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- 5. **Unfair Competition (Violation of Cal. Business and Professions Code, § 17200, *et seq.*)**
- 6. **Failure to Pay Overtime (Violation of Fair Labor Standards Act, 29 U.S.C. § 207)**

PLAINTIFFS’ ORIGINAL CLASS AND COLLECTIVE ACTION COMPLAINT AND JURY DEMAND

I. INTRODUCTION

1. This is a collective and class action lawsuit brought by Plaintiffs Amado Haro and Rochelle Ortega (“Plaintiffs”) on behalf of themselves and all others similarly situated. Defendant Walmart, Inc. (“Walmart”) implemented an illegal policy requiring its non-exempt workers to undergo a COVID-19 screening each shift without pay. This physical and medical examination constitutes compensable time that was worked by the Plaintiffs and Class Members. By failing to pay for this time worked, Walmart has violated California and Federal law. In addition to the Plaintiffs, Walmart has failed to pay for the time spent undergoing COVID-19 screenings by thousands of other workers nationwide.

2. Walmart’s conduct violates the state laws of California because Walmart failed to pay for all hours worked by its employees, failed to pay overtime wages, and failed to provide itemized wage statements as required by the California Labor Code and California Industrial Wage Commission Wage Orders. Plaintiffs bring this lawsuit as a Rule 23 Class Action under California law. Members of the Class Action are referred to as “California Class Members.”

3. Walmart’s conduct also violates the Fair Labor Standards Act (“FLSA”), which requires non-exempt employees to be compensated for all hours worked in excess of forty in a workweek at one and one-half times their regular rate. *See* 29 U.S.C. § 207(a). On behalf of themselves and all others similarly situated employees, Plaintiff brings this action as a collective action under the FLSA, 29 U.S.C. § 216(b). Members of the collective action are referred to hereinafter as the “FLSA Class Members.”

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II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 because the action involves a federal statute, the FLSA, 29 U.S.C §§ 201, *et seq.* The Court has supplemental jurisdiction over the state law wage and hour claims under 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative fact.

5. Venue is proper in the Eastern District of California because a substantial portion of the events forming the basis of this suit occurred in the Eastern District of California. Plaintiffs worked in the Eastern District of California and were denied wages in this district.

6. Plaintiff Haro works and lives in Merced County, California. Thus, a substantial part of the events or omission which give rise to the claims occurred in Merced County and this action is properly assigned to the Fresno Division of the Eastern District of California.

7. Walmart is subject to personal jurisdiction before this Court because it has purposefully availed itself of the privileges of conducting activities in the state of California and established minimum contacts sufficient to confer jurisdiction. Walmart does business in California, advertises in California, markets to California consumers, and the violations of the law forming the basis of this lawsuit occurred in California. Further, Walmart maintain offices in California and employs California residents. Therefore, the assumption of jurisdiction over Walmart will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process. Walmart also had and continues to have continuous and systematic contacts with the State of California sufficient to establish general jurisdiction over it.

8. This Court is empowered to issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

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III. PARTIES AND PERSONAL JURISDICTION

9. Plaintiff Amado Haro is an individual residing in Atwater, California. Plaintiff's written consent to this action is attached hereto as Exhibit "A."

10. Plaintiff Rochelle Ortega is an individual residing in Sacramento, California. Plaintiff's written consent to this action is attached hereto as Exhibit "B."

1 11. The “FLSA Class Members” are all current and former hourly paid employees of
2 Walmart who underwent a COVID-19 screening during at least one week in the three-year period
3 before the filing of this Complaint to the present.

4 12. The “California Class Members” are all current and former hourly paid employees
5 of Walmart who underwent a COVID-19 screening during at least one week in California in the
6 four-year period before the filing of this Complaint to the present.

7 13. The FLSA Class Members and California Class Members shall be collectively
8 referred to as “Class Members.”

9 14. Defendant Walmart Inc. is a Delaware corporation that does business in California.
10 Walmart may be served process through its registered agent CT Corporation System at 818 West
11 Seventh Street, Suite 930, Los Angeles, CA 90017.

12 15. At all material times, Walmart was and is legally responsible for the unlawful
13 conduct, policies, practices, acts, and omissions as described and set forth in this Complaint, as the
14 employer of Plaintiffs and the Class Members.

15 16. At all material times, Walmart has been governed by and subject to the FLSA, 29
16 U.S.C. § 207.

17 17. At all material times, Walmart has been an employer within the meaning of section
18 3(d) of the FLSA. 29 U.S.C. § 203(d).

19 18. At all material times, Walmart has been an enterprise within the meaning of section
20 3(r) of the FLSA. 29 U.S.C. § 203(r).

21 19. At all material times, Walmart has been an enterprise in commerce or in the
22 production of goods for commerce within the meaning of section 3(s)(1) of the FLSA because
23 Walmart has had and continues to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

24 20. At all material times, the unlawful conduct against Plaintiffs and the Class Members
25 as described in this Complaint was actuated, in whole or in part, by a purpose to serve Walmart.
26 At all relevant times, the unlawful conduct described in this Complaint was reasonably foreseeable
27 by Walmart and committed under actual or apparent authority granted by Walmart such that all
28 unlawful conduct is legally attributable to Walmart.

1 21. At all material times, Walmart has had an annual gross business volume of not less
2 than \$500,000.

3 **IV. FACTS**

4 22. The novel Coronavirus has infected nearly 27,000,000 Americans and caused the
5 deaths of approximately 500,000 Americans. (See <https://coronavirus.jhu.edu/map.html>, last
6 visited February 8, 2021). Following the outbreak of the Coronavirus, Walmart implemented a
7 company-wide policy requiring each of its hourly, non-exempt employees to undergo a physical
8 and medical examination to check for symptoms of the Coronavirus each shift. This examination
9 was imposed by Walmart as a requirement to work each shift. The examination was conducted on
10 the premises of Walmart, was required by Walmart, and was necessary for each employee to
11 perform his/her work for Walmart. Unfortunately, Walmart refused to pay for this time.
12 Walmart's conduct violates both California law and the FLSA. This illegal conduct continues to
13 this day.

14 23. Plaintiff Haro worked for Walmart as an hourly, non-exempt employee at Walmart
15 Store Number 2039 in Merced, California. He worked in the furniture department and later
16 performed online grocery pickup services. He was paid \$15.05 per hour. His normal shift was
17 Monday through Friday, 7 am to 4 pm. He has worked for Walmart since May 2014.

18 24. Plaintiff Ortega worked for Walmart as an hourly, non-exempt employee at
19 Walmart Store Number 4202 in Roseville, California. She worked in the meat department and
20 was paid \$18.25 per hour. Her normal shift was 8 hours per day for five days per week. She
21 worked for Walmart from July 2018 to June 2020.

22 25. As hourly, non-exempt employees, Plaintiffs were required to clock-in and clock-
23 out each day. Unfortunately, Walmart did not pay for all hours that they worked. Prior to clocking
24 in each day, Plaintiffs were required to undergo a physical and medical examination to screen for
25 COVID-19.

26 26. Walmart requires its employees to arrive at its retail stores and fulfillment centers
27 prior to the start of their scheduled shifts. However, when employees of Walmart arrive, they are
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1 not allowed to clock-in for the day until they pass a physical and medical examination to screen
2 for symptoms of COVID-19.

3 27. At the Walmart retail stores, the employees undergo a COVID-19 screening
4 normally in the garden center of the store or the automobile center of the store. The employees
5 are required to arrive at Walmart at least 30 minutes prior to the start of their scheduled shift so
6 that they can complete the COVID-19 screening with enough time to clock in by the start of their
7 scheduled shift. After arriving at Walmart, the employees enter the garden center or auto center
8 where a line usually forms for employees to be screened.

9 28. The screening process involves another employee of Walmart taking the
10 temperature of each employee whose shift is about to start and asking a series of questions related
11 to their health condition, such as whether they had trouble breathing, were coughing, had a runny
12 nose, chest pain, and other questions regarding their health. They were also asked questions such
13 as (1) whether the employee has travelled recently, (2) whether the employee was exposed to
14 someone with COVID-19, and (3) other similar questions. If the employee passes the examination,
15 he/she is then given a sticker to wear with the date on it indicating that he/she has cleared the
16 COVID-19 screening. The employee is also given a face mask and gloves that he/she must put on
17 before entering the store. After the employee enters the store, the employee is allowed to clock-
18 in for the day. The employees normally walked to the opposite end of the store where the time
19 clocks were located.

20 29. If an employee does not initially pass the physical and medical examination, that
21 employee is moved to another section where a second examination occurs. The employee is then
22 asked a series of follow-up questions to identify whether the worker currently has symptoms of
23 COVID-19 and poses a potential health hazard to the store. If the employee passes the second
24 examination, the employee is then given a face mask and gloves and is allowed to clock-in for the
25 day. If not, the employee is not permitted to work that day.

26 30. A similar screening process occurs at the Walmart fulfillment centers. After
27 parking, the Walmart employee approaches the door of the fulfillment center and swipes the
28 employee's security badge to enter. At that point, the employee approaches a security booth. At

1 this checkpoint, the Walmart employee is asked a series of questions similar to those identified
2 above. If the employee successfully answers the health questions, the employee's temperature is
3 taken. If the employee does not have a fever, the employee is then given a face mask and is allowed
4 to clock in for the day.

5 31. The amount of time it takes to undergo the COVID-19 examination is
6 approximately 10 minutes to 15 minutes on average. This amount of time could be longer if there
7 are other Walmart employees in line for the COVID-19 screening.

8 32. This COVID-19 screening should have been paid by Walmart because it constitutes
9 compensable time worked. During this time, Plaintiffs and the Class Members were subject to the
10 control of Walmart.

11 33. Plaintiffs and the Class Members were required to follow Walmart's instructions
12 while awaiting and during the COVID-19 screening. Walmart required every employee to
13 complete the COVID-19 screening and it was not optional. Indeed, the COVID-19 screening was
14 required by Walmart and its employees must comply under threat of discipline, including possible
15 termination.

16 34. Additionally, the Plaintiffs and Class Members were confined to the premises of
17 Walmart when they waited for and during the examination.

18 35. Moreover, Walmart compels its employees to perform specific tasks during the
19 examination. They must answer questions, submit to have their temperature taken, and wear masks
20 and gloves.

21 36. In other words, Walmart directs, commands, and restrains its employees during the
22 COVID-19 examination; prevents them from using that time effectively for their own purposes;
23 and they remain subject to Walmart's control during the examination.

24 37. Under California law, the time spent undergoing the COVID-19 screening is
25 compensable time that should have been paid by Walmart. *See Frlekin v. Apple, Inc.*, 8 Cal. 5th
26 1038, 457 P.3d 526 (2020).

27 38. Likewise, under the FLSA, the time spent undergoing the COVID-19 screening is
28 compensable time that should have been paid by Walmart. The COVID-19 screenings were

1 required by Walmart and Plaintiffs and the Class Members were told in advance the time they
2 were required to be at the Walmart facilities.

3 39. The COVID-19 screenings were also necessary to the principal work performed by
4 the Plaintiffs and Class Members and were necessary to ensure a safe workplace. The COVID-19
5 examinations were also undertaken on Walmart's premises, were controlled and required by
6 Walmart, and undertaken primarily for the benefit of Walmart.

7 40. Indeed, Walmart required the Plaintiffs and Class Members to undergo this
8 screening for the purposes of overall safety in the Walmart facilities and to prevent the Plaintiffs
9 and Class Members from inadvertently or unintentionally infecting the Walmart facilities or
10 Walmart's customers.

11 41. These COVID-19 examinations were necessary to ensure that the virus did not
12 infect the Walmart facilities or customers. The examinations were also necessary to ensure that
13 the virus did not disrupt the work performed by the Plaintiffs and Class Members or effect the
14 business operations of Walmart. If Walmart did not have the COVID-19 screening, workers could
15 inadvertently or unintentionally bring the virus into the Walmart facilities causing a mass breakout
16 of the virus infecting hundreds to thousands of other workers and customers of Walmart.

17 42. The COVID-19 screenings were integral and indispensable to the principal activity
18 and primary job duty performed by the Plaintiffs and Class Members, which was to serve and
19 assist Walmart customers. The COVID-19 screenings were necessary for the Plaintiffs and Class
20 Members to perform their primary job duty for Walmart. If Walmart cancelled the COVID-19
21 screening, the Walmart stores could get contaminated with virus, the items that Walmart sold could
22 get contaminated with the virus, the customers could get infected, and other employees of Walmart
23 could get infected. In that event, Walmart's business would be disrupted, and the Plaintiffs and
24 Class Members would not be able to do their work. Therefore, the COVID-19 screenings were
25 necessary to ensure that the Plaintiffs and Class Members could do their jobs for Walmart in
26 serving and assisting Walmart customers.

1 43. The Department of Labor has issued regulations stating that physical and health
2 examinations, like the COVID-19 examination, constitutes time that should be paid for by
3 employers. *See* 29 CFR § 785.43.

4 In an opinion letter, the Department of Labor has further stated as follows:
5 Time spent undergoing a physical examination is time during which the
6 employee's freedom of movement is restricted for the purpose of serving
7 the employer and time during which the employee is subject to the
8 employer's discretion and control. It is immaterial whether the time spent in
9 undergoing the required physical examination is during the employee's
10 normal working hours or during nonworking hours. The physical
11 examination is an essential requirement of the job and thus primarily for the
12 benefit of the employer. **Therefore, it is our opinion that the time so spent
13 must be counted as hours worked under the FLSA.**

14 DOL Wage and Hour Opinion Letter, January 26, 1998 (emphasis added).

15 44. Thus, Walmart has violated both California and federal law by failing to pay for
16 the time spent undergoing the COVID-19 examinations.

17 45. In light of Walmart's conduct, the Plaintiffs and Class Members are owed
18 significant unpaid wages.

19 46. The Plaintiffs and Class Members were non-exempt employees.

20 47. The Plaintiffs and Class Members were paid on an hourly rate basis.

21 48. When they worked more than eight hours in a day or forty hours in a workweek,
22 they were entitled to overtime pay.

23 49. The pre-shift activities identified above were not incidental activities for the
24 Plaintiffs and Class Members, but instead, this time was integral and indispensable to their
25 principal activity and is compensable.

26 50. Although Walmart employed electronic "clocking in" technology, this technology
27 was not made accessible to Plaintiffs and the Class Members before the COVID-19 screening.

28 51. Due to the substantial pre-shift work, Plaintiffs and the Class Members were not
paid for all time worked each day and are owed significant unpaid wages.

 52. Walmart's method of paying Plaintiffs and the Class Members in violation of the
FLSA and California law was willful and was not based on a good faith and reasonable belief that

1 their conduct complied with the law. Walmart knew the requirement to pay for all time worked,
2 but intentionally and/or recklessly chose not to do so.

3 **CALIFORNIA CLASS ALLEGATIONS**

4 53. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules
5 of Civil Procedure on behalf of the California Class, which is comprised of:

6 **All current and former hourly paid employees of Walmart who**
7 **underwent a COVID-19 screening during at least one week in**
8 **California in the four-year period before the filing of this**
9 **Complaint to the present.**

10 54. Numerosity. The number of members in the California Class is believed to exceed
11 forty and in fact, is likely to be in the thousands. This volume makes bringing the claims of each
12 individual member of the class before this Court impracticable. Likewise, joining each individual
13 member of the California Class as a plaintiff in this action is impracticable. Furthermore, the
14 identity of the members of the California Class will be determined from Walmart's records, as will
15 the compensation paid to each of them. As such, a class action is a reasonable and practical means
16 of resolving these claims. To require individual actions would prejudice the California Class and
17 Walmart.

18 55. Typicality. Plaintiffs' claims are typical of the California Class because like the
19 members of the California Class, Plaintiffs were subject to Walmart's uniform policies and
20 practices and were compensated in the same manner as others in the California Class. Walmart
21 failed to pay the California Class Members for all hours they worked. Additionally, members of
22 the California Class worked substantially more than eight (8) hours in a day and forty (40) hours
23 in a week as non-exempt employees. Moreover, the California Class Members each received wage
24 statements that failed to comply with California law. Thus, Plaintiffs and the California Class have
25 been uncompensated and/or under-compensated as a result of Walmart's common policies and
26 practices which failed to comply with California law. As such, Plaintiffs' claims are typical of the
27 claims of the California Class. Plaintiffs and all members of the California Class sustained
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1 damages arising out of and caused by Walmart’s common course of conduct in violation of law as
2 alleged herein.

3 56. Adequacy. Plaintiffs are representative parties who will fairly and adequately
4 protect the interests of the California Class because it is in their interest to effectively prosecute
5 the claims herein alleged in order to obtain the unpaid wages and penalties required under
6 California law. Plaintiffs have retained attorneys who are competent in both class actions and
7 wage and hour litigation. Plaintiffs do not have any interest which may be contrary to or in conflict
8 with the claims of the California Class they seek to represent.

9 57. Commonality. Common issues of fact and law predominate over any individual
10 questions in this matter. The common issues of fact and law include, but are not limited to:

- 11 a. Whether Plaintiffs and the California Class are entitled to compensation for the time
12 spent in the COVID-19 screening;
 - 13 b. The amount of time spent in the COVID-19 screening;
 - 14 c. Whether Plaintiffs and the California Class worked more than eight (8) hours in a
15 day and/or worked more than forty (40) hours in a workweek;
 - 16 d. Whether Walmart failed to pay Plaintiffs and the California Class wages for all
17 hours worked;
 - 18 e. Whether Walmart failed to keep accurate records of employees’ hours of work and
19 hourly wages, and failed to timely furnish each Class Member with a statement
20 accurately showing the total number of hours worked and wages earned each pay
21 period;
 - 22 f. Whether Walmart failed to timely pay employees unpaid wages and overtime due
23 upon their separation from employment with Walmart;
 - 24 a. Whether Plaintiffs and the California Class are entitled to compensatory damages;
 - 25 b. The proper measure of damages sustained by Plaintiffs and the California Class;
26 and
 - 27 c. Whether Walmart’s actions were “willful.”
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1 58. Superiority. A class action is superior to other available means for the fair and
2 efficient adjudication of this lawsuit. Even in the event any member of the California Class could
3 afford to pursue individual litigation against a company the size of Walmart, doing so would
4 unduly burden the court system. Individual litigation would magnify the delay and expense to all
5 parties and flood the court system with duplicative lawsuits. Prosecution of separate actions by
6 individual members of the California Class would create the risk of inconsistent or varying judicial
7 results and establish incompatible standards of conduct for Walmart.

8 59. A class action, by contrast, presents far fewer management difficulties and affords
9 the benefits of uniform adjudication of the claims, financial economy for the parties, and
10 comprehensive supervision by a single court. By concentrating this litigation in one forum,
11 judicial economy and parity among the claims of individual California Class Members are
12 promoted. Additionally, class treatment in this matter will provide for judicial consistency. Notice
13 of the pendency and any resolution of this action can be provided to the California Class by mail,
14 electronic mail, text message, print, broadcast, internet and/or multimedia publication. The
15 identity of members of the California Class is readily identifiable from Walmart's records.

16 60. This type of case is well-suited for class action treatment because: (1) Walmart's
17 practices, policies, and/or procedures were uniform; (2) the burden is on Walmart to prove it
18 properly compensated its employees including any potential exemptions that might apply; and (3)
19 the burden is on Walmart to accurately record hours worked by employees. Ultimately, a class
20 action is a superior form to resolve the California claims detailed herein because of the common
21 nucleus of operative facts centered on the continued failure of Walmart to pay Plaintiffs and the
22 California Class per applicable California laws.

23 **V. COLLECTIVE ACTION ALLEGATIONS**

24 61. Plaintiffs have actual knowledge that the FLSA Class Members have also been
25 denied pay for hours worked over forty (40) per workweek. Plaintiffs worked with and
26 communicated with other hourly, non-exempt employees and as such, have personal knowledge
27 of their existence, status as Walmart's employees, pay structure, and the overtime violations.
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1 62. Walmart has employed numerous other employees throughout the US during the
2 last three years, who were paid on an hourly basis, were classified as not exempt from overtime,
3 and who underwent the COVID-19 medical screening without pay.

4 63. As such, the “FLSA Class” is properly defined as follows:

5 **All current and former hourly paid employees of Walmart who**
6 **underwent a COVID-19 screening during at least one week in**
7 **the three-year period before the filing of this Complaint to the**
8 **present.**

9 64. Although Walmart permitted and/or required the FLSA Class Members to work in
10 excess of forty (40) hours per workweek, Walmart has denied them compensation for their hours
11 worked over forty (40).

12 65. Plaintiffs are representatives of the FLSA Class Members in that they were
13 classified as non-exempt from overtime, were paid on an hourly basis, and underwent the COVID-
14 19 screening without pay. Plaintiffs are acting on behalf of their interests as well as Plaintiffs’
15 own interests in bringing this action.

16 66. FLSA Class Members were classified as non-exempt.

17 67. FLSA Class Members were paid on an hourly basis.

18 68. FLSA Class Members underwent the COVID-19 screening.

19 69. FLSA Class Members regularly work or have worked in excess of forty (40) hours
20 during a workweek.

21 70. FLSA Class members were not paid for the time spent in the COVID-19 screening.

22 71. The policy of failing to pay for the time spent in the COVID-19 screening is
23 universal across the defined FLSA Class and forms the basis of the overtime violation.

24 72. FLSA Class Members are not exempt from receiving overtime pay under the FLSA.

25 73. As such, FLSA Class Members are similar to the Plaintiffs in terms of pay structure
26 and/or the denial of overtime.

1 74. Walmart's failure to pay overtime compensation at the rate required by the FLSA
2 results from generally applicable policies or practices, and does not depend on the personal
3 circumstances of the FLSA Class Members.

4 75. The experiences of the Plaintiffs, with respect to their pay, are typical of the
5 experiences of the FLSA Class Members.

6 76. The specific job titles or precise job responsibilities of each FLSA Class Member
7 does not prevent collective treatment.

8 77. All FLSA Class Members, irrespective of their particular job requirements, are
9 entitled to overtime compensation at the rate of time and a half for hours worked in excess of forty
10 (40) during a workweek.

11 78. Although the exact amount of damages may vary among FLSA Class Members,
12 the damages for can be easily calculated by a simple formula. The claims of all FLSA Class
13 Members arise from a common nucleus of facts. Liability is based on a systematic course of
14 wrongful conduct by the Walmart that caused harm to all FLSA Class Members.

15 79. The similarly situated FLSA Class Members are known to Walmart, are readily
16 identifiable, and can be located through Walmart's records. They should be notified and allowed
17 to opt into this action pursuant to 29 U.S.C. § 216(b) for the purpose of collectively adjudicating
18 their claims for overtime compensation, liquidated damages and/or prejudgment interest, and
19 attorneys' fees and costs.

20 80. Unless the Court promptly issues such notice, the numerous similarly situated
21 workers nationwide will be unable to secure unpaid overtime pay, which has been unlawfully
22 withheld by Walmart.

23 **VI. CAUSES OF ACTION**

24 **FIRST CLAIM FOR RELIEF**

25 **Failure to Pay for All Hours Worked**

26 **(Violation of Cal. Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198)**

27 **On Behalf of Plaintiffs and the California Class**

28 81. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

1 82. At all relevant times, Walmart was required to compensate its hourly, non-exempt
2 employees for all hours worked pursuant to the Industrial Welfare Commission Orders and
3 California Labor Code sections 204, 1194, 1194.2, 1197, 1197.1, 1198.

4 83. Specifically, California law requires employers to pay their employees a minimum
5 wage for all hours worked, which is defined as the “time during which an employee is subject to
6 the control of an employer, and includes all the time the employee is suffered or permitted to work,
7 whether or not required to do so.” *See Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038, 457 P.3d 526 (2020).
8 Section 4 of the applicable Industrial Welfare Commission Order requires Walmart to pay non-
9 exempt employees at least at the minimum wage set forth therein for all hours worked, which
10 consist of all hours that an employer has actual or constructive knowledge that employees are
11 working.

12 84. Walmart failed to compensate the Plaintiffs and the California Class Members for
13 all hours that they worked. As noted above, the Plaintiffs and California Class Members were not
14 paid for the time they spent in the COVID-19 screenings. Plaintiffs and the California Class
15 Members are entitled to recover compensation for all hours worked, but not paid, during the
16 statutory period covered by this lawsuit. The Plaintiffs and Class Members are also entitled to
17 reasonable attorneys’ fees, interest, and costs of suit.

18 85. The California Class Members, including Plaintiffs, have been deprived of their
19 rightfully earned wages as a direct and proximate result of Walmart’s failure and refusal to pay for
20 time spent in the COVID-19 screenings.

21 86. Walmart has knowingly and willfully refused to perform its obligations to
22 compensate Plaintiffs and the California Class for all wages earned and all hours worked, in
23 violation of California law. As a direct result, Plaintiffs and the California Class have suffered,
24 and continue to suffer, substantial losses related to the use and enjoyment of such wages.

25 87. Walmart regularly, willfully, and repeatedly failed and continues to fail to make,
26 keep, and preserve accurate time records required by the California Labor Code §§ 226 and 1174,
27 with respect to the Plaintiffs and Class Members. Through this unlawful course of conduct,
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1 Walmart has deprived and continues to deprive Plaintiffs and the California Class Members of
2 records necessary to calculate with precision the compensation due to them.

3 **SECOND CLAIM FOR RELIEF**

4 **Failure to Pay Overtime**

5 **(Wage Order No. 4-2001; California Labor Code §§ 510, 558, 1194)**

6 **On Behalf of Plaintiffs and the California Class**

7 88. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

8 89. At all relevant times, Walmart was required to compensate its non-exempt
9 employees for all hours worked. Walmart was also required to compensate all of its employees
10 for all overtime worked, at one-and-a-half times their regular rates of pay for hours worked more
11 than eight (8) hours per day or forty (40) hours per workweek, and double-time for hours worked
12 more than twelve (12) hours per day. Walmart was also required to pay one-and-a-half times the
13 regular rate for the first eight (8) hours worked on the seventh day of a workweek.

14 90. At all relevant times, Walmart operated under and continues to operate under a
15 common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay
16 Plaintiffs and the California Class Members for overtime at the rates required by California Labor
17 Code § 510 and Wage Order No. 4-2001.

18 91. Walmart knew or clearly should have known that Plaintiffs and the California Class
19 Members were entitled to compensation for the time they spent in the COVID-19 screenings.

20 92. Walmart routinely required Plaintiffs and the California Class Members to work
21 more than eight (8) hours per day or forty (40) hours per workweek. Despite the provisions of
22 California's overtime law, Walmart has willfully failed and refused to pay the California Class,
23 including Plaintiffs, overtime wages for any of the overtime hours they worked during the statutory
24 period covered by this lawsuit.

25 93. The California Class Members, including Plaintiffs, have been deprived of their
26 rightfully earned overtime wages as a direct and proximate result of Walmart's failure and refusal
27 to pay for all hours worked in the COVID-19 screenings.

1 94. Walmart regularly, willfully, and repeatedly failed and continues to fail to make,
2 keep, and preserve accurate time records required by the California Labor Code §§ 226 and 1174,
3 with respect to the Plaintiffs and Class Members. Through this unlawful course of conduct,
4 Walmart has deprived and continues to deprive Plaintiffs and the California Class Members of
5 records necessary to calculate with precision the overtime compensation due to them.

6 95. Walmart’s conduct violates California Labor Code §§ 510 and 1194. Therefore,
7 pursuant to California Labor Code § 1194, the California Class, including Plaintiff, are entitled to
8 recover, and seek to recover, damages for the nonpayment of overtime wages for all overtime
9 hours worked in excess of eight (8) hours per day, in excess of forty (40) hours per workweek, for
10 the first eight (8) hours worked on the seventh day of a workweek, and double-time pay for the
11 hours worked in excess of twelve (12) in a day in addition to interest on such amounts pursuant to
12 California Labor Code § 1194, plus reasonable attorneys’ fees, interest, and costs of suit, and the
13 relief requested below in the Prayer for Relief.

14 **THIRD CLAIM FOR RELIEF**

15 **Failure to Furnish Wage Statements**

16 **(California Labor Code §§ 226)**

17 **On Behalf of Plaintiffs and the California Class**

18 96. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

19 97. Walmart knowingly and intentionally failed to furnish and continues to fail to
20 furnish Plaintiffs and each California Class Member with timely, itemized wage statements that
21 accurately reflect – among other things – the total number of hours worked and wages earned, as
22 mandated by the California Labor Code § 226(a), which requires employers, semi-monthly or at
23 the time of each payment of wages, to furnish each employee with a statement that accurately
24 reflects the total number of hours worked and wages due.

25 98. As a result, Walmart is liable to Plaintiffs and each of the California Class Members
26 for the amounts provided by California Labor Code § 226(e): the greater of actual damages or fifty
27 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
28 up to four thousand dollars (\$4000).

1 99. Plaintiffs and the California Class are also entitled to reasonable attorneys’ fees,
2 interest, and costs pursuant to California Labor Code § 226(e).

3 **FOURTH CLAIM FOR RELIEF**

4 **Failure to Pay All Wages Upon Separation from Employment**

5 **(California Labor Code §§ 201, 202, 203, 218)**

6 **On Behalf of Plaintiff Ortega and the California Class**

7 100. Plaintiff Ortega incorporates all preceding paragraphs as though fully set forth
8 herein.

9 101. California Labor Code § 201 provides that any discharged employee is entitled to
10 all wages due at the time of discharge.

11 102. Where an employer willfully fails to pay discharged or resigning employees all
12 wages due as required under the California Labor Code, the employer is liable to such employees
13 under California Labor Code § 203 for waiting time penalties in the amount of one (1) day’s
14 compensation at the employees’ regular rate of pay for each day the wages are withheld, up to
15 thirty (30) days.

16 103. During all relevant times, Walmart knowingly and willfully violated California
17 Labor Code §§ 201 and 202 by failing to pay Plaintiff Ortega and members of the California Class
18 who are no longer employed by Walmart all wages owed as alleged herein. Walmart is therefore
19 liable to Plaintiff and members of the California Class who are no longer employed by Walmart
20 for waiting time penalties as required by California Labor Code §§ 203 and 218.

21 104. Plaintiff Ortega, individually and on behalf of the members of the California Class
22 who are no longer employed by Walmart, respectfully request that the Court award all waiting
23 time penalties due, and the relief requested below in the Prayer for Relief.

24 **FIFTH CLAIM FOR RELIEF**

25 **Unlawful and/or Unfair Competition Law Violations**

26 **(California Business & Professions Code §§ 17200-17208.)**

27 **On Behalf of Plaintiffs and the California Class**

28 105. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

1 106. California Business & Professions Code § 17200 *et seq.* prohibits unfair
2 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

3 107. Plaintiffs bring this cause of action on behalf of themselves and as a representative
4 of all others subject to Walmart’s unlawful acts and practices.

5 108. During all relevant times, Walmart committed unlawful, unfair, deceptive, and/or
6 fraudulent acts as defined by California Business & Professions Code § 17200. Walmart’s
7 unlawful, unfair, deceptive, and/or fraudulent business practices include, without limitation,
8 failing to pay for all hours worked, failing to pay all overtime wages, failing to provide itemized
9 wage statements, and failing to pay all wages upon termination in violation of California law, as
10 described throughout this Complaint.

11 109. As a result of this unlawful and/or unfair and/or fraudulent business practice,
12 Walmart reaped unfair benefits and illegal profits at the expense of Plaintiffs and the California
13 Class. Walmart must disgorge these ill-gotten gains and restore to Plaintiffs and the California
14 Class all wrongfully withheld wages, including, but not limited to minimum wages and overtime
15 compensation, interest on these wages, and all other injunctive and preventive relief authorized by
16 Business and Professions Code §§ 17202 and 17203.

17 110. Plaintiffs, on behalf of themselves and the members of the California Class,
18 respectfully request that judgment be awarded in their favor to provide restitution and interest, and
19 the relief requested below in the Prayer for Relief.

20 **SIXTH CLAIM FOR RELIEF**

21 **Failure to Pay Overtime**

22 **(Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*)**

23 **On Behalf of Plaintiffs and the FLSA Collective Class**

24 111. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

25 112. At all relevant times, Walmart has been, and continues to be, an “employer”
26 engaged in interstate commerce and/or in the production of goods for commerce, within the
27 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Walmart has employed and
28

1 continues to employ, employees, including Plaintiffs and the FLSA Class Members, as defined by
2 the FLSA. At all relevant times, Walmart has had gross operating revenues in excess of \$500,000.

3 113. The FLSA requires each covered employer, such as Walmart, to compensate all
4 non-exempt employees at a rate of not less than one-and-a-half times their regular rate of pay for
5 work performed in excess of forty (40) hours in a workweek.

6 114. Plaintiffs and the FLSA Class Members were entitled to be paid overtime
7 compensation for all overtime hours worked at the rate of one and one-half times their regular rate
8 of pay.

9 115. At all relevant times, Walmart required and/or permitted Plaintiffs and the FLSA
10 Class Members to work in excess of forty (40) hours per workweek. Despite the hours worked by
11 them, Walmart willfully, in bad faith, and knowingly violated the FLSA, failed and refused to pay
12 Plaintiffs and the FLSA Class Members the appropriate overtime wages for all compensable time
13 worked in excess of forty (40) hours per workweek. Plaintiffs and the Class Members were not
14 paid the full amount of overtime wages due under the FLSA as a result of Walmart's failure and
15 refusal to classify the time spent in the COVID-19 screening as compensable time. By failing to
16 compensate Plaintiffs and the FLSA Class Members at a rate of not less than one-and-a-half times
17 the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Walmart
18 has violated the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 207(a).

19 116. Plaintiffs and the FLSA Class Members seek recovery of their damages, unpaid
20 wages, unpaid overtime pay, liquidated damages, attorney's fees, costs and expenses.

21 117. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
22 within the meaning of 29 U.S.C. § 255(a).

23 **JURY DEMAND**

24 118. Plaintiffs hereby demand trial by jury on all issues.

25 **PRAYER FOR RELIEF**

26 Plaintiffs, on behalf of themselves and the Class Members, pray for relief as follows:

- 27 1. That, at the earliest possible time, the Plaintiffs be allowed to give notice of this collective
28 action, or that the Court issue such notice, to the FLSA Class Members as defined herein

1 so that such persons shall be informed that this civil action has been filed, of the nature of
2 the action, and of their right to join the FLSA collective suit if they believe they were
3 denied unpaid wages;

- 4 2. The Court certify that this action may proceed as a collective action under 29 U.S.C. §
5 216(b) and class action under Fed. R. Civ. P. 23;
- 6 3. The Court issue preliminary, permanent, mandatory injunctive relief prohibiting Walmart,
7 their officers, agents, and all those acting in concert with it, from committing in the future
8 those violations of law herein alleged;
- 9 4. The Court find that Walmart's policies and/or practices described above violate the FLSA
10 and California Law;
- 11 5. The Court award damages, liquidated damages, restitution, and/or statutory penalties to be
12 paid by Walmart for the causes of action alleged herein;
- 13 6. The Court award interest, costs, and expenses, including reasonable attorneys' fees and
14 expert fees, pursuant; and
- 15 7. The Court order such other and further legal and equitable relief the Court deems just,
16 necessary and proper.

17 PARMET PC

18
19 By: /s/ Matthew S. Parmet
20 Matthew S. Parmet (CSB # 296742)
21 matt@parmet.law
22 PARMET PC
23 340 S. Lemon Ave., #1228
24 Walnut, CA 91789
25 phone 310 928 1277

26 AND

27 HODGES & FOTY, L.L.P.

28 Don J. Foty
(will apply for admission *pro hac vice*)
dfoty@hftrialfirm.com
David W. Hodges
(will apply for admission *pro hac vice*)

Case No. 1:21-cv-00147

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dhodges@hftrialfirm.com
4409 Montrose Blvd, Ste. 200
Houston, TX 77006
Telephone: (713) 523-0001
Facsimile: (713) 523-1116

*Counsel for Plaintiffs and Putative Class
Member*