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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

DEBRA BARNETT, GEORGIE HARTWIG,  
and BELLA BLAUBERGS, on their own  
behalf and on behalf of all others similarly  
situated,

Plaintiffs,

v.

WAL-MART STORES, INC., a Delaware  
corporation, d/b/a WAL-MART, d/b/a SAM'S  
CLUB, d/b/a SUPERCENTER,

Defendant.

NO. 01-2-24553-8 SEA

THIRD AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES,  
RESTITUTION, AND INJUNCTIVE  
RELIEF

Plaintiffs, by their undersigned attorneys, for their Class Action Complaint against Defendant Wal-Mart Stores, Inc., d/b/a Wal-Mart, d/b/a Sam's Club, d/b/a Supercenter, allege as follows:

**I. NATURE OF ACTION**

1.1. Plaintiffs Debra Barnett, Georgie Hartwig and Bella Blaubergs ("Plaintiffs") bring this action against Wal-Mart Stores, Inc. (including all Washington Wal-Mart stores, Supercenters and Sam's Clubs, collectively "Wal-Mart" or "Defendant") for engaging in a systematic scheme of wage abuse against its hourly paid employees in the state of Washington. This scheme involved, inter alia, failing to record and pay for hourly employees' off-the-clock work and overtime, and preventing such employees from taking and/or completing their rest



1 and meal breaks. As a result of its systematic scheme of failing to properly pay its hourly  
2 employees throughout Washington, Wal-Mart has violated Washington common and statutory  
3 laws as described more particularly below.

## 4 **II. JURISDICTION AND VENUE**

5 2.1. Venue is proper in King County because Plaintiff Barnett resides in King  
6 County and worked for Defendant at a Wal-Mart store located in King County where the  
7 violations alleged herein on her behalf occurred. In addition, Defendant transacts business in  
8 King County and many of the specific acts, as well as the course of conduct charged herein,  
9 occurred in King County.

10 2.2. The Defendant is within the jurisdiction of this Court. Wal-Mart does tens of  
11 millions of dollars of business in the State of Washington and operates stores in King County.  
12 Thus, Defendant has obtained the benefits of the laws of the State of Washington and the  
13 Washington retail and labor markets.

14 2.3. The total amount in controversy of the named Plaintiffs' claims is less than  
15 Seventy-Five Thousand Dollars (\$75,000). In addition, as master of their complaint, Plaintiffs  
16 assert no claims arising under federal law. Rather, Plaintiffs allege claims for relief based  
17 solely on, and arising from, Washington law. The claims of Plaintiffs and the Class members  
18 are individual claims for violations of Washington law described herein. These claims do not  
19 unite or enforce a single title or right to which Plaintiffs and the Class have a common and  
20 undivided interest.

## 21 **III. PARTIES**

22 3.1. Plaintiff Debra Barnett. Plaintiff Barnett worked from approximately  
23 October 1995 to March 1999 at the Wal-Mart Discount Store in Auburn, Washington, located  
24 in King County. On multiple occasions during her employment as a cashier and customer  
25 service manager ("CSM"), Plaintiff Barnett worked time off the clock for which she was never  
26 paid, worked overtime for which she was not paid, and was denied meal and rest breaks.

1 Plaintiff Barnett, as the lead CSM, ran the cashier meetings, scheduled the cashiers, and  
2 performed other time-consuming tasks. Plaintiff Barnett estimates that on average she worked  
3 16-20 hours per month for which she was not compensated. These estimates do not include the  
4 substantial hours for which she received no compensation during the holidays and at inventory  
5 time.

6 3.2. Plaintiff Georgie Hartwig. Plaintiff Hartwig worked from March 14, 1994, to  
7 October 9, 2000, at the Wal-Mart Discount Store in Colville, Washington, located in Stevens  
8 County. On multiple occasions during her employment as a freight receiving coordinator, sales  
9 associate, morning stocker, and department manager, Plaintiff Hartwig worked time off the  
10 clock for which she was never paid, worked overtime for which she was not paid, was locked  
11 into the store at night, and was denied meal and rest breaks. On average, Plaintiff Hartwig  
12 estimates that she worked between two to five hours per week for which she was not  
13 compensated. These estimates do not include the substantial hours for which she was not paid  
14 during the holidays and at inventory time.

15 3.3. Plaintiff Bella Blaubergs. Plaintiff Bella Blaubergs worked from December  
16 1997 to March 1999 at the Wal-Mart store in Mt. Vernon, Washington, located in Skagit  
17 County. She worked as a fitting room attendant, a greeter, and a sales associate in the fabrics  
18 and crafts department. While employed by Wal-Mart, Plaintiff Blaubergs worked time off the  
19 clock for which she was not paid, worked overtime for which she was not paid, was locked in  
20 the store at night after clocking out, and was regularly unable to take meal and rest breaks.

21 3.4. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its headquarters  
22 in Bentonville, Arkansas. Wal-Mart Stores, Inc. is a corporation doing tens of millions of  
23 dollars of business within the State of Washington. Indeed, Wal-Mart Stores, Inc. operates a  
24 total of approximately 30 stores (including Wal-Mart Stores, Supercenters and Sam's Clubs) in  
25 Washington. Wal-Mart Stores, Inc. is an employer of thousands of employees in the State of  
26 Washington.

1 3.5. Sam's Club is an operating segment of Wal-Mart Stores, Inc. and operates at  
2 least two Sam's Club stores in Washington.

3  
4 **IV. CLASS ACTION ALLEGATIONS**

5 4.1. Plaintiffs bring this case as a class action pursuant to Washington Civil Rule 23  
6 on behalf of a Class consisting of:

7 All current and former hourly paid employees of Wal-Mart Stores,  
8 Inc. (including Wal-Mart Stores, Supercenters and Sam's Clubs) in  
9 the state of Washington from September 10, 1995 to the present  
10 who have not held a salaried management position with Wal-Mart  
11 at any time from September 10, 1995 to the present ("the Class").

12 Excluded from the Class are Defendant, any entity in which Defendant has a controlling  
13 interest or which has a controlling interest of Defendant, and Defendant's legal representatives,  
14 assignees and successors. Also excluded are the judge to whom this case is assigned and any  
15 member of the judge's immediate family.

16 4.2. Plaintiffs believe there are at least tens of thousands of current and former  
17 hourly paid Wal-Mart employees in the Class. Given Defendant's massive size and the  
18 systematic nature of Defendant's failure to comply with Washington employment law and  
19 common law, the members of the Class are so numerous that joinder of all members is  
20 impracticable.

21 4.3. Plaintiffs' claims are typical of the claims of the members of the Class because  
22 they were hourly employees who, like the members of the Class, sustained damages arising out  
23 of the Defendant's campaign to force them to work off the clock, failure to pay wages,  
24 including overtime, and failure to provide meal and rest breaks.

25 4.4. Plaintiffs will fairly and adequately protect the interests of the Class members.  
26 Plaintiffs have retained counsel competent and experienced in complex and class action  
litigation, including employment law.

1           4.5. Common questions of law and fact exist as to Plaintiffs and all members of the  
2 Class and predominate over any questions solely affecting individual members of the Class.

3 Among the questions of law and fact common to Plaintiffs and the Class are:

4           a. Whether Wal-Mart has engaged in a pattern and/or practice in  
5 Washington of forcing or permitting Plaintiffs and the Class to work off the clock without  
6 compensation;

7           b. Whether Wal-Mart has engaged in a pattern and/or practice in  
8 Washington of encouraging Plaintiffs and members of the Class to not report all time worked;

9           c. Whether Wal-Mart has engaged in a pattern and/or practice in  
10 Washington of threatening Plaintiffs and the Class with discharge, demotion, or discrimination  
11 or otherwise intimidating Plaintiffs and the Class if they do not work off the clock;

12           d. Whether Wal-Mart failed to permit meal and rest periods as required by  
13 Washington law and Wal-Mart's stated policy and its company-wide agreements;

14           e. Whether Wal-Mart failed to properly compensate Plaintiffs and the Class  
15 in connection with interruptions in the meal or rest breaks;

16           f. Whether Wal-Mart failed to keep true and accurate time records for all  
17 hours worked by its employees and/or altered time records;

18           g. Whether Wal-Mart failed to pay Plaintiffs and the Class for the work  
19 Wal-Mart permitted them to perform;

20           h. Whether Wal-Mart violated RCW 49.46.130;

21           i. Whether Wal-Mart violated RCW 49.46.090;

22           j. Whether Wal-Mart violated RCW 49.52.050;

23           k. Whether Wal-Mart violated WAC 296-126-023;

24           l. Whether Wal-Mart violated WAC 296-126-0924 and 296-125-0287;

25           m. Whether Wal-Mart violated RCW 19.86 et. seq.; and  
26

1 n. The nature and extent of class-wide injury and the measure of  
2 compensation for such injury.

3 4.6. Class action treatment is superior to the alternatives for the fair and efficient  
4 adjudication of the controversy alleged herein. Such treatment will permit a large number of  
5 similarly situated persons to prosecute their modest, purely economic, common claims in a  
6 single forum simultaneously, efficiently, and without the duplication of effort and expense that  
7 numerous individual actions would entail. No difficulties are likely to be encountered in the  
8 management of this class action that would preclude its maintenance as a class action, and no  
9 superior alternative exists for the fair and efficient adjudication of this controversy. The Class  
10 is readily identifiable from the Defendant's records.

11 4.7. Defendant has acted on grounds generally applicable to the entire Class, thereby  
12 making final injunctive relief or corresponding declaratory relief appropriate with respect to the  
13 Class as a whole. Prosecution of separate actions by individual members of the Class would  
14 create the risk of inconsistent or varying adjudications with respect to individual members of  
15 the Class that would establish incompatible standards of conduct for Defendant.

16 4.8. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy since joinder of all members is impracticable. Furthermore,  
18 the amounts at stake for many of the Class members, while substantial to them, are not great  
19 enough to hire an attorney to prosecute individual suits against Defendant.

20 4.9. Without a class action, Defendant will likely continue its course of illegal action  
21 which will cause further damage to Plaintiffs and the Class.

## 22 **V. SUMMARY OF ALLEGATIONS**

23 5.1. Beginning at a date unknown to Plaintiffs, but at least as early as September 10,  
24 1995, Defendant committed, and continues to commit, acts of wage abuse against its hourly  
25 paid employees including, but not limited to: forcing or permitting Plaintiffs and the Class to  
26 work off-the-clock, failing to pay Plaintiffs and the Class wages, including overtime worked,

1 and for interrupted work and rest breaks, altering payroll records, locking employees into its  
2 stores, and preventing Plaintiffs and the Class from taking and/or completing their rest/lunch  
3 breaks.

4 5.2. Wal-Mart's orchestrated program of forcing its hourly employees to work off  
5 the clock is, in part, carried out through its culture. Wal-Mart gives employees work  
6 assignments that Wal-Mart knows or should know its employees cannot complete within their  
7 scheduled hours. Wal-Mart also creates pressure on its employees to complete their work  
8 assignments through intimidation, threats of discharge, and demotion, while at the same time  
9 precluding such employees from clocking in hours worked and necessary to accomplish their  
10 assignments outside their regular work schedule. Consequently, employees must work after  
11 clocking out at the end of their shifts, before clocking in at the beginning of their shifts, and  
12 through lunch and rest breaks.

13 5.3. Wal-Mart's Store, District, Club/General, and Regional Managers in the state of  
14 Washington have financial incentives to suppress store expenses. These Store, District,  
15 Club/General, and Regional Managers' financial compensation and bonuses are enhanced by  
16 reduction of store expenses and lowering overhead costs, the largest component of which is  
17 employee payroll. These Store, District, Club/General, and Regional Managers have adopted  
18 and are using methods to hold down pay to Wal-Mart employees, including Plaintiffs and the  
19 Class. Among those methods are forcing employees to work off the clock, understaffing  
20 Wal-Mart stores, causing employees to work without receiving their required meal and rest  
21 breaks, and manipulating time and wage records to reduce the amounts paid to Plaintiffs and  
22 the Class.

23 5.4. Wal-Mart engages in the practice of "locking in" employees overnight. The  
24 practice involves physically locking employees in the store overnight so that they cannot leave  
25 the store premises. Employees are forced to clock out and continue working and/or wait for the  
26 store to be unlocked.

1           5.5.     Wal-Mart also requires its employees to attend meetings and computer training  
2 while off the clock. In addition, Wal-Mart systematically fails to hire sufficient numbers of  
3 employees to complete the work available, requiring employees to work through their lunch  
4 and rest periods and otherwise complete their tasks while off the clock.

5           5.6.     Wal-Mart also pressures its management to encourage its employees not to  
6 record all their time actually worked and/or not take their meal and rest breaks. Indeed,  
7 Wal-Mart's practice is to pay little or no overtime. Employees who record their overtime are  
8 reprimanded and often humiliated. For example, in the Auburn store, the Store Manager would  
9 post the name of any employees who had recorded overtime next to the time clock as a  
10 reminder that doing so was against company policy. Wal-Mart also awards financial bonuses  
11 to its store managers based on factors (i.e., net profit ratios, which are affected by payroll  
12 ratios) that encourage such managers to grossly understaff their stores. Wal-Mart employees  
13 are generally aware of this bonus system and its impact on staffing.

14          5.7.     Wal-Mart also causes its employees to work through meal and rest breaks and to  
15 interrupt their meal and rest breaks to perform work.

16          5.8.     Wal-Mart hides behind its written policy that purports to forbid these unlawful  
17 labor practices while, at the same time, it maintains conditions that foster these unlawful  
18 practices. If employees make an issue of not being paid for unrecorded time, or not being  
19 allowed to take their meal and rest breaks, Wal-Mart feigns "ignorance" and blames the  
20 employee for violating written company policy. Wal-Mart unfairly, fraudulently, and  
21 unlawfully uses its no off-the-clock policy as a two-edged sword against its hourly paid  
22 employees: Wal-Mart uses its written policies to shield itself from paying for off-the-clock  
23 work and overtime and then terminates employees who complain about having to do such  
24 work.

25          5.9.     Wal-Mart knew or should have known that the employees were working off the  
26 clock by virtue of the fact that (a) its managers have been present in stores when off-the-clock

1 work was occurring; (b) it assigns work that cannot be accomplished during an employee's  
2 shift and makes threats or intimidating remarks if the assigned work is not completed, but  
3 refuses to allow the employee to clock in the additional time which is necessary to accomplish  
4 such work; and (c) it systematically under-staffs its stores.

## 5 **VI. FIRST CLAIM FOR RELIEF**

### 6 **(Breach of Contract: Working Off The Clock)**

7 6.1. Plaintiffs reallege and incorporate by reference each and every allegation set  
8 forth in the preceding paragraphs.

9 6.2. At the time Plaintiffs and members of the Class accepted employment with  
10 Wal-Mart, they were hired to work at a fixed hourly wage rate. Plaintiffs and Class members  
11 were expressly told the rate they would earn for each hour worked. While no written  
12 employment agreement was entered into, Plaintiffs and Class members were provided with a  
13 copy of the Associate Handbook (the "Handbook"), which they were told embodied the terms  
14 of their employment and to which they were directed to refer if they had any questions  
15 regarding their employment.

16 6.3. This Handbook is a standardized, uniform document used throughout the state of  
17 Washington, which is presented on a take-it-or-leave-it basis. Indeed, given the unequal  
18 bargaining power between Plaintiffs, Class members and Defendant, neither Plaintiffs nor any  
19 of the Class members had an opportunity to negotiate the terms of their employment contracts.

20 6.4. Defendant breached its contract with Plaintiffs and the Class members by not  
21 paying for all hours worked and by failing to pay wages according to Washington law.

22 6.5. The Handbook provides:

23 Always clock in before beginning your work day and at other  
24 appropriate times; ask your supervisor for specific details. If you  
25 forget to do this, notify your supervisor immediately so corrections  
26 can be made. Your hard work is appreciated and we want to pay  
you for this work. **Remember working off the clock is not only  
against Wal-Mart policy -- it's against the law. Always clock in  
when you are working -- Always! There are no exceptions.**  
(emphasis in original)

1 Wal-Mart appreciates enthusiastic associates, but in no case are  
2 you to ever volunteer your off-duty time by performing work for  
our Company without clocking in.

3 6.6. The employment contract between Plaintiffs and the Class members and  
4 Wal-Mart arises from the Handbook, Defendant's other express policies, and the parties'  
5 express agreements.

6 6.7. For many of the hours Plaintiffs and the Class worked "off the clock" during  
7 their tenure with Defendant, they received no compensation from Defendant. Defendant's  
8 failure to pay Plaintiffs and the Class for the time worked off the clock violates the parties'  
9 employment agreements. Hours that Plaintiffs and Class members worked "off the clock" were  
10 at the direction and behest of Defendant.

11 6.8. Defendant is liable to Plaintiffs and the Class for the damages incurred as a  
12 result of Defendant's failure to pay Plaintiffs and the Class for their off-the-clock work.

### 13 **VII. SECOND CLAIM FOR RELIEF**

#### 14 **(Breach of Contract: Failure To Provide Rest and Meal Breaks)**

15 7.1. Plaintiffs reallege and incorporate by reference each and every allegation set  
16 forth in the preceding paragraphs.

17 7.2. Wal-Mart entered into contracts with each employee under which Wal-Mart  
18 agreed to provide them with rest and meal breaks if they worked a certain amount of time in a  
19 workday. More specifically, the Handbook provides: "No associate should work over six  
20 hours without taking at least a 30-minute lunch or dinner break. Remember to clock in and out  
21 for meal periods. Please follow this policy. There are no exceptions."

22 7.3. Wal-Mart breached this agreement by failing to provide Plaintiffs and the Class  
23 with the agreed rest and meal breaks and failing to compensate them for the entire period at  
24 their regular rate of pay in instances where rest and meal breaks were interrupted to perform  
25 work.

26 7.4. Accordingly, Defendant is liable to Plaintiffs and the Class for damages incurred  
as a result of Defendant's failure to provide rest and meal breaks and compensation in instances

1 where rest and meal breaks were interrupted to perform work in accordance with the  
2 agreements between the parties.

3 **VIII. THIRD CLAIM FOR RELIEF**

4 **(Minimum Wage Act: RCW 49.46.130)**

5 8.1. Plaintiffs reallege and incorporate by reference each and every allegation set  
6 forth in the preceding paragraphs.

7 8.2. RCW 49.46.130 provides in relevant part that “no employer shall employ any of  
8 his employees for a workweek longer than 40 hours unless such employee receives  
9 compensation for his employment in excess of the hours above specified at a rate not less than  
10 one and one-half times the regular rate at which he is employed.”

11 8.3. By the actions alleged above, Defendant violated the provisions of  
12 RCW 49.46.130.

13 8.4. As a result of the unlawful acts of Defendant, Plaintiffs and the Class have been  
14 deprived of overtime compensation in amounts to be determined at trial, and pursuant to  
15 RCW 49.46.090 are entitled to recovery of such amounts, including interest thereon, attorneys’  
16 fees and costs.

17 **IX. FOURTH CLAIM FOR RELIEF**

18 **(Unpaid Wages On Termination: RCW 49.48)**

19 9.1. Plaintiffs and the Class reallege and incorporate by reference each and every  
20 allegation set forth in the preceding paragraphs.

21 9.2. RCW 49.48.010 provides: “When any employee shall cease to work for an  
22 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of  
23 his employment shall be paid to him at the end of the established pay period.” The statute  
24 further provides that it shall be unlawful “for any employer to withhold or divert any portion of  
25 an employee’s wages.”  
26



1 11.2. RCW 49.12.010 provides “The welfare of the state of Washington demands that  
2 all employees be protected from conditions of labor which have a pernicious effect on their  
3 health. The state of Washington, therefore, exercising herein its police and sovereign power  
4 declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

5 11.3. WAC 296-126-092 and WAC 296-125-0287 provide that employees, including  
6 minors, shall be allowed a meal period of at least 30 minutes on the employer’s time for each  
7 five hours worked. WAC 296-126-092 and WAC 296-125-0287 further provide that  
8 employees, including minors, shall be allowed a rest period of not less than ten minutes on the  
9 employer’s time for each four hours worked. By the actions alleged above, Defendant violated  
10 the provisions of WAC 296-126-092 and WAC 296-125-0287. This, in turn, constitutes a  
11 violation of RCW 49.12.010.

12 11.4. As a result of the unlawful acts of Defendant, Plaintiffs and the Class have been  
13 deprived of compensation for missed and shortened meal and rest breaks in amounts to be  
14 determined at trial. Pursuant to RCW 49.48.030, Plaintiffs and the Class are entitled to recover  
15 attorneys’ fees and costs of suit.

16 **XII. SEVENTH CLAIM FOR RELIEF**

17 **(Willful Refusal To Pay Wages: RCW 49.52.050)**

18 12.1. Plaintiffs and the Class reallege and incorporate by reference each and every  
19 allegation set forth in the preceding paragraphs.

20 12.2. RCW 49.52.050(2) provides that any employer who “willfully and with intent to  
21 deprive the employee of any part of his wages, shall pay any employee a lower wage than the  
22 wage such employer is obligated to pay such employee by any statute, ordinance, or contract”  
23 shall be guilty of a misdemeanor.

24 12.3. RCW 49.52.070 provides that any employer who violates the foregoing statute  
25 shall be liable in a civil action for twice the amount of wages withheld, together with costs of  
26 suit and a reasonable attorney fee.

