Defendants named herein as DOES 1 through 100  
13 are unknown to Plaintiffs at this time, and they are therefore sued by such fictitious names  
14 pursuant to California Code of Civil Procedure Section 474. Plaintiffs will amend this  
15 Complaint to allege the true names and capacities of DOES 1 through 100 when Plaintiffs  
16 know them. Each of DOES 1 through 100 Defendants is in some manner legally  
17 responsible for the violations of law alleged herein.

18                  12. At all times herein mentioned, each of the Defendants sued as DOE  
19 was the agent and employee of each of the remaining Defendants and was at all times acting  
20 within the purpose and scope of such agency and employment.

21                  13. At all times herein mentioned, each of the Defendants was the agent  
22 and employee of each of the remaining Defendants, and in doing the things alleged herein,  
23 was acting within the scope of such agency. Furthermore, the acts charged in this Third  
24 Amended Complaint as having been done by Defendants were committed, authorized,  
25 ordered, ratified, and/or done by the Defendants' officers, agents, employees, and/or  
26 designated and/or authorized representatives, while actively engaged in the management of  
27 the Defendants' businesses and/or affairs and while acting with real and/or apparent  
28 authority of the Defendants.

1 CLASS ACTION ALLEGATIONS

2 14. Plaintiffs bring this case as a class action pursuant to California Code  
3 of Civil Procedure §382 on behalf of a Class consisting of:

4 all current and former hourly-paid employees of Wal-Mart  
5 Stores, Inc. (including Wal-Mart Stores and Supercenters)  
6 in the State of California from February 6, 1997 to the  
7 present, and all current and former hourly-paid employees  
8 of Sam's Club in the State of California from May 23, 1997  
9 to the present, excluding: 1) all employees who hold or held  
10 salaried positions; and 2) all customer service managers, all  
11 pharmacists, and all personnel managers (the "Class").

12 15. Plaintiffs believe there are over 200,000 current and former  
13 employees in the Class. Given Defendants' massive size and the systematic nature of  
14 Defendants' failure to comply with California common and statutory law, the members of  
15 the Class are so numerous that joinder of all members is impractical.

16 16. Plaintiffs' claims are typical of the claims of the members of the Class  
17 because they were hourly-paid employees who, like the other members of the Class,  
18 sustained damages arising out of the Defendants' wage abuse campaign, which includes, but  
19 is not limited to, the following: failing to properly compensate Plaintiffs and Class members  
20 for their off-the-clock work; failing to pay them overtime; and failing to properly  
21 compensate them for missed and/or interrupted meal and rest breaks.

22 17. Plaintiffs will fairly and adequately protect the interests of the Class  
23 members. Plaintiffs have no conflict of interest with any member of the Class. Plaintiffs  
24 have retained counsel competent and experienced in complex, class action litigation.

25 18. Common questions of law and fact exist as to all members of the  
26 Class and predominate over any questions solely affecting individual members of the Class.  
27 Among the questions of law and fact common to Plaintiffs and the Class members are:

- 28 a. Whether Defendants engaged in a pattern and/or practice in California  
of failing to properly compensate Plaintiffs and the Class members for  
their work, including but not limited to their off-the-clock work;

- 1           b.     Whether Defendants engaged in a pattern and/or practice in California  
2                 of encouraging Plaintiffs and the Class members not to report all time  
3                 worked and/or to work through meal and rest breaks;
- 4           c.     Whether Defendants engaged in a pattern and/or practice in California  
5                 of threatening Plaintiffs and the Class members with discharge,  
6                 demotion, discrimination or otherwise intimidating them if they did  
7                 not work off-the-clock and/or through meal and rest breaks;
- 8           d.     Whether Defendants failed to properly compensate hourly-paid  
9                 employees for missed and/or interrupted meal and rest breaks as  
10                required by California law, Defendants' contracts with the hourly-  
11                paid employees, and Defendants' own stated policies and company-  
12                wide agreements;
- 13          e.     Whether Defendants failed to keep true and accurate time records for  
14                 all hours worked by their hourly-paid employees and/or altered time  
15                 records;
- 16          f.     Whether Defendants failed to pay Plaintiffs and the Class members  
17                 for the work they performed;
- 18          g.     Whether Defendants violated Cal. Labor Code §§1194 *et seq.*, 1197,  
19                 and 1198;
- 20          h.     Whether Defendants violated Cal. Labor Code §204;
- 21          i.     Whether Defendants violated Cal. Labor Code §510;
- 22          j.     Whether Defendants violated Cal. Labor Code §512;
- 23          k.     Whether Defendants violated Cal. Labor Code §551;
- 24          l.     Whether Defendants violated Cal. Labor Code §552;
- 25          m.     Whether Defendants violated Cal. Labor Code §§201-203;
- 26          n.     Whether Defendants violated Cal. Labor Code §§226 and 226.7;
- 27          o.     Whether Defendants violated Cal. Labor Code §1182.11;
- 28

- 1           p.     Whether Defendants violated California Industrial Welfare  
2                   Commission ("IWC") Order Numbers 7-80 *et seq.* through 7-2001 *et*  
3                   *seq.*;
- 4           q.     Whether Defendants converted the property of Plaintiffs and the Class  
5                   members;
- 6           r.     Whether Defendants have been unjustly enriched;
- 7           s.     Whether Plaintiffs are entitled to injunctive relief; and
- 8           t.     The nature and extent of class-wide injury and the measure of  
9                   damages for the injury.

10           19.    Class action treatment is superior to any alternatives to ensure the fair  
11 and efficient adjudication of the controversy alleged herein. Such treatment will permit a  
12 large number of similarly situated persons to prosecute their common claims in a single  
13 forum simultaneously, efficiently, and without the duplication of effort and expense that  
14 numerous individual actions would entail. No difficulties are likely to be encountered in the  
15 management of this class action that would preclude its maintenance as a class action, and  
16 no superior alternative exists for the fair and efficient adjudication of this controversy. The  
17 Class members are readily identifiable from Defendants' records.<sup>1</sup>

18           20.    Defendants' actions are generally applicable to the entire Class,  
19 thereby making final injunctive relief or corresponding declaratory relief appropriate with  
20 respect to the Class as a whole. Prosecution of separate actions by individual members of  
21 the Class creates the risk of inconsistent or varying adjudications of the issues presented  
22 herein, which, in turn, would establish incompatible standards of conduct for Defendants.

23           21.    Because joinder of all members is impractical, a class action is  
24 superior to other available methods for the fair and efficient adjudication of this  
25  
26

27           <sup>1</sup>     Under Defendants' corporate policy, payroll records are retained for seven years. In  
28 addition, under California law, Defendants must keep payroll records for all employees for  
at least two years. See Cal. Labor Code §1174(d).

1 controversy. Furthermore, the amounts at stake for many of the Class members, while  
2 substantial, are insufficient to enable them to maintain separate suits against Defendants.

3           22. Defendants' wrongful and unlawful conduct has been widespread,  
4 recurring and uniform at their California stores. Defendants knew or should have known  
5 that their hourly employees, including Plaintiffs and the Class, were not being provided  
6 with their earned meal periods and rest breaks as required by law. Absent a class action,  
7 Defendants will likely continue their wrongdoing resulting in further damage to Plaintiffs  
8 and the Class.

### 9                                   SUMMARY OF ALLEGATIONS

#### 10                   A.   Wal-Mart.

11           23. Wal-Mart is a retailing powerhouse that generated approximately  
12 \$256 billion in revenues for the last fiscal year. At last count, Wal-Mart had over  
13 1.5 million employees.

14           24. Wal-Mart operates mass merchandising stores, which serve customers  
15 primarily through the operation of Wal-Mart Stores and Sam's Clubs.

#### 16                   B.   Defendants' Employment Agreements With Plaintiffs And The 17                                   Class Members.

18           25. Defendants offered the Plaintiffs and each Class member employment  
19 as hourly-paid employees, which each Plaintiff and Class member accepted, thereby  
20 entering into an employment relationship governed by the parties' employment agreements,  
21 the California Labor Code, and the Code's implementing regulations and orders.

22           26. At the time Plaintiffs and the Class members accepted employment  
23 with Defendants, Defendants expressly told them the rate they would earn for each hour  
24 worked.

25           27. Following acceptance of employment with Defendants, Plaintiffs and  
26 the Class members attended a standard orientation, which included, among other things, a  
27 discussion of Defendants' corporate policies and terms of employment, a store tour, viewing  
28



1 safety videos, completing employment paperwork, job specific training, and computer  
2 training, including clocking in and out.

3           28. At the time of hire, Defendants mandate that all hourly-paid  
4 employees receive the Wal-Mart Associate Handbook ("Handbook"), attached hereto as  
5 Exhibit A. This Handbook is a standardized, uniform document used by Wal-Mart stores  
6 and Sam's Clubs throughout the State of California. Hourly-paid employees received copies  
7 of the Handbook.

8           29. Defendants inform their hourly-paid employees that the Handbook  
9 embodies the terms of their employment. Hourly-paid employees are also instructed to  
10 refer to their Handbook if they have any questions about their employment.

11           30. Defendants claim that they respect their hourly-paid employees and  
12 that their treatment of hourly-paid employees is crucial to their success. For example, the  
13 following statements are in the Handbook:

- 14           a. "Welcome to the Wal-Mart Family!"
- 15           b. "But the most important thing we can do is to respect the talents and  
16 individuality of our fellow Associates. If we do all these things, if we  
17 consider ourselves as members of a wonderful extended family there's  
18 no limit to what we can accomplish." (emphasis added);
- 19           c. "Wal-Mart takes great pride in having an outstanding business  
20 reputation. As an Associate, you enjoy the same reputation for  
21 honesty and integrity our Company does. You are expected to live up  
22 to the high standards of personal integrity." (emphasis added);
- 23           d. "WHAT WE NEED IN OUR STORES IS INGENUITY,  
24 MORALITY, AND HONESTY." Sam Walton (emphasis added);
- 25           e. "General Rules

26                       These rules, and those throughout this booklet, are designed  
27                       for your well being and that of our Company. This applies to  
28                       hourly-paid employees in all divisions. All Associates are  
                         expected to be aware of and follow them." (emphasis added);

Coaching

1 There are, however, certain actions of misconduct that may  
2 result in immediate termination.

3 ...

4 Fraud

5 ...

6 Dishonesty/Compromised Integrity

7 ...

8 Theft of Company time. (emphasis added);

9 Managing Your Time

10 This is one of your responsibilities. Our expectation is very  
11 clear. Always clock in to begin your workday and at other  
12 appropriate times; ask your Supervisor for specific details. If  
13 you forget to do this, notify your Supervisor immediately so  
14 corrections can be made. Your hard work is appreciated, and  
15 we want to pay you for this work. Remember that working  
16 off the clock is not only against Wal-Mart Policy—it's against  
17 the law. Always clock in when you are working—Always!  
18 There are no exceptions." (emphasis added);

14 f. "DON'T COMPROMISE YOUR REPUTATION. IT'S A  
15 PRECIOUS COMMODITY. DON'T COMPROMISE YOUR  
16 INTEGRITY ... HAVE A GOOD NAME." Sam Walton;

17 g. "THE MOST IMPORTANT ASSETS THAT WE HAVE ARE  
18 INTEGRITY AND HONESTY IN DEALING WITH OUR  
19 ASSOCIATES, CUSTOMERS, AND OUR VENDORS." Dave  
20 Dible, Executive Vice President Specialty Groups;

21 31. Defendants' Handbook expressly mandates that Defendants will  
22 provide meal and rest breaks, and that Defendants will compensate hourly-paid employees  
23 for rest breaks. The Handbook provides, in part:

24 Meal and Break Periods

25 Associates will be provided break and meal periods during  
26 their scheduled work shift. Associates are paid for up to two  
27 break periods per work shift. No associate should work over  
28 six hours without taking at least a 30-minute meal period.  
Remember to clock in and out for meal periods.

1 Associates should not be required nor requested to perform  
2 work during their break and/or meal periods. Associates  
3 whose break or meal period is interrupted to perform work  
4 will be compensated at the appropriate rate of pay and may be  
5 provided an additional break or meal period. (Exh. A, p. 26)  
6 (emphasis added).

7 32. The Handbook also provides, in part:

8 Always clock in to begin your workday and at other  
9 appropriate times; ask your supervisor for specific details. If  
10 you forget to do this, notify your Supervisor immediately so  
11 corrections can be made. Your hard work is appreciated and  
12 we want to pay you for this work." (Exh. A, p. 25) (emphasis  
13 added).

14 33. Defendants present the Handbook to hourly-paid employees on a  
15 "take-it-or-leave-it" basis. Given the unequal bargaining power between hourly-paid  
16 employees and Defendants, neither Plaintiffs nor any of the Class members had an  
17 opportunity to negotiate the terms of their employment contracts.

18 34. As noted above, the Handbook contains definite and specific terms  
19 concerning Defendants' policies with respect to compensating their hourly-paid employees,  
20 as well as specific and detailed corporate policies and procedures with respect to, inter alia,  
21 attendance, "coaching," use of drugs, fraternization, gifts and gratuities, harassment and  
22 inappropriate conduct, employment of relatives, identification badges, managing time, and  
23 meal and break periods.

24 35. The Handbook is not a 48-page gratuitous expression. Rather,  
25 Defendants created and distributed the Handbook for the express purpose of securing  
26 tangible benefits. These benefits include promoting employee adherence to Defendants'  
27 desired code of workplace conduct which allows Defendants both to implement their  
28 uniform personnel system and prevent disputes over personnel policies with their hundreds  
of thousands of hourly-paid employees. The Handbook is also designed to give hourly-paid  
employees the impression that Defendants subscribe to a philosophy of fairness and equal  
treatment in employment matters, thereby boosting employee morale and fostering a  
workforce that is both loyal and hardworking.

1                   36.     Plaintiffs were reasonable in their belief that Defendants would act in  
2 full accord with the mandatory language of the Handbook, namely, that hourly-paid  
3 employees would be paid for all time worked and would be given earned and uninterrupted  
4 meal and rest breaks. This belief is quite reasonable given that Defendants consider the  
5 Handbook binding on hourly-paid employees. The stated purpose of the Handbook is to  
6 induce hourly-paid employees' strict adherence to Defendants' policies and procedures. See  
7 Exhibit A at 21. If Defendants both expect and require Plaintiffs and Class members to be  
8 bound by the Handbook, and consider violations of its terms as grounds for termination (see  
9 supra ¶31(j)), hourly-paid employees are reasonable in assuming that Defendants will abide  
10 by the promises stated therein.

11                   37.     Defendants' corporate policies regarding rest breaks provide, in part  
12 that: 1) if an hourly-paid employee works between 3 to 6 hours, that employee is entitled to  
13 one 15 minute rest break; 2) if an hourly-paid employee works over 6 hours, that hourly-  
14 paid employee is entitled to two 15 minute rest breaks.

15                   38.     Defendants' corporate policies pertaining to meal breaks include, but  
16 are not limited to: 1) meal periods which are a minimum of 30 minutes; 2) if an hourly-  
17 paid employee works 7 hours and 1 minute, that employee is entitled to one meal break for  
18 one hour.

19                   39.     Defendants' corporate policies regarding meal and rest breaks provide  
20 that hourly-paid employees whose meal or rest break is interrupted to perform work will  
21 receive compensation for the entire period at their regular rate of pay and be allowed an  
22 additional break or meal period. In addition, Defendants' mandatory corporate meal and  
23 rest break policy is delineated in PD-07 and is communicated to all employees through  
24 Defendants' "pipeline", *i.e.*, internal network.

25                   40.     Further indicia of Defendants' agreements with their hourly-paid  
26 employees to pay for all hours worked, and provide meal and rest breaks, include, among  
27 other things, Defendants' conduct of treating hourly-paid employees as their employees;  
28

1 Defendants' standardized new employee orientation; hourly-paid employees' pay-stubs; the  
2 distribution of the Handbook to hourly-paid employees; and Defendants' corporate policies.

3 C. Defendants' Uniform And Systematic Campaign of Wage Abuse  
4 Waged Against Plaintiffs and the Class Members.

5 41. One of Defendants' largest expenses is the payroll of their hourly-paid  
6 employees. Although Defendants claim to "respect the individual," they have ridden the  
7 backs of their hourly-paid employees to extreme profitability. One of Defendants'  
8 undisclosed secrets of their profitability, since at least February 6, 1997, is the creation and  
9 implementation of a system that fails to properly compensate hourly-paid employees in  
10 California for off-the-clock work, overtime and missed and/or interrupted meal and rest  
11 breaks.

12 42. The time that Plaintiffs and the Class members worked "off-the-  
13 clock" and through meal and rest breaks was at the direction and/or behest of Defendants  
14 and/or with their knowledge and/or acquiescence. Plaintiffs and the Class members did not  
15 voluntarily perform this work, but rather undertook it because it was a requirement of not  
16 getting "coached," and a necessary element of keeping their jobs.

17 43. While employed by Defendants, Plaintiffs and the Class members  
18 performed services for Defendants under their contracts of employment. Such services  
19 were not gratuitously undertaken or "volunteered," but done with the reasonable expectation  
20 of compensation from Defendants.

21 44. The essence of employment is to receive compensation for one's  
22 labor. Indeed, the very nature of the relationship between an employer and an employee  
23 gives rise to a reasonable expectation that Plaintiffs and the Class members—as employees  
24 hired by Defendants to work at a fixed hourly rate—would be paid for the work they  
25 performed. Wal-Mart Stores, Inc. is a for-profit company that generated over \$8 billion in  
26 profits last year, and therefore knew that its hourly-paid employees were not working for  
27 free.

1           45.     Without the employment of Plaintiffs and the Class members,  
2 Defendants could not have opened or operated their approximately 170 stores in California.

3           46.     Defendants breached their agreements with Plaintiffs and the Class  
4 members by failing to provide Plaintiffs and the Class members with the agreed upon and  
5 required meal and rest breaks and by failing to compensate them for the entire period of  
6 such breaks at their regular rate of pay in instances where meal and rest breaks were  
7 interrupted to perform work. Plaintiffs and the Class members worked many days and  
8 nights without promised meal and rest breaks at the direction and behest of Defendants.

9           47.     Defendants' clandestine program of failing to pay hourly-paid  
10 employees for off-the-clock work and for missed and/or interrupted meal and rest breaks is,  
11 in part, carried out through their corporate culture. Defendants give employees work  
12 assignments that Defendants know or should know they cannot complete within their  
13 regularly scheduled hours. Defendants also pressure hourly-paid employees to complete  
14 said work assignments through intimidation, threats of discharge, and demotion, while at  
15 the same time precluding such employees from clocking in for all hours worked, which  
16 were in fact necessary to accomplish their assignments. Consequently, hourly-paid  
17 employees must work after clocking out at the end of their shifts, before clocking in at the  
18 beginning of their shifts, and during, as well as through, meal and rest breaks.

19           48.     Defendants have adopted, and are using, unfair business practices to  
20 minimize hourly-paid employees' compensation and increase profits. Among these unfair  
21 business practices are failing to pay hourly-paid employees for off-the-clock work,  
22 understaffing Defendants' stores, causing hourly-paid employees to work without receiving  
23 adequate meal and rest breaks, and manipulating time and wage records to reduce the  
24 amounts paid to hourly-paid employees below the wages actually due and owing.

25           49.     Defendants engage in the practice of "locking in" hourly-paid  
26 employees overnight. The practice involves physically locking employees in the store  
27 overnight so that they cannot leave the store premises. Hourly paid employees are forced to  
28

1 clock out and yet continue working and/or wait for the store to be unlocked, in either case  
2 without being appropriately compensated.

3 50. Defendants' corporate policies also encourage hourly-paid employees  
4 to forego recording all time actually worked and/or to skip their meal and rest breaks.  
5 Indeed, Defendants' corporate practice, carried out in part by managerial personnel, is to  
6 pay little or no overtime. Hourly-paid employees who work overtime are not only  
7 inadequately paid, they are "coached." Coaching is synonymous with being reprimanded.  
8 If an employee receives too much "coaching," the hourly-paid employee is first sent home  
9 to think about how important the job is to him and his family, and then may be ultimately  
10 terminated.

11 51. Defendants' corporate policies create a financial incentive for  
12 executives and managerial personnel to suppress store payroll. For example, Wal-Mart told  
13 one store manager in California that for his 280 employees, he would be allowed only 20  
14 hours of overtime per month. Such a scant amount is not only unreasonable, but it also  
15 reinforces Wal-Mart's philosophy: pay as little overtime as possible and ride the backs of  
16 the hourly-paid employees to extreme profitability.

17 52. Defendants' scheme to underpay their hourly-paid employees is also  
18 carried out in other ways. For example, Defendants have called hourly-paid employees  
19 back to work while they were taking their meal and rest breaks without the employees  
20 having an opportunity to clock back in.

21 53. Defendants exploit some Class members' ignorance of the law and  
22 fear of losing their jobs into working off-the-clock, working overtime without adequate pay,  
23 working through and during their meal and rest breaks, and working seven days a week.  
24 For example, Plaintiff Savaglio personally witnessed numerous employees at the Pleasanton  
25 store who were forced into working seven days a week.

26 54. Defendants hide behind their written policy that purports to forbid  
27 employees from working off-the-clock while at the same time they maintain conditions that  
28 foster this unlawful and unfair practice. Employees are often coached if they fail to

complete assignments, make an issue of not being paid for unrecorded time, or not being allowed to take their full meal or rest breaks.

55. Defendants knew or should have known that hourly-paid employees were working off-the-clock by virtue of the fact that Defendants: (a) knew that the hourly-paid employees were not working on-the-clock and thus would not be paid for such work; (b) managers have been present in stores when off-the-clock work, overtime work, and missed and/or interrupted meal and rest breaks occurred; (c) managers assign work that cannot be accomplished during an employee's regular shift and make threats or intimidating remarks if the assigned work is not completed, but refuse to allow the employee to clock in the additional time which was necessary to accomplish such work; and (d) systematically understaff their stores. Furthermore, Defendants knew or should have known that the employees were precluded from taking their meal and rest breaks, either in whole or in part. This knowledge is reflected, inter alia, in internal reports that are generated on a daily basis in the regular course of business, as well as in Defendants' own computer databases.

### FIRST CAUSE OF ACTION

**(Breach of Contract Founded Upon an Instrument in Writing:**

**Working Off-The-Clock)**

56. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

57. The Wal-Mart Class Period for this cause of action is February 6, 1997 to the present.

58. The Sam's Club Class Period for this cause of action is May 23, 1997 to the present.

59. The Handbook obligates Defendants to pay Plaintiffs and the Class members for their off-the-clock work.

60. Plaintiffs and the Class members duly performed all the conditions on their part under their employment contracts by furnishing their labor at the direction and/or behest of Defendants and/or with their knowledge and/or acquiescence.



1           61. Defendants breached their employment contracts with Plaintiffs and  
2 the Class members by failing to pay Plaintiffs and the Class members for all hours worked  
3 according to the parties' employment agreements and according to California law.

4           62. As a direct result of Defendants' conduct, Plaintiffs and the Class  
5 members suffered damages in the form of lost wages. Defendants are liable to Plaintiffs  
6 and the Class members for the damages incurred as a result of Defendants' failure to pay  
7 Plaintiffs and the Class members for their off-the-clock work.

8                           **SECOND CAUSE OF ACTION**

9           **(Breach of Implied Contract Formed By Conduct: Working Off-The-Clock)**

10           63. Plaintiffs re-allege and incorporate by reference each and every  
11 allegation set forth in the preceding paragraphs.

12           64. Plaintiffs plead this cause of action as an alternative theory of liability  
13 to their First Cause of Action.

14           65. The Wal-Mart Class Period for this cause of action is February 6,  
15 1999 to the present.

16           66. The Sam's Club Class Period for this cause of action is May 23, 1999  
17 to the present.

18           67. As noted by the United States Supreme Court, "[A]n informal  
19 contract of employment may arise by the simple act of handing a job applicant a shovel and  
20 providing a workplace." Hishon v. King & Spalding, 467 U.S. 69, 74 (1984).

21           68. The employment contracts between hourly-paid employees and  
22 Defendants, arise from, among other things: Defendants' conduct of treating hourly-paid  
23 employees as their employees; Defendants' standardized employee orientation; hourly-paid  
24 employees' pay-stubs; Defendants' corporate meal and rest break policy (PD-07); and the  
25 distribution of the Handbook to hourly-paid employees.

26           69. By furnishing their labor on behalf of Defendants and/or with their  
27 knowledge and/or acquiescence, hourly-paid employees duly performed all the conditions  
28 on their part under their employment contracts.

1           70. By failing to properly compensate hourly-paid employees for off-the-  
2 clock work, Defendants breached their employment contracts with Plaintiffs and the Class  
3 members.

4           71. Plaintiffs and the Class members suffered damages in the form of lost  
5 wages and benefits as a direct result of Defendants' conduct. Defendants are liable to  
6 Plaintiffs and the Class members for the damages incurred as a result of Defendants' failure  
7 to pay Plaintiffs and the Class members for their off-the-clock work.

8                           **THIRD CAUSE OF ACTION**

9                   **(Breach of Contract Founded Upon An Instrument In Writing:**

10                           **Failure to Provide Meal and Rest Breaks)**

11           72. Plaintiffs re-allege and incorporate by reference each and every  
12 allegation set forth in the preceding paragraphs.

13           73. The Wal-Mart Class Period for this cause of action is February 6,  
14 1997 to the present.

15           74. The Sam's Club Class Period for this cause of action is May 23, 1997  
16 to the present.

17           75. Defendants entered into contracts with each hourly-paid employee  
18 under which Defendants agreed to provide them with meal and rest breaks if they worked a  
19 certain amount of time in a workday. These contractual provisions also specified that  
20 Defendants would compensate an hourly-paid employee when her meal and/or rest breaks  
21 were interrupted because she was required to perform work for Wal-Mart or Sam's Club.

22           76. Plaintiffs and the Class members were interrupted from their meal and  
23 rest breaks to perform work without receiving compensation and without being allowed to  
24 take additional meal and rest breaks in accordance with the agreements between the parties.

25           77. Defendants breached their employment contracts and intentionally  
26 misled Plaintiffs and members of the Class into believing they would receive full meal and  
27 rest breaks and additional meal and rest breaks when such original breaks were interrupted  
28 in accordance with the agreements between the parties.

1                   78.     Plaintiffs and the Class members duly performed all the conditions on  
2 their part under their employment contracts by furnishing their labor at Defendants'  
3 direction.

4                   79.     Plaintiffs and the Class members suffered damages in the form of lost  
5 compensation as a direct result of Defendants' conduct. Accordingly, Defendants are liable  
6 to the Plaintiffs and the Class members for damages incurred as a result of Defendants'  
7 failure to provide full meal and rest breaks and compensation in instances where meal and  
8 rest breaks were interrupted to perform work in accordance with the employment  
9 agreements between the parties.

10                                   **FOURTH CAUSE OF ACTION**

11                                   **(Breach of Implied Contract Formed By Conduct:**

12   **Failure to Provide Meal And Rest Breaks)**

13                   80.     Plaintiffs re-allege and incorporate by reference each and every  
14 allegation set forth in the preceding paragraphs.

15                   81.     Plaintiffs plead this cause of action as an alternative theory of liability  
16 to their Third Cause of Action.

17                   82.     The Wal-Mart Class Period for this cause of action is February 6,  
18 1999 to the present.

19                   83.     The Sam's Club Class Period for this cause of action is May 23, 1999  
20 to the present.

21                   84.     The employment contracts between hourly-paid employees and  
22 Defendants arise from, among other things: Defendants' conduct of treating hourly-paid  
23 employees as their employees; Defendants' standardized orientation; hourly-paid  
24 employees' pay-stubs; Defendants' corporate meal and rest break policy (PD-07); and the  
25 distribution of the Handbook to hourly-paid employees.

26                   85.     Plaintiffs and the Class members duly performed all the conditions on  
27 their part under their employment contracts by furnishing their labor at the direction and/or  
28 behest of Defendants and/or with their knowledge and/or acquiescence.

1           86. By failing to properly compensate hourly-paid employees for off-the-  
2 clock work, Defendants breached their employment contracts with Plaintiffs and the Class  
3 members.

4           87. Plaintiffs and the Class members suffered damages in the form of lost  
5 wages and benefits as a direct result of Defendants' conduct. Defendants are liable to  
6 Plaintiffs and the Class members for the damages incurred as a result of Defendants' failure  
7 to provide full meal and rest breaks and compensation in instances where meal and rest  
8 breaks were interrupted or missed to perform work in accordance with the employment  
9 agreements between the parties.

10                           **FIFTH CAUSE OF ACTION**

11                           **(Failure to Pay Overtime Wages: IWC Wage Orders,**  
12                           **Cal. Labor Code §§510, 1194 *et seq.*, 1198)**

13           88. Plaintiffs re-allege and incorporate by reference each and every  
14 allegation set forth in the preceding paragraphs.

15           89. The Wal-Mart Class Period for this cause of action is February 6,  
16 1998 to the present.

17           90. The Sam's Club Class Period for this cause of action is May 23, 1998  
18 to the present.

19           91. Cal. Labor Code §510 provides in relevant part:

20                           Day's work; overtime; commuting time

21                           Eight hours of labor constitutes a day's work

22                           \* \* \* \*

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

1                   92.     Cal. Labor Code §1194 provides in relevant part that: “any employee  
2 receiving less than the minimum wage or the legal overtime compensation applicable to the  
3 employee is entitled to recover in a civil action the unpaid balance of the full amount of this  
4 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s  
5 fees, and costs of suit.”

6                   93.     Cal. Labor Code §1198 provides in relevant part, “the employment  
7 for longer hours than those fixed by the order or under conditions of labor prohibited by the  
8 order is unlawful.”

9                   94.     IWC Order No. 7-2001(3)(A)(1) provides in relevant part:

10                   [E]mployees shall not be employed more than eight (8)  
11 hours in any workday or more than 40 hours in any  
12 workweek unless the employee receives one and one-half  
13 (1 ½) times such employee’s regular rate of pay for all  
14 hours worked over 40 hours in the workweek. Eight (8)  
15 hours of labor constitutes a day’s work. Employment  
16 beyond eight (8) hours in any workday or more than six  
17 (6) days in any workweek is permissible provided the  
18 employee is compensated for such overtime at not less  
19 than:

- 20                   (a)     One and one-half (1½) times the employee’s regular rate of  
21 pay for all hours worked in excess of eight (8) hours up to and  
22 including 12 hours in any workday, and for the first eight (8)  
23 hours worked on the seventh (7th) consecutive day of work in  
24 a workweek; and  
25                   (b)     Double the employee’s regular rate of pay for all hours  
26 worked in excess of 12 hours in any workday and for all hours  
27 worked in excess of eight (8) hours on the seventh (7th)  
28 consecutive day of work in a workweek.

95.     As alleged herein, Defendants failed to properly compensate Plaintiffs  
and the Class members for working off-the-clock, overtime and during meal and/or rest  
breaks. Plaintiffs and the Class members did not receive compensation for all hours worked  
over eight per day or forty per week.

96.     In addition, Cal. Labor Code §226(a) provides in relevant part that:  
“Every employer shall...furnish each of his or her employees...an itemized statement in  
writing showing ... total hours worked by the employee...and all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly  
2 rate by the employee.”

3 97. Cal. Labor Code §226(b) then provides in relevant part: “Any  
4 employee suffering injury as a result of a knowing and intentional failure by an employer to  
5 comply with subdivision (a) shall be entitled to recover the greater of all actual damages or  
6 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
7 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
8 aggregate penalty of four thousand dollars (\$4,000) and shall be entitled to an award of  
9 costs and reasonable attorney’s fees.”

10 98. By their actions alleged above, Defendants violated the provisions of  
11 §§226, 510, 1194 *et seq.* and 1198 of the California Labor Code and are therefore liable to  
12 Plaintiffs and the Class for the damages caused.

13 99. As a result of the unlawful acts of Defendants, Plaintiffs and the Class  
14 members have been deprived of overtime compensation in amounts to be determined at  
15 trial, and are entitled to injunctive relief and recovery of such amounts, including interest  
16 thereon, attorneys’ fees, costs, and penalties.

### 17 SIXTH CAUSE OF ACTION

#### 18 (Unjust Enrichment/Quantum Meruit)

19 100. Plaintiffs re-allege and incorporate by reference each and every  
20 allegation set forth in the preceding paragraphs.

21 101. The Wal-Mart Class Period for this cause of action is February 6,  
22 1998 to the present.

23 102. The Sam’s Club Class Period for this cause of action is May 23, 1998  
24 to the present.

25 103. By working for Defendants without appropriate pay—pay for off-the-  
26 clock work, overtime, and missed and/or interrupted meal and rest breaks—Plaintiffs and  
27 the Class members conferred a substantial benefit on Defendants. Plaintiffs and the Class  
28 members performed work for Defendants without receiving the wages and benefits to which

1 Plaintiffs and the Class members were entitled to as a matter of contract and/or law. This  
2 significant benefit substantially reduced Defendants' hourly wage expenses, thereby  
3 increasing Defendants' profitability.

4 104. Given that Wal-Mart, including Sam's West, Inc., is a public  
5 company that thrives on increasing its profitability and increasing returns to its  
6 shareholders, Defendants knew of and/or appreciated the benefits conferred upon them by  
7 their retention of Plaintiffs' and the Class members' property. Without Defendants'  
8 clandestine wage abuse campaign, Wal-Mart, including Sam's Club, would not be able to  
9 operate nearly as profitably.

10 105. Defendants' computer systems produce internal reports demonstrating  
11 the hours worked by hourly-paid employees and whether said employees were allowed their  
12 full meal and rest breaks.

13 106. The hours that Plaintiffs, the Class members worked off-the-clock,  
14 overtime, and through/during meal and rest breaks were at the direction and behest of  
15 Defendants. Plaintiffs, the Class members did not perform this work voluntarily but did so  
16 with the expectation of earning their respective hourly wage rates and receiving their agreed  
17 upon meal and rest breaks. Furthermore, Plaintiffs, the Class members provided a  
18 significant quantity of labor to Defendants at no cost to Defendants. Defendants accepted,  
19 appreciated and were enriched by this benefit conferred and have never properly paid  
20 Plaintiffs, the Class members for the labor provided.

21 107. By failing to pay all earned wages to Plaintiffs and the members of the  
22 Class when due, Defendants wrongfully obtained and withheld the wages and benefits  
23 earned by Plaintiffs and members of the Class.

24 108. Defendants are liable to Plaintiffs, the Class members for all hours  
25 worked off-the-clock, overtime, and during missed and/or interrupted meal and rest breaks  
26 for which the Defendants have not paid Plaintiffs, the Class members. Defendants have  
27 failed and refused to pay Plaintiffs, the Class members for such wages on the next payday  
28 after they earned such wages.

1           109. Defendants accepted and retained the wages earned by Plaintiffs and  
2 the Class members. Under these circumstances, it would be inequitable for Defendants to  
3 keep the wages and benefits earned by Plaintiffs and the Class members.

4                           **SEVENTH CAUSE OF ACTION**

5                                   **(Conversion)**

6           110. Plaintiffs re-allege and incorporate by reference each and every  
7 allegation set forth in the preceding paragraphs.

8           111. The Wal-Mart Class Period for this cause of action is February 6,  
9 1997 to the present.

10          112. The Sam's Club Class Period for this cause of action is May 23, 1997  
11 to the present.

12          113. Pursuant to the employment agreements between Plaintiffs and the  
13 Class members and Defendants, the parties agreed that Defendants would pay wages and  
14 benefits to Plaintiffs and the Class members for all time worked.

15          114. Pursuant to Cal. Labor Code §204, all earned wages "are due and  
16 payable twice during each calendar month, on days designated in advance by the employer  
17 as the regular pay days."

18          115. Defendants failed and refused to pay overtime wages, wages for off-  
19 the-clock work and other wages owed to Plaintiffs, the Class members on the next payday  
20 after they earned such wages.

21          116. At the time wages were due and payable by Defendants to Plaintiffs  
22 and the Class, the unpaid wages became the property of Plaintiffs and the Class. Plaintiffs  
23 and the Class members had a right to possess their property. By failing to pay the earned  
24 wages to each Class member when due and by failing to provide Plaintiffs and the Class  
25 members with their full meal and rest breaks, Defendants wrongfully converted said  
26 property to their own use and exercised dominion and control over Plaintiffs' and the Class  
27 members' property.



1                   117. Once Defendants thereafter applied the monies and benefits, which  
2 were the equivalent to these wages, to their own use, the conversion was complete.  
3 Plaintiffs and the Class members have been denied the possession, use, and enjoyment of  
4 said monies and benefits.

5                   118. The monetary value and amount of wages and benefits converted by  
6 Defendants from Plaintiffs and the Class members is specific, certain, and capable of  
7 identification based on the number of improperly withheld and/or interrupted meal and rest  
8 breaks and the number of uncompensated hours worked.

9                   119. Accordingly, Plaintiffs and the Class members have been damaged in  
10 an amount certain to be determined according to the proof at trial. In failing to pay all  
11 overtime compensation, failing to pay for off-the-clock work, and for failing to provide  
12 Plaintiffs and the Class members with their full meal and rest breaks, retaining these wages  
13 and benefits for their own use, and in erasing time worked through manipulation of  
14 computer data, Defendants have acted with malice, oppression, and/or conscious disregard  
15 for the statutory rights of Plaintiffs and the Class members. Such wrongful and intentional  
16 acts justify an award of punitive damages.

17                   **EIGHTH CAUSE OF ACTION**

18                   **(Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**

19                   120. Plaintiffs re-allege and incorporate by reference each and every  
20 allegation set forth in the preceding paragraphs.

21                   121. The Wal-Mart Class Period for this cause of action is February 6,  
22 1997 to the present.

23                   122. The Sam's Club Class Period for this cause of action is May 23, 1997  
24 to the present.

25                   123. Every contract entered into in California contains an implied covenant  
26 of good faith and fair dealing by each party not to do anything that will deprive the other  
27 parties of the benefits of the contract, and a breach of this covenant by failure to deal fairly  
28 or in good faith gives rise to an action for damages.

1           124. The implied covenant of good faith and fair dealing, *inter alia*,  
2 prevents an employer from denying its employees compensation for past services and  
3 therefore reaping a financial windfall from its unfair acts.

4           125. Defendants' misrepresentation of their policies and the terms and  
5 conditions of Plaintiffs' and the Class members' employment also violates the implied  
6 covenant of good faith and fair dealing.

7           126. Defendants' failure to provide meal and rest breaks and failure to pay  
8 for earned wages violates the implied covenant of good faith and fair dealing inherent in the  
9 parties' employment contract.

10           127. Defendants' systematic campaign of wage abuse as herein described  
11 constitutes a breach of the implied covenant of good faith and fair dealing by interfering  
12 with Plaintiffs' and the Class members' rights to reap the benefits of their employment  
13 contracts including receiving meal and rest breaks and payment for all their earned wages.

14           128. Defendants failed to properly compensate hourly-paid employees for  
15 off-the-clock work, overtime, and for missed and/or interrupted meal and rest breaks.  
16 Defendants' conduct damaged the hourly-paid employees.

17           129. Defendants are liable to Plaintiffs and the Class members for all  
18 wages earned but not paid by Defendants, as well as compensation for Defendants' failure  
19 to provide agreed upon meal and rest breaks.

20                   **NINTH CAUSE OF ACTION**

21           **(Failure to Pay Minimum Wage: Cal. Labor Code §§1194, 1194.2, 1197)**

22           130. Plaintiffs re-allege and incorporate by reference each and every  
23 allegation set forth in the preceding paragraphs.

24           131. The Wal-Mart Class Period for this cause of action is February 6,  
25 1998 to the present.

26           132. The Sam's Club Class Period for this cause of action is May 23, 1998  
27 to the present.

1           133. Cal. Labor Code §1197 provides, “the minimum wage for employees  
2 fixed by the commission is the minimum wage to be paid to employees, and the payment of  
3 a less wage than the minimum so fixed is unlawful.”

4           134. Cal. Labor Code §1194 *et seq.* provides in relevant part that any  
5 employee receiving less than the minimum wage applicable to the employee is entitled to  
6 recover in a civil action the unpaid balance of the full amount of this minimum wage,  
7 including interest thereon, reasonable attorneys’ fees, and costs of suit.

8           135. Cal. Labor Code §1194.2 provides in relevant part that: “In any  
9 action under ... Section 1194 to recover wages because of a payment of a wage less than the  
10 minimum wage fixed by an order of the commission, an employee shall be entitled to  
11 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest  
12 thereon.”

13           136. As alleged herein, Defendants failed to properly compensate Plaintiffs  
14 and the Class members for off-the-clock work, overtime and work during missed and/or  
15 interrupted meal and rest breaks. By their actions, Defendants violated Cal. Labor Code  
16 §1197 and are liable to Plaintiffs and the Class members.

17           137. As a result of the unlawful acts of Defendants, Plaintiffs and the Class  
18 members have been deprived of compensation in amounts to be determined at trial, and are  
19 entitled to recovery of such amounts, including interest thereon, liquidated damages,  
20 attorneys’ fees, costs, and any other damages as set forth under California law.

21                           **TENTH CAUSE OF ACTION**

22                           **(Failure to Provide Mandated Meal And Rest Periods:**

23                           **IWC Wage Orders, Cal. Labor Code §§226.7, 512)**

24           138. Plaintiffs re-allege and incorporate by reference each and every  
25 allegation set forth in the preceding paragraphs.

26           139. The Wal-Mart Class Period for this cause of action is February 6,  
27 1998 to the present.

1                   140. The Sam's Club Class Period for this cause of action is May 23, 1998  
2 to the present.

3                   141. Cal. Labor Code §226.7(a) provides, "No employer shall require any  
4 employee to work during any meal or rest period mandated by an applicable order of the  
5 Industrial Welfare Commission."

6                   142. IWC Order No. 7-2001(11)(c) provides in relevant part, "Unless the  
7 employee is relieved of all duty during a 30 minute meal period, the meal period shall be  
8 considered an 'on duty' meal period and counted as time worked." (Emphasis added).

9                   143. IWC Order No. 7-2001(12)(A) authorizes employees to take rest  
10 periods based on the total hours worked daily at the rate of ten minutes net rest per four  
11 hours or major fraction thereof.

12                   144. Cal. Labor Code §512, which provides in relevant part:

13                   Meal periods

14                   An employer may not employ an employee for a work period  
15 of more than five hours per day without providing the  
16 employee with a meal period of not less than 30 minutes,  
17 except that if the total work period per day of the employee is  
18 no more than six hours, the meal period may be waived by  
19 mutual consent of both the employer and employee. An  
20 employer may not employ an employee for a work period of  
more than 10 hours per day without providing the employee  
with a second meal period of not less than 30 minutes, except  
that if the total hours worked is no more than 12 hours, the  
second meal period may be waived by mutual consent of the  
employer and the employee only if the first meal period was  
not waived.

21                   145. As alleged herein, Defendants routinely interrupted Plaintiffs' and  
22 Class members' meal and rest breaks. By their actions, Defendants violated Cal. Labor  
23 Code §226.7(a) and are liable to Plaintiffs and the Class.

24                   146. As a result of the unlawful acts of Defendants, Plaintiffs and the Class  
25 members have been deprived of meal and rest breaks, and are entitled to recovery under  
26 Cal. Labor Code §226.7(b) in the amount of one additional hour of pay at the employee's  
27 regular rate of compensation for each work day that a meal or rest period was not provided.  
28

1           147. Defendants have acted with malice, oppression, and/or in conscious  
2 disregard for the legal rights of Plaintiffs and the Class members by failing to provide them  
3 with their full meal periods and rest breaks as required by California law. Defendants'  
4 actions are also in blatant violation of California law and public policy concerning the  
5 provision of meal periods and rest breaks. Punitive damages are therefore warranted to  
6 deter Defendants' wrongful and egregious conduct.

7                           **ELEVENTH CAUSE OF ACTION**

8                           **(Failure to Make Payment Within The Required Time:**

9                           **Cal. Labor Code §§201-203, 226)**

10           148. Plaintiffs re-allege and incorporate by reference each and every  
11 allegation set forth in the preceding paragraphs.

12           149. The Wal-Mart Class Period for this cause of action is February 6,  
13 1998 to the present.

14           150. The Sam's Club Class Period for this cause of action is May 23, 1998  
15 to the present.

16           151. Cal. Labor Code §201 provides in relevant part, "[i]f an employer  
17 discharges an employee, the wages earned and unpaid at the time of discharge are due and  
18 payable immediately."

19           152. Cal. Labor Code §202 provides in relevant part, "[i]f an employee  
20 not having a written contract for a definite period quits his or her employment, his or her  
21 wages shall become due and payable not later than 72 hours thereafter, unless the employee  
22 has given 72 hours previous notice of his or her intention to quit, in which case the  
23 employee is entitled to his or her wages at the time of quitting."

24           153. As alleged herein, Defendants failed to pay earned wages to Plaintiffs  
25 and the Class members who are former employees of Defendants at the time they became  
26 due and payable. Thus, Defendants violated Cal. Labor Code §§201 and 202.

27           154. Defendants' failure to pay wages as alleged herein was willful in that  
28 Defendants knew that Plaintiffs and the Class members were not receiving all of their

1 earned pay because of at least the following: (1) Defendants received weekly documents  
2 showing that Plaintiffs and the Class members were not receiving all of their earned wages;  
3 (2) Defendants altered Class and Subclass members' overtime pay records thereby reducing  
4 the amount of overtime pay due them.

5 155. As a result of Defendants' unlawful acts, Plaintiffs and the Class  
6 members who are former employees of Defendants are entitled to recover, pursuant to Cal.  
7 Labor Code §203, continuing wages as a penalty from the due date thereof at the same rate  
8 until paid or until this action was commenced; but for no more than 30 days.

9 156. Defendants also violated Cal. Labor Code §226(a) and (b) and are  
10 liable to Plaintiffs and the Class members.

### 11 TWELFTH CAUSE OF ACTION

#### 12 (Promissory Estoppel)

13 157. Plaintiffs re-allege and incorporate by reference each and every  
14 allegation set forth in the preceding paragraphs.

15 158. The Wal-Mart Class Period for this cause of action is February 6,  
16 1997 to the present.

17 159. The Sam's Club Class Period for this cause of action is May 23, 1997  
18 to the present.

19 160. Through Defendants' conduct in hiring and employing Plaintiffs and  
20 the Class members (as well as, *inter alia*, distributing the Handbook), Defendants made a  
21 clear and definite promise that Plaintiffs and the Class members would be provided meal  
22 and rest breaks according to the terms of the parties' employment agreements, and paid for  
23 all time worked at the behest of Defendants.

24 161. The Handbook contains terms which are sufficiently definite to create  
25 a promise on behalf of Defendants to Plaintiffs and the Class members that they would be  
26 provided meal and rest breaks and paid for all work undertaken at the direction and/or  
27 behest of Defendants and/or with Defendants' knowledge and/or acquiescence.

1           162. By providing Plaintiffs and the Class members with the Handbook,  
2 Defendants, as employers, exhibited a manifestation of willingness to enter into an  
3 employment agreement which justified Plaintiffs and the Class members, as employees of  
4 Defendants, to rely on Defendants' offer to provide meal and rest breaks and pay them for  
5 all their time worked at the stores. Plaintiffs and members of the Class accepted  
6 Defendants' offer by receiving the Handbook and working for Defendants.

7           163. Defendants made the above-described promises with the knowledge  
8 and/or understanding that the Plaintiffs and the Class members were seeking employment  
9 with them. Plaintiffs and the Class members relied on Defendants' promises to pay for all  
10 earned wages and provide meal and rest breaks. Absent such promises, Plaintiffs and the  
11 Class members would not have worked for Defendants. Thus, Defendants knew or  
12 reasonably should have known that Plaintiffs and other Class members would be reasonably  
13 induced to rely on Defendants' promise by undertaking all work requested by Defendants.

14           164. It was the mutual intent of Defendants and Plaintiffs and the Class  
15 members that hourly-paid employees would be provided meal and rest breaks and would be  
16 paid for all hours worked.

17           165. Defendants knew or reasonably should have known that Plaintiffs and  
18 the Class members undertook their employment with a reasonable expectation that they  
19 would be paid for all their wages earned and would be provided meal and rest breaks.  
20 Indeed, the essence of the employer-employee relationship is that the employer will pay its  
21 employees for all wages earned.

22           166. Plaintiffs and other Class members reasonably relied on Defendants'  
23 promises and were induced to perform all the work requested by Defendants. In return,  
24 Defendants have not fulfilled their promise to pay Plaintiffs and the other Class members  
25 for all wages earned and to provide meal and rest breaks according to the parties'  
26 employment agreement.

27           167. Plaintiffs and the Class members acted to their substantial detriment in  
28 reasonable reliance on Defendants' promise to pay them for wages earned. Injustice can be

1 avoided only if this Court mandates that Defendants, as employers of tens of thousands of  
2 California citizens, pay their employees (which they refer to as "family" members) all  
3 wages earned but not paid by Defendants.

4 168. Indeed, allowing Defendants to punitively ride the backs of their  
5 hourly-paid employees to extreme profitability without any legal consequences for these acts  
6 would result in an extreme and gross miscarriage of justice.

7 169. Accordingly, Defendants are liable to the Plaintiffs and the Class  
8 members for damages incurred as a result of Defendants' failure to provide meal and rest  
9 breaks, failure to compensate for missed and/or interrupted meal and rest breaks properly,  
10 and failure to pay for off-the-clock work and overtime in accordance with the agreements  
11 between the parties.

12 **THIRTEENTH CAUSE OF ACTION**

13 **(Unfair/Unlawful/Fraudulent Business Practices:**

14 **Cal. Bus. & Prof. Code §17200 *et seq.*)**

15 170. Plaintiffs re-allege and incorporate by reference each and every  
16 allegation set forth in the preceding paragraphs.

17 171. The Wal-Mart Class Period for this cause of action is February 6,  
18 1997 to the present.

19 172. The Sam's Club Class Period for this cause of action is May 23, 1997  
20 to the present.

21 173. Section 17200 of the California Business & Professions Code  
22 prohibits any unlawful, unfair, or fraudulent business act or practices.

23 174. Labor Code section 90.5(a) states it is the public policy of California  
24 to enforce vigorously minimum labor standards in order to ensure employees are not  
25 required to work under substandard and unlawful conditions, and to protect employers who  
26 comply with the law from those who attempt to gain competitive advantage at the expense  
27 of their workers by failing to comply with minimum labor standards.  
28



1           175. Through their actions alleged herein, Defendants have engaged in  
2 unfair competition within the meaning of Cal. Bus. & Prof. Code §17200, because  
3 Defendants' conduct has violated state wage and hour laws and the California common law  
4 as herein described. Indeed, Defendants' conduct as herein alleged has damaged Plaintiffs  
5 and the Class members by wrongfully denying them earned wages, meal periods, and rest  
6 breaks, and therefore was substantially injurious to Plaintiffs and the Class members.

7           176. Beginning at a date unknown to Plaintiffs, but at least as early as  
8 February 6, 1997, Defendants committed, and continue to commit, acts of unfair  
9 competition, as defined by §17200 *et seq.* of the California Business and Professions Code,  
10 by and among other things, engaging in the acts and practices described above.

11           177. Defendants engaged in unfair competition in violation of Cal. Bus. &  
12 Prof. Code §17200 *et seq.* by violating, inter alia, each of the following:

- 13           a. Causes of action One through Twelve stated above;
- 14           b. Cal. Labor Code §§201, 202, 203, 204 *et seq.*;
- 15           c. Cal. Labor Code §§226, 226.7;
- 16           d. Cal. Labor Code §510;
- 17           e. Cal. Labor Code §512;
- 18           f. Cal. Labor Code §551;
- 19           g. Cal. Labor Code §552;
- 20           h. Cal. Labor Code §1182.11;
- 21           i. Cal. Labor Code §1194 *et seq.*;
- 22           j. Cal. Labor Code §§1197, 1198; and
- 23           k. California IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*

24           178. Defendants' course of conduct, act, and practice in violation of the  
25 California laws mentioned in each paragraph above constitute separate and independent  
26 violations of §17200 *et seq.* of the California Business and Professions Code.

27           179. The harm to Plaintiffs and the Class members in being wrongfully  
28 denied lawfully earned wages and meal and rest breaks outweighs the utility, if any, of

1 Defendants' policies/practices and, therefore, Defendants' actions described herein  
2 constitute an unfair business practice or act within the meaning of California Business and  
3 Professions Code §17200.

4 180. The unlawful, unfair, and fraudulent business practices and acts of  
5 Defendants, and each of them, as described above, have injured Plaintiffs and members of  
6 the Class in that they were wrongfully denied the payment of overtime wages, wages for  
7 work off-the-clock, and wages due for missed and/or interrupted meal and rest breaks.

8 **EXEMPLARY DAMAGES ALLEGATIONS**

9 181. Defendants acted or failed to act as herein alleged with malice,  
10 oppression and/or reckless indifference to the protected rights of Plaintiffs and Class  
11 members. As herein alleged, Defendants' acts and/or omissions were also reprehensible,  
12 fraudulent and in blatant violation of California law and policy. Plaintiffs and Class  
13 members are thus entitled to recover punitive damages in an amount to be determined  
14 according to proof.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on behalf of themselves and the members of the  
17 Class, pray for judgment against Defendants as follows:

- 18 1. An Order that this action may proceed and be maintained as a class  
19 action;
- 20 2. On the First through Fourth Causes of Action:
- 21 a. For damages according to proof at trial; and
- 22 b. An award to the Named Plaintiffs and the Class members of
- 23 pre-judgment interest at the highest legal rate;
- 24 3. For the Fifth Cause of Action:
- 25 a. A declaratory judgment that Defendants have violated Cal.
- 26 Labor Code §§510, 1194 *et seq.*, 1198 and the IWC Order
- 27 Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;
- 28

- 1                   b.     An award to Plaintiffs and the Class members of damages for  
2                   the amount of unpaid overtime compensation, including, but  
3                   not limited to, overtime work while off-the-clock or during  
4                   meal and rest breaks, further including interest thereon, and  
5                   penalties subject to proof;
- 6                   c.     Pursuant to Cal. Labor Code Section 218.6, an award of all  
7                   accrued interest from the date that the wages were due and  
8                   payable at the interest rate specified in subdivision (b) of  
9                   Section 3289 of the Civil Code (10%/year); and
- 10                  d.     An award to Plaintiffs and the Class members of reasonable  
11                  attorneys' fees and costs pursuant to Cal. Labor Code §1194  
12                  and/or other applicable state laws;
- 13                  4.     For the Sixth and Twelfth Causes of Action:
- 14                  a.     An order imposing a constructive trust upon the Defendants to  
15                  compel them to transfer Plaintiffs' and the Class members'  
16                  wages that have been wrongfully obtained and held by  
17                  Defendants to Plaintiffs and the Class members;
- 18                  b.     An accounting to determine all money wrongfully obtained and  
19                  held by Defendants; and
- 20                  c.     An award to Plaintiffs and the Class members of their  
21                  attorneys' fees and costs of suit to the extent permitted by law,  
22                  including, but not limited to, Cal. Code of Civ. Proc.  
23                  §1021.5;
- 24                  5.     For the Seventh Cause of Action:
- 25                  a.     For general damages according to proof;
- 26                  b.     For special damages according to proof;
- 27                  c.     For an award of pre-judgment interest at the highest legal rate;  
28                  and

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- d. For punitive damages;
- 6. For the Eighth Cause of Action:
  - a. For general damages according to proof;
  - b. For special damages according to proof; and
  - c. An award to the Named Plaintiffs and the Class of pre-judgment interest at the highest legal rate;
- 7. For the Ninth Cause of Action:
  - a. A declaratory judgment that Defendants have violated Cal. Labor Code §§1194, 1194.2 and 1197;
  - b. An award to Plaintiffs and the Class members of damages for the balance of unpaid compensation, including interest thereon, and penalties subject to proof;
  - c. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Cal. Labor Code §1194 and/or other applicable state laws;
  - d. Pursuant to Cal. Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) of Section 3289 of the Civil Code (10%/year); and
  - e. An award to Plaintiffs and the Class members of liquidated damages, pursuant to Cal. Labor Code §1194.2;
- 8. For the Tenth Cause of Action:
  - a. A declaratory judgment that Defendants have violated Cal. Labor Code §§226.7, 512 and the IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;
  - b. Pursuant to Cal Labor Code §226.7, an award to Plaintiffs and the Class members of an additional hour of pay at the

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employee's regular rate of compensation for each work day  
that a meal or rest break was not provided;

- c. Pursuant to Cal. Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) of Section 3289 of the Civil Code (10%/year); and
- d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Cal. Labor Code §218.5 and/or other applicable state laws;
- e. For punitive damages;

9. For the Eleventh Cause of Action:

- a. A declaratory judgment that Defendants have violated Cal. Labor Code §§201, 202, 203 and 226;
- b. An award to Plaintiffs and the Class members who are former hourly-paid employees of continuing wages as a penalty from the due date thereof at the same rate until paid or until this action was commenced; but for no more than 30 days;
- c. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Cal. Labor Code §218.5 and/or other applicable state laws;
- d. Pursuant to Cal. Labor Code §226, an award to Plaintiffs and the Class members of actual damages as well as an award of costs and reasonable attorneys' fees; and
- e. Pursuant to Cal. Labor Code §226(b), an award of the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand  
2 dollars (\$4,000);

3 10. For the Thirteenth Cause of Action:

- 4 a. Ordering Defendants, their agents, servants, and employees,  
5 and all persons acting, directly or indirectly, in concert with  
6 them, to restore and disgorge all funds to each member of the  
7 Class acquired by means of any act or practice declared by this  
8 Court to be unlawful, unfair or fraudulent and therefore  
9 constitute unfair competition under §17200 *et seq.* of the  
10 California Business and Professions Code;
- 11 b. For injunctive relief pursuant to California Business &  
12 Professions Code §17203, consisting of, *inter alia*: (1) a  
13 declaration that Defendants have engaged in unlawful and  
14 unfair and fraudulent business acts and practices in violation of  
15 California Business & Professions Code §17200 *et seq.*; (2) a  
16 preliminary and/or permanent injunction enjoining Defendants  
17 and their respective successors, agents, servants, officers,  
18 directors, employees and all persons acting in concert with  
19 them from pursuing the policies, acts and practices complained  
20 of herein and prohibiting Defendants from continuing such acts  
21 of unfair and illegal business acts and practices; and
- 22 c. Restitution, including, but not limited to, the relief permitted  
23 by the California IWC Order Nos. 7-1997 et seq. through 7-  
24 2001 et seq.;

25 11. An award to Plaintiffs and the Class members of their attorneys' fees  
26 and costs of suit to the extent permitted by law, including, but not limited to Cal. Code of  
27 Civ. Proc. §1021.5;

1                   12. Exemplary and punitive damages in an amount commensurate with  
2 Defendants' ability to pay and to deter future illegal and wrongful conduct; and

3                   13. All other relief as this Court may deem proper.

4                   **JURY TRIAL DEMAND**

5                   Plaintiffs hereby demand a trial by jury for all issues so triable.

6 Dated: January 5, 2005

7                   Respectfully submitted,

8  
9 By: 

10 FREDERICK P. FURTH  
11 JESSICA L. GRANT  
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# PROOF OF SERVICE

I, Jessica L. Grant, declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE FURTH FIRM LLP, located at 225 Bush Street, 15th Floor, San Francisco, California 94104, whose members are members of the State Bar of California and at least one of whose members is a member of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. THIRD AMENDED CLASS ACTION COMPLAINT; and
2. PROOF OF SERVICE.

☐ **By Facsimile:** I caused each document listed above to be transmitted via facsimile to the fax number(s) set forth below on this date by 5:30 p.m.

☐ **By Personal Service:** I placed a true copy of each document listed above in a sealed envelope to each person named below at the address(es) shown below and gave same to a messenger for personal delivery by 5:30 p.m. on this date.

☒ **By Mail:** I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

☐ **By Express Mail:** I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date and affixed a pre-paid air bill, and caused the envelope to be delivered to an express service carrier for overnight delivery.

Teresa A. Beaudet  
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Executed on January 5, 2005 at San Francisco, California

Signed  Jessica L. Grant