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

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

No. 01-2-24553-8 SEA

Plaintiffs,)

DEFENDANT’S ANSWER TO
THIRD AMENDED COMPLAINT;
AFFIRMATIVE AND OTHER
DEFENSES

v.)

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

Defendant.)

Defendant, Wal-Mart Stores, Inc., d/b/a Wal-Mart, d/b/a Sam’s Club d/b/a

SUPERCENTER (herein called “Wal-Mart”) answers plaintiffs’ Third Amended Complaint as follows:

1.1 Answering Paragraph 1.1 of the Third Amended Complaint, Wal-Mart admits that Debra Barnett, Georgie Hartwig, and Bella Blaubergs are former employees, but denies that any of them is a proper representative of the putative class identified therein, whether in Washington or any other venue and denies, as well, each and every remaining allegation as untrue.

2.1 Answering Paragraph 2.1 of the Third Amended Complaint, Wal-Mart admits that it transacts business within King County. Wal-Mart denies the allegations referenced by plaintiffs. Wal-Mart is without knowledge to admit or deny the residence of plaintiff Barnett.

1 2.2. Answering Paragraph 2.2 of the Third Amended Complaint, Wal-Mart admits
2 that it transacts business in King County, Washington. Wal-Mart denies all remaining
3 allegations contained therein as untrue and/or inaccurate.

4 2.3 Answering Paragraph 2.3 of the Third Amended Complaint, Wal-Mart is
5 without knowledge to admit or deny the total amount in controversy and avers that the
6 remaining allegations are conclusions as opposed to well-pled facts, and therefore, require no
7 response.

8 3.1 Answering Paragraph 3.1 of the Third Amended Complaint, Wal-Mart admits
9 that plaintiff Barnett was an employee of Wal-Mart. Wal-Mart denies all other allegations
10 contained therein as untrue.

11 3.2 Answering Paragraph 3.2 of the Third Amended Complaint, Wal-Mart admits
12 that plaintiff Hartwig was an employee of Wal-Mart. Wal-Mart denies all other allegations
13 contained therein as untrue.

14 3.3 Answering Paragraph 3.3 of the Third Amended Complaint, Wal-Mart admits
15 that plaintiff Blaubergs was an employee of Wal-Mart. Wal-Mart denies all other allegations
16 contained therein as untrue.

17 3.4 Wal-Mart admits the accuracy of its state of incorporation and headquarters and
18 that it employs over one thousand employees in Washington. Wal-Mart further admits that it
19 owns and operates stores throughout the state of Washington. Wal-Mart denies the accuracy of
20 all other allegations contained in paragraph 3.4.

21 3.5 Answering Paragraph 3.5 of the Third Amended Complaint, Wal-Mart admits
22 that Sam's Club stores are subsidiaries of Wal-Mart, Inc., and that there are two Sam's Club
23 stores in Washington.

24 4.1 Answering Paragraph 4.1 of the Third Amended Complaint, Wal-Mart avers that
25 it is a conclusion, as opposed to well-pled facts, and therefore, requires no response, except that
26 Wal-Mart denies that plaintiffs are proper representatives of the putative class, and denies that
27

1 the putative class is amenable to certification under Washington Civil Rule (“CR”) 23 and
2 denies that plaintiffs can satisfy the requirements of CR 23.

3 4.2 Answering Paragraph 4.2 of the Third Amended Complaint, Wal-Mart denies
4 the allegations contained therein as untrue and/or inaccurate.

5 4.3 Answering Paragraph 4.3 of the Third Amended Complaint, Wal-Mart denies
6 the allegations contained therein as untrue.

7 4.4. Answering Paragraph 4.4 of the Third Amended Complaint, Wal-Mart denies
8 the allegations contained therein as untrue.

9 4.5 Answering Paragraph 4.5 of the Third Amended Complaint and its sub-
10 paragraphs (a) through (n) inclusive, Wal-Mart avers that the allegations contained therein are
11 conclusions of law, as opposed to well-pled facts, and therefore, require no response, except
12 that Wal-Mart denies the appropriateness of the putative class and denies that any common
13 questions of law would predominate over the individual circumstances that permeate Plaintiffs’
14 underlying allegations of Wal-Mart’s alleged conduct.

15 4.6 Answering Paragraph 4.6 of the Third Amended Complaint, Wal-Mart denies
16 the allegations contained therein as untrue.

17 4.7 Answering Paragraph 4.7 of the Third Amended Complaint, Wal-Mart denies
18 the allegations contained therein as untrue.

19 4.8 Answering Paragraph 4.8 of the Third Amended Complaint, Wal-Mart denies
20 the allegations contained therein as untrue.

21 4.9 Answering Paragraph 4.9 of the Third Amended Complaint, Wal-Mart denies
22 the allegations contained therein as untrue.

23 5.1 Answering Paragraph 5.1 of the Third Amended Complaint, Wal-Mart denies
24 the allegations contained therein as untrue.

25 5.2 Answering Paragraph 5.2 of the Third Amended Complaint, Wal-Mart denies
26 the allegations contained therein as untrue.
27

1 5.3 Answering Paragraph 5.3 of the Third Amended Complaint, Wal-Mart denies
2 the allegations contained therein as untrue.

3 5.4 Answering Paragraph 5.4 of the Third Amended Complaint, Wal-Mart denies
4 the allegations contained therein as untrue.

5 5.5 Answering Paragraph 5.5 of the Third Amended Complaint, Wal-Mart denies
6 the allegations contained therein as untrue.

7 5.6 Answering Paragraph 5.6 of the Third Amended Complaint, Wal-Mart denies
8 the allegations contained therein as untrue.

9 5.7 Answering Paragraph 5.7 of the Third Amended Complaint, Wal-Mart denies
10 the allegations contained therein as untrue.

11 5.8 Answering Paragraph 5.8 of the Third Amended Complaint, Wal-Mart denies
12 the allegations contained therein as untrue.

13 5.9 Answering Paragraph 5.9 of the Third Amended Complaint, Wal-Mart denies
14 the allegations contained therein as untrue.

15 6.1 Answering Paragraph 6.1 of the Third Amended Complaint, Wal-Mart
16 incorporates its answers, denials, and responses to Paragraphs 1.1 through 5.9, as if fully
17 restated herein.

18 6.2 Answering Paragraph 6.2 of the Third Amended Complaint, Wal-Mart denies
19 the allegations contained therein as untrue.

20 6.3 Answering Paragraph 6.3 of the Third Amended Complaint, Wal-Mart denies
21 the allegations contained therein as untrue.

22 6.4 Answering Paragraph 6.4 of the Third Amended Complaint, Wal-Mart denies
23 the allegations contained therein as untrue.

24 6.5 Answering Paragraph 6.5 of the Third Amended Complaint, Wal-Mart avers that
25 the document speaks for itself, but otherwise admits the allegations contained therein.

26 6.6 Answering Paragraph 6.6 of the Third Amended Complaint, Wal-Mart denies
27 the allegations contained therein as untrue.

1 6.7 Answering Paragraph 6.7 of the Third Amended Complaint, Wal-Mart denies
2 the allegations contained therein as untrue.

3 6.8 Answering Paragraph 6.8 of the Third Amended Complaint, Wal-Mart denies
4 the allegations contained therein as untrue.

5 7.1 Answering Paragraph 7.1 of the Third Amended Complaint, Wal-Mart
6 incorporates its answers, denials, and responses to Paragraphs 1.1 through 6.8, as if fully
7 restated herein.

8 7.2 Answering Paragraph 7.2 of the Third Amended Complaint, Wal-Mart denies
9 the allegations contained therein as untrue.

10 7.3 Answering Paragraph 7.3 of the Third Amended Complaint, Wal-Mart denies
11 the allegations contained therein as untrue.

12 7.4 Answering Paragraph 7.4 of the Third Amended Complaint, Wal-Mart denies
13 the allegations contained therein as untrue.

14 8.1 Answering Paragraph 8.1 of the Third Amended Complaint, Wal-Mart
15 incorporates its answers, denials, and responses to Paragraphs 1.1 through 7.4, as if fully
16 restated herein.

17 8.2 Answering Paragraph 8.2 of the Third Amended Complaint, Wal-Mart denies
18 the allegations contained therein as untrue to the extent that they do not represent a complete
19 and accurate quotation of the material referenced.

20 8.3 Answering Paragraph 8.3 of the Third Amended Complaint, Wal-Mart denies
21 the allegations contained therein as untrue.

22 8.4 Answering Paragraph 8.4 of the Third Amended Complaint, Wal-Mart denies
23 the allegations contained therein as untrue.

24 9.1 Answering Paragraph 9.1 of the Third Amended Complaint, Wal-Mart
25 incorporates its answers, denials, and responses to Paragraphs 1.1 through 8.4, as if fully
26 restated herein.

1 9.2 Answering Paragraph 9.2 of the Third Amended Complaint, Wal-Mart avers that
2 the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
3 therefore require no response, and Wal-Mart further denies the allegations contained therein as
4 untrue to the extent that they do not represent a complete and accurate quotation of the material
5 referenced.

6 9.3 Answering Paragraph 9.3 of the Third Amended Complaint, Wal-Mart denies
7 the allegations contained therein as untrue.

8 9.4 Answering Paragraph 9.4 of the Third Amended Complaint, Wal-Mart denies
9 the allegations contained therein as untrue.

10 10.1 Answering Paragraph 10.1 of the Third Amended Complaint, Wal-Mart
11 incorporates its answers, denials, and responses to Paragraphs 1.1 through 9.4, as if fully
12 restated herein.

13 10.2 Answering Paragraph 10.2 of the Third Amended Complaint, Wal-Mart avers
14 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
15 therefore require no response, and Wal-Mart further denies the allegations contained therein as
16 untrue to the extent that they do not represent a complete and accurate representation of the
17 material referenced.

18 10.3 Answering Paragraph 10.3 of the Third Amended Complaint, Wal-Mart denies
19 the allegations contained therein as untrue.

20 10.4 Answering Paragraph 10.4 of the Third Amended Complaint, Wal-Mart denies
21 the allegations contained therein as untrue.

22 11.1 Answering Paragraph 11.1 of the Third Amended Complaint, Wal-Mart
23 incorporates its answers, denials, and responses to Paragraphs 1.1 through 10.4, as if fully
24 restated herein.

25 11.2 Answering Paragraph 11.2 of the Third Amended Complaint, Wal-Mart avers
26 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
27 therefore require no response, and Wal-Mart further denies the allegations contained therein as

1 untrue to the extent that they do not represent a complete and accurate quotation of the material
2 referenced.

3 11.3 Answering Paragraph 11.3 of the Third Amended Complaint, Wal-Mart avers
4 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
5 therefore require no response, and Wal-Mart further denies the allegations contained therein as
6 untrue to the extent that they do not represent a complete and accurate representation of the
7 material referenced, and denies all other allegations incorporated therein as untrue.

8 11.4 Answering Paragraph 11.4 of the Third Amended Complaint, Wal-Mart denies
9 the allegations contained therein as untrue.

10 12.1 Answering Paragraph 12.1 of the Third Amended Complaint, Wal-Mart
11 incorporates its answers, denials, and responses to Paragraphs 1.1 through 11.4, as if fully
12 restated herein.

13 12.2 Answering Paragraph 12.2 of the Third Amended Complaint, Wal-Mart avers
14 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
15 therefore require no response, and Wal-Mart further denies the allegations contained therein as
16 untrue to the extent that they do not represent a complete and accurate quotation of the material
17 referenced.

18 12.3 Answering Paragraph 12.3 of the Third Amended Complaint, Wal-Mart avers
19 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
20 therefore require no response, and Wal-Mart further denies the allegations contained therein as
21 untrue to the extent that they do not represent a complete and accurate representation of the
22 material referenced.

23 12.4 Answering Paragraph 12.4 of the Third Amended Complaint, Wal-Mart denies
24 the allegations contained therein as untrue.

25 12.5 Answering Paragraph 12.5 of the Third Amended Complaint, Wal-Mart avers
26 that the allegations contained therein are conclusions of law, as opposed to well-pled facts, and
27 therefore require no response, and Wal-Mart further denies the allegations contained therein as

1 untrue to the extent that they do not represent a complete and accurate representation of the
2 material referenced, and denies all other allegations incorporated therein as untrue.

3 12.6 Answering Paragraph 12.6 of the Third Amended Complaint, Wal-Mart denies
4 the allegations contained therein as untrue.

5 13.1 Answering Paragraph 13.1 of the Third Amended Complaint, Wal-Mart
6 incorporates its answers, denials, and responses to Paragraphs 1.1 through 12.6, as if fully
7 restated herein.

8 13.2 Answering Paragraph 13.2 of the Third Amended Complaint, Wal-Mart denies
9 the allegations contained therein as untrue.

10 13.3 Answering Paragraph 13.3 of the Third Amended Complaint, Wal-Mart denies
11 the allegations contained therein as untrue.

12 13.4 Answering Paragraph 13.4 of the Third Amended Complaint, Wal-Mart denies
13 the allegations contained therein as untrue.

14 13.5 Answering Paragraph 13.5 of the Third Amended Complaint, Wal-Mart denies
15 the allegations contained therein as untrue.

16 **WAL-MART'S AFFIRMATIVE AND OTHER DEFENSES**

17 14. Plaintiffs fail to state a claim upon which relief can be granted.

18 15. Plaintiffs lack standing to seek injunctive relief.

19 16. Plaintiffs have knowingly submitted to any alleged wage loss violation,
20 including knowingly submitting to any alleged wage loss violation under RCW 49.52.070.

21 17. Plaintiffs have failed to state facts entitling them to any exemplary damages.

22 18. Some or all of plaintiffs' claims are barred by the statute of frauds.

23 19. Some or all of plaintiffs' claims are barred by the doctrines of waiver, estoppel,
24 ratification, acquiescence, accord and satisfaction, settlement, consent, agreement, payment and
25 release.

26 20. Some or all of plaintiffs' claims are barred by judicial estoppel arising out of
27 bankruptcy proceedings.

1 21. Plaintiffs' claims, in whole or in part, are barred by the applicable statute of
2 limitations.

3 22. Plaintiffs' claims, in whole or in part, are barred by the doctrine of laches.

4 23. Plaintiffs failed to mitigate their damages, if any they sustained.

5 24. The putative class cannot be certified under Rule 23, given the necessarily
6 individualized nature of the damage claims, which predominate over common questions of law
7 and fact.

8 25. Plaintiffs' state law breach of contract and consumer protection act claims are
9 subsumed, in whole or in part, by the Washington Minimum Wage Act, RCW Ch. 49.46.

10 26. Plaintiffs' claims are barred under the de minimis doctrine.

11 27. Plaintiffs have no private right of action to assert state law claims alleging meal
12 break violations.

13 28. Plaintiffs' alleged claims and remedies must be denied in whole or part because
14 they are duplicative and cumulative.

15 29. Some or all of the alleged work activities described in plaintiffs' Third Amended
16 Complaint are not compensable and/or are excluded from measured working time.

17 30. Any act or omission alleged to have given rise to plaintiffs' Third Amended
18 Complaint in this action was in good faith and based on a reasonable belief that Wal-Mart was
19 in compliance with all applicable wage and hour requirements.

20 31. Any alleged act or omission by Wal-Mart complained of in plaintiffs' Third
21 Amended Complaint was in good faith in conformity with and reliance upon applicable
22 administrative agency regulations, orders, rulings, statements, approvals, interpretations,
23 practices and/or enforcement policies.

24 32. Any alleged act or omission by Wal-Mart complained of in plaintiffs' Third
25 Amended Complaint was not intentional, but rather was undertaken in good faith.

26 33. Plaintiffs do not have standing to assert claims for class members under RCW
27 49.52.070 as they lack necessary wage assignments.

