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DOLORES HUMMEL, on behalf of herself :	COURT OF COMMON PLEAS
and all others similarly situated, :	PHILADELPHIA COUNTY
Plaintiff :	AUGUST TERM, 2004
v. :	NO.
WAL-MART STORES, INC., :	
SAM'S CLUB :	
Defendants. :	

**CLASS ACTION COMPLAINT**

Plaintiff, by her undersigned attorneys, for her Class Action Complaint against defendants Wal-Mart Stores, Inc. and Sam's Club, alleges, upon information and belief, except as to the allegations that pertain to plaintiff and her counsel, which are based upon personal knowledge, as follows:

**NATURE OF ACTION**

1. Plaintiff Dolores Hummel ("Hummel") brings this action against Wal-Mart Stores, Inc. (including all Pennsylvania Wal-Mart stores, Supercenters, and Sam's Clubs, collectively "Wal-Mart") for engaging in a systematic scheme of wage abuse against its hourly paid employees in Pennsylvania. This scheme involved, *inter alia*, failing to record and pay hourly employees for off-the-clock work and overtime, and preventing such employees from

taking and/or completing their rest/meal periods. As a result of Wal-Mart's systematic and clandestine scheme of failing to properly pay its hourly employees throughout Pennsylvania, Wal-Mart has violated Pennsylvania common law and statutory laws as described more particularly below.

2. Venue is proper in this county under Rule 2179 of the Pennsylvania Rules of Civil Procedure. Wal-Mart transacts business throughout the Commonwealth of Pennsylvania in general and within Philadelphia County specifically. Many of the acts, as well as the course of conduct charged herein, occurred in Philadelphia County.

### **JURISDICTION AND VENUE**

3. Wal-Mart is within the jurisdiction of this Court. Wal-Mart operates numerous stores within the Commonwealth of Pennsylvania and within Philadelphia County. Thus, Wal-Mart has obtained the benefits of the laws of the Commonwealth of Pennsylvania and the Pennsylvania retail and labor markets.

4. The total amount in controversy of the named plaintiff and each member of the Class (as defined below) is less than Seventy-Five Thousand Dollars (\$75,000) per individual. In addition, as master of her complaint, plaintiff asserts no claims arising from federal law. Rather, plaintiff brings causes of action based solely on, and arising from, Pennsylvania law. The claims of plaintiff and the Class are individual claims for violations of Pennsylvania law described herein. These claims do not unite or enforce a single title or right to which plaintiff and the Class have a common and undivided interest, but rather arise from Wal-Mart's systematic wage abuse against its hourly employees in Pennsylvania.

## THE PARTIES

5. Plaintiff Hummel resides at 1350 Mulberry Street, Reading, Pennsylvania, 19604. At all times material, plaintiff Hummel worked as an hourly paid employee for Wal-Mart from October 1992 to September 4, 2002, as a cake decorator in the Bakery at the Sam's Club in Reading, Pennsylvania located in Berks County. Commencing immediately after her hire, on many occasions, at times too numerous to mention, plaintiff Hummel worked time off-the-clock for which she was never paid consisting of: (1) being denied rest breaks and/or required to work through a portion of her rest breaks an average of 4-5 times per week; (2) being denied meal breaks and/or required to work through a portion of her meal breaks an average of 1-2 times per week; (3) working 2-3 hours off-the-clock per week in order to complete her assigned tasks; and (4) working more than forty hours a week (counting time worked off-the-clock) and not being paid overtime. Plaintiff Hummel worked an average total time off-the-clock between 8-12 hours each month. The conduct complained of continued during plaintiff Hummel's entire period of employment.

6. In addition to the personal deprivation complained of herein, during the entire term of her employment, plaintiff Hummel observed nearly all other hourly employees working off-the-clock in the same ways as plaintiff Hummel and also observed at least one other employee who regularly worked for several hours off-the-clock at the end of the assigned shifts in order to complete the required assignments.

7. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its headquarters in Bentonville, Arkansas, and doing business within the Commonwealth of Pennsylvania. Indeed, Wal-Mart Stores, Inc. operates a total of 123 stores (including Wal-Mart Stores,

Supercenters and Sam's Clubs) in Pennsylvania. Wal-Mart Stores, Inc. is an employer of approximately 31,630 employees in Pennsylvania.

8. Sam's Club is an operating segment of Wal-Mart Stores, Inc. and operates approximately 20 Sam's Clubs in Pennsylvania.

9. The acts charged in this Complaint as having been done by defendant took place in Pennsylvania and were authorized, ordered or done by its officers, agents, employees, or representatives, while actively engaged in the management of defendant's businesses or affairs in Pennsylvania.

### **CLASS ACTION ALLEGATIONS**

10. The Named Plaintiff is an individual who, within the applicable period of limitations prior to the commencement of this action, was employed by Wal-Mart in Pennsylvania. Plaintiff brings this case as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701, *et seq.*, on behalf of a Class consisting of: all current and former hourly employees of Wal-Mart stores (including Wal-Mart Stores, Supercenters and Sam's Clubs) in the Commonwealth of Pennsylvania during the period March 19, 1998 to the present (the "Class").

11. Plaintiff believes that there are at least tens of thousands of presently and formerly employed hourly paid Wal-Mart employees in the Class. Given Wal-Mart's massive size and the systematic nature of its failure to comply with Pennsylvania statutory law and common law, the members of the Class are so numerous that joinder of all members is impractical.

12. Plaintiff's claims are typical of the claims of the Class members because she was an hourly employee who, like the Class members, sustained damages arising out of Wal-Mart's campaign to force her to work off-the-clock, failure to pay overtime, and failure to provide meal and rest periods.

13. Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in complex, class action litigation.

14. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to plaintiff and the Class are:

- a. Whether the work performed by plaintiff and the Class is included in the type of work Wal-Mart employed plaintiff and the Class to perform;
- b. Whether Wal-Mart has engaged in a pattern and/or practice in Pennsylvania of forcing or permitting plaintiff and the Class to work off-the-clock without compensation;
- c. Whether Wal-Mart has engaged in a pattern and/or practice in Pennsylvania of encouraging plaintiff and the Class not to report all time worked;
- d. Whether Wal-Mart has engaged in a pattern and/or practice in Pennsylvania of threatening plaintiff and the Class with discharge, demotion, or discrimination or otherwise intimidating plaintiff and the Class if they do not work off-the-clock;
- e. Whether Wal-Mart has failed to permit meal and rest periods as required by Pennsylvania law and Wal-Mart's stated policy and its company-wide agreements;
- f. Whether Wal-Mart has failed to properly compensate plaintiff and the Class in connection with interruptions in their meal or rest periods as set forth in Wal-Mart's stated policy and its company-wide agreements;

- g. Whether Wal-Mart has failed to keep true and accurate time records for all hours worked by its employees as required by Wal-Mart's policies and the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.108.
- h. Whether Wal-Mart failed to pay plaintiff and the Class for the work Wal-Mart required them to perform;
- i. Whether Wal-Mart violated the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.104;
- j. Whether Wal-Mart violated the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1 *et seq.*; and;
- k. The nature and extent of class-wide injury and the measure of damages for the injury.

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

16. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants.

17. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, the amounts at stake for many of the Class members, while substantial, are not great enough to enable them to maintain separate suits against defendant.

18. Without a class action, defendants will likely retain the benefit of their wrongdoing and will continue a course of action, which will result in further damages to plaintiff and the Class. Plaintiff envisions no difficulty in the management of this action as a class action.

### **PRELIMINARY ALLEGATIONS**

19. Wal-Mart is primarily engaged in the operation of mass merchandising stores, which serve customers primarily through the operation of Wal-Mart Stores and Sam's Clubs, which include warehouse membership clubs in the United States.

20. Wal-Mart operates 123 Wal-Mart stores (which includes Sam's Clubs) in Pennsylvania.

21. Wal-Mart claims that it respects its employees and that its treatment of its employees is crucial to its success. For example, the following statements may be found in Wal-Mart's Associate Handbook ("Handbook"):

"The roots of our success remain firmly grounded in three fundamental principles: respect for the individual; service to customers; and striving for excellence . . . WAL-MART has always been an organization whose strength lies in the belief that extraordinary results can come from empowering ordinary people. In the history of major U.S. corporations, few are more passionate about principles." (Emphasis added.) "There is absolutely no limit to what plain, ordinary working people can accomplish if they're given the opportunity, encouragement, and incentive to do their best."

"[The Sundown Rules] is a rule we take seriously at WAL-MART. In this busy place, where our jobs depend on one another, it's our standard to get things done

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<sup>1</sup> Under Wal-Mart's corporate policy, it retains payroll records for five years. In addition, under Pennsylvania law, Wal-Mart must keep payroll records for all employees for a period of three years from date of last entry. 43 P.S. § 333.108.

today – before the sun goes down . . . It supports Mr. Sam’s three basic beliefs: respect for the individual, customer service and striving for excellence.”

22. One of Wal-Mart’s largest expenses is the payroll of its hourly employees. Although Wal-Mart claims that it “respects the individual,” it has ridden the backs of its hourly employees to extreme profitability. One of Wal-Mart’s undisclosed secrets for its profitability is its creation and implementation of a system that encourages off-the-clock work for its hourly employees throughout its stores in Pennsylvania.

23. Beginning at a date unknown to plaintiff, but at least as early as March 19, 1998, defendant committed, and continues to commit, acts of wage abuse against its hourly employees including, but not limited to: forcing plaintiff and the Class to work off-the-clock, failing to pay plaintiff and the Class for their overtime worked and for interrupted meal and rest periods, and preventing plaintiff and the Class from taking and/or completing their rest/meal periods.

24. Wal-Mart’s clandestine program of forcing its hourly employees to work off-the clock is, in part, carried out through its culture. Wal-Mart gives employees work assignments that Wal-Mart knows or should know its employees cannot complete within their scheduled hours. Wal-Mart also places pressure on its employees to complete their work assignments through intimidation, threats of discharge, and demotion, while at the same time precluding such employees from clocking in for hours worked necessary to accomplish their assignments outside their regular work schedule. Consequently, employees must work after clocking out at the end of their shifts, before clocking in at the beginning of their shifts, and through meal and rest periods without being compensated for that time.

25. Wal-Mart’s store, district, club/general, and regional managers in Pennsylvania have financial incentives to suppress store expenses. These store, district, club/general, and regional managers’ financial compensation and bonuses are enhanced by reduction of store

expenses and lowering of overhead costs, the largest component of which is employee payroll. These store, district, club/general, and regional managers have adopted and are using methods to decrease compensation to be paid to Wal-Mart employees, including plaintiff and the Class. Among those methods are forcing employees to work off-the-clock, understaffing Wal-Mart stores, causing employees to work without receiving their required meal and rest periods, and manipulating time and wage records to reduce the amounts paid to Wal-Mart employees. It is through the direction and control of its store, district, club/general, and regional managers that Wal-Mart is able to carry out its wrongful wage and labor scheme.

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

27. Wal-Mart also pressures its management to encourage its employees not to record all their time actually worked and/or not to take their meal and rest periods. Indeed, Wal-Mart’s practice is to pay little or no overtime. Wal-Mart also awards financial bonuses to its store managers based on factors (*i.e.*, net profit ratios, which are affected by payroll ratios) that encourage such managers to grossly understaff their stores.

28. Wal-Mart’s scheme to underpay its hourly employees is also carried out in other ways. Employees who work overtime are “encouraged” not to clock their time. Also, managers assign hourly employees to tasks after such employees have clocked out.

29. In addition, Wal-Mart causes its employees to work through meal and rest periods and interrupts their meal and rest periods and requires them to perform work. On numerous

occasions, plaintiff and the Class clocked out to take their meal and rest periods and were then called back to work without having an opportunity to clock back in.

30. Wal-Mart takes advantage of the Class' ignorance of the law and fear of losing their jobs and forces them to work seven days a week, in direct violation of Wal-Mart's stated policies and the Class' employment contracts.

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

32. Wal-Mart knew or should have known that its employees were working off-the-clock by virtue of the fact that (a) its managers have been present in stores when off-the-clock work was occurring; (b) it assigns work that cannot be accomplished during an employee's shift and makes threats or intimidating remarks if the assigned work is not completed, but refuses to allow the employee to clock in for the additional time necessary to accomplish such work; and (c) it systematically understaffs its stores. Further, Wal-Mart knew or should have known that its employees were precluded from taking their rest or meal breaks. This knowledge is reflected, *inter alia*, in internal reports that are generated in the regular course of Wal-Mart business.

## **FIRST CAUSE OF ACTION**

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

33. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

34. The Class period for this cause of action is March 19, 1998, to the present.

35. At the time plaintiff and the Class accepted employment with Wal-Mart, they were hired to work at a fixed hourly wage rate. Plaintiff and the Class were expressly told the rate they would earn for each hour worked.

36. Plaintiff and the Class were provided with a copy of the Associate Handbook, which they were told embodied the terms of their employment and to which they were directed to refer if they had any questions.

37. The language in the Handbook setting forth Wal-Mart's policies regarding off-the-clock work, overtime and rest/meal periods constituted promises clear enough that plaintiff and the Class could reasonably believe an offer of employment pursuant to the terms contained in the writings and Wal-Mart's oral policies had been made.

38. Wal-Mart's oral policies and the Handbook were disseminated to plaintiff and the Class members in a manner to insure that they were aware of the contents and would reasonably believe it to be an offer of employment pursuant to the terms contained in the writings and Wal-Mart's oral policies.

39. Plaintiff and the Class accepted Wal-Mart's offer of employment by commencing and/or continuing work after learning of Wal-Mart's policies.

40. The employment contract between plaintiff and the Class and Wal-Mart arises from the Handbook, Wal-Mart's other express policies, and the parties' express agreements.

41. Plaintiff and the Class justifiably relied upon Wal-Mart's promises enunciated in the Handbook, Wal-Mart's other express policies, and the parties' express agreements concerning compensation, off-the-clock work, and rest and/or meal periods by adopting an expectation of specific treatment and continuing to work for defendant.

42. Wal-Mart foresaw or reasonably should have foreseen that plaintiff and the Class would rely upon said promises concerning compensation, off-the-clock work, and rest and/or meal periods by adopting an expectation of specific treatment and continuing to work for Wal-Mart.

43. Wal-Mart breached its contract with Plaintiff and the Class by not paying them for all hours worked, failing to pay wages according to Pennsylvania law, and failing to provide the required rest/meal periods pursuant to Pennsylvania law and the agreements between the parties. The Handbook provides:

“Always clock in before beginning your workday and at other appropriate times; ask your supervisor for specific details. If you forget to do this, notify your supervisor immediately so corrections 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)

“WAL-MART appreciates enthusiastic associates, but in no case are you to ever volunteer your off-duty time by performing work for our Company without clocking in.”

44. For many of the hours plaintiff and the Class worked “off-the-clock” in their tenure with Wal-Mart, they received no compensation from Wal-Mart. Wal-Mart's failure to pay plaintiff and the Class for the time worked off-the-clock violated the parties' employment agreements.

45. Plaintiff and the Class worked "off-the-clock" at the direction and behest of Wal-Mart, including Wal-Mart store managers. Plaintiff and the Class did not voluntarily perform this work, but rather it was undertaken with the expectation of earning their hourly wage, as promised in Wal-Mart policies and the Handbook.

46. Wal-Mart is liable to plaintiff and the Class for the damages incurred as a result of Wal-Mart's failure to pay plaintiff and the Class for their off-the-clock work.

## **SECOND CAUSE OF ACTION**

### **(Breach of Contract: Failure to Provide Rest and Meal Periods)**

47. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

48. The Class period for this cause of action is March 19, 1998 to the present.

49. The Wal-Mart corporate policy on Rest and Meal Periods provides:

**“Policy:**

“Associates will be provided break and meal periods during their scheduled work time consistent with the policy guidelines.”

**“Applies to:**

“This policy applies to all Associates, Salaried and Hourly, full and peak-time, and temporary.

**“Break (Rest) Periods**

Length- Break periods are 15 minutes in length. In Distribution Centers operating on the 10-hour, 4-days per week schedule, the length of breaks varies. Direct questions concerning Distribution Center breaks to that facility's Personnel Manager.

Number of Breaks- The number of breaks provided depends on the number of consecutive hours an Associate works:

Hours Worked	Number of Breaks
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Under 3 hours	0
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3 to 6 hours	1
Over 6 hours	2

Compensation- Associates receive compensation for break time at their regular rate of pay.

Scheduling Breaks- The Associate’s immediate Supervisor is responsible for scheduling breaks. Except in Distribution Centers, Hourly Associates are in expected to “clock out” at the start of their break and “clock in” when returning from break. Associates are requested not to leave the facility during breaks.”

**“Meal Period**

Length- Meal periods are a minimum of 30 minutes and with the Supervisor’s agreement, may be up to 60 minutes.

Eligibility for Meal Period- Associates who work more than six (6) consecutive hours will be provided a meal period.

Compensation- Associates generally do not receive compensation for meal periods. (See Interruption of Break and Meal Periods)

Associates in positions requiring that they be “locked in” and not leave the facility during the meal period do not receive compensation for the meal period except where required by state law. States that require compensation for meal periods for Associates “locked in” are: California, Connecticut, Massachusetts, New Jersey, North Dakota, Washington, Wisconsin.

Scheduling the Meal Period- The Associate’s immediate Supervisor is responsible for scheduling meal periods. Hourly Associates are expected to “clock out” at the start of their meal period and “clock in” when returning to work.”

**“Interruption of Break and Meal Periods**

“Supervisors and Management may not require nor request Associates to perform work during their break and mal periods, except in extreme emergencies where no other Associate is available. Hourly Associates whose break or meal period is interrupted to perform work will receive compensation for the

entire period at their regular rate of pay and be allowed an additional break or meal period.”

**“State Law**

Where state law requires additional or more frequent breaks/meal periods, state law will be followed.”

50. Under Wal-Mart’s Time Clock Punch Exception Reports, hourly paid employees who work for more than seven hours are guaranteed a one-hour meal period.

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

52. Wal-Mart breached these agreements by failing to provide plaintiff and the Class with the agreed rest and meal periods and failing to compensate them for the entire period at their regular rate of pay in instances where rest and meal periods were interrupted to perform work.

53. On many occasions, plaintiff and the Class were interrupted during their rest and meal periods to perform work. They did not receive compensation for that time worked and were not permitted to take additional rest or meal periods in accordance with the agreements between the parties.

54. Wal-Mart breached its express agreement with plaintiff and the Class to pay wages according to Pennsylvania law and to follow the mandates of Pennsylvania law.

55. Accordingly, Wal-Mart is liable to plaintiff and the Class for damages incurred as a result of Wal-Mart’s failure to provide the rest and meal periods and compensation in instances

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

### **THIRD CAUSE OF ACTION**

#### **(Violation of Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 *et seq.*)**

56. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

57. The Class period for this cause of action is March 19, 1998 to the present.

58. The Pennsylvania Minimum Wage Act of 1968, § 333.104(c), provides in relevant part that: “Employees shall be paid for overtime not less than one and one-half times the employee’s regular rate. . .”

59. By their actions alleged above, Wal-Mart violated the provisions of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 et seq.

60. As a result of Wal-Mart’s unlawful acts, plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with costs and attorneys fees pursuant to the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.113.

61. For many of the hours plaintiff and the Class worked "off-the-clock" during their tenure with Wal-Mart, they received no compensation from Wal-Mart. Had that work been completed "on-the-clock," plaintiff and the Class would have worked over forty hours a week and been entitled to be paid one and a half times their regular hourly wages for each hour over forty hours they worked.

#### **FOURTH CAUSE OF ACTION**

##### **(Violation of Wage Payment and Collection Act, 43 P.S. § 260.1 *et seq.*)**

62. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

63. The Class period for this cause of action is March 19, 1998 to the present.

64. The Wage Payment and Collection Act provides in relevant part (43 P.S. §260.3: "Every employer shall pay all wages, . . . , due to his employees on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period."

65. By its actions alleged above, Wal-Mart violated the provisions of the Wage Payment and Collection Act, 43 P.S. § 260.1 et seq.

66. As a result of Wal-Mart's unlawful acts, plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, and liquidated damages, together with costs and attorneys fees pursuant to the Wage Payment and Collection Act, 43 P.S. §§260.9a, 260.10.

67. For many of the hours plaintiff and the Class worked "off-the-clock" during their tenure with Wal-Mart, they received no compensation from Wal-Mart. Plaintiff and the Class were not paid for that time worked on the regular paydays nor were they compensated for overtime work in the subsequent pay period.

## **FIFTH CAUSE OF ACTION**

### **(Restitution)**

68. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

69. The Class period for this cause of action is March 19, 1998 to the present.

70. Wal-Mart, at all times material to this Class Action Complaint, was aware that plaintiff and the Class were working "off-the-clock" and/or through their meal and rest periods, as Wal-Mart supervisors directed plaintiff and the Class to do so to ensure that assigned work was completed. Moreover, Wal-Mart's computer systems produce internal reports showing the hours worked by employees and whether the employees were allowed their full meal and rest periods.

71. The hours that plaintiff and the Class worked "off-the-clock" and through meal and rest periods were at the direction and behest of Wal-Mart. Plaintiff and the Class did not perform this work voluntarily but with the expectation of earning their respective hourly wages and receiving the required meal/rest periods pursuant to their employment contract. Further, plaintiff and the Class provided a great deal of labor to Wal-Mart at no cost to Wal-Mart. Thus, Wal-Mart accepted and appreciated this benefit conferred and has never properly paid plaintiff and the Class for the labor provided.

72. Wal-Mart is liable to plaintiff and the Class for all hours worked "off-the-clock" for which Wal-Mart has not paid plaintiff and the Class.

73. Wal-Mart knew of and appreciated the benefit conferred upon it by its retention of plaintiff's and the Class' property.

74. Under the circumstances as alleged, it would be inequitable for Wal-Mart to continue to retain the property of plaintiff and the Class, entitling plaintiff and the Class to the relief set forth hereafter.

### **SIXTH CAUSE OF ACTION**

#### **(Unjust Enrichment – Quasi Contract)**

75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

76. The Class period for this cause of action is March 19, 1998 to the present.

77. That subsequent thereto Wal-Mart devised and implemented a plan to increase their profits fostering a scheme of securing uncompensated work from plaintiff and the Class as in more specifically alleged hereafter.

78. More specifically, contrary to all good faith and fair dealing, Wal-Mart instructed and encouraged its store/club managers, district and regional managers, to induce by threats or promises, plaintiff and the Class to work during the lunch hours and scheduled breaks, and other off-the-clock work, for which no compensation has been given.

79. That by reason of having secured the work and efforts of plaintiff and the Class with compensation, Wal-Mart enjoyed reduced over-head with respect to the retail operation where this occurred and therefore realized additional profits at such locations, to their own benefit and to the detriment of plaintiff and the Class, and that it retained and continues to retain such benefits contrary to the fundamental principles of justice, equity and good conscience.

80. Moreover, Wal-Mart rewarded its store/club managers, district and regional managers, for effecting its plan's purpose, enlarging their compensation based upon the increase of profit alleged in the proceeding paragraph, effectively sharing with them the moneys Wal-

Mart received by reason of this scheme, which benefits they retain contrary to the fundamental principles of justice, equity and good conscience.

81. That accordingly, plaintiff and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by Wal-Mart.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on behalf of herself and the Class, prays for judgment against defendants as follows:

1. Determining that this action may proceed and be maintained as a class action;
2. For the First and Second Causes of Action:
  - a. For damages according to proof at trial;
  - b. Awarding the Named Plaintiff and the Class pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid wages from the date such wages were earned and due;
3. For the Third Cause of Action:
  - a. An award to Plaintiff and the Class of damages for the amount of unpaid off-the-clock and overtime compensation, including interest thereon, and penalties subject to proof;
  - b. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to Pennsylvania Minimum Wage Act.
4. For the Fourth Cause of Action:

- a. An award to Plaintiff and the Class of damages for the amount of unpaid off-the-clock and overtime compensation, including interest thereon, and penalties subject to proof;
  - b. An award to Plaintiff and the Class of liquidated damages in an amount equal to twenty-five percent of the total amount of wages due pursuant to the Wage Payment and Collection Act, 43 P.S. §260.10.
  - c. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to the Wage Payment and Collection Act.
5. For the Fifth Cause of Action:
  - a. An order imposing a constructive trust upon the Defendants to compel them to transfer Plaintiff's and the Class members' wages that have been wrongfully obtained and held by Defendants to Plaintiff and the Class;
6. For the Sixth Cause of Action:
  - a. For general damages according to proof;
  - b. For special damages according to proof;
7. For the Seventh Cause of Action:
  - a. For compensatory damages according to proof;
8. Awarding Plaintiff and members of the Class attorneys' fees and costs of suit to the extent permitted by law; and
9. All such other relief as this Court may deem proper.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury for all issues so triable.

Dated: August 30, 2004

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