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CONSTANCE R. WHITE
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NO: 23-2-10696-8

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 JOSHUA WALZ, individually and on
10 behalf of all those similarly situated,

11 Plaintiff,

12 vs.

13 WALMART INC., a Foreign Profit
14 Corporation, DELIVERY DRIVERS INC.,
15 a Foreign Profit Corporation, and ASHLEY
16 HATFIELD, individually and her marital
community, if any,

17 Defendants.

No.

CLASS ACTION COMPLAINT FOR
DAMAGES

18 Plaintiff claims against Defendants as follows:

19 **I. NATURE OF ACTION**

20 1.1. Plaintiff Joshua Walz (“Walz”), individually and on behalf of all individuals
21 currently or formerly employed in Washington as “Delivery Drivers” for Walmart Inc.
22 (“Walmart”), Delivery Drivers Inc. (“DDI”), and/or Ashley Hatfield (“Hatfield”) and paid in
23 whole or in part on a piecework, commission, or other productivity basis brings this action for
24 money damages and statutory penalties for violations of Washington Industrial Welfare Act
25 (“IWA”), RCW 49.12, Minimum Wage Act (“MWA”), RCW 49.46, Wage Payment Act
26 (“WPA”), RCW 49.48, and Wage Rebate Act (“WRA”), RCW 49.52.

1 **II. JURISDICTION AND VENUE**

2 2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to
3 RCW 2.08.010.

4 2.2. Venue in Pierce County is appropriate pursuant to RCW 4.12.025.

5 2.3. Defendants transact business in Pierce County, and at least some of the acts and
6 omissions alleged in this Complaint took place in the State of Washington and Pierce County.

7 **III. PARTIES**

8 3.1. Defendant Walmart is organized under the laws of the State of Delaware and
9 maintains a principal place of business in Bentonville, Arkansas. Walmart operates retail locations
10 and serves customers throughout Washington including in Pierce County. Walmart is an employer
11 for the purposes of the IWA, MWA, WPA and WRA.

12 3.2. Defendant DDI is organized under the laws of the State of California and maintains
13 a principal place of business in Irvine, California and provides delivery services and serves
14 customers throughout Washington including in Pierce County. DDI is an employer for the
15 purposes of the IWA, MWA, WPA and WRA.

16 3.3. Defendant Ashley Hatfield, at all relevant times, was a principal, member, officer,
17 owner, and/or manager of Walmart, as the Department Manager for e-commerce at Walmart's
18 Tumwater Superstore, and had apparent and/or actual, direct and/or indirect, authority over
19 employment matters. Ashley Hatfield had supervisory authority over Plaintiff during his
20 employment. She is and was an employer for purposes of MWA, WPA, and WRA.

21 3.4. Plaintiff Joshua Walz is a resident of Oakville, Washington and is a former
22 employee of Defendants paid on a piecework, commission, or other productivity basis.

23 **IV. FACTUAL ALLEGATIONS**

24 4.1. Defendant Walmart is an international retail and eCommerce business with \$573
25 billion in annual revenues, the majority of which comes from its U.S. business operating in all 50
26 states, Washington D.C., and Puerto Rico.

1 4.2. A core and growing part of Defendant Walmart’s business is through the cross
2 section of its retail and eCommerce platforms, in which it provides services such as pickup and
3 delivery and ship-from-store fulfillment options. Defendant Walmart plans to grow this method of
4 eCommerce sales by continuing to develop its technology tools to ship its products directly to
5 consumers’ homes. Defendant Walmart delivers its goods direct to consumers by delivery drivers
6 primarily in two ways: from fulfillment centers and from more than 3,500 Walmart stores.

7 4.3. Defendant Walmart contracts with thousands of delivery drivers who use
8 Walmart’s Spark Driver mobile application (“Spark app”) to deliver its products. As of 2022,
9 nearly three-quarters of delivery orders are fulfilled by drivers using the Spark app, reaching 84%
10 of U.S. households and making it the largest delivery provider for Walmart.

11 4.4. Defendant DDI recruits and employs delivery drivers and contracts with retail
12 companies like Walmart to perform delivery services for them. Defendant DDI performs a variety
13 of services such as conducting background checks on drivers, requiring them to have auto
14 insurance, and performing accounting and payroll services, including paying drivers.

15 4.5. On or about September 2018, DDI publicly announced that it was the
16 “administrator of driver management” for the Walmart Spark Delivery Platform. As administrator,
17 DDI was “responsible for managing recruiting, screening and background checks, payment, and
18 accounting, among other services for drivers.”

19 4.6. On or about August 2022, Defendant Walmart announced its plan to acquire
20 Defendant DDI in order to “streamline the driver experience with a single point of contact” as part
21 of its plan to expand its delivery services.

22 4.7. Upon information and belief, Defendant Walmart wholly owns and operates DDI.

23 4.8. Walmart and DDI recruit drivers through online job postings on sites such as
24 Craigslist called “Deliver for Walmart.” There are numerous such job postings by DDI recruiting
25 drivers for Walmart on Craigslist, Indeed, Monster Jobs, and other similar job websites.
26

1 4.9. Defendant DDI enters contracts with Delivery Drivers around the country to
2 provide delivery services for Defendant Walmart.

3 4.10. Plaintiff and members of the putative class signed employment documents with
4 both DDI and Walmart to deliver products goods to Walmart's customers.

5 4.11. Plaintiff and members of the putative class are or were jointly employed by
6 Defendants in Washington state as Delivery Drivers paid on a per delivery basis determined by
7 Walmart.

8 4.12. A vast majority of the products and goods delivered by Plaintiff and members of
9 the putative class were produced, manufactured, and/or distributed from outside of Washington
10 for sale by Walmart to Washington customers.

11 4.13. Defendants required Plaintiff and members of the putative class to use their own
12 car and pay themselves for gas, tires, auto maintenance, auto insurance, cell phone usage, and other
13 necessary expenses to perform their job without reimbursement.

14 4.14. Plaintiff and members of the putative class were required to undergo unpaid
15 training to learn how to make deliveries using the Spark app.

16 4.15. Plaintiff and members of the putative class engaged in interstate commerce by
17 transporting goods that originated from outside Washington.

18 4.16. Plaintiff and members of the putative class perform last-leg delivery to consumers
19 of goods that travel through the chain of interstate commerce.

20 4.17. At times, Plaintiff and members of the putative class got delivery orders that cross
21 state borders.

22 4.18. Defendants had the ability to set terms and conditions of employment of Plaintiff
23 and members of the putative class to a substantial degree and all had the ability to hire and fire.

24 4.19. Defendants took part in the Delivery Drivers' pay. For Walmart, this came in the
25 form of setting payment via the Spark App algorithm and deciding terms of pay for the deliveries.
26

1 For DDI, this came in the form of dispersing pay to the Delivery Drivers, including determining
2 payment form and frequency.

3 4.20. Upon logging into the Spark app, Plaintiff and members of the putative class were
4 presented with approximately 1-7 orders to choose from stating the distance of the delivery, the
5 size, and a flat rate of pay for each delivery, which was calculated by an algorithm formulated,
6 upon information and belief, by Defendant Walmart and not shared with Delivery Drivers.

7 4.21. Upon receiving a delivery request on the Spark app, Delivery Drivers had
8 approximately 30 seconds to 3 minutes to accept the order.

9 4.22. Upon information and belief, both DDI and Walmart maintain employment records
10 for Delivery Drivers, including employment contracts and agreements with Delivery Drivers,
11 payment records, background checks, and insurance.

12 4.23. Supervisors and managers at both DDI and Walmart directed, controlled, and
13 supervised the Delivery Drivers' work.

14 4.24. After selecting a delivery, Plaintiff and members of the putative class were directed
15 to a Walmart store to pick up the delivery.

16 4.25. When Plaintiff and members of the putative class arrived at the Walmart store to
17 pick up the deliveries, they received direction from Defendant Walmart's employees at the store
18 who managed the online delivery orders and prepared and loaded the vehicles for delivery of the
19 products to Defendant Walmart's customers.

20 4.26. Plaintiff and members of the putative class were prohibited from loading the orders
21 into their own personal vehicles unsupervised and Defendant Walmart required a specific
22 methodology for where orders were placed in the drivers' vehicles. Defendant Walmart's
23 employees and managers, including Defendant Hatfield, enforced these rules and supervised the
24 loading of Plaintiff and members of the putative class's vehicles.

25 4.27. Defendants were responsible for establishing the timeframe in which Plaintiff and
26 members of the putative class could accept deliveries.

1 4.28. Plaintiff and members of the putative class were limited in how many deliveries
2 they could reject before being terminated.

3 4.29. At times, Plaintiff and members of the putative class received incorrect information
4 regarding order sizes.

5 4.30. At times, Plaintiff and members of the putative class were told that orders were
6 ready for pick up from a Walmart store and when they arrived had to wait before the order was
7 actually ready. Plaintiff and members of the putative class were not paid for this waiting time.

8 4.31. Defendants imposed requirements for the condition that Plaintiff and members of
9 the putative class's vehicles had to be in, and Defendant Walmart's retail employees could report
10 Delivery Drivers for not meeting these requirements.

11 4.32. Defendant Walmart substantially restricted how Plaintiff and members of the
12 putative class performed the duties of their job. Per the Walmart Spark Driver Mobile App Terms
13 of Use Agreement, Plaintiff and members of the putative class had to agree that they would not
14 subcontract their services to others; they had to comply with a certain level of service; they had to
15 follow instructions for deliveries as specified in the Spark app; they had to make pick-ups within
16 a given time period; they were required to maintain a certain ratio between orders they accepted
17 and performed and orders they accepted and did not perform ("Drop Order Rate"); they could not
18 have young children as passengers while they were making deliveries; they could not engage in
19 any activity that results in a disruption to Defendant Walmart's operation; they had to use a vehicle
20 that was clean, smoke free, had the capacity to hold delivery orders, and could hold delivery orders
21 in a contained and separate way; they could not accept rideshare passengers while services were
22 being performed for Defendant Walmart; and they had to maintain automobile liability insurance.

23 4.33. If Plaintiff and members of the putative class did not meet the conditions set out in
24 Defendant Walmart's agreement, they were subject to deactivation and their ability to use the
25 Spark app would be revoked.

26 4.34. Plaintiff and members of the putative class were also subject to discipline by

1 Walmart, including being suspended from performing deliveries for certain store locations or
2 deactivated from the Sparks app.

3 4.35. On or about March 3, 2022, Plaintiff was deactivated from the Spark Driver
4 program for purported performance and disciplinary violations. On May 5, 2022, Walmart
5 subsequently agreed that Plaintiff would be reactivated on the Spark Driver platform. On or about
6 September 30, 2022, Walz was again deactivated from the Spark Driver program.

7
8 4.36. Plaintiff and members of the putative class could appeal disciplinary actions
9 through an appeal process established by Defendant Walmart.

10 4.37. Plaintiff appealed both deactivations. Following the first deactivation appeal he
11 was reinstated. After the second deactivation, he appealed and was told that he was permanently
12 banned from the Spark Driver program. Walmart retained a law firm and contacted Plaintiff with
13 a severance offer of \$500 in consideration for a release of legal claims.

14
15 4.38. Plaintiff and members of the putative class were required by Defendant Walmart to
16 keep their order acceptance rate above a certain level.

17 4.39. If the customer is not available when the delivery is made, Plaintiff and members
18 of the putative class were forced by Defendant Walmart to return the delivery to the store for only
19 \$2.50 or less, regardless of the time or cost to Plaintiff and members of the putative class, or they
20 risk being deactivated from the Spark app and potentially being accused of fraud by Defendant
21 Walmart.

22
23 4.40. The delivery service was integral to Defendants' business operations.

24 4.41. Defendants prohibited Plaintiff and members of the putative class from working
25 with other delivery services.

1 4.42. Defendants uniformly, and pursuant to a common policy, misclassified Plaintiff and
2 members of the putative class as independent contractors when they were Defendants' employees.

3 4.43. Plaintiff and members of the putative class receive no hourly wage.

4 4.44. Plaintiff and members of the putative class were required to be paid through the
5 Branch app to receive their weekly compensation.

6 4.45. Upon information and belief, Branch is fully owned and operated by Defendant
7 DDI.

8 4.46. The Branch app tracked the total sum each Delivery Driver made in a given day,
9 but did not track hours worked, rates of compensation, deductions, or any other wage information.

10 4.47. Defendants failed to compensate Plaintiff and members of the putative class for all
11 hours worked.

12 4.48. At times, inclusive of among other things drive time, waiting time, returns, and
13 phone calls with Spark app support, Plaintiff and members of the putative class hourly wages fell
14 below the state minimum wage.

15 4.49. At times, Defendants' customers gave Plaintiff and members of the putative class
16 tips and gratuities.

17 4.50. At times, Defendants failed to pay Plaintiff and members of the putative class tips
18 and gratuities given to them by customers.

19 4.51. Defendants created and maintained work schedules and a working environment that
20 discouraged Plaintiff and members of the putative class from taking rest periods and meal periods
21 in compliance with Washington law.

22 4.52. At times, Plaintiff and members of the putative class worked more than three
23 consecutive hours without a rest period.

24 4.53. With respect to Plaintiff and members of the putative class, Defendants failed to
25 establish or maintain a process to record the occurrence, time, and duration of paid rest periods.
26

1 4.54. With respect to Plaintiff and members of the putative class, Defendants failed to
2 provide a process to report instances of when they were required or allowed to work over three hours
3 without a rest period, when they did not receive a rest period in at least a ten-minute duration or when
4 they failed to receive a rest period of at least ten minutes in length for each four hours worked.

5 4.55. Plaintiff and members of the putative class were not scheduled for and, at times,
6 did not take a ten-minute rest period on the employer's time for every four hours worked.

7 4.56. Defendants did not compensate Plaintiff and members of the putative class for rest
8 periods separately and in addition to the piecework, commission, and/or productivity-based wages.

9 4.57. Defendants did not train Plaintiff and members of the putative class on the elements
10 of an unpaid meal period.

11 4.58. Defendants did not provide Plaintiff and members of the putative class a process to
12 record a meal period or report a missed meal period.

13 4.59. At times, Plaintiff and members of the putative class worked shifts greater than five
14 hours in length and, at times, were not scheduled for, did not take and did not waive their rights to
15 compliant thirty-minute meal periods during these shifts.

16 4.60. Defendants did not add thirty minutes of compensable time to Plaintiff's and
17 putative class members' pay for those shifts greater than five hours in length and when meal
18 periods were not taken.

19 4.61. Defendants did not add another thirty minutes of compensable time to Plaintiff's
20 and putative class members' pay for those shifts greater than ten hours in length and when
21 additional meal periods were not taken.

22 4.62. Defendants did not compensate Plaintiff and members of the putative class for meal
23 periods separately and in addition to the piecework, commission, and/or productivity-based wages.

24 4.63. At times, Plaintiff and members of the putative class worked over forty hours per
25 week.
26

1 4.64. Defendants never paid overtime premiums for hours worked in excess of forty per
2 week.

3 4.65. There is no fairly debatable issue of law or any objectively or subjectively reasonable
4 dispute whether Defendants needed to compensate Plaintiff and members of the putative class in
5 compliance with Washington law.

6 4.66. Defendants' failure to compensate Plaintiff and members of the putative class in
7 compliance with Washington law was not the result of administrative or clerical errors.

8 4.67. There is no fairly debatable issue of law or any objectively or subjectively reasonable
9 dispute whether additional wages are owed to compensate for meal and rest periods not provided in
10 compliance with Washington law.

11 4.68. Defendants' failure to compensate Plaintiff and members of the putative class with
12 additional wages to compensate for meal and rest periods not provided in compliance with Washington
13 law was not the result of administrative or clerical errors.

14 4.69. At times, Plaintiff and members of the putative class were absent from work
15 resulting from:

- 16 (1) personal mental or physical illness, injury, or health condition;
- 17 (2) medical diagnosis, care, or treatment of a mental or physical illness,
18 injury, or health condition;
- 19 (3) preventative medical care;
- 20 (4) care for a family member with a mental or physical illness, injury,
21 or health condition;
- 22 (5) care for a family member who needs medical diagnosis, care, or
23 treatment of a mental or physical illness, injury, or health condition;
- 24 (6) care of a family member who needs preventative medical care;
- 25 (7) Defendants' business being closed by order of a public official for
26 any health-related reason, such as COVID;

1 (8) child's school or place of care being closed for any health-related
2 reason, such as COVID; or

3 (9) leave under the domestic violence leave act, chapter 49.76 RCW.

4 4.70. Defendants failed to provide paid sick leave at a rate of at least one hour for every
5 forty hours worked by Plaintiff and members of the putative class.

6 4.71. Defendants failed to allow Plaintiff and members of the putative class to use
7 accrued paid sick leave for qualifying absences.

8 4.72. Defendant Hatfield supervised Plaintiff Walz and other Spark app drivers and
9 directed them in packing their car with merchandise for delivery and would cancel orders when
10 Plaintiff Walz did not pack his car properly.

11 4.73. Defendant Hatfield provided written guidelines to Plaintiff Walz on interactions
12 between Walmart employees and drivers and explained that he was essentially an employee of
13 Walmart and had to do what she told him to do.

14 4.74. Defendant Hatfield's authority to enforce Walmart policies that applied to Plaintiff
15 Walz included those relating to packing his car for delivery, managing his delivery orders, wearing
16 a mask and other safety precautions, and behavior and treatment of Walmart staff.

17 4.75. By cancelling some of Plaintiff Walz's orders, Defendant Hatfield was responsible
18 for Defendants not paying Plaintiff Walz for all hours that he worked.

19 4.76. Plaintiff's interests in this matter do not conflict with the interests of the putative class.

20 4.77. Plaintiff's counsel is experienced in complex wage and hour class action litigation and
21 has been appointed Class Counsel in dozens of similar cases.

22 4.78. Plaintiff's counsel has adequate financial resources to prosecute this claim through trial
23 and beyond.

24 V. CLASS ACTION ALLEGATIONS

25 5.1. Pursuant to Civil Rule 23, Plaintiff brings this case as a class action against
26 Defendants on behalf of a Class as defined as follows:

1 All individuals currently or formerly contracted directly by Defendants
2 to provide delivery services to Walmart in Washington at any time since
3 October 23, 2020, and paid in whole or in part on a piecework,
4 commission, or other productivity basis.

5 5.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).

6 5.3. The number of putative class members exceeds forty and therefore, pursuant to CR
7 23(a)(1), it is impracticable to join all of the members of the class as defined herein as named
8 plaintiffs.

9 5.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among
10 Plaintiff and members of the putative class including, but not limited to:

11 (1) Whether Defendants unlawfully failed to pay class members at least
12 the Washington minimum wage after accounting for, among other things, drive
13 time, waiting time, returns, and phone calls with Spark app support;

14 (2) Whether Defendants unlawfully failed to pay lawful overtime
15 premiums for all hours worked in excess of forty in a given week;

16 (3) Whether class members have been required to pay for business
17 expenses as part of their employment, such as gas, tires, auto maintenance, auto
18 insurance, cell phone usage, and other expenses necessary to perform their job;

19 (4) Whether these violations were pursuant to a common policy or
20 practice applicable to all class members;

21 (5) The proper measure of damages sustained by the proposed
22 Washington class;

23 (6) Whether Defendants were joint employers for all class members
24 during their performance of services as Delivery Drivers;

25 (7) Whether the work performed by class members providing package
26 delivery services from Walmart retail stores to Walmart customers is within
Walmart's usual course of business and is fully integrated into Walmart's business;

1 (8) Whether Defendants was required to keep records of the occurrence,
2 time, and duration of rest periods provided to Plaintiff and members of the putative
3 class;

4 (9) Whether Defendants failed to keep records of the occurrence, time,
5 and duration of rest periods;

6 (10) Whether Defendants required Plaintiff and members of the putative
7 class to work greater than three consecutive hours without a rest period;

8 (11) Whether Defendants failed to ensure Plaintiff and members of the
9 putative class received a compliant rest period of at least ten minutes in length, on
10 the employer's time, for each four hours worked;

11 (12) Whether Defendants were required to compensate Plaintiff and
12 members of the putative class for an additional ten minutes of work for each
13 instance it required them to work greater than three consecutive hours without a
14 rest period, or in which it failed to ensure Plaintiff and members of the putative
15 class received a compliant rest period of at least ten minutes in length, on the
16 employer's time, for each four hours worked;

17 (13) Whether Defendants failed to compensate Plaintiff and members of
18 the putative class for an additional ten minutes of work for each instance it required
19 them to work greater than three consecutive hours without a rest period or in which
20 it failed to ensure Plaintiff and members of the putative class received a compliant
21 rest period of at least ten minutes in length, on the employer's time, for each four
22 hours worked;

23 (14) Whether Defendants did not provide Plaintiff and members of the
24 putative class a process to record a meal period or report a missed meal period;

25 (15) Whether Defendants failed to provide a compliant meal period of at
26 least thirty minutes for shifts greater than five hours in length;

1 (16) Whether Plaintiff and members of the putative class worked greater
2 than five consecutive hours without a meal period;

3 (17) Whether Defendants was required to compensate Plaintiff and
4 members of the putative class for an additional thirty minutes of work for each
5 instance it failed to provide a compliant meal period of at least thirty minutes for
6 shifts greater than five hours in length or required them to work greater than five
7 consecutive hours without a meal period;

8 (18) Whether Defendants failed to compensate Plaintiff and members of
9 the putative class for an additional thirty minutes of work for each instance it failed
10 to provide a compliant meal period of at least thirty minutes for shifts greater than
11 five hours in length or required them to work greater than five consecutive hours
12 without a meal period;

13 (19) Whether Defendants failed to compensate Plaintiff and members of
14 the putative class for an additional thirty minutes of work for each instance it failed
15 to provide a second compliant meal period of at least thirty minutes for shifts
16 greater than ten hours in length;

17 (20) Whether Defendants failed to pay Plaintiff and members of the
18 putative class one and one-half their regular rate of pay for all hours over forty in a
19 workweek;

20 (21) whether Defendant was required to provide paid sick leave at a rate
21 of at least one hour for every forty hours worked by Plaintiffs and members of the
22 putative class;

23 (22) whether Defendant failed to provide paid sick leave at a rate of at
24 least one hour for every forty hours worked by Plaintiffs and members of the
25 putative class;

26

1 (23) whether Defendant failed to compensate Plaintiffs and members of
2 the putative class for sick leave at the employee's regular and normal wage.

3 (24) whether Defendant was required to allow Plaintiffs and members of
4 the putative class to use accrued paid sick leave for qualifying absences;

5 (25) whether Defendant failed to allow Plaintiffs and members of the
6 putative class to use accrued paid sick leave for qualifying absences; and

7 (26) Whether Defendant acted willfully and with the intent of depriving
8 wages or other compensation.

9 5.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of
10 all class members and of Defendants' anticipated defenses thereto.

11 5.6. The named Plaintiff and their counsel will fairly and adequately protect the interests
12 of the class as required by CR 23(a)(4).

13 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
14 of law or fact common to members of the class predominate over any questions affecting only
15 individual members, and because a class action is superior to other available methods for the fair
16 and efficient adjudication of the controversy.

17 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
18 **MINIMUM WAGE, TIPS, AND FOR ALL HOURS WORKED IN**
19 **VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND**
WAGE PAYMENT ACT

20 6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

21 6.2. Pursuant to RCW 49.46.020, Plaintiff and members of the putative class are entitled
22 to the minimum wage for all periods of employment and all tips and gratuities.

23 6.3. By willfully failing to ensure that its delivery drivers receive the Washington state
24 minimum wage, after accounting for expenses they paid that were necessary to perform their job
25 and all hours worked, Defendants violated RCW 49.46.020.

1 6.4. By failing to pay Plaintiff and members of the putative class all tips and gratuities
2 given to them by customers, Defendants violated RCW 49.46.020.

3 6.5. By cancelling his orders, Defendant Hatfield was responsible for Plaintiff Walz not
4 being paid for all hours worked.

5 6.6. As a result of Defendant Hatfield's acts and omissions, Plaintiff has been damaged
6 in amounts as will be proven at trial.

7 6.7. As a result of Defendants' acts and omissions, Plaintiff and members of the
8 putative class have been damaged in amounts as will be proven at trial.

9 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE ENSURE REST**
10 **PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
11 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS IN**
12 **VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND**
13 **WASHINGTON WAGE PAYMENT ACT**

14 7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

15 7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
16 regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten
17 minutes, on the employer's time, for each four hours of working time.

18 7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
19 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow Freight*
20 *Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

21 7.4. A rest period violation is a wage violation with employees entitled to ten minutes of
22 additional compensation for each instance they are required or allowed to work longer than three
23 consecutive hours without a rest break. *Id* at 849.

24 7.5. Defendants violated the IWA and its implementing regulation by failing to ensure
25 Plaintiff and members of the putative class received a ten-minute paid rest period for every four hours
26 worked and by failing to keep records of the occurrence, time, and duration of rest periods taken, by
failing to implement a process for Plaintiff and members of the putative class to report missed or

1 otherwise noncompliant rest periods and by creating work schedules, staffing levels and conditions of
2 work that discouraged paid rest periods.

3 7.6. Defendants violated the MWA and WPA when it failed to compensate Plaintiff and
4 members of the putative class for an additional ten minutes of work for each instance a rest period was
5 not provided in compliance with IWA.

6 7.7. Defendants violated the IWA and MWA when it failed to compensate Plaintiff and
7 members of the putative class for rest periods separately and in addition to piecework, commission,
8 and/or other productivity-based wages.

9 7.8. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
10 class have been damaged in amounts as will be proven at trial.

11 **VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE MEAL**
12 **PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL WELFARE ACT**
13 **AND FAILURE TO COMPENSATE FOR VIOLATIONS OF THE WASHINGTON**
14 **MINIMUM WAGE ACT AND WASHINGTON WAGE PAYMENT ACT**

15 8.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

16 8.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing regulation,
17 WAC 296-126-092, require employers to provide thirty-minute meal periods to their employees for
18 work shifts greater than five hours in length and prohibits employees from working more than five
19 consecutive hours without a meal period.

20 8.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
21 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow Freight*
22 *Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

23 8.4. A meal period violation is a wage violation with employees entitled to thirty minutes
24 of additional compensation for each instance they are required to work more than five consecutive
25 hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553, 560 (2018), citing
26 *Hill v. Garda CL Nw., Inc.*, 198 Wn. App 326, 361 (2017).

1 8.5. Defendant has violated the IWA and its implementing regulation by failing to provide
2 Plaintiff and members of the putative class with compliant thirty-minute meal periods and by creating
3 work schedules, staffing levels and conditions of work that discouraged compliant meal periods.

4 8.6. Defendants violated the MWA and WPA when it failed to compensate Plaintiff and
5 members of the putative class for thirty minutes of work for each instance a meal period was not
6 provided in compliance with the IWA.

7 8.7. Defendants violated the IWA and MWA when it failed to compensate Plaintiff and
8 members of the putative class for meal periods separately and in addition to piecework,
9 commission, and/or other productivity-based wages.

10 8.8. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
11 class have been damaged in amounts as will be proven at trial.

12 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY OVERTIME**
13 **WAGES IN VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT**

14 9.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

15 9.2. Defendants violated the Washington State Minimum Wage Act, RCW 49.46.130, by
16 failing to pay Plaintiff and members of the putative one and one-half times their regular rate of pay
17 for weekly hours worked in excess of forty, including all time worked and additional compensable
18 time for Defendants' failure to provide compliant rest and meal periods.

19 9.3. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
20 class have been damaged in amounts as will be proven at trial.

21 **X. FIFTH CAUSE OF ACTION – CLASSWIDE WILLFUL WITHHOLDING OF**
22 **WAGES IN VIOLATION OF THE WASHINGTON WAGE REBATE ACT**

23 10.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

24 10.2. By the foregoing, Defendants' actions constitute willful withholding of wages due
25 in violation of RCW 49.52.050 and .070.
26

1 10.3. By the foregoing, Defendant Hatfield's actions constitute willful withholding of
2 wages due in violation of RCW 49.52.050 and .070.

3 10.4. As a result of Defendant Hatfield's acts and omissions, Plaintiff Walz has been
4 damaged in amounts as will be proven at trial.

5 10.5. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
6 class have been damaged in amounts as will be proven at trial.

7 **XI. SIXTH CAUSE OF ACTION – CLASSWIDE FAILURE TO ACCRUE AND**
8 **ALLOW THE USE OF PAID SICK LEAVE IN VIOLATION OF THE**
9 **WASHINGTON MINIMUM WAGE ACT**

10 11.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

11 11.2. The Washington Paid Safe and Sick Leave Act, RCW 49.46.210, and its
12 implementing regulations WAC 296-128-620 requires that employees accrue paid sick leave for
13 all hours worked at a rate of at least one hour for every forty hours worked.

14 11.3. Defendants violated the MWA by failing to accrue sick leave for and failing to
15 allow the usage of paid sick leave for qualifying absences by Plaintiff and members of the putative
16 class.

17 11.4. Pursuant to RCW 49.46.200, Defendants must compensate Plaintiff and members
18 of the putative class for sick leave at the employee's regular and normal wage;

19 11.5. As a result of Defendants' acts and omissions, Plaintiff and members of the
20 putative class have been damaged in amounts as will be proven at trial.

21 **XII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff request this Court enter an order against Defendants Walmart,
23 DDI, and Hatfield granting the following relief:

- 24 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);
25 B. Damages for unpaid wages in amounts to be proven at trial;

1 C. Exemplary damages in amounts equal to double the wages due to Plaintiff and
2 members of the putative class pursuant to RCW 49.52.070;

3 D. Attorneys' fees and costs pursuant to RCW 49.46.090, 49.48.030 and 49.52.070;

4 E. Additional Attorneys' fees pursuant to all applicable factors outlined in *Bowers v.*
5 *Transamerica Title Ins.*, 100 Wn.2d 581, 593-597 (1983);

6 F. Prejudgment interest pursuant to RCW 19.52.010; and

7 G. Such other and further relief as the Court deems just and proper.
8

9 DATED this the 23rd day of October 2023

10 ENTENTE LAW PLLC

11 s/ James B. Pizl

12 James B. Pizl, WSBA #28969

13 Justin Abbasi, WSBA #53582

14 Ari Robbins Greene, WSBA #54201

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