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26 *Attorneys for Plaintiffs*

27 UNITED STATES DISTRICT COURT
28 NORTHERN DISTRICT OF CALIFORNIA

29 JOYCE CLARK, SUZANNE HEWEY, KRISTY FARIAS,
30 LUCRETIA JOHNSON, HILDA TODD, and KRISTIN
31 MARSH, on behalf of themselves and all others similarly
32 situated,

33 Plaintiffs,

34 v.

35 WAL-MART STORES, INC.,

36 Defendant.

Case No. C-01-2252-CRB
[PROPOSED] COMPLAINT IN
INTERVENTION
[CLASS ACTION]
DEMAND FOR JURY TRIAL

1 Intervenor-Plaintiffs Joyce Nadine Clark, Suzanne Hewey, Kristy Farias, Lucretia Johnson,
2 Hilda Todd, Kristin Marsh (“Intervenor-Plaintiffs”), on behalf of themselves and all others similarly
3 situated, allege, upon personal knowledge as to themselves and upon information and belief as to
4 other matters, as follows:

5 **INTRODUCTION**

6
7 1. Over 15 years ago, this action was commenced as a national class against Wal-Mart
8 Stores, Inc., the largest retailer in the world and the largest private employer in the United States.
9 The action alleged that female employees in Wal-Mart and Sam’s Club retail stores were
10 discriminated against based on their gender, with respect to pay and promotion to management track
11 positions, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

12 2. In 2004, this Court certified a national class of female employees challenging retail
13 store pay and management promotion policies and practices under Fed. R. Civ. Pro 23(b)(2). The
14 United States Supreme Court reversed that class certification order on June 20, 2011. The high
15 court, issuing new guidelines for class actions and Title VII employment discrimination cases, held
16 that the national class could not be certified, based on the facts it outlined in its opinion. The
17 Supreme Court did not rule on the merits of the action, but only ruled that the class as certified could
18 not proceed. It did not preclude prosecution of a class that was consistent with its newly announced
19 guidelines and standards.

20 3. Intervenor-Plaintiffs bring this action in accordance with those new guidelines.
21 Rather than challenging Wal-Mart’s discriminatory practices on a national level, this action alleges
22 claims on behalf of three regional classes of present and former female Wal-Mart and Sam’s Club
23 retail store employees. The members of each class were subjected to gender discrimination as a
24 result of the specific policies and practices in place in their particular region. The three regions at
25 issue in this case, all based in California (“California Regions”), consist of:

- 26 a. Wal-Mart Region 16—approximately 105 Wal-Mart retail stores located in
27 southern California and some bordering states;
28 b. Wal-Mart Region 19—approximately 97 Wal-Mart retail stores located in

1 northern California and some bordering states; and

2 c. Sam’s Club Region 5—one of only 6 Sam’s Club regions in the United States,
3 consisting of approximately 73 Sam’s Club retail stores, located in California and 13 other
4 western states.

5 4. In each of the above California Regions, Wal-Mart maintained a pattern or practice of
6 gender discrimination in compensation and promotion. And, in each of the above California
7 Regions, the compensation and promotion policies and practices of Wal-Mart had a disparate
8 impact, not justified by business necessity, on its female employees in the Region. Plaintiffs allege
9 gender discrimination as follows:

- 10 a. Denial of equal pay for hourly retail store positions;
11 b. Denial of equal pay for salaried management positions up to and including Co-
12 Manager;
13 c. Denial of equal opportunities for promotion to management track positions up
14 to and including Co-Manager.

15 5. The class membership period commences on December 26, 1998, 300 days prior to
16 the earliest class EEOC charge by a former class member. Based on evidence produced in discovery
17 in this matter, interviews with class members and witnesses, and publicly available information,
18 plaintiffs allege that the challenged practices, and therefore the class period, extends at least until
19 June 2004, and, on information and belief, they allege that members of the class have been denied
20 equal opportunities for promotion and equal pay through the present. With renewed discovery,
21 plaintiffs will plead more specific time periods for each of the claims.

22 6. This action seeks an end to Wal-Mart’s discriminatory policies and practices in the
23 California Regions, make whole relief for the class, and punitive damages.

24 **JURISDICTION AND VENUE**

25 7. Plaintiffs’ claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C.
26 §§ 2000e, et seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e-5(f), 28
27 U.S.C. §§ 1331 and 1343(a)(4).
28

1 the Beaumont, CA store; and in San Bernardino County in Wal-Mart Store #1914 (Highland, CA),
2 all in Region 16.

3 13. Intervenor-Plaintiff Suzanne Hewey is a woman and a resident of La Habra,
4 California. She was employed in Riverside and Orange Counties by Wal-Mart Stores, Inc. from
5 October 2002 to December 2008 in stores in Corona and La Habra, California, along with other
6 stores in Region 16. Plaintiff is informed and believes she is eligible for rehire.

7 14. Intervenor-Plaintiff Kristy Farias is a woman and a resident of Indio, California. She
8 was employed in Riverside County by Wal-Mart Stores, Inc. from November 1998 to January 2012
9 in Store #1805 (La Quinta, CA) in Region 16. Plaintiff is informed and believes she is eligible for
10 rehire.

11 15. Intervenor-Plaintiff Lucretia Johnson is a woman and a resident of Antioch,
12 California. She was employed in Contra Costa County by Wal-Mart Stores, Inc. from August 1993
13 to December 2011 in Sam's Club Store #6612 in Concord, California, part of Sam's Club Region 5.
14 Plaintiff was on leave after July 31, 2009 until the end of her employment in 2011. Plaintiff is
15 informed and believes she is eligible for rehire.

16 16. Intervenor-Plaintiff Hilda Todd is a woman and a resident of Concord, California.
17 She was employed in Contra Costa County by Wal-Mart from the mid-1990's to the present in
18 Sam's Club Store #6612 in Concord, California, part of Sam's Club Region 5.

19 17. Intervenor-Plaintiff Kristin Marsh is a woman and resident of Hollister, California.
20 She was employed in Monterey and Santa Clara Counties by Wal-Mart in California from 1994 to
21 July 2007, in Store 2458 (Salinas, CA) and Store 2002 (Gilroy, CA), both in Region 19.

22 18. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with stores throughout
23 California. Its corporate headquarters is located in Bentonville, Arkansas. Wal-Mart Stores, Inc.
24 operates retail stores doing business as Wal-Mart Discount Stores, Wal-Mart Supercenters and
25 Sam's Clubs Stores (collectively "Wal-Mart") in California.

26 **CLASS ALLEGATIONS**

27 19. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure
28

1 on behalf of the following regional classes:

2 a. Wal-Mart Region 16 Class—all female employees of Wal-Mart retail stores
3 located in Wal-Mart Region 16, excluding Pharmacists and managers at Store Manager level
4 and above, who were: (1) denied equal opportunities for promotion to management track
5 positions up to and including Store Manager; (2) denied equal pay for hourly retail store
6 positions; or (3) denied equal pay for salaried management positions up to and including Co-
7 Manager.

8 i. Region 16 Injunctive Relief Subclass—All women in the Wal-Mart
9 Region 16 Class who are currently, or who may in the future be, employed at any Wal-Mart
10 retail store located in Region 16, from now until the time of judgment.

11 ii. Region 16 Monetary Relief Subclass—All women in the Wal-Mart
12 Region 16 Class who were employed at any Wal-Mart retail store located in Region 16 at any
13 time from December 26, 1998 through the time of judgment.

14 b. Wal-Mart Region 19 Class—all female employees of Wal-Mart retail stores
15 located in Wal-Mart Region 19, excluding Pharmacists and managers at Store Manager level
16 and above, who were: (1) denied equal opportunities for promotion to management track
17 positions up to and including Store Manager; (2) denied equal pay for hourly retail store
18 positions; or (3) denied equal pay for salaried management positions up to and including Co-
19 Manager.

20 i. Region 19 Injunctive Relief Subclass—All women in the Wal-Mart
21 Region 19 Class who are currently employed, or who may in the future be employed, at any
22 Wal-Mart retail store located in Region 19 from now until the time of judgment.

23 ii. Region 19 Monetary Relief Subclass—All women in the Wal-Mart
24 Region 19 Class who were employed at any Wal-Mart retail store located in Region 19 at any
25 time from December 26, 1998 through the time of judgment.

26 c. Sam’s Club Region 5 Class—all female employees of Sam’s Club retail stores
27 located in Sam’s Club Region 5, excluding Pharmacists and managers at Store Manager level
28 and above, who were: (1) denied equal opportunities for promotion to management track

1 positions up to and including Store Manager; (2) denied equal pay for hourly retail store
2 positions; or (3) denied equal pay for salaried management positions up to and including Co-
3 Manager.

4 i. Region 5 Injunctive Relief Subclass—All women in the Sam’s Club
5 Region 5 Class who are currently, or who may in the future be, employed at any Sam’s Club
6 retail store located in Region 5 from now until the time of judgment.

7 ii. Region 5 Monetary Relief Subclass—All women in the Sam’s Club
8 Region 5 Class who were employed at any Sam’s Club retail store located in Region 5 at any
9 time from December 26, 1998 through the time of judgment.

10 20. Intervenor-Plaintiffs are members of the classes they seek to represent: Intervenor-
11 Plaintiffs Clark, Hewey and Farias are members of the Region 16 class; Plaintiffs Johnson and Todd
12 are members of the Sam’s Club Region 5 class; Intervenor-Plaintiff Marsh is a member of the
13 Region 19 class.

14 21. The members of the classes are sufficiently numerous that joinder of all members is
15 impracticable. Intervenor-Plaintiffs are informed and believe that each regional class exceeds
16 30,000 women.

17 22. There are questions of law and fact common to the classes, which predominate over
18 individual questions and will be subject to common proof. In each Region, Intervenor-Plaintiffs
19 allege that Wal-Mart cultivates through its Management Team a work environment that
20 discriminates against female employees, which is demonstrated by its policies, a pattern or practice
21 of discrimination, and objective statistical analysis. The common questions of law and fact for each
22 regional class include, without limitation: whether Wal-Mart, through its managers with final
23 authority to make the challenged decisions, has engaged in a general policy of discrimination
24 evidenced by a pattern or practice of discrimination in pay and in management track promotions
25 against its female employees; whether there are statistical patterns adverse to female employees in
26 pay and in management track promotions; whether Wal-Mart’s policies have had an adverse impact
27 upon the class members and, if so, whether this impact can be justified by business necessity;
28 whether the failure of Wal-Mart’s management in each Region to prevent, investigate, or properly

1 respond to evidence of complaints of discrimination in the workplace violates Title VII; whether
2 Wal-Mart is liable for a continuing, systemic violation of Title VII; and whether injunctive relief and
3 punitive damage relief are warranted.

4 23. The claims alleged by the Intervenor-Plaintiffs are typical of the claims of the classes
5 and subclasses. Each Intervenor-Plaintiff has worked in one or more Wal-Mart retail stores located
6 in Wal-Mart Region 16, Wal-Mart Region 19, or Sam’s Club Region 5, and has been subjected to
7 the discriminatory policies and practices alleged herein. And each Intervenor-Plaintiff asks for relief
8 typical to that sought on behalf of the subclass she seeks to represent.

9 24. The named plaintiffs will fairly and adequately represent and protect the interests of
10 the classes.

11 25. The Injunctive Relief Class is properly maintainable under Federal Rule of Civil
12 Procedure Rule 23(b)(2) because defendant has acted or refused to act on grounds generally
13 applicable to this class, thereby making appropriate final injunctive relief or corresponding
14 declarative relief with respect to this class as a whole.

15 26. The named Intervenor-Plaintiffs will fairly and adequately represent and protect the
16 interests of the classes. Each Intervenor-Plaintiff has interests that are coextensive with those of the
17 members of the subclass that she seeks to represent. Further, each Intervenor-Plaintiff is willing and
18 able to fairly and vigorously represent the interests of the members of the subclass she seeks to
19 represent while pursuing her own similar individual claims.

20 27. The Injunctive Relief Subclasses are properly maintainable under Federal Rule of
21 Civil Procedure 23(b)(2) because Wal-Mart has acted or refused to act on grounds generally
22 applicable to each subclass, thereby making appropriate final injunctive relief or corresponding
23 declarative relief with respect to each subclass as a whole.

24 28. The Monetary Relief Subclasses are properly maintainable under Federal Rule of
25 Civil Procedure 23(b)(3) because questions of law and fact common to the subclasses predominate
26 over any questions affecting only individual members, and a class action is superior to other
27 available methods for the fair and efficient adjudication of this case.

28 29. Alternatively, class-wide liability and punitive damages liability under the theories

1 advanced in this action are properly certified under Rule 23(c)(4) for each Monetary Relief Subclass
 2 because such claims present only common issues, the resolution of which would advance the
 3 interests of the parties in an efficient manner.

4 30. The costs that will be involved in proving Wal-Mart's pattern and practice of
 5 discrimination makes it impracticable for the Intervenor-Plaintiffs and class members to pursue their
 6 claims individually. Thus, a class action is superior to other available means for fairly and
 7 efficiently adjudicating the claims of the Intervenor-Plaintiffs and the class members

8 **ORGANIZATIONAL AND STORE STRUCTURE WITHIN CALIFORNIA REGIONS**

9 31. *Store Formats*—Within Wal-Mart Region 16 and Wal-Mart Region 19, Wal-Mart has
 10 operated in three primary formats—Wal-Mart Discount Stores, Wal-Mart Supercenters; and Wal-
 11 Mart Neighborhood Markets. Within Sam's Club Region 5, Wal-Mart has operated in only one
 12 format—Sam's Clubs. The basic organizational structure for the retail stores within each Region has
 13 been the same throughout the Region.

14 32. *Common Hourly Jobs Within Stores*—The stores within each Region use common job
 15 titles and job descriptions, and the same job hierarchies, throughout the Region.

16 33. *Most Common Positions*—While there are numerous job titles at Wal-Mart, the
 17 majority of hourly employees have worked as sales workers, cashiers, department managers and
 18 stockers. The most common management position is assistant manager.

19 34. *Common Department Structure*—Stores within each Region have been divided into
 20 numerous departments, which are staffed by hourly paid employees. Some departments have been
 21 designated as specialty departments. In each Region, the departmental structure in the stores is the
 22 same throughout the Region.

23 35. *Common Management Jobs*—With the exception of Support Manager, management
 24 positions within each Region are salaried. Within each Region, each store has Assistant Managers,
 25 while larger stores have had one or more Co-Managers who supervise Assistant Managers and other
 26 staff. All stores have Store Managers who are in charge of the store. Specialty department managers,
 27 who report to Store Managers, also report to District and Regional Specialty Managers above the
 28

1 store level.

2 36. *District Organization*—Stores within each Region are grouped into districts
3 consisting of at least six stores that are supervised by District Managers.

4 37. *District Manager’s Role*—Within each Region, District Managers are responsible for
5 ensuring store compliance with company policies and culture. District Managers are based in their
6 districts and spend their time visiting and monitoring the stores in their districts and reviewing all
7 facets of the store operations. District Managers also have authority to make or approve
8 compensation and promotion decisions for the stores within their district.

9 38. *Regional Organization*—Each Region consists of multiple districts that are headed by
10 a Regional Vice President.

11 39. *Role of Regional Vice President*—The Regional Vice President of each Region
12 monitors and implements corporate and regional policies regarding compensation and promotion,
13 and makes decisions regarding the pay and promotion of employees working within the Region. In
14 each Region, the Regional Vice President regularly meets with District Managers and receives
15 weekly reports from District Managers about the activities in the Region stores they supervise. Each
16 Regional Vice President is charged with the ultimate responsibility to ensure that personnel
17 decisions in his Region are made in a consistent and lawful manner and has the authority to direct
18 changes to personnel decisions.

19 40. *Regional Personnel Manager’s Role*—Each Region has a Regional Personnel
20 Manager, who assists the Regional Vice President and District Managers in making pay and
21 promotion decisions for employees working within the Region’s stores.

22 41. *Divisional Organization*—Each Regional Vice President reports to a Divisional
23 Senior Vice President.

24 42. *Management Team*—Each Region has a “Management Team” consisting of the
25 Regional Manager, District Managers, Regional Vice President, and Regional Personnel Manager
26 that provides direction, oversight, and approval of pay and promotion practices at the stores within
27 the Region.

28

COMPENSATION DISCRIMINATION WITHIN CALIFORNIA REGIONS

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43. *Common Compensation Policies*—Within each Region, compensation of store-based employees has been set based upon a common set of guidelines from the Management Team that are applied consistently throughout the Region and establish basic standards for setting pay rates at hire and subsequent pay adjustments of hourly and salaried employees, hereby referred to as Pay Guidelines.

44. *Hourly Job Categories*—Within each Region, all hourly positions have been grouped into various job categories, which are uniform throughout the Region. All employees with the same job title, such as sales associates, are placed in the same job category regardless of the department they work in.

45. *Job Category Pay Rates*—Within each Region, the minimum pay levels at hire (“start rates”) for each job category have been established for each regional store with the approval of the Management Team. Thereafter, an employee’s pay level may be adjusted: 1) after an initial probationary period; 2) if the employee is promoted to a higher job class or into management; 3) on an annual basis if the employee satisfies minimum performance standards; or 4) if the employee has been awarded a special “merit” raise.

46. *Process for Setting Hourly Pay*—Within each Region, the Store Manager of each retail store has the initial responsibility to set pay rates for that store’s individual hourly employees within the pay guidelines, subject to a number of constraints set by the Management Team. When a Store Manager sets a pay rate above or below the guidelines, the rate is called an “exception” and is subject to the approval of the Management Team. After 2004, increasing constraints were placed on establishing the initial pay rate.

47. *Hourly Pay Exceptions*—Through 2004, the pay rate for a new employee may be set up to a maximum of \$2 per hour above the start rate, but if the new employee’s rate is more than 6% above the established start rate for that pay class, a computer program in the payroll system prohibits payment at that rate unless and until the Store Manager manually enters the pay rate for that employee. In virtually every store in each Region, a significant proportion of employees has been

1 paid 6% or more above the start rate.

2 48. *Approval of Exceptions*—In each Region, hourly pay exceptions are automatically
3 reported to the District Manager who must then approve or disapprove each exception. The
4 Management Team is also informed of hourly pay exceptions and is required by Wal-Mart policy to
5 ensure that hourly compensation is consistent among employees throughout the Region.

6 49. *Hourly Pay Reports and Audits*—Within each Region, the District Managers,
7 Regional Personnel Managers, and Regional Vice President regularly receive reports of all
8 employees whose hourly pay in a job category is more than 10% below or 5% above the average pay
9 in that class. The District Managers also perform quarterly audits of each store’s compliance with
10 company policies, including compensation policies, which are reported to Regional Personnel
11 Managers and Regional Vice Presidents.

12 50. The Management Team for each Region has the ultimate authority whether, and by
13 how much, to adjust the pay of all hourly employees, including those who are listed on exception
14 reports, and exerts ultimate control over the pay and promotion decisions in the particular stores of
15 each Region. The Management Team of each Region has subjected the Intervenor-Plaintiffs and
16 class members employed in the stores of that Region to a common mode of exercising discretion.

17 51. *Salaried Pay Guidelines*—Within each Region, salaried employee compensation is
18 required to be made in accordance with pay guidelines for each salaried position. These guidelines
19 set broad pay ranges for each position.

20 52. *Assistant Manager Salary*—In each Region, District Managers, with the concurrence
21 of the Regional Vice President and Regional Personnel Managers, set the compensation for Assistant
22 Managers throughout the Region.

23 53. *Co-Manager Compensation*—In each Region, Co-Manager compensation is
24 comprised of a base salary and profit sharing tied to the profitability of the Co-Manager’s store.
25 Regional Vice Presidents determine base salary and assign the stores at which Co-Managers work,
26 the profitability of which affects the profit-sharing component of the compensation they receive.

27 54. *Pay Decisions Not Job Related Or Documented*—In each Region, Managers are not
28 required to use job related criteria such as job performance or experience in setting, adjusting, or

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1 approving compensation for individual employees. The managers within a Region do not document
2 the reason for setting, adjusting or approving the compensation of individual employees. The
3 Management Team of each Region does not hold the managers in the Region accountable for the
4 factors they use in making pay decisions or in ensuring those factors comport with the law, nor do
5 they require any documentation of the reasons for the compensation paid to individual employees.
6 Nor do the managers within a Region specify the weight that should be accorded any requirement for
7 setting or adjusting compensation.

8 55. *Patterns in Compensation*—In each Region, women who hold salaried and hourly
9 positions have been regularly paid less on average than similarly-situated men, although on average
10 the women have more seniority and higher performance ratings than the men. This gender pay
11 difference adverse to women exists in the vast majority of the stores of each Region, even when
12 nondiscriminatory objective factors, such as seniority, performance, store location and other factors
13 are taken into account. A statistical analysis of this gender discrimination revealed the impact of
14 these policies and practices within each Region:

- 15 a. Wal-Mart Region 16—72-87% of stores show disparate pay that is lower for
16 women as compared to similarly situated men;
- 17 b. Wal-Mart Region 19—78-90% of stores show disparate pay that is lower for
18 women as compared to similarly situated men;
- 19 c. Sam’s Club Region 5—65-67% of stores show disparate pay that is lower for
20 women as compared to similarly situated men.

21 56. *Management Knowledge of Compensation Discrimination*—In each Region, the
22 Management Team receives regular reports about compensation for hourly and salaried employees
23 within the Region showing that female employees were paid less than men on average.

24 57. *Adverse Impact of Compensation System*—Wal-Mart’s compensation policies,
25 including its failure to require managers to base pay decisions for individual employees on job
26 related criteria such as experience or documented performance, have had an adverse impact upon its
27 female employees in each Region. These policies have resulted in a disparate impact on women that
28 is not justified by business necessity. Because reasons for compensation decisions are not

1 documented, elements of Wal-Mart’s compensation decision-making are not capable of separation
2 for analysis.

3 **PROMOTION DISCRIMINATION WITHIN CALIFORNIA REGIONS**

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5 58. *Management Track Positions Below Assistant Manager Positions* - Within California
6 Regions, Support Managers are the highest level hourly supervisory positions and assume the duties
7 of Assistant Managers in their absence. At Sam’s Club, Salaried Area Managers serve similar
8 functions. Employees in these positions are often groomed for further advancement. The vast
9 majority of Support Manager and Area Manager vacancies have not been posted. There has been no
10 formal application process for selection for these positions or job related criteria for making
11 selections of those to be promoted.

12 59. *Promotion to Management Trainee* – Entry into the Management Trainee Program is
13 a requirement for advancement into Assistant Manager and other salaried management positions.
14 Prior to 2003, there was no application process or job posting for Management Trainee positions.
15 Hourly employees in the California Regions were not provided any information regarding how to
16 enter management, or what the requirements or qualifications were for entering management, or how
17 to apply for the Management Trainee Program.

18 60. *Criteria for Promotion to Management Trainee* – District Managers, assisted by
19 Regional Personnel Managers, select management trainees. Within California Regions, these
20 managers have been provided uniform guidelines setting minimal eligibility criteria for promotion
21 into the Management Trainee Program, including minimum tenure, age (18 years or older), absence
22 of current “active” discipline, satisfactory recent performance evaluation and willingness to
23 relocate, but no job related criteria have been provided for making selections among those who meet
24 the minimum criteria. Employees selected into the Management Training program are required to
25 transfer from their stores and often their districts as they enter training and Assistant Manager
26 positions, subject to very limited exceptions which must be approved by the Regional Personnel
27 Manager and Regional Vice President.

28 61. *Promotion to Co-Manager* - Within California Regions, Regional Vice Presidents

1 select Co-Managers subject to approval by the Divisional Senior Vice President. The majority of
 2 Co-Manager promotions are transfers across district lines. Co-Manager openings have rarely been
 3 posted and there has been no formal application process for such positions. While there have been
 4 minimal eligibility requirements for promotion to co-manager such as satisfactory performance and
 5 willingness to relocate, there are no job related criteria for making selections among those who meet
 6 the minimum criteria or determining which store to assign to a co-manager.

7 62. In each of California's Regions and Districts management track promotional policies
 8 and practices have denied interested and qualified females equal access to promotional opportunities
 9 because promotion opportunities are not posted, there is not an open application system, and
 10 employees are not informed of the criteria for promotion. Moreover, Managers in California
 11 Regions do not require or use valid, job related factors in making the promotion selections within the
 12 California Regions. Nor does Wal-Mart specify the weight that should be accorded any
 13 requirements for promotion. As a consequence, qualified women were denied equal access to
 14 promotions because of their gender.

15 63. *Management Trainee Registration of Interest* - In January 2003, Wal-Mart instituted
 16 within the California Regions an online application process for entry into the Management Training
 17 Program. In order to be considered as an applicant, employees were required to agree to a set of
 18 conditions, many of which had the purpose and effect of discouraging women from seeking such
 19 positions. Potential applicants for entry level store management positions were required to accept
 20 the conditions that, as Assistant Managers, they would travel for up to six weeks in duration, be
 21 subject to a varied and not regular schedule, including work on scheduled days off, work during
 22 days, overnights, weekends and holidays, scheduled days off not consecutive and rotated weekly,
 23 and scheduled hours changed or increased without notice. None of these requirements is justified by
 24 business necessity, and it is untrue that Assistant Managers must normally travel up to six weeks.
 25 Failure to accept all of these conditions precluded consideration as an applicant, which has resulted
 26 in the exclusion of interested and qualified women from the management training program.

27 64. *No Documentation of Promotion Decisions* - Managers have not documented, and
 28 Wal-Mart had not tracked, the reason for selecting a particular employee for a management

1 promotion. Managers have not documented, and Wal-Mart has not tracked, which employees have
2 been denied consideration for promotion because of their inability to comply with relocation, travel
3 or scheduling requirements for promotion.

4 65. *External Statistics* - Wal-Mart has had a significantly lower percentage of female
5 managers in its California Regions compared to its largest competitors.

6 66. *Internal Statistics on Promotion Rates* - Female employees in California Regions and
7 Districts, including the regions and districts in which each named plaintiff worked, have been much
8 less likely than their male counterparts to receive promotion to management track positions
9 including Support and Area Managers, Management Trainee and Assistant Manager, and Co-
10 Manager positions, despite the fact that they possess equal or better qualifications than their male
11 counterparts.

12 67. *Internal Statistics on Time to Promotion* - Female employees must wait significantly
13 longer to be promoted into management track positions than men with equal or lesser qualifications.
14 This is true in each of California's Regions and Districts, including the Regions and Districts in
15 which each named plaintiff worked.

16 68. *Management Knowledge of Promotion Discrimination* - Wal-Mart management has
17 long known about gender disparities in promotion in the California Regions and have failed to take
18 any remedial action.

19 69. *Reporting by Gender* - Every store, district, and region in the California Regions
20 regularly compiles and reports to corporate headquarters the gender composition of its hourly and
21 managerial workforce, employee turnover, exceptions to promotion policies, job posting data, entry
22 into management training programs and other data. District Managers, Regional Personnel
23 Managers and Regional Vice Presidents for the California Regions receive these reports.

24 70. *People Division Reports* - Wal-Mart's People division regularly prepares reports for
25 senior management summarizing promotion and incumbency rates for store management positions
26 by gender, and reports are regularly made to the Board of Directors.

27 71. *Store Visits* - District Managers, Regional Personnel Managers and Regional Vice
28 Presidents in the California Regions regularly visit stores and are aware of the gender composition of

1 the workforce.

2 72. *Warnings About Discrimination* - Senior management officials, senior People
3 division officials, and outside consultants have warned Wal-Mart that women are not sufficiently
4 represented in management positions, that women are paid less than male employees in the same
5 jobs, and that Wal-Mart lags behind its competitors in the promotion of women to management
6 positions.

7 73. *Discriminatory Practices Identified* - These officials and consultants have also
8 identified policies and practices at Wal-Mart that have an adverse impact on its female employees,
9 including lack of consistent job posting, the requirement of relocation as a condition of entry into
10 and promotion through management, reliance on stereotypes in making pay and promotion
11 decisions, lack of objective criteria for making promotion decisions, and lack of consistent and
12 reliable scheduling for management level employees.

13 74. *Relocation Unnecessary* - Wal-Mart's founder, Sam Walton, conceded in 1992 that
14 Wal-Mart's policies, particularly its relocation requirement, were an unnecessary barrier to female
15 advancement, yet this policy remained in place thereafter.

16 75. *Changes Blocked* - Senior managers also blocked policy changes that would have
17 reduced the impact of Wal-Mart's discriminatory policies including posting of managerial vacancies.

18 76. *Failure to Analyze* - Wal-Mart had never studied nor analyzed whether any of its
19 practices were consistent with business necessity or whether less discriminatory alternatives to these
20 policies and practices could be adopted.

21 77. *Adverse Impact of Promotion Policies* - Wal-Mart's promotion policies, including its
22 failure to require managers to base promotion decisions for individual employees on job related
23 criteria, have had a statistically significant adverse impact upon its female employees in the
24 California Regions. Because reasons for promotion decisions are not documented, and Wal-Mart
25 does not create or maintain records which identify the impact of separate components of its
26 promotion policies and practices, its promotion decision-making process is not capable of separation
27 for analysis.

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WAL-MART MANAGERS RELY ON DISCRIMINATORY STEREOTYPES

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78. In the absence of job-related compensation and promotion criteria, Wal-Mart’s managers rely on discriminatory stereotypes and biased views about women in making pay and promotion decisions in the California Regions and Districts.

79. A 1998 survey of Wal-Mart managers revealed that there was a “good ol’ boy philosophy” at Wal-Mart, that many managers were “close minded” about diversity in the workplace, and that some District Managers “don’t seem personally comfortable with women in leadership roles.”

80. A committee of Wal-Mart’s few female executives, disbanded before this action was filed, noted that, “stereotypes limit the opportunities offered to women.”

81. All Wal-Mart Store Managers, including California Store Managers, have been required to attend training programs at the company’s Walton Institute. These managers were advised at the Institute that the reason there are few senior female managers at Wal-Mart is because men were “more aggressive in achieving those levels of responsibility” than women. Managers were cautioned that efforts to promote women could lead to the selection of less qualified women over more qualified men.

82. On January 24, 2004, at a meeting of all Wal-Mart’s District Managers presided over by Wal-Mart Stores’ CEO Thomas Coughlin, the District Managers were told that they were the key to running the stores: “[y]ou are the culture.” The key to success was described as “single focus to get the job done. . . . women tend to be better at information processing. Men are better at focus single objective.” The District Managers were instructed to create a “culture of execution” and a “culture of results” as they picked “[f]uture leaders.”

83. California Regional Vice President John Butler presumed that women did not seek management positions because of their “family commitments.”

84. John Scantlin, a District Manager in Region 19, concluded that women were uninterested in management, basing his conclusion on his mother, a woman who had never worked at Wal-Mart and, decades earlier, had not been interested in advancement.

1 85. California Sam’s Club District Manager Terry Moran justified denying a woman a
2 promotion to an Assistant Manager position because of his concern that she had a small child. He
3 did not raise this concern with male candidates for Assistant Manager. He also explained higher
4 male pay rates as justified because they were the head of their households.

5 86. California Sam’s Club District Manager Phil Goodwin justified paying less to a
6 female manager than a male employee on the ground that the male manager “supports his wife and
7 two kids.”

8 87. Sam’s Club Store Manager Alan Oshier justified giving a large raise to a male
9 employee because he had a family to support. He later suggested to a female employee that she
10 “doll up” and “blow the cobwebs off” her make-up to make herself more promotable.

11 88. Sam’s Club El Monte Store Manager Jim Black told a female assistant manager who
12 had missed work due to a sick child that the District Manager had said “this is why we are concerned
13 about promoting women with children.”

14 89. Intervenor-Plaintiff Clark heard the Store Manager and an Assistant Manager in the
15 Highland, California Wal-Mart Store make comments about women being “too weak to do the job”
16 in management positions and stating that “they are just bitches.”

17 90. When Intervenor-Plaintiff Marsh sought promotion to Support Manager or
18 Management Trainee she was asked by a District Manager “Aren’t you a single mother?” as if that
19 were disqualifying. She did not receive the promotion.

20 91. Other California managers justified denying promotions to women or paying them
21 less than their male employees because of perceived family obligations of the women and male
22 responsibility to support their families or because of their presumed inability to relocate.

23 **WAL-MART’S INEFFECTIVE ANTI-DISCRIMINATION EFFORTS**

24 92. Prior to the filing of this action, Wal-Mart had no meaningful policies or practices to
25 hold managers accountable, financially or otherwise, to equal employment and diversity policies and
26 goals.

27 93. Starting in 2000, Wal-Mart asked District Managers to set diversity “goals” for
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1 advancement of women in management. The goals were based on each manager's individual views
2 on what was attainable and were not tied to any objective measures of availability or qualifications.
3 Prior to 2004, failure to meet diversity goals had no financial or other consequence for managers.

4 94. As late as 2003, Wal-Mart Stores' CEO Coughlin was not aware of any diversity
5 goals or whether managers had met such goals. Many Store Managers were also unaware of the
6 existence of any diversity goals.

7 95. Until at least 2003, there had never been any diversity goals set for individual stores,
8 or for any compensation practices.

9 **ALLEGATIONS OF NAMED PLAINTIFFS**

10 **JOYCE NADINE CLARK**

11 96. Plaintiff Clark worked for Wal-Mart from approximately February 2, 1993 to July 14,
12 2010 in stores in Region 16, including Corona, California (Store 1912); Riverside, California (Store
13 2028); San Bernadino, California (Store 1914); Hemet, California (Store 1853) and Belmont,
14 California. Ms. Clark began as an hourly worker, and subsequently was promoted to an Assistant
15 Manager position in the late-1990's.

16 97. Upon information and belief, Ms. Clark believes she was paid less than other
17 similarly situated men during her employment within Region 16, in both hourly and salaried
18 positions.

19 98. Ms. Clark sought promotion from Assistant Manager to Co-Manager in 2004, while
20 working in the Hemet, California store. A male Assistant Manager who had been the subject of
21 several complaints was selected instead of Ms. Clark, despite her better record.

22 99. Ms. Clark applied for promotion to Co-Manager of the Highland, California Wal-
23 Mart store in 2005. Once again she was denied in favor of a man. At that time she heard the Store
24 Manager and an Assistant Manager discussing women in higher level management positions, and
25 they stated that women were "too weak to do the job" and "they are just bitches."

26 100. Ms. Clark continued to apply for Co-Manager positions, but was consistently denied,
27 usually in favor of male candidates.
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1 101. Ms. Clark would return to work for Wal-Mart if Wal-Mart took all appropriate and
2 necessary actions to fully remedy its past discriminatory actions, if it did not engage in future
3 discriminatory actions against women, and if she were offered an appropriate position.

4 102. On or about May 17, 2012, Ms. Clark submitted a charge of discrimination to the
5 EEOC. (Exhibit A) Ms. Clark has requested a right to sue letter from the EEOC, but it has not yet
6 been received.

7 SUZANNE HEWEY

8 103. Plaintiff Hewey worked for Wal-Mart from approximately October 2002 to
9 December 24, 2008 in stores in Region 16, including Corona, California (Store 1912) and La Habra,
10 California. She worked in the hourly positions of cashier and Department Manager.

11 104. Upon information and belief, Ms. Hewey believes she was paid less than other
12 similarly situated and less qualified men during her employment within Region 16.

13 105. Ms. Hewey sought promotion to Assistant Manager through the Manager Training
14 program. She expressed interest in the promotion through the company intranet site between 2006
15 and 2008 when she worked in the La Habra store. She never even received an interview, but
16 observed several men were selected for promotion, including one man who she had trained prior to
17 his being selected for the Assistant Manager Training program.

18 106. Ms. Hewey would return to work for Wal-Mart if Wal-Mart took all appropriate and
19 necessary actions to fully remedy its past discriminatory actions, if it did not engage in future
20 discriminatory actions against women, and if she were offered an appropriate position.

21 107. On or about May 1, 2012, Ms. Hewey submitted a charge of discrimination to the
22 EEOC. (Exhibit A) Ms. Hewey has requested a right to sue letter from the EEOC, but it has not yet
23 been received.

24 KRISTY FARIAS

25 108. Plaintiff Farias worked for Wal-Mart from approximately November 1998 to January
26 26, 2012 in the La Quinta, CA store (Store 1805), which is in Region 16. Ms. Farias worked as a
27 sales associate and Department Manager, both hourly positions.

28 109. Upon information and belief, Ms. Farias believes she was paid less than other

1 similarly situated and less qualified men during her employment within Region 16.

2 110. Ms. Farias would return to work for Wal-Mart if Wal-Mart took all appropriate and
3 necessary actions to fully remedy its past discriminatory actions, if it did not engage in future
4 discriminatory actions against women, and if she were offered an appropriate position.

5 111. On or about March 29, 2012, Ms. Farias submitted a charge of discrimination to the
6 EEOC. (Exhibit A) Ms. Farias has requested a right to sue letter from the EEOC, but it has not yet
7 been received.

8 LUCRETIA JOHNSON

9 112. Plaintiff Johnson worked for Sam's Club from approximately August 17, 1993 to
10 December 1, 2011 in the Concord, California club, which is part of Sam's Region 5. Ms. Johnson
11 began as an hourly worker, and subsequently held positions as front end supervisor, area manager,
12 assistant membership manager and business manager.

13 113. Upon information and belief, Ms. Johnson believes she was paid less than other
14 similarly situated and less qualified men during her employment within Sam's Region 5, in both
15 hourly and salaried positions.

16 114. Ms. Johnson sought promotion from early in her career at Sam's Club, expressing
17 interest in her annual evaluations.

18 115. Ms. Johnson started working as marketing team leader in 1998. Following that
19 promotion, she began seeking promotion to Area Manager over either Front End or Receiving. No
20 positions were posted, but she repeatedly discussed these positions with management. She observed
21 several men who were promoted ahead of her, despite not being better qualified, until she was finally
22 promoted to Area Manager over the Front End in June 2002. Upon information and belief, among
23 the men promoted ahead of her were men who had held hourly positions below the team lead
24 position that Ms. Johnson held.

25 116. Starting in approximately 2000, she began asking her managers about promotion to
26 Assistant Manager and participation in the Management Training program. She was told she must
27 work as an Area Manager first, although that is not officially a requirement. She was not provided
28 any information about how to formally apply for Management Training. Upon information and

1 belief, several men were selected for the management training program during this time who were
2 similarly situated or less qualified than Ms. Johnson.

3 117. Once she achieved the Area Manager position in 2002, she renewed her request for
4 promotion to Assistant Manager. At that time, she was told she must also have experience as a
5 Receiving Manager (another Area Manager position), although that too was not required, as another
6 manager told her. Upon information and belief, men without such experience obtained promotions
7 to Assistant Manager.

8 118. Once there was a formal application process available for the Management Training
9 program, Ms. Johnson applied, in approximately 2003. She was told that she was not ready, despite
10 10 years of experience at Sam's Club and good evaluations. Upon information and belief, men with
11 less experience and qualifications were able to obtain such promotions.

12 119. In approximately 2004, after she had complained to the home office, Ms. Johnson
13 was promoted to Assistant Business Manager, an Assistant Manager position.

14 120. Following her promotion to Assistant Manager in 2004, Ms. Johnson began asking
15 about promotion to General Manager, both verbally and in her written evaluations. In 2007 and
16 2008 Ms. Johnson saw a posting for General Manager positions, but the postings were taken down
17 that same day, preventing her from applying.

18 121. Ms. Johnson would return to work for Wal-Mart (Sam's Club) if Wal-Mart took all
19 appropriate and necessary actions to fully remedy its past discriminatory actions, if it did not engage
20 in future discriminatory actions against women, and if she were offered an appropriate position.

21 122. On or about May 25, 2012, Ms. Johnson submitted a charge of discrimination to the
22 EEOC. (Exhibit A) Ms. Johnson has requested a right to sue letter from the EEOC, but it has not
23 yet been received.

24 HILDA TODD

25 123. Plaintiff Todd worked for Sam's Club from approximately the mid-1990's to the
26 present in the Concord, California store, which is in Sam's Region 5. Ms. Todd worked as an hourly
27 employee in the Bakery, as Bakery Lead, as a greeter, as a clerk and as Front End Supervisor (an
28 hourly position).

1 124. Upon information and belief, Ms. Todd believes she was paid less than other
2 similarly situated and less qualified men during her employment within Sam’s Region 5.

3 125. Ms. Todd sought promotion to Bakery Manager, an Assistant Manager position, in
4 1998, but was passed over for a man with no bakery experience, while she had extensive bakery
5 experience.

6 KRISTIN MARSH

7 126. Plaintiff Marsh worked for Wal-Mart from 1994 to July 17, 2007. She worked in
8 Region 19 in the Gilroy, California (Store 2002), and Salinas, California (Store 2458) stores. Ms.
9 Marsh worked in hourly positions, as a sales associate and then Department Manager.

10 127. Upon information and belief, Ms. Marsh believes she was paid less than other
11 similarly situated and less qualified men during her employment within Wal-Mart Region 19.

12 128. Ms. Marsh sought promotion to Support Manager and to the Management Training
13 program to become an Assistant Manager. She began seeking promotion in 1998, specifically
14 through the Tire and Lube department. She was never interviewed nor promoted. During one
15 conversation with the District Manger over TLE, she asked about becoming Assistant Manager in
16 TLE, and the District Manager asked her “Aren’t you a single mother?” implying that this
17 disqualified her from consideration.

18 129. Upon information and belief, several men were selected for the management training
19 program during this time who were similarly situated or less qualified than Ms. Marsh.

20 130. On or about March 12, 2012, Ms. Marsh submitted a charge of discrimination to the
21 EEOC. (Exhibit A) Ms. Marsh has requested a right to sue letter from the EEOC, but it has not yet
22 been received.

23 **FIRST CLAIM FOR RELIEF**

24 (Violation of Title VII)

25 131. Plaintiffs incorporate Paragraphs 1 through 130.

26 132. This claim is brought on behalf of all Named Intervenor-Plaintiffs and the classes
27 they seek to represent.
28

1 133. On or about October 22, 1999, January 4, 2000 and April 3, 2000, class member and
2 former plaintiff Stephanie Odle filed charges of sex discrimination against Wal-Mart with the United
3 States Equal Employment Opportunity Commission. Ms. Odle thereafter received a right to sue
4 notice and commenced this action as a named plaintiff in a timely fashion. From the filing of her
5 EEOC complaints through the initiation of this action, the class-wide nature of Ms. Odle's charges
6 has been communicated to defendant.

7 134. In June 2004, this Court certified this case as a national class action, a decision that
8 was largely upheld by the Ninth Circuit Court of Appeals *en banc*. On June 20, 2011, the Supreme
9 Court reversed the Ninth Circuit decision. During the pendency of the former certified class, time
10 periods for filing EEOC charges and subsequent litigation for all former class members were tolled.
11 This Court subsequently held that claims of class members would be tolled during the pendency of
12 the national class action until the following dates: for former class members who had received an
13 EEOC right to sue based on a claim encompassed by the former class: October 28, 2011; all other
14 former class members in deferral states would have until May 25, 2012 to file EEOC charges based
15 on conduct encompassed by the former class definition.

16 135. The foregoing conduct violates Title VII of the Civil Rights Act of 1964. Wal-Mart
17 has engaged in a pattern or practice of discriminating against its female employees in making
18 compensation and management track promotion decisions in its California Regions.

19 136. Wal-Mart has maintained a system for making decisions about compensation and
20 promotions that has had an adverse impact on its female employees in its California Regions. Its
21 compensation policies for setting and adjusting pay collectively and individually, including its
22 failure to require or use job related criteria for making compensation decisions, has had an adverse
23 impact on women. Its management track promotion policies: the absence of an open application
24 process and job posting its relocation and travel requirements for management positions, its
25 scheduling requirements which deny managers a consistent schedule, and its failure to apply job-
26 related objective criteria for making management selections have all individually and collectively
27 caused this adverse impact on female employees in promotions.

28 137. Wal-Mart has failed in California to create or maintain the data that would allow

1 analysis of the impact of each of these policies and practices individually. Nor does Wal-Mart
2 specify the weight that should be accorded to each of the requirements for pay and promotion. Wal-
3 Mart's pay and promotion policies and procedures are thus not capable of separation for analysis,
4 and accordingly the entire decision-making process for compensation and promotions decisions may
5 each be analyzed as one employment practice. 42 U.S.C. 2000e-2(k)(1)(B)(i).

6 138. Wal-Mart's compensation and promotion policies are not job related or consistent
7 with business necessity. Wal-Mart's own consultants and human resources staff have proposed job
8 posting, elimination of relocation requirements, adoption of more consistent and reliable scheduling,
9 and the use of more objective criteria for management promotions. Adopting these policies would
10 have resulted in less discriminatory impact upon female employees while serving Wal-Mart's
11 business needs more effectively than its current practices.

12 139. Wal-Mart's discriminatory practices described above have denied female employees
13 promotional opportunities and compensation to which they are entitled, which has resulted in the
14 loss of past and future wages and other job benefits.

15 140. Plaintiffs request relief as provided in the Prayer for Relief below.

16 **RELIEF ALLEGATIONS**

17 141. Intervenor-Plaintiffs and the Injunctive Relief Classes they represent have no plain,
18 adequate or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief
19 sought in this action is the only means of securing complete and adequate relief. Intervenor-
20 Plaintiffs and the Injunctive Relief Classes they represent are now suffering and will continue to
21 suffer irreparable injury from Defendant's discriminatory acts and omissions.

22 142. The actions on the part of Defendant have caused and continue to cause Intervenor-
23 Plaintiffs and all Monetary Relief class members substantial losses in earnings, promotional
24 opportunities and other employment benefits, in an amount to be determined according to proof.

25 143. Defendant acted or failed to act as herein alleged with malice or reckless indifference
26 to the protected rights of Intervenor-Plaintiffs' and Monetary Relief class members. Intervenor-
27 Plaintiffs and class members are thus entitled to recover punitive damages in an amount to be
28

1 determined according to proof.

2 **PRAYER FOR RELIEF**

3
4 WHEREFORE, Intervenor-Plaintiffs and the proposed classes pray for relief as
5 follows:

6 1) Certification of the Regional Classes and Injunctive Relief and Monetary Relief Sub-
7 Classes as class actions under Rule 23 (b)(2) and (3), and designation of the Intervenor-Plaintiffs as
8 class representatives and their counsel of record as Class Counsel for all classes;

9 2) All damages which the Named Plaintiffs and the Monetary Relief Classes have
10 sustained as a result of Defendant’s conduct, including back pay, front pay, general and special
11 damages for lost compensation and job benefits that they would have received but for the
12 discriminatory practices of Defendant;

13 3) For Intervenor-Plaintiffs’ individual, non-class claims, all damages they have
14 sustained as a result of defendant’s conduct, including back pay, front pay, general and specific
15 damages for lost compensation and job benefits they would have received but for the discriminatory
16 practices of defendant, damages for emotional distress, and punitive damages, according to proof;

17 4) For Intervenor-Plaintiffs and the Monetary Relief Class exemplary and punitive
18 damages in an amount commensurate with Defendant’s ability to pay and to deter future conduct;

19 5) A preliminary and permanent injunction against Defendant and its directors, officers,
20 owners, agents, successors, employees and representatives, and any and all persons acting in concert
21 with them, from engaging in each of the unlawful practices, policies, customs and usages set forth
22 herein. Such relief at minimum should include professional designed job analyses of all job
23 positions and identification of objective, nondiscriminatory criteria for compensation and promotion
24 decisions, record keeping that requires documentation of compensation and promotion decisions,
25 open application and job posting procedures for promotion, training and accountability measures to
26 ensure consistent, nondiscriminatory decision-making, adjustment of the wage rates and benefits for
27 Intervenor-Plaintiffs and the Injunctive Relief Class to that level which Intervenor-Plaintiffs and the
28 Injunctive Relief Class would be enjoying but for Defendant’s discriminatory practices, and

1 affirmative action to provide lost promotion opportunities to Intervenor-Plaintiffs and Injunctive
2 Relief class members.

3 6) A declaratory judgment that the practices complained of in this Fourth Amended
4 Complaint are unlawful and violate 42 U.S.C. § 2000(e), et. seq., Title VII of the Civil Rights Act of
5 1964;

6 7) Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;

7 8) Pre-Judgment and Post-Judgment interest, as provided by law; and

8 9) Such other and further legal and equitable relief as this Court deems necessary, just
9 and proper.

10
11
12 Dated: July 14, 2016

Respectfully submitted,

13 /s/ Joseph M. Sellers

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