

AMENDED **SUMMONS**
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: MARY PYTELEWSKI, DENISE KRIVITSKY, (AVISO AL DEMANDADO): ERIC STILLER, SAM CARROLL, STEVE VRISMO, JEREMY MONCAUSKAS, ALBERT COOPER, JOSEPH MORO, CLARICE PYTELEWSKI, AND MORGAN DANIELS, on behalf of themselves individually and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CIVIL BUSINESS OFFICE 1
CENTRAL DIVISION

2009 OCT -2 PM 4: 02

CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

COSTCO WHOLESALE CORPORATION; WIRELESS ADVOCATES, LLC; and
DOES 1 through 25, inclusive

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
330 W. BROADWAY
330 W. BROADWAY
SAN DIEGO, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
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DATE: OCT 02 2009
(Fecha)

Clerk, by J. Knebaum, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

(SEAL)

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CENTRAL DIVISION

2009 OCT -2 PM 4:02

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

MARY PYTELEWSKI,
on behalf of herself individually and all
others similarly situated,

Plaintiff,

vs.

COSTCO d/b/a COSTCO WHOLESALE
CORPORATION; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: 37-2009-00089654-CU-OE-CTL

Assigned to: Hon. David B. Oberholtzer

Department: C-67

) **AMENDED CLASS ACTION**
) **COMPLAINT AND DEMAND**
) **FOR JURY TRIAL**

I.

**OVERVIEW OF DEFENDANTS' VIOLATIONS OF CALIFORNIA'S LABOR
LAWS, AND FALSE IMPRISONMENT OF PLAINTIFFS AND THE CLASS**

1. This class action lawsuit seeks to redress an ongoing wrongful scheme by Defendants Costco Wholesale Corporation, Wireless Advocates, LLC, and Does 1-25 (hereinafter "Defendants" collectively and "Defendant Costco" and "Defendant Wireless Advocates" individually), to deny their hourly warehouse employees earned wages for all hours worked "off-the-clock" in violation of California's wage and hour laws. This lawsuit also seeks to end Defendants' unlawful practice of forcing their hourly employees in all Costco warehouses in California to remain locked inside the warehouses without pay after the end of their daily shifts.

2. Plaintiffs Mary Pytelewski, Denise Krivitsky, Eric Stiller, Sam Carroll, Steve Vrismo, Jeremy Moncauskas, Albert Cooper, Joseph Moro, Clarice Pytelewski, and Morgan Daniels ("Plaintiffs" or "Named Plaintiffs"), bring this action on behalf of themselves individually and on behalf of similarly situated hourly, non-exempt employees ("the Class"), employed in Costco warehouses in California to seek redress for unpaid minimum wages, unpaid straight-time wages, and unpaid overtime wages earned "off-the-clock" under

1 California's wage and hour laws. This action also seeks relief on behalf of the Class for false
2 imprisonment by Defendants and retaliatory actions taken by Defendant Costco against
3 Plaintiff Mary Pytelewski individually for her complaints regarding Costco's violations of
4 California's wage and hour laws.

5 3. Defendants' wrongful acts against its Plaintiff-employees and the Class arise
6 from Defendants' failure to pay hourly employees all wages earned and due for all hours
7 worked "off-the-clock," including their failure to pay minimum wages, straight-time wages,
8 and overtime wages, and their false imprisonment of these employees. Defendants accomplish
9 their wage and hour and tortious violations through systematic policies and/or practices which
10 include requiring hourly, non-exempt employees to remain locked inside Costco warehouses
11 without pay or the freedom to leave the premises after their shifts end every workday.

12 4. For at least seven years prior to the filing of this Complaint, Defendants have
13 willfully committed widespread violations of California wage and hour laws and tort law.
14 Plaintiffs and the Class have suffered common financial harm as their employers Costco and
15 Wireless Advocates have violated and continue to violate: (1) California Labor Code §§204,
16 510, 1194; (2) the Unfair Competition Law ("UCL") codified in California Business and
17 Professions Code §§ 17200 *et seq.*; (3) Industrial Welfare Commission Order 7-2001,
18 incorporated into the California Code of Regulations; and (4) California common law
19 prohibiting false imprisonment. Defendant Costco has also retaliated against Plaintiff Mary
20 Pytelewski because she complained about Defendants' violations of California's wage and hour
21 laws.

22 II.

23 JURISDICTION

24 5. This Court has jurisdiction over Plaintiffs' claims under the California Labor
25 Code, the UCL, and common law. This action is properly filed in the County of San Diego and
26 in this judicial district because Defendants' obligations and liability arise therein, Defendants
27 maintain offices and do business within the County of San Diego, and Plaintiffs worked in the
28 County of San Diego.

1 III.

2 THE PARTIES

3 6. **Plaintiff Mary Pytelewski** is currently employed as a Front-End Assistant in
4 Costco's Warehouse Number 416, 725 Center Drive, San Marcos, California ("San Marcos
5 Costco"), where her duties include assisting at the cash register. Plaintiff Mary Pytelewski was
6 initially hired as a part-time Seasonal Assistant in October of 2001. Beginning in January of
7 2002, she held the hourly, non-exempt position of Front-End Assistant before being promoted
8 to Clerk. In August of 2006, Plaintiff Mary Pytelewski was placed on full-time status. Then,
9 in May of 2009, Plaintiff Mary Pytelewski was forced to accept a demotion back to Front-End
10 Assistant after Costco retaliated against her for the filing of this lawsuit.

11 7. **Plaintiff Denise Krivitsky** ("Plaintiff Krivitsky") was employed from
12 November of 1991 to May of 2008 as a full-time Pharmacy Technician and Pharmacy
13 Supervisor in Costco's Warehouse Number 44, 2130 Roscoe Boulevard, Canoga Park,
14 California.

15 8. **Plaintiff Eric Stiller** ("Plaintiff Stiller") was employed from 2000 to November
16 of 2006 as a full-time Merchandiser and from November of 2006 to November of 2008 as a
17 full-time Closing Cashier in Costco's Warehouse Number 124, 1755 Hacienda Drive, Vista,
18 California ("Vista Costco").

19 9. **Plaintiff Sam Carroll** ("Plaintiff Carroll") was employed from June of 2007 to
20 January of 2008 as a part-time Front-End Assistant in the San Marcos Costco.

21 10. **Plaintiff Steve Vrismo** ("Plaintiff Vrismo") is currently employed part-time in
22 Member Services in Costco's Warehouse Number 694, 1051 Hume Way, Vacaville, California,
23 where his duties include checking customer's receipts at the front door of the warehouse and
24 monitoring warehouse security in the parking lot following closing. Plaintiff Vrismo was
25 initially hired part-time as part of the Merchandising Crew in November of 2006. In April of
26 2009, Plaintiff Vrismo was transferred to Member Services after suffering a worker's
27 compensation injury.

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1 11. **Plaintiff Jeremy Moncauskas** ("Plaintiff Moncauskas") was employed part-
2 time from 2004 to January of 2009 in the deli of Costco's Warehouse Number 462, 951
3 Palomar Airport Road, Carlsbad, California ("Carlsbad Costco").

4 12. **Plaintiff Albert Cooper** ("Plaintiff Cooper") was employed part-time from
5 March of 2005 to October of 2006 in the deli of the Carlsbad Costco.

6 13. **Plaintiff Joseph Moro** ("Plaintiff Moro") is currently employed as a Front-End
7 Assistant in Costco's Warehouse Number 690, 27220 Heather Ridge Road, Laguna Niguel,
8 California. Plaintiff Moro was initially hired part-time in July of 2005 and worked in the cart
9 area and in maintenance before becoming a Front-End Assistant.

10 14. **Plaintiff Clarice Pytelewski** was employed by Costco and Wireless Advocates
11 as a part-time Wireless Sales Expert in the Wireless Advocates kiosk of the San Marcos Costco
12 from June of 2007 to December of 2007, where her duties included approaching Costco
13 customers to convince them to buy new cell phones or upgrade their existing cell phones.

14 15. **Plaintiff Morgan Daniels** ("Plaintiff Daniels") was employed by Costco and
15 Wireless Advocates as a part-time Wireless Sales Expert in the Wireless Advocates kiosks of
16 Costco's Warehouse Number 452 at 12350 Carmel Mountain Road, San Diego, California;
17 Costco's Warehouse Number 775 at 12155 Tech Center Drive, Poway, California; the San
18 Marcos Costco; the Carlsbad Costco; and the Vista Costco from June of 2007 to February of
19 2008.

20 16. **Defendant Costco Wholesale Corporation** is a corporation formed under the
21 laws of the State of Delaware with its principal offices in Issaquah, Washington. Costco is
22 registered to do business in the State of California and does business in San Diego County and
23 throughout California. Costco has approximately 100 stores located in the State of California.

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1 17. **Defendant Wireless Advocates, LLC** is a limited liability company formed
2 under the laws of the State of Washington with its principal offices in Seattle, Washington.
3 Wireless Advocates, LLC is registered to do business in the State of California and does
4 business in San Diego County and throughout California. Wireless Advocates is the exclusive
5 third-party provider of wireless and related products and services in Costco warehouses
6 nationwide.

7 18. At all relevant times, Defendants Costco and Wireless Advocates are and were
8 employers under applicable the California Labor Code and Industrial Welfare Commission
9 Orders.

10 19. At all relevant times, Defendants are and were legally responsible for all of the
11 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
12 paragraphs of this Complaint as the employers of Plaintiffs and the Class members. Further,
13 Defendants are responsible for each of the unlawful acts or omissions complained of herein
14 under the doctrine of *respondeat superior*. The conduct of Costco and Wireless Advocates
15 managers and supervisors was at all relevant times undertaken as employees of Costco and
16 Wireless Advocates, acting within the scope of their employment or authority in all of the
17 unlawful activities described in each and all of the paragraphs of this Complaint.

18 20. Plaintiffs allege on information and belief that at all relevant times **Defendants**
19 **Does 1 through 25**, inclusive, were the agents, employees, representatives, partners, control
20 persons, and related or affiliated entities of Defendant Costco, whose acts or practices caused or
21 assisted in the wrongdoing and damages alleged herein.

22 21. Plaintiffs are informed and believe, and thereon allege, that each of the
23 Defendants designated herein as **Defendants Does 1 through 25**, inclusive, is in some manner
24 responsible for the events and happenings herein referred to, and caused or contributed to the
25 damages to Plaintiffs and the Class members as herein alleged. Plaintiffs will amend this
26 Complaint to allege such true names and capacities when the same are ascertained.

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1 IV.

2 **FACTUAL ALLEGATIONS**

3 22. During their employment with Defendants, Plaintiffs and other hourly, non-
4 exempt employees were and continue to be regularly forced, against their will, to remain locked
5 inside of Warehouse Numbers 44, 124, 416, 452, 462, 690, 694, 775 and other warehouses
6 throughout California, after clocking out at the end of each shift. During this unpaid lock-in
7 time, Plaintiffs' supervisors – Defendant Costco's Supervisors and Managers – perform closing
8 activities, such as removing jewelry from cases and emptying cash registers. Upon information
9 and belief, Defendant Costco's Managers and Supervisors falsely claim that locking the
10 employees inside the warehouses until the time the Managers complete the closing tasks and
11 leave the building is necessary for security and theft prevention. However, Defendants refuse
12 to pay Plaintiffs and other hourly, non-exempt employees for this time.

13 **A. Costco's Role as Employer**

14 23. At all relevant times, Defendant Costco acted as an employer or joint employer
15 of Wireless Advocates employees working at Costco warehouses, including Plaintiffs Clarice
16 Pytelweski and Daniels, and the class members they seek to represent, within the meaning of
17 the California Labor Code and applicable Wage Orders. Costco exercised meaningful control
18 over the employment relationship of Wireless Advocates employees working at Costco
19 warehouses, including the power to supervise and discipline employees, the power to direct
20 employees in the tasks they must perform, the power to set standards for their performance, and
21 the power to determine the hours and terms of their work. Costco requires Plaintiffs Clarice
22 Pytelweski and Daniels and its other wireless services employees to perform work that is an
23 integral part of Costco's business, such that wireless services class members are or were
24 dependent upon Costco as a matter of economic reality. Indeed, Costco controlled the hours
25 and working conditions of wireless services employees to such a degree that it locked these
26 employees inside Costco warehouses without pay after their shifts ended. Costco, together with
27 Wireless Advocates, shared the power to set the employment terms and conditions for Plaintiffs
28 Clarice Pytelweski and Daniels and the wireless services employees they seek to represent, and

1 Defendants jointly reap the benefits from the underpayment of Plaintiffs' wages and non-
2 compliance with other statutory provisions governing their employment.

3 **B. Wireless Advocates' Role in the "Lock-In" Practice**

4 24. Upon information and belief, Defendant Wireless Advocates' Kiosk Managers
5 and District Managers knew their employees were and continue to be locked in without pay and
6 against their will at closing time, and Defendant Wireless Advocates has not taken any action to
7 prevent this practice or to compensate its employees for this time.

8 25. In fact, Defendant Wireless Advocates has refused to allow its employees to
9 clock out a few minutes before their shifts end in order to avoid being locked inside Costco
10 warehouses. In approximately 2007, after Plaintiff Daniels informed his District Manager that
11 he was clocking out before the end of his shift because Costco managers were locking the doors
12 and refusing to release employees at closing time, Plaintiff Daniels' District Manager sent an
13 email to his employees stating that they would be written up if they continued to clock out
14 early. Upon information and belief, the Manager took no action to remedy the issue.

15 26. Upon information and belief, both Defendant Costco and Defendant Wireless
16 Advocates refuse to allow employees to clock back in during the "waiting time" in which they
17 are locked inside Costco warehouses without pay because Defendants do not want to
18 compensate their employees for the time spent waiting on Costco's managers or supervisors.

19 27. As a direct result of Defendants' unlawful conduct, Defendants have violated
20 numerous sections of the California Labor Code, including California Labor Code §§ 204, 510,
21 and 1194 and California Industrial Welfare Commission Occupational Wage Order 7-2001, 8
22 Cal. Code of Reg. § 11040 (hereinafter "Wage Order"), which together entitle employees to be
23 paid (i) the minimum wage for all hours worked; (ii) their regular hourly rate when due for all
24 hours worked; (iii) overtime compensation at one-and-a-half times their regular rate of pay for
25 all hours worked over eight (8) hours in one workday and under and including twelve (12)
26 hours one workday; (iv) overtime compensation at two-times their regular rate of pay for all
27 hours worked over twelve (12) hours in one workday; and (v) overtime compensation at one-
28 and-a-half times their regular rate of pay for all hours worked over forty (40) in one workweek.

28. Defendants have also violated the Unfair Competition Law, Business and Professions Code § 17200 et seq. (“UCL”) and the common law of false imprisonment, by the violations of California law as described above.

29. Plaintiff Mary Pytelewski has made numerous complaints to Costco Management about Defendant Costco's violation of California's wage and hour laws and its other unlawful practices, which resulted in Defendant Costco taking unlawful retaliatory actions toward Plaintiff. Such adverse actions include, *inter alia*, writing Plaintiff Mary Pytelewski up for discrepancies in cash drawers, placing Plaintiff Mary Pytelewski on two unofficial "probations," calling her "Crazy Mary," and posting a supervisor as a guard at her cash register.

30. As a direct result of Defendants' unlawful conduct, Plaintiff Mary Pytelewski has suffered harm, injury, and damages in addition to being deprived of the wages, overtime, and other legal protections to which she was entitled under federal and California law.

V.

CLASS ACTION ALLEGATIONS

31. Plaintiffs brings this action, on behalf of themselves and all others similarly situated, as a class action pursuant to California Code of Civil Procedure § 382. The Class that Plaintiffs seek to represent is composed of and defined as follows: all persons who are, were, or will be employed by Defendants as hourly, non-exempt employees in Costco warehouses throughout California at any time since at least May 2005.

32. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

33. The class is sufficiently numerous, since it is estimated to include approximately several hundred or more Costco and Wireless Advocates employees geographically dispersed, the joinder of whom in one action is impracticable, and the disposition of whose claims in a class action will provide substantial benefits to both the parties and the Court.

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1 34. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the parties to be represented. The questions of law and fact common to the
3 Class predominate over questions that may affect individual Class members, including but not
4 limited to the following:

- 5 (a) Whether Defendants failed and continue to fail to fully pay hourly, non-
6 exempt employees all wages due for all hours worked in violation of
7 California Labor Code §§ 204, 1194 *et seq.* and California Business and
8 Professions Code §§ 17200 *et seq.*;
- 9 (b) Whether Defendants failed and continue to fail to fully pay hourly, non-
10 exempt employees all overtime wages earned in violation of California
11 Labor Code §§ 510, 1194 *et seq.* and California Business and
12 Professions Code §§ 17200 *et seq.*;
- 13 (c) Whether Defendants failed and continue to fail to make, keep, preserve,
14 and/or timely furnish records of hourly, non-exempt employees' daily
15 hours worked, including the start and end of each work period and wages
16 earned in violation of California Labor Code § 226;
- 17 (d) Whether Defendants' conduct is "unlawful," "unfair," or "fraudulent"
18 under the California Business and Professions Code §§ 17200 *et seq.*;
- 19 (e) Whether Defendants falsely imprisoned employees by involuntarily
20 confining them on the store's premises by locking the doors and refusing
21 egress;
- 22 (f) Whether Defendants should be enjoined from continuing their unlawful
23 practices;
- 24 (g) Whether Defendants are liable to the California class; and

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1 (h) Whether the systematic acts and practices of Defendants as alleged
2 herein violated, *inter alia*, applicable provisions of the California Labor
3 Code, including but not limited to, §§ 204, 510, 1194, and applicable
4 Industrial Welfare Commission Orders, and California Business &
5 Professions Code § 17200, et seq.

6 35. Plaintiffs are asserting claims that are typical of the claims of the Class.
7 Plaintiffs worked overtime on a daily and weekly basis for which Plaintiffs were not properly
8 compensated. Plaintiffs Krivitsky, Stiller, Carroll, Moncauskas, Cooper, Clarice Pytelewski,
9 and Daniels were non-exempt employees throughout their employment with Costco and
10 Wireless Advocates. Plaintiffs Mary Pytelewski, Vrismo, and Moro have been and still remain
11 non-exempt employees of Costco.

12 36. Plaintiffs will fairly and adequately represent and protect the interests of the
13 Class in that they have no disabling conflicts of interest that would be antagonistic to those of
14 the other members of the Class. Plaintiffs have retained counsel who are competent and
15 experienced in the prosecution of class action wage and hour violations.

16 37. Because Plaintiffs and the members of the Class have all similarly suffered
17 irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct,
18 including but not limited to Defendants' systematic failure to pay compensation for time they
19 required employees to remain on Costco company premises, failure to pay minimum, regular or
20 overtime wages, and systematic false imprisonment, class treatment is especially appropriate.
21 Absent this action, Defendants' unlawful conduct will continue unremedied and uncorrected.

22 **FIRST CAUSE OF ACTION**

23 **UNLAWFUL FAILURE TO PAY ALL WAGES** 24 **EARNED AND DUE FOR ALL HOURS WORKED** **(LABOR CODE §204 and WAGE ORDER NO. 7-2001)**

25 38. Plaintiffs repeat and reallege each and every allegation set forth in all of the
26 foregoing paragraphs as if fully set forth herein.

27 39. During all relevant periods, Defendants required Plaintiffs and the Class
28 members to remain on company premises working "off-the-clock" without compensation.

1 40. During all relevant periods, the California Labor Code requires that employers
2 fully and timely pay employees all wages earned and due for all hours worked. By requiring
3 employees to remain inside the Costco warehouses to perform “off-the-clock” tasks integral
4 and essential to their employment without compensation, Defendants knowingly and willfully,
5 failed to fully and timely pay Plaintiffs and the Class members their regular straight-time wage
6 rate for all hours worked. Plaintiffs and the Class members are entitled to recover their unpaid
7 compensation and liquidated damages arising therefrom.

8 41. Plaintiffs and the Class members are therefore entitled to the relief requested
9 below.

10 **SECOND CAUSE OF ACTION**

11 **UNLAWFUL FAILURE TO PAY MINIMUM WAGES**
12 **FOR ALL HOURS WORKED “OFF-THE-CLOCK”**
 (LABOR CODE §§ 200, 1194 et seq.)

13 42. Plaintiffs repeat and reallege each and every allegation set forth in all of the
14 foregoing paragraphs as if fully set forth herein.

15 43. During all relevant periods, Defendants required Plaintiffs and the Class
16 members to remain on Costco company premises without compensation.

17 44. During all relevant periods, the California Labor Code requires that employers
18 pay employees for time worked. By requiring employees to remain inside the Costco
19 warehouses and refusing to allow them to leave and not paying them for such time, Defendants
20 failed to pay Plaintiffs and the Class members earned minimum wages. Plaintiffs and the Class
21 members are entitled to recover their unpaid compensation and liquidated damages arising
22 therefrom.

23 45. Plaintiffs and the Class members are therefore entitled to the relief requested
24 below.

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1 51. During all relevant times, Defendants intentionally failed to furnish to Plaintiffs
2 and Class members, upon each payment of compensation, itemized statements accurately
3 showing: total hours worked, the applicable hourly rates in effect during each pay period, and
4 the corresponding hours worked at each hourly rate.

5 52. Plaintiffs and the Class members were damaged by these failures because,
6 among other things, the failures led them to believe that they were not entitled to be paid
7 minimum wages, straight time wages, or overtime wages, even though they were so entitled
8 and because the failures hindered them from determining the amounts of unpaid wages owed to
9 them.

10 53. Named Plaintiffs and the Class members are entitled to the amounts provided in
11 California Labor Code § 226(e), plus costs and attorneys' fees.

12 **FIFTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**
14 **(BUS. & PROF. CODE §§ 17200-17208)**

15 54. Plaintiffs repeat and reallege each and every allegation contained in the
16 foregoing paragraphs as if fully set forth herein.

17 55. Defendants' failure to pay overtime, as alleged above, constitutes unlawful
18 and/or unfair and/or fraudulent activity prohibited by California Business and Professions Code
19 § 17200.

20 56. As a result of their unlawful and/or unfair and/or fraudulent acts, Costco and
21 Wireless Advocates have reaped and continue to reap unfair benefits and illegal profits at the
22 expense of Plaintiffs and Class members. Defendants should be enjoined from this activity and
23 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class members the
24 wrongfully withheld overtime wages, to provide the Class members restitution for the
25 withholding, and for delay in receiving the compensation and overtime wages due, pursuant to
26 Business and Professions Code § 17203.

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1 57. Accordingly, Plaintiffs and the Class members respectfully request that the
2 Court award judgment and relief in their favor to provide restitution and other types of
3 equitable relief.

4 **SIXTH CAUSE OF ACTION**

5 **FALSE IMPRISONMENT**

6 58. Plaintiffs repeat and reallege each and every allegation contained in the
7 foregoing paragraphs as if fully set forth herein.

8 59. Defendants' act of locking employees inside the Costco warehouses, thus
9 confining them against their will and refusing to allow the employees to exit, constitutes false
10 imprisonment under California law.

11 60. These acts of false imprisonment were and are conducted due to approved
12 Company policy willfully designed to injure Plaintiffs and the Class members.

13 61. Defendants intentionally engaged in these acts of false imprisonment with
14 oppression, fraud and malice, and with reckless disregard of the rights of Plaintiffs and Class
15 members, entitling them to punitive damages.

16 62. Plaintiffs and the Class members are entitled to damages for mental anguish and
17 emotional distress resulting from such unlawful conduct.

18 63. Plaintiffs and the other members of the Class are therefore entitled to the relief
19 requested below.

20 **SEVENTH CAUSE OF ACTION**

21 **RETALIATION**

22 64. Plaintiff Mary Pytelewski repeats and realleges each and every allegation
23 contained in the foregoing paragraphs as if fully set forth herein.

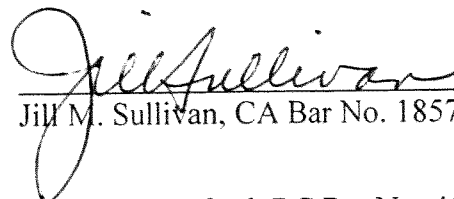
24 65. Plaintiff Mary Pytelewski engaged in protected activity by making complaints
25 about Defendant's violation of California's wage and hour laws.

26 66. Defendant Costco retaliated against Plaintiff Mary Pytelewski by subjecting her
27 to adverse employment actions in response to her complaints regarding Defendant's violation
28 of California's wage and hour laws.

- 1 G. That Defendants further be enjoined to cease and desist from unlawful
2 and/or unfair activities in violation of Business and Professions Code §
3 17200, pursuant to § 17203;
- 4 H. That Defendants be ordered to pay compensatory and punitive damages
5 for their tortious conduct in the form of false imprisonment;
- 6 I. That Plaintiff Mary Pytelewski be awarded compensatory damages for
7 Defendant's retaliatory conduct in violation of California public policy;
- 8 J. That Plaintiffs and the Class be awarded reasonable attorneys' fees and
9 costs pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5
10 and/or other applicable law;
- 11 K. That the Court award such other and further relief as this Court may
12 deem appropriate.

13
14 Dated: October 2, 2009

Respectfully submitted,

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