

ORIGINAL

90723  
AL0025

1 MATTHEW P. KANNY (Bar No. CA 167118)  
2 YOANNA S. BINDER (Bar No. CA 218239)  
3 MANATT, PHELPS & PHILLIPS, LLP  
4 11355 W. Olympic Blvd.  
5 Los Angeles, California 90064  
6 Telephone: (310) 312-4000  
7 Facsimile: (310) 312-4224  
8 Email: mkanny@manatt.com  
9 Email: ybinder@manatt.com

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAY 10 2013

JOHN A. CLARKE, DEPUTY CLERK/CLERK  
BY [Signature] Deputy  
Gina Grider

6 Steven D. Wheelless (*Pro Hac Vice* Pending)  
7 Douglas D. Janicik (*Pro Hac Vice* Pending)  
8 STEPTOE & JOHNSON LLP  
9 201 E. Washington St.  
10 Phoenix, Arizona 85004  
11 Telephone: (602) 257-5234  
12 Facsimile: (602) 257-5299  
13 Email: swheelless@steptoe.com  
14 Email: djanicik@steptoe.com

12 Attorneys for Plaintiff  
13 Wal-Mart Stores, Inc.

D54 Ernest Hirschige

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

18 WAL-MART STORES, INC., a Delaware  
19 corporation,

Case No. **BC508587**

19 Plaintiff,

**VERIFIED COMPLAINT FOR:**

20 vs.

**CIVIL TRESPASS;  
INJUNCTIVE RELIEF; AND  
DECLARATORY RELIEF**

21 UNITED FOOD AND COMMERCIAL  
22 WORKERS INTERNATIONAL UNION,  
23 ORGANIZATION UNITED FOR  
24 RESPECT AT WALMART, and DOES 1-  
25 10,

24 Defendants.,

CIT/Case #: BC508587  
LEA/DEF#:   
RECEIPT #: CCH501702  
DATE PAID: 05/10/13 1:33:13 PM  
PAYMENT: \$435.00  
RECEIVED:   
CHECK: \$35.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

26 Plaintiff WAL-MART STORES, INC. ("Walmart"), by and through its undersigned  
27 attorneys, brings this action for injunctive and declaratory relief from trespass against defendants

28 UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION ("UFCW"),

VERIFIED COMPLAINT

05/10/2013

MANATT, PHELPS &  
PHILLIPS, LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1 ORGANIZATION UNITED FOR RESPECT AT WALMART (“OURWalmart”) and DOES 1-  
2 10 (collectively, “Defendants”), and for causes of action, states:

3 INTRODUCTION

4 1. Walmart owns and operates retail stores nationwide in a number of business  
5 formats, including retail stores, Supercenters, Sam’s Clubs and Neighborhood Markets in the  
6 State of California. Walmart’s stores are private property and are open to the public for the  
7 purpose of retail shopping. Walmart brings this action to assert and defend its right to manage,  
8 control, and operate its business *inside its stores*, free from Defendants’ repeated and continuing  
9 trespasses and other unlawful conduct in the State of California, including Los Angeles County.

10 2. California’s Moscone Act, section 527.3 of the Code of Civil Procedure (“CCP”),  
11 presently affords Defendants the right—provided they act peacefully and in accordance with the  
12 law—to conduct certain labor-related activities outside Walmart’s stores. Defendants’ repeated  
13 trespasses and other unlawful conduct *inside Walmart’s* stores are not protected labor-related  
14 activity under the Moscone Act or any other California law.

15 3. Defendants and their agents have violated California law through coordinated,  
16 statewide acts of repeated and continuing trespasses and breach of the peace *inside* numerous  
17 Walmart stores. Among other things, Defendants disrupt operations, damage property and  
18 engage in disorderly conduct, annoy and harass customers and Walmart associates, and block  
19 access or egress/ingress to the stores. Defendants have committed these unlawful acts despite  
20 Walmart’s repeated requests that they not trespass onto its private property by entering inside  
21 stores for any purpose other than retail shopping. Indeed, in many instances, Defendants and  
22 their agents brazenly have refused to leave the inside of the store after Walmart management  
23 asked them to leave. In other instances, Defendants and their agents leave and then return later  
24 and commit a trespass all over again.

25 4. As a result of Defendants’ repeated trespasses and other unlawful activities as  
26 described in this Complaint, Walmart has engaged local law enforcement to assist in protecting its  
27 property rights. Unfortunately, police intervention often arrives when it is too late, after the  
28 damage is already done. At that point, Defendants’ trespasses and other unlawful activities have

05/10/201

1 caused substantial disruption and damage to Walmart's business operations. Even when the  
2 police are on-site to monitor demonstrations occurring outside the store and in the parking lots,  
3 they are not able to prevent demonstrators from trespassing inside the store and engaging in  
4 unlawful behavior.

5 5. Walmart has repeatedly requested, urged, and demanded that Defendants stop their  
6 continued unlawful trespass into its stores by sending numerous separate cease and desist  
7 demands to Defendants. It is clear, however, that Defendants intend to continue their unlawful  
8 trespasses, as evidenced by communications in which they threaten, "it's not over" and "we'll be  
9 back." Indeed, just recently, as described further below, Defendants planned and orchestrated a  
10 disruptive trespass at a store in San Leandro, on April 6, 2013. Moreover, on April 24, 2013, in  
11 coordinated actions throughout the State, Defendants again trespassed inside Walmart stores to  
12 engage in unlawful activity. Having exhausted all other available avenues, Walmart has been left  
13 with no other choice but to pursue permanent injunctive relief through the courts.

14 6. **This action does not seek to prevent Defendants from engaging in peaceful labor-**  
15 **related activity outside of Walmart's stores as permitted under California law.** Rather, it seeks  
16 only to stop Defendants' ongoing practice of unlawfully trespassing *inside* Walmart's stores to  
17 engage in disruptive and harassing conduct, none of which is protected under California law.

18 7. The term "Defendant" as used in this Complaint does not include Walmart  
19 associates engaged in non-disruptive and peaceful handbilling or solicitation.

20 **PARTIES**

21 8. Plaintiff Walmart is incorporated under the laws of the State of Delaware, with its  
22 principal place of business in Bentonville, Arkansas. Walmart owns and/or operates over 4,500  
23 stores in the United States, including 250 stores in California. Walmart currently employs over  
24 75,000 people in this State, which includes close to 12,000 associates in Los Angeles County.

25 9. Walmart is informed and believes and on that basis alleges that Defendant UFCW  
26 is a national labor organization, as defined in the National Labor Relations Act, with its principal  
27 place of business in Washington, D.C. UFCW is composed of many members. It is impractical  
28 to make all of its members parties hereto and bring them before this Court other than by

1 representation.

2 10. Walmart is informed and believes and on that basis alleges that Defendant  
3 OURWalmart is a labor organization as defined under the National Labor Relations Act and a  
4 wholly-owned subsidiary and agent of the UFCW, which governs, controls, and finances  
5 OURWalmart.<sup>1</sup>

6 11. The true names and identities of the Doe Defendants are currently unknown to  
7 Walmart and are, in any event, better known to Defendants than to Walmart. At such time as this  
8 information becomes known to Walmart, Walmart reserves the right to amend this Complaint, or,  
9 if appropriate, request that the Court enter this information in any judgment obtained as if that  
10 information had been set forth in this Complaint.

11 12. The Doe Defendants are individuals believed to be residing in California. They  
12 participated in, and on information or belief caused others to participate in, one or more of the  
13 events, complained about herein.

14 13. On information and belief, the UFCW and OURWalmart hire, pay, or otherwise  
15 induce other persons who are not Walmart associates to trespass on Walmart property.

16 **JURISDICTION AND VENUE**

17 14. This Court has jurisdiction over this action pursuant to Article VI, section 4 of the  
18 California Constitution and section 1600 of the California Code of Civil Procedure ("CCP").

19 15. This Court has personal jurisdiction over the Defendants who engaged in conduct,  
20 and who continue to engage in conduct, giving rise to the claims stated herein at locations within  
21 the State of California and Los Angeles County.

22 16. Venue is proper in this Court pursuant to, among other provisions, CCP 392(a).

23 **GENERAL ALLEGATIONS**

24 17. Without invitation or permission and over Walmart's express objection,  
25 Defendants have repeatedly trespassed inside Walmart stores to engage in unauthorized activities.  
26 Such unwanted entrance into Walmart's private property for purposes other than retail shopping

27 \_\_\_\_\_  
28 <sup>1</sup> Walmart has never consented to the use of the name OURWalmart and believes that such use is inappropriate. Walmart reserves all its rights with respect to such use.

1 constitutes an unlawful trespass outside the scope of the Moscone Act.

2 18. In addition to trespassing inside Walmart's private property, Defendants have  
3 further engaged in unlawful in-store activity that is not protected by the Moscone Act. Such  
4 unlawful activity includes:

- 5 • blocking ingress and egress at store entrances;
- 6 • patrolling through the sales floor and soliciting customers and working associates;
- 7 • parading and initiating confrontational demonstrations;
- 8 • shouting through bullhorns and carrying banners and signs;
- 9 • "flash mobs"<sup>2</sup>;
- 10 • handbilling flyers and business cards to customers and working associates;
- 11 • setting free tens of balloons inside the store;
- 12 • leaving perishable goods in carts and walking away without paying;
- 13 • blocking customer traffic inside the store; and
- 14 • tracking down and confronting store managers on the sales floor to make various  
15 demands, and refusing to leave until the manager responds to them.

16 19. In addition to diverting management from their normal job functions and  
17 interfering with working Walmart associates, Defendants' trespassory conduct interferes with  
18 Walmart customers as they try to shop. Examples of Defendants' acts of trespass are described in  
19 more detail below in paragraphs 20 to 27 and 31 to 35 of this Complaint.

### 20 DEFENDANTS' REPEATED TRESPASSES IN 2012

21 20. Over a period of months in 2012, OURWalmart demonstrators trespassed in the  
22 Placerville Walmart store and left hundreds of OURWalmart flyers throughout the inside of the  
23 store.

24 21. On August 15, 2012, a flash mob of around 50 OURWalmart demonstrators  
25 occupied the inside of the Baldwin Hills Walmart store. Before the flash mob occurred, some of  
26 the demonstrators appeared to be shopping. Suddenly, a member of the group took out a bullhorn

27 <sup>2</sup> The Merriam-Webster dictionary defines a "flash mob" as "a group of people summoned (as by e-mail or text  
28 message) to a designated location at a specified time to perform an indicated action before dispersing." Defendants' use of flash mobs in Walmart stores includes showing up unannounced and without permission to perform choreographed songs and chants. The flash mobs typically last from 10 to 20 minutes, after which the demonstrators leave quickly before the local police arrive.

1 and began reading from a script. Others then joined in and also began shouting. At one point, the  
2 group sang along to the song "Respect" by Aretha Franklin. The incident lasted approximately  
3 15 to 20 minutes. The chaos confused and startled customers and associates. Even as they  
4 departed, demonstrators continued to chant through a megaphone.

5 22. One month later, on September 15, 2012, approximately 50 to 60 OURWalmart  
6 demonstrators congregated at the Walmart store in Baldwin Park. Despite the presence of law  
7 enforcement at the demonstration, police did not stop a group of about 15 demonstrators from  
8 trespassing inside the store and confronting the store manager. After 15 minutes or so, the group  
9 left the store, threatening, "it's not over."

10 23. On October 5, 2012, approximately 50 OURWalmart and UFCW demonstrators  
11 trespassed inside the Pico Rivera Walmart store. They clapped, chanted, and marched *through*  
12 *the store* carrying banners and flags. Some of the demonstrators banged pots and pans as they  
13 paraded down the aisles. The demonstration lasted around 10 to 15 minutes.

14 24. On October 10, 2012, at least 5 OURWalmart demonstrators trespassed in a  
15 Walmart store in Chula Vista and handed out flyers inside the store. When the store manager  
16 asked them to leave Walmart's private property, the demonstrators said they had a "right" to pass  
17 out flyers inside the store. The store manager called the police. Just then, a group of 10  
18 demonstrators congregated in front of the store, blocked customer traffic between the cash  
19 register lanes and the exit, and demanded to see the store manager. A spokesperson ignored the  
20 store manager's request that they all step outside to talk. The group also ignored the store  
21 manager's request to stop videotaping with their smartphones. Eventually, the police arrived, but  
22 by then, the damage had already been done.

23 25. On November 14, 2012, at the Walmart store in San Leandro, 40 to 50  
24 OURWalmart demonstrators trespassed and marched slowly around the inside of the store. Some  
25 of the demonstrators took video and pictures, ignoring a Walmart's manager request that they  
26 stop. The demonstrators made their way to the associate break room where they blocked ingress  
27 and egress. A Walmart manager asked police officers to intervene since the demonstrators were  
28 trespassing onto Walmart's private property, but the police said they would do nothing unless

1 Walmart wanted to make a citizen's arrest. Later, on November 20, 2012, at the San Leandro  
2 Walmart store, around 40 OURWalmart demonstrators congregated outside the store. Police  
3 officers were on-site and monitored the demonstration, but did not stop several demonstrators  
4 from trespassing inside the store where they dropped leaflets on the sales floor as they walked  
5 around. As the demonstrators returned to the parking lot, they chanted, "we'll be back."

6 26. On November 23, 2012, while 100 or more OURWalmart demonstrators paraded  
7 outside the front entrance of the Walmart store in Richmond, six of them trespassed inside the  
8 store with a large OURWalmart poster and confronted the store manager. One demonstrator kept  
9 taking pictures, despite the manager's request that he stop. The on-site police officers did not  
10 stop the demonstrators' unlawful trespass.

11 27. During Defendants' repeated and unlawful trespasses into Walmart stores, law  
12 enforcement officers have, at times, been unable or unwilling to assist with evicting the  
13 demonstrators, or uncertain as to whether they have the legal ability to remove the demonstrators  
14 from inside Walmart's stores.

#### 15 **WALMART'S CEASE AND DESIST NOTICES**

16 28. In addition to individual store-level interactions in which Walmart managers  
17 repeatedly told Defendant trespassers to leave Walmart's stores and refrain from interfering with  
18 customers and Walmart associates, Walmart formally notified the UFCW or OURWalmart (or  
19 both) and their non-Walmart associate agents and representatives on October 8, 2011, October 14,  
20 2012 and November 15, 2012 to cease and desist from trespassing inside Walmart's private  
21 property in California and elsewhere. Copies of Walmart's cease and desist notices to UFCW  
22 and OURWalmart are attached hereto as Exhibit A.

23 29. In those notices, Walmart affirmatively revoked the license, invitation and/or  
24 privilege of all non-Walmart associate UFCW or OURWalmart (or both) supporters,  
25 demonstrators, agents, or representatives to enter into any Walmart store or other facility for the  
26 purpose of engaging in any picket, patrol, parade, "flash mob," demonstration, handbilling,  
27 solicitation, manager confrontation, or customer disruption. Despite those specific instructions  
28 not to trespass inside Walmart's stores, Defendants continued to trespass.

1 **DEFENDANTS CONTINUE TO TRESPASS IN 2013**

2 30. Shortly before April 4, 2013, Walmart learned that Defendants planned a  
3 demonstration at Walmart's San Leandro store on April 6, 2013. Thus, on April 4, 2013,  
4 Walmart's counsel wrote the UFCW and gave Defendants "yet another formal, written notice that  
5 non-Walmart associates acting under – or in response to – the direction, control, or inducement of  
6 [the UFCW], its agents, or affiliates shall not enter inside any Walmart facility in San Leandro,  
7 California or any other location in California for any purpose other than to shop and specifically  
8 shall not engage in picketing, patrolling, parading, "flash mobs," customer disruptions, or other  
9 demonstrations inside any Walmart facility in California." A copy of this letter is attached hereto  
10 at Exhibit B.

11 31. Nevertheless, on April 6, 2013, OURWalmart demonstrators trespassed inside the  
12 San Leandro store and passed out flyers. A Walmart manager asked the group inside the store to  
13 leave, but they refused. After about 15 minutes, the police arrived and only then did the group  
14 exit the store.

15 32. On April 16, 2013, an OURWalmart demonstrator confronted working associates  
16 inside the Paramount Walmart, refusing a manager's request that he leave. The demonstrator also  
17 refused to stop filming the manager with his cell phone. The police were called, arriving after the  
18 trespasser exited the store. The manager asked for a police report, but the police officers refused  
19 to provide one.

20 33. Then, on April 18 and April 23, 2013, Walmart's counsel again wrote the  
21 Defendants upon learning, through public sources, of Defendants' plans to enter Walmart stores  
22 across the nation and in California to confront managers and handbill and solicit customers and  
23 working associates inside the store. Walmart again put the UFCW and OURWalmart on notice  
24 that they had no authorization to engage in such trespassory conduct and that, again, Walmart  
25 "expressly revokes any invitation, license or privilege of the [Defendants] and [their] non-  
26 associate agents to enter ... inside Walmart's property to engage in any of the aforementioned  
27 activities." A copy of those letters are attached hereto as Exhibit C.

28 ///



1           34.     Despite that notice, on April 24, 2013, Defendants and their agents trespassed *into*  
2 at least 10 Walmart stores in California. For example, a group of OURWalmart demonstrators  
3 entered the Walmart store in Covina and passed out flyers throughout the store. One of the  
4 demonstrators insisted that a manager take a letter addressed to Walmart's CEO. When he was  
5 asked if there were others in the store handing out flyers, the demonstrator lied and said no. In a  
6 San Diego Walmart, an OURWalmart demonstrator entered the store and began handing out  
7 cards to associates. He was asked to leave, but minutes later, he came back into the store with five  
8 other demonstrators, one of whom began reciting a speech while another demonstrator videotaped  
9 the activity.

10           35.     Prior to the April 24 events, local law enforcement officers told Walmart's labor  
11 relations director for Southern California that they would not force Defendant trespassers to leave  
12 the inside of a Walmart store. The officers also stated that the demonstrators "have a right to  
13 walk back to your break room and solicit and distribute literature." Indeed, on May 9, 2013,  
14 several Defendant demonstrators entered the Paramount store and congregated in the back where  
15 customers pick up their internet purchases. The demonstrators interlocked hands and blocked  
16 customer access. One demonstrator told a Walmart manager that they would be back every day,  
17 "bigger and badder." Then, as they marched slowly to the front of the store, the crowd chanted  
18 "we'll be back." The police arrived 15 minutes after the demonstrators left; the officers refused  
19 to issue a police report because it was not a "criminal matter." Instead, they said that they would  
20 prepare a "labor activity report," even though a Walmart manager explained to the officers that  
21 the demonstrators had blocked customer access. Later that evening, around 30 Defendant  
22 demonstrators returned to the Paramount store, trespassed inside, and confronted management in  
23 the personnel office at the back of the store. The demonstrators refused to leave despite  
24 management's request that they leave. The demonstrators then formed a horse-shoe shape that  
25 blocked access to the internet purchase area and the nearby restrooms.

26     ///  
27     ///  
28     ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**

**(TRESPASS)**

**(AGAINST ALL DEFENDANTS)**

36. Walmart incorporates paragraphs 1 through 35 of this Complaint by reference.

37. Walmart has performed all conditions precedent to the commencement of this action, or such conditions have otherwise occurred.

38. Walmart has lawful possession of its stores in the State of California as property owner or lessee with the right to exclude.

39. On repeated past occasions and continuing to the present, Defendants entered – without Walmart’s invitation or permission and over Walmart’s express objection – Walmart stores throughout the State of California, including stores in the County of Los Angeles, for the sole purpose of engaging in disruptive and harassing behavior.

40. Defendants have repeatedly entered Walmart’s stores in the State of California (a) in excess of their limited permission to enter for the purpose of retail shopping, and (b) without permission to engage in picketing, patrolling, parading, “flash mobs,” demonstrations, handbilling, solicitation, manager confrontations, and customer disruptions, and they have threatened to do so again.

41. Defendants’ actions as described herein were willful and fraudulent in that Defendants entered the inside of Walmart stores without invitation to do so. Despite Walmart’s warnings that Defendants were unwelcome and were trespassing, and in conscious disregard of the safety and quiet enjoyment of Walmart’s customers and associates, Defendants have refused to leave the stores.

42. Defendants had and have no right or authority to use the inside of Walmart’s stores or other facilities in the State of California for the activities described herein.

43. Defendants’ activities in Walmart stores constituted unlawful trespass and impermissible use of the inside of Walmart’s stores far beyond the scope allowable under California law, including the Moscone Act.

05/10/201

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND CAUSE OF ACTION**

**(INJUNCTIVE RELIEF)**

**(AGAINST ALL DEFENDANTS)**

44. Walmart incorporates paragraphs 1 through 43 of this Complaint by reference.

45. Walmart has a right to control the inside of its stores in the State of California in which the Defendants have trespassed and continue to trespass, and has the right to protect against Defendants' trespassing and interfering with Walmart's use of its interior property.

46. As a proximate result of Defendants' trespasses and breach of the peace and other unlawful conduct, Walmart has suffered and will continue to suffer substantial and irreparable damage.

47. Unless Defendants are permanently enjoined from trespassing inside Walmart stores and engaging in other in-store unlawful activities such as patrolling, parading, "flash mobs," demonstrations, handbilling, solicitation, manager confrontations, or customer disruptions, Walmart will be substantially and irreparably injured by:

a. A continued negative impact on Walmart's ability to use, manage, control, and operate its business affairs inside its stores free from Defendants' campaign of unlawful trespass and disruption;

b. The interference and disruption to customers and working associates, which Walmart cannot quantify in money damages because of the difficulty in determining how many present, former, and potential Walmart customers and associates have been interfered with and disrupted while they shopped or worked and the degree of such interference and disruption;

c. A loss of customers and goodwill, because of the damage to Walmart's reputation as a safe, comfortable, and convenient place to shop; and

d. Continuous disruptions to its operations and productivity to address the coordinated and unabated trespasses of the Defendants, which will otherwise require Walmart to file successive legal actions for each new act of trespass.

48. Walmart has no adequate legal remedy at law.

49. Greater injury will be inflicted upon Walmart by the denial of a permanent

05/10/2011

1 injunction than will be inflicted upon Defendants by the granting of such relief.

2 50. Law enforcement officers are unable or unwilling to furnish adequate protection  
3 from Defendants' trespassory conduct described above.

4 51. In order to prevent and restrain a continuation of Defendants' unlawful activity  
5 and breaches of the peace, which in the absence of injunctive relief is likely to occur, Walmart is  
6 entitled to permanent injunctive relief.

7 **THIRD CAUSE OF ACTION**  
8 **(DECLARATORY RELIEF)**  
9 **(AGAINST ALL DEFENDANTS)**

10 52. Walmart incorporates paragraphs 1 through 51 of this Complaint by reference.

11 53. Walmart contends that the Moscone Act, CCP 527.3, does not apply to any  
12 "labor" activity or demonstration occurring *inside* a retail store or other private property of a  
13 business owner, regardless of whether the "labor" activity or demonstration is "peaceful" or not.  
14 Thus, Defendants' demonstrations and other unauthorized activity described herein exceed the  
15 activities that are protected by the Moscone Act and thus constitute an unlawful trespass which  
16 may be enjoined.

17 54. Defendants continue to assert that their demonstrators have the right to enter inside  
18 Walmart's stores in California and use Walmart's sales floor where customers shop and  
19 associates work for their own purposes, as described above.

20 55. An actual controversy has arisen and now exists between Walmart and Defendants  
21 concerning their respective rights, in that Walmart contends:

22 a. Walmart has the absolute right to exclude Defendants from entering  
23 Walmart's stores for any purpose other than shopping for and/or purchasing merchandise at  
24 Walmart's stores;

25 b. Defendants' entry into Walmart stores for purposes of engaging in labor-  
26 related activities and not for the purpose of retail shopping is conduct not protected by the  
27 Moscone Act, CCP § 527.3; and

28 ///

05/10/201

1 c. Walmart has the right to prohibit Defendants from entering its stores for  
2 the purpose of engaging in any picket, patrol, parade, "flash mob," demonstration, handbilling,  
3 solicitation, manager confrontation, or customer disruption.

4 56. Because of the parties' conflicting interpretation of applicable statutory and  
5 common law rights and obligations with respect to trespass, including whether the Moscone Act  
6 applies to Defendants' trespassory conduct inside Walmart's stores, irreparable damage will be  
7 done unless the rights of the parties are determined by this Court.

8 57. Walmart has satisfied the requirements of CCP 1060 for issuance of a declaratory  
9 judgment.

10 **FOURTH CAUSE OF ACTION**  
11 **(DECLARATORY RELIEF)**  
12 **(AGAINST ALL DEFENDANTS)**

13 58. Walmart incorporates paragraphs 1 through 57 of this Complaint by reference.

14 59. Defendants have taken the position that no actionable trespass occurs inside  
15 private "retail" property, like Walmart's property in California, until the demonstrators are told,  
16 in-person, to leave the property.

17 60. In fact, in response to Walmart's April 4, 2013, letter and prior correspondence  
18 instructing Defendants to refrain from trespassing in its stores when they conduct demonstrations  
19 similar to the ones described herein, including the demonstration at Walmart's San Leandro store  
20 on April 6, 2013, Defendants refused to acknowledge that the demonstrators' entrance inside  
21 Walmart's stores to engage in unauthorized activity would constitute a trespass in the first  
22 instance.

23 61. Instead, Defendants continue to enter Walmart's stores without any authorization,  
24 license, or invitation, and will not leave until Walmart tells them to leave, Walmart calls the  
25 police, or police arrive and instruct the demonstrators (if they have not already exited the store) to  
26 exit the store.

27 62. Where prior notice has been given to persons that they have no right to come into  
28 another's private property or that the authorization, license, or invitation to do so is limited to

1 specific activities, and despite that notice those persons enter the private property to engage in  
2 unauthorized activities, California law does not require the property owner to instruct those  
3 persons to leave in order for their unauthorized entry to constitute trespass under California law.  
4 In those circumstances, entering the property to engage in unauthorized activity is itself a  
5 trespass.

6 63. There is an actual and existing controversy between Defendants and Walmart over  
7 whether an on-site, in-person demand that the demonstrators leave the store is required to  
8 establish that Defendants have trespassed in violation of California law, where Walmart has given  
9 Defendants prior notice that they have no right to come into its stores to engage in any picket,  
10 patrol, parade, "flash mob," demonstration, handbilling, solicitation, manager confrontation, or  
11 customer disruption and that their authorization, license, or invitation to enter Walmart's stores  
12 for any reason other than to shop or make purchases has been revoked.

13 64. Because of the parties' conflicting interpretation of applicable statutory and  
14 common law rights and obligations with respect to trespass and any associated notice  
15 requirements, irreparable damage may be done unless the rights of the parties are determined by  
16 this Court.

17 65. Walmart has satisfied the requirements of CCP 1060 for issuance of a declaratory  
18 judgment.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Walmart prays for judgment in its favor and against the Defendants as  
21 follows:

22 **A.** *Issuance of a permanent injunction, enjoining and restraining Defendants, their*  
23 *parents, subsidiaries, and affiliates, their non-Walmart associate officers, employees,*  
24 *representatives, affiliates, and agents, and all other non-Walmart associate persons who act in*  
25 *concert or participation with Defendants, directly or indirectly, from:*

26 (i) entering Walmart stores and facilities in the State of California, or such  
27 other geographic area as this Court deems just and proper, for any purpose other than shopping  
28 for and/or purchasing merchandise at Walmart's stores;

05/10/201

1 (ii) entering Walmart stores and facilities in the State of California, or such  
2 other geographic area as this Court deems just and proper, to engage in unlawful activities such as  
3 picketing, patrolling, parading, "flash mobs," demonstrations, handbilling, solicitation, manager  
4 confrontations, or customer disruptions, all of which are outside the scope of the Moscone Act;  
5 and

6 (iii) committing any other unlawful and disruptive acts that this Court deems  
7 appropriate for injunctive relief.

8 **B.** *A declaration that the Moscone Act, CCP 527.3, does not apply to Defendants'*  
9 *(i) trespasses into Walmart's stores and other facilities in California, and/or (ii) their other in-*  
10 *store unlawful activities in California, such as picketing, patrolling, parading, "flash mobs,"*  
11 *demonstrations, handbilling, solicitation, manager confrontations, or customer disruptions.*

12 **C.** *A declaration that, because Walmart has notified Defendants that they have no*  
13 *right to come inside its stores and other facilities to engage in picketing, patrolling, parading,*  
14 *"flash mobs," demonstrations, handbilling, solicitation, manager confrontations, or customer*  
15 *disruptions, Defendants commit an unlawful trespass each and every time their demonstrators*  
16 *enter a Walmart store or other facility to engage in any such unauthorized activity, regardless of*  
17 *whether they are told to leave at the time and refuse to do so.*

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

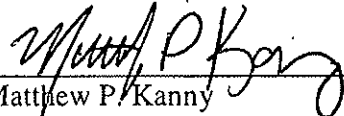
28 ///

05/10/2011

1 D. An award to Walmart of such other further relief as the Court deems just and  
2 equitable.

3 RESPECTFULLY SUBMITTED this 10th day of May, 2013.

4 MANATT, PHELPS & PHILLIPS, LLP

5  
6 By   
Matthew P. Kanny  
7 Yoanna S. Binder  
8 11355 W. Olympic Blvd.  
Los Angeles, California 90064

9 and

10 STEPTOE & JOHNSON LLP  
Steven D. Wheelless  
11 Douglas D. Janicik  
201 East Washington Street, Suite 1600  
12 Phoenix, Arizona 85004-2382  
Counsel for Plaintiff Wal-Mart  
13 Stores, Inc.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
05/10/2013



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VERIFICATION

I, Lee Swietlikowski, declare as follows:

I am the Labor Relations Director for Walmart, plaintiff in this action, and have been authorized to make this verification on its behalf.

I have read the foregoing Verified Complaint, and know its contents. I am informed and believe that the matters stated therein are true, and on that ground certify and declare under penalty of perjury under the laws of the State of California that the same are true and correct and that this Verification was executed on May 10, 2013, at Paramount, California.

  
\_\_\_\_\_  
Lee Swietlikowski

307996870.1

05 / 10 / 20