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10 Attorneys for Plaintiff  
11 Tri Huynh

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 TRI HUYNH,  
15 Plaintiff,

16 v.

17 WAL-MART STORES, INC., a  
18 Delaware Corporation; WAL-MART  
19 ASSOCIATES, INC., a Delaware  
20 Corporation; WAL-MART.COM,  
21 INC., a Delaware Corporation; and  
22 DOES 1 through 50, inclusive.

23 Defendants.

Case No.:

**COMPLAINT FOR:**

1. Whistleblower Retaliation in Violation of the Sarbanes-Oxley Act (18 U.S.C. §1514A, et seq.);
2. Retaliation in Violation of California Labor Code §1102.5;
3. Disability Discrimination in Violation of California Fair Employment and Housing Act;
4. Failure to Accommodate in Violation of California Fair Employment and Housing Act;
5. Failure to Engage in a Good Faith Interactive Process in Violation of the California Fair Employment and Housing Act;
6. Retaliation in Violation of the California Fair Employment and Housing Act;
7. Failure to Prevent Discrimination and Retaliation in Violation of the California Fair Employment and Housing Act;
8. Wrongful Termination in Violation of Public Policy.

**(JURY TRIAL DEMAND)**

1 **INTRODUCTION**

2 “Personal and moral integrity is one of our basic  
3 fundamentals, and it has to start with each of us.”

4 “Don’t compromise your reputation. It’s a precious  
5 commodity. Don’t compromise your integrity ... have a  
6 good name.”

7 1. These are the words of Wal-Mart founder Sam Walton who built Wal-  
8 Mart into America’s largest corporation by recognizing that honesty and integrity  
9 were critical components of a long-term successful business strategy. But this case  
10 shows that Wal-Mart has forgotten its roots and betrayed the principles of its  
11 Founder. For the first time since it had become the undisputed champion of retail,  
12 Wal-Mart faced a serious long-term threat: Amazon. Wal-Mart had been asleep at  
13 the wheel and was slow to react to the seismic shift in retail purchasing dollars  
14 away from traditional brick-and-mortar retail and into the land of E-commerce.  
15 Wal-Mart sat there idly on the sidelines as Amazon built its business model around  
16 the fact that long-term retail success would be driven by E-commerce success. By  
17 July 2015, Wal-Mart’s world was rocked when Amazon’s market capitalization  
18 exceeded Wal-Mart’s. Soon, a massive decline in Wal-Mart share value ensued.  
19 Wal-Mart’s senior leadership knew it had to act fast and decisively to swiftly  
20 change the short-term market perspective on its E-commerce progress to keep its  
21 share price up. It thus embarked on an overly-aggressive push to show meteoric  
22 growth in its E-commerce business by any means possible – even, illegitimate ones.  
23 In short, Wal-Mart sacrificed and betrayed its Founder’s key principles of integrity  
24 and honesty, pushing those core values aside in its rush to win the E-commerce war  
25 at all costs. In doing this, it realized it must silence any whistleblower who spoke  
26 up against its “win at all costs” approach to e-Commerce growth. This case is  
27 brought by one of Wal-Mart’s key E-commerce executives who refused to be  
28 silenced in the face of demands that he look the other way to unlawful conduct  
occurring with Wal-Mart’s E-commerce business.

**JURISDICTION, VENUE AND EXHAUSTION**

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2           2.       This court has federal question jurisdiction based on 28 U.S.C. § 1331,  
3 the Sarbanes-Oxley Act, 18 U.S.C. §1514A, et seq. The first claim for relief arises  
4 directly under federal law.

5           3.       This court has supplemental jurisdiction over the second through  
6 eighth claims for relief pursuant to 28 U.S.C. § 1367.

7           4.       The City of San Bruno in San Mateo County, is where the majority of  
8 the acts and omissions alleged occurred.

9           5.       Venue is properly laid in this District pursuant to 28 U.S.C. §  
10 1391(b)(1) & (2). The acts and omissions complained of herein occurred within  
11 this District and this Division, and Mr. Huynh’s employment was within this  
12 District and this Division.

13           6.       Excluding interest and costs, the amount in controversy exceeds the  
14 statutory minimum of \$75,000.

15           7.       Plaintiff has exhausted any and all administrative remedies required to  
16 file this complaint. Plaintiff timely filed a complaint of Sarbanes-Oxley retaliation  
17 with the United States Department of Labor and the Department did not issue  
18 findings or recommendations within the statutory one hundred and eighty days, thus  
19 permitting a direct lawsuit by Plaintiff in federal court. Moreover, Plaintiff has  
20 filed charges with the California Department of Fair Employment and Housing and  
21 has received a “right to sue” notice from that agency. Plaintiff has given notice of  
22 his intent to seek remedies under the Labor Code Private Attorney Generals Act of  
23 2004 (PAGA) with the Labor and Workforce Development Agency and is awaiting  
24 the expiration of the statutory period. Upon expiration of the statutory waiting  
25 period, Plaintiff will amend this complaint to allege a claim seeking remedies under  
26 PAGA.

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**PARTIES**

8. Mr. Huynh is a resident of the State of Washington.

9. Defendants WAL-MART STORES, INC., a Delaware Corporation; WAL-MART ASSOCIATES, INC., a Delaware Corporation; and WAL-MART.COM, INC., a Delaware Corporation (collectively referred to as Wal-Mart), are, and at all times relevant hereto were, a publicly traded company with securities registered under section 12(g) of the Securities Exchange Act of 1934 (“the Exchange Act”). Specifically, and upon information and belief, WAL-MART STORES, INC., a Delaware Corporation, is believed to be the parent company of wholly-owned subsidiaries WAL-MART ASSOCIATES, INC., a Delaware Corporation; and WAL-MART.COM, INC., a Delaware Corporation. At all times herein mentioned, Wal-Mart was required to file periodic reports pursuant to section 13 of the Exchange Act, including annual reports (10Ks), quarterly reports (10Qs), and reports when certain events occur (8Ks). These periodic reports must include or incorporate by reference types of information that would help investors decide whether Wal-Mart’s securities are a good investment. At all times herein mentioned, Wal-Mart was also required by 15 U.S.C. §78m(b)(2) to “(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (B) devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that – (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization....”



1           14.     Founded in 1962, by the late-1980s, Wal-Mart had become the most  
2 profitable retailer in America, beating-out then rivals Kmart and Sears though both  
3 had existed for decades longer than Wal-Mart. By 1990, Wal-Mart was America’s  
4 largest retailer by revenue and, by the mid-1990s, was widely recognized as  
5 America’s largest, most dominant retailer. It then began to expand internationally  
6 stretching into Mexico and Canada in the early- to mid-1990s and then spreading  
7 beyond North America into other continents in the mid- to late-1990s.

8           15.     By 2002, Wal-Mart achieved the top spot on the Fortune 500 list of  
9 America’s largest corporations with annual revenue of nearly \$220 billion and  
10 annual profits of \$6.7 billion.

11           16.     By 2005, Wal-Mart reported \$312.4 billion in annual sales, more than  
12 6,200 facilities worldwide – including 3,800 stores within the United States alone –  
13 and it employed more than 1.6 million associates making it the largest private  
14 employer in the country and largest private corporation in the world.

15           17.     While Wal-Mart encountered its share of public relations and  
16 regulatory challenges during these years of rapid expansion and monumental  
17 growth, none of these challenges fundamentally threatened its status as America’s  
18 most dominant retailer. Even in the face of repeated and consistent public backlash  
19 against Wal-Mart’s market-dominance strategies, Wal-Mart retained its  
20 indisputable status as America’s largest, most dominant and most profitable  
21 retailer.<sup>1</sup>

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28           <sup>1</sup> Paragraphs 13 through 17 are plead on information and belief.

1           **B. With the rise of E-commerce, Amazon becomes Wal-Mart’s**  
2           **greatest long-term threat. Wal-Mart knows this. It is thus**  
3           **desperate to gain the ground it had long lost to Amazon as a result**  
4           **of Wal-Mart’s “tortoise-like ... pace” in pursuing the online retail**  
5           **market.**

6           18. Wal-Mart’s path to market dominance was paved by its traditional  
7 brick-and-mortar retail business. But as society has progressed and evolved  
8 technologically, so too have consumers’ purchasing practices for both day-to-day  
9 necessities and luxury items. With the rise of E-commerce – that is, online retail  
10 platforms – a growing segment of the purchasing dollars have shifted away from  
11 traditional brick-and-mortar purchases into the online retail space. Each year, more  
12 and more purchasing power has been diverted away from traditional brick-and-  
13 mortar store purchases into the online E-commerce segment. And each year, the  
14 predictions have been for this trend to continue at a more rapid pace year-after-year.

15           19. For years, Wal-Mart’s senior leadership recognized the trend:  
16 expansion of the E-commerce market with a corresponding contraction of the  
17 traditional brick-and-mortar market. Eventually, E-commerce sales will likely  
18 exceed traditional brick-and-mortar retail sales. Thus, senior leadership identified  
19 the need to catch-up in the E-commerce space, fearing that the growth of E-  
20 commerce competition, and Wal-Mart’s “tortoise-like”<sup>2</sup> entry into the E-commerce  
21 sphere, posed the first serious long-term threat to Wal-Mart’s retail market-  
22 dominance.

23           20. By at least 2011 forward, Wal-Mart’s senior leadership publicly, and  
24 repeatedly, acknowledged that its E-commerce business would continue to play an

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26           <sup>2</sup> “Walmart Slowly Makes Strides in E-Commerce,” by Jennifer Saba. *New*  
27 *York Times* (Dec. 27, 2016). Found at:  
28 [https://www.nytimes.com/2016/12/27/business/dealbook/walmart-slowly-makes-](https://www.nytimes.com/2016/12/27/business/dealbook/walmart-slowly-makes-strides-in-e-commerce.html)  
[strides-in-e-commerce.html](https://www.nytimes.com/2016/12/27/business/dealbook/walmart-slowly-makes-strides-in-e-commerce.html)



1 increasingly important role across its business segments. Wal-Mart thus knew it  
2 needed to focus on and improve its E-commerce business to remain competitive on  
3 a long-term basis. Yet, while Wal-Mart's senior leadership acknowledged the need  
4 to do so, it did not react swiftly enough to this long-term risk posed to Wal-Mart by  
5 this shift in purchasing dollars and customer focus away from traditional brick-and-  
6 mortar and into E-commerce.

7 21. In 2014 and 2015, Wal-Mart's slow reaction to this significant shift in  
8 consumer purchasing practices towards E-commerce began to be more apparent,  
9 and to produce more immediate negative consequences.

10 22. In February 2014, Wal-Mart announced its year-end Fiscal Year 2014  
11 numbers, reporting a 5.7% drop in full-year net income, a 3.2% drop in full-year  
12 earnings per share and disappointing fourth quarter in-store sales. Analysts and  
13 financial reporters continued to raise concern about Wal-Mart's long-term position  
14 following these reports. Then, in February 2015, following Wal-Mart's report of its  
15 Fiscal Year 2015 year-end numbers – including that its E-commerce growth fell  
16 short of expectations – Wal-Mart's share price dropped 3% wiping out \$6 billion in  
17 its market value. Still, Wal-Mart's leadership continued to preach the message that  
18 Wal-Mart was well-positioned in the E-commerce space.

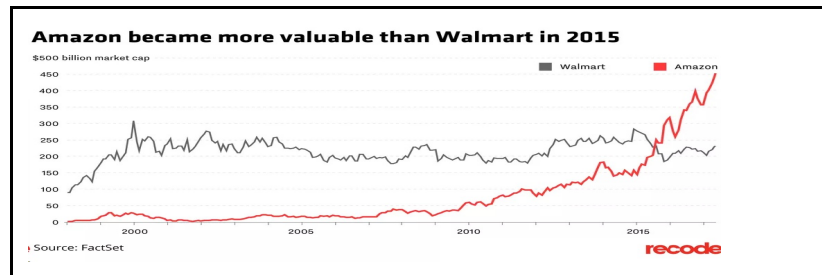
19 23. At the same time, the market-leader of E-commerce (Amazon) reported  
20 continued meteoric growth. On July 23, 2015, when Amazon reported a quarterly  
21 profit of \$.19 cents per share (contrary to predictions of a loss per share), Amazon's  
22 stock price soared to a staggering number exceeding \$560 per share. Amazon's  
23 market capitalization of \$262.7 billion now exceeded Wal-Mart's market  
24 capitalization of \$233.5 by 12%.

25 24. It was not just Amazon's growth that struck fear into Wal-Mart's  
26 senior leadership. Amazon also showed other key signs of being well-positioned to  
27 maintain its status as the undisputed E-commerce champion into the future. For  
28



1 example, in 2014, an industry study reported that Amazon on average charged 9%  
2 lower than Wal-Mart for comparable products.

3 25. Amazon had now solidified its status as the e-Commerce market-  
4 dominator, and its meteoric rise was widely noted by analysts who began to saturate  
5 the market with reports about the battle between Amazon and Wal-Mart for  
6 dominance in the E-commerce space. Analysts and news reports began to depict  
7 Amazon's continued assault on Wal-Mart's role as the market-dominator in stark  
8 and understandable terms like that set forth below:



15 26. For the first time in decades, Wal-Mart faced a real threat. Analysts  
16 began to report that Wal-Mart may be in long-term trouble. And Wal-Mart's stock  
17 began to plummet.

18 27. By late-2015, Wal-Mart's stock price was in steep decline. On  
19 October 18, 2015, Wal-Mart's share price dropped ten percent (10%) – its biggest  
20 single-day stock drop in twenty-five years – wiping out \$21 billion in value. In  
21 November 2015, Wal-Mart's stock price reached a historic low of just under \$57  
22 per share, stock price having dropped ten percent (33%) since January 2015.

23 28. Bottom line: Having been late to the E-commerce game, Wal-Mart was  
24 continuously playing catch-up. And Wal-Mart's senior leadership knew that if it  
25 did not seriously catch-up in the E-commerce race, Wal-Mart's long-term status as  
26 the undisputed champion of retail was in serious jeopardy. And with any signs of  
27 long-term jeopardy or risk, the market would negatively react in the short-term  
28 causing a corresponding hit to the stock-price and immediate negative impact on the

1 incentive compensation pay-outs of senior executive leadership. This is the  
2 backdrop that explains everything that follows.<sup>3</sup>

3  
4 **C. Wal-Mart pushes for massively aggressive E-commerce growth**  
5 **and paints a misleadingly optimistic picture of its progress.**

6 29. Seeing the writing on the wall, Wal-Mart reacted by painting an  
7 overly-optimistic picture of its current status in the race to catch-up in the E-  
8 commerce space.

9 30. Wal-Mart knew that – no matter how well it performed in trying to  
10 regain ground in the E-commerce land – at best, it would show only slow,  
11 incremental progress. In other words, Wal-Mart knew that making true progress in  
12 closing the gap with Amazon could only be a long-term goal that would take many,  
13 many years. But if Wal-Mart did not show a positive short-term picture, the result  
14 would be further dilution of its share value and corresponding hits to senior  
15 leadership’s cashing-in on substantial incentive compensation. Thus, Wal-Mart’s  
16 senior leadership knew they had to manage the market’s perception of its current  
17 and short-term progress in achieving its long-term goals. Wal-Mart thus  
18 endeavored to paint an overly-optimistic picture of its current and short-term  
19 progress in the catching-up in the E-commerce space.

20 31. This was the consistent message, and the company stuck to it whenever  
21 it could at all try to justify doing so. Indeed, in Wal-Mart’s view, there was no  
22 room for an alternative message. If it wanted to preserve its status as the retail  
23 market-dominator, Wal-Mart had to convince analysts, investors, the purchasing  
24 public and the market that it could compete long-term with Amazon and others who  
25 dominated the E-commerce space. It thus had a motive to silence anyone who  
26 questioned its core efforts to gain ground and meaningfully compete in the E-

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28 <sup>3</sup> Paragraphs 18 through 28 are alleged on information and belief.

1 commerce space – regardless of whether those questioning Wal-Mart’s practices  
2 had valid, viable concerns.<sup>4</sup>

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4 **D. September 2014: Wal-Mart hires Tri Huynh as its Director of**  
5 **Business Development, Marketplace Business.**

6 **1. Tri Huynh’s background before Wal-Mart**

7 32. Tri Huynh was born in Vietnam to parents who resided in Long Xuyen  
8 South Vietnam. At twelve years-old, Tri Huynh was separated from his parents and  
9 sent to a refugee camp in Thailand with his aunt and two cousins. In 1980, Tri  
10 Huynh was sponsored by his aunt’s daughter who had previously immigrated to the  
11 United States right after the fall of Saigon to come to America. He thus left  
12 Thailand and made his way to New York.

13 33. Tri Huynh’s family wanted him to immigrate to the United States for  
14 the same reasons as so many other American immigrants. Their country was torn  
15 apart by civil unrest and America promised a brighter future. Grateful for the  
16 opportunities that America promised, Tri Huynh worked hard to achieve the  
17 “American Dream.”

18 34. Tri Huynh spent his teenage years in a tough inner city neighborhood  
19 in Queens. Struggling to master the English language, Mr. Huynh still graduated  
20 near the top of his high school class. He then went on to obtain a Bachelor’s of  
21 Engineering (B.E.) in Electrical Engineering, a Masters of Science (M.S.) in  
22 Manufacturing Engineering from New York University - Polytechnic School of  
23 Engineering and a Master of Business Administration (M.B.A.) with a focus on  
24 Strategy and Finance from Harvard Business School.

25 35. Before he began at Wal-Mart, Mr. Huynh had a successful career as an  
26 executive building and leading business development and category management

27 \_\_\_\_\_  
28 <sup>4</sup> Paragraphs 29 through 31 are alleged on information and belief.

1 teams. His experience ranged from up-and-coming start-ups to large international  
2 corporations. Some of his key experience included:

3  
4 ● For approximately four years, Mr. Huynh led project teams at Booz Allen  
5 & Hamilton, a global management consulting firm, where he focused on  
6 solving complex business problems for clients in strategy development and  
7 operational transformation. In this position, Mr. Huynh: designed and  
8 executed post-merger integration of key supported functions for a firm client;  
9 assisted in developing and implementing a transformative strategy to reduce  
10 substantially a client's overhead by operational standardizations and  
11 centralization; led a "turnaround" of a subsidiary of a multinational  
12 corporation focusing on redesigning the company's organizational structure  
13 and streamlining customer facing and support functions, etc.

14  
15 ● At Infosys Technologies, a large global IT consulting company, Mr. Huynh  
16 was responsible for managing and growing the profit and loss of multiple  
17 client accounts. He was also involved in driving strategic deal pursuits using  
18 a consultative selling framework to target new strategic accounts.

19  
20 ● Mr. Huynh also served important roles in various start-up or fledgling  
21 companies including: (1) at Array Networks, he was a founding member  
22 focused on fund raising, strategic planning, product management and  
23 marketing; (2) at Motif, Inc., he served as Vice President of Strategy and  
24 Operations Effectiveness working directly with the Chief Executive Officer  
25 to develop and implement a turnaround and go-to-market strategy to drive  
26 accelerated revenue growth; and (3) at Mu Sigma, Inc., he served as Regional  
27 Head, Client Engagement where he was responsible for managing multiple  
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1 teams to deliver analytics projects for various clients to generate strategic  
2 insights that drive action to enhance their business.

3  
4 36. Moreover, and most important from Wal-Mart's perspective, Mr.  
5 Huynh spent approximately three years working as a Category Leader in Amazon's  
6 Marketplace/3P Consumer Electronics Business. In this role, Mr. Huynh: owned  
7 the profit and loss for the Consumer Electronics 3P ("third-party") Business;  
8 managed and lead teams that executed seller acquisition and scaling, selection  
9 expansion, catalog data quality, and other similar duties. In his work at Amazon,  
10 Mr. Huynh gained experience that would be invaluable for Wal-Mart in its efforts  
11 to ramp-up its E-commerce segment. Specifically, at Amazon, Mr. Huynh had the  
12 opportunity to work with two members of Amazon's senior leadership (S-Team  
13 reporting directly to Amazon founder Jeff Bezos) where he learned firsthand how to  
14 deliver value and drive a superior shopping experience for the customers. He also  
15 drove to fruition several strategic projects for Amazon – e.g., led a twenty-one (21)  
16 month project to develop and roll out a new Customer Electronics Accessories  
17 category, etc.

18  
19 **2. Tri Huynh's hiring into Wal-Mart and its E-commerce**  
20 **division.**

21 37. On or about September 2, 2014, Mr. Huynh began working for Wal-  
22 Mart's E-commerce division as its Director of Business Development Marketplace  
23 Business.

24 38. When he accepted the position at Wal-Mart, Mr. Huynh resided with  
25 his wife and two children – then ages twelve (12) and fifteen (15) – in Seattle,  
26 Washington. Because his young children were settled in school at critical ages, he  
27 and his wife were concerned about uprooting his family to relocate to California.  
28 Instead, Mr. Huynh accepted the position working in San Bruno for Wal-Mart

1 commuting weekly at his own expense between San Bruno and Seattle leaving his  
2 family each week to work for Wal-Mart.

3 39. Wal-Mart's E-commerce division offers customers the ability to  
4 purchase items online via Wal-Mart's website ([www.Walmart.com](http://www.Walmart.com)) through two  
5 different methods. The first method – called “first party” or “1P” – involves Wal-  
6 Mart offering its inventory of products direct-to-customer by the customer  
7 purchasing an item via Wal-Mart's website. Wal-Mart then fills and processes this  
8 “first party” order through Wal-Mart's inventory and supply chain. The second  
9 method – called “third party” or “3P” – involves Wal-Mart permitting third-party  
10 sellers to sell their products from their inventory via Wal-Mart's website. In this  
11 “third-party” or “3P” model, Wal-Mart provides “third-party” sellers the ability to  
12 offer their products for purchase on Wal-Mart's “third-party” marketplace at  
13 Walmart.com, and Wal-Mart then charges a commission to the “third-party” seller  
14 for each completed sales transaction. Wal-Mart's “third-party” E-commerce  
15 business is referred to at times as its “Marketplace.”

16 40. At the outset, as the Director of Business Development, Marketplace  
17 Business, Mr. Huynh's duties included both recruiting new “third-party”/“3P”  
18 sellers and handling their onboarding once the new seller became an authorized  
19 Wal-Mart “third party” seller through [www.Walmart.com](http://www.Walmart.com). As the Director of  
20 Business Development for the Marketplace business, Mr. Huynh led a team of  
21 approximately forty (40) business development associates.

22  
23 **E. Mr. Huynh performs well, and Wal-Mart recognizes his positive**  
24 **performance.**

25 41. During his employment, Wal-Mart recognized and rewarded Mr.  
26 Huynh for positive work performance. For example, and not by way of limitation  
27 but merely by way of illustration:

1 ● On April 3, 2015, Mr. Huynh was given his Fiscal Year 2015 written  
2 performance evaluation. In his Fiscal Year 2015 written performance  
3 evaluation, Mr. Huynh received an overall rating of “Solid Performer” and  
4 either “Exceeds Expectations” or “Solid Performer” in every single  
5 individual category.

6  
7 ● In October 2015, Mr. Huynh was granted a discretionary grant of two  
8 hundred thousand dollars (\$200,000.00) worth of Restricted Stock Options  
9 (RSUs) in a special grant vesting over three years. This RSU grant was not a  
10 required component of Mr. Huynh’s compensation package. Rather, it was a  
11 discretionary grant and Mr. Huynh, suggesting management’s positive view  
12 of Mr. Nuyh’s performance.

13  
14 ● In or about mid-2015 through 2016, Mr. Huynh was repeatedly selected to  
15 be a spokesperson for the Global E-Commerce Group to present to newly-  
16 elected officers who came to the San Bruno location where Mr. Huynh  
17 worked.

18  
19 ● In early-2016, Mr. Huynh was assured that if he met his year-end goal of  
20 recruiting three thousand (3,000) new sellers, he would be promoted to a  
21 Senior Director.

22  
23 ● In March 2016, Mr. Huynh was selected by Global Marketplace Senior  
24 Vice President Seth Beal (Mr. Huynh’s then direct supervisor) and Suri Priya  
25 (VP of Human Resources) to attend the shareholder meeting in Bentonville in  
26 June 2016, which selection was approved by the Walmart.com leadership.



1           ● In March 2016, Mr. Huynh was given his Fiscal Year 2016 written  
2 performance evaluation. This evaluation was even better than his Fiscal Year  
3 2015 evaluation. Mr. Huynh received an overall rating of “Exceeds  
4 Expectations,” and achieved one “Role Model,” eight “Exceeds  
5 Expectations,” and five “Solid Performer” individual category ratings. The  
6 review confirmed that “FY 16 marked a significant success for Tri as a  
7 Marketplace leader and emerging organizational leader. Tri was able to  
8 channel his high intellect and skill set to tackle challenging problems and  
9 objectives while continually adjusting in an environment of constant change.  
10 He was able to drive material value to the goals, even beyond his immediate  
11 domain area, demonstrating his passion for the customer, seller, and the  
12 success of the Marketplace program. He repeatedly took methodical  
13 analytical approaches to devise and revise strategies through the year, which  
14 places his team and function in position for continued success and rapid  
15 scaling. Tri should feel very proud for exceeding his goals and  
16 competencies, and look to FY17 to continue his progress and develop a  
17 broader more far reaching leadership profile.” This review praised Mr.  
18 Huynh for his successful acquisition and onboarding of sellers which was  
19 noted to be “not only effective and accurate, [but it] also demonstrated Tri’s  
20 strategic leadership, resourcefulness, and his ability to deviate from  
21 conventional approaches when necessary to create a new best practice.”  
22

23           42. In short, Mr. Huynh performed well for Wal-Mart and Wal-Mart  
24 recognized his positive performance – that is, until Mr. Huynh refused to back-  
25 down when repeatedly instructed to stop raising concerns about conduct he  
26 reasonably believed violated the law within Wal-Mart’s E-commerce business.  
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1           **F. Mr. Huynh observes, identifies and reports concerns that he**  
2           **reasonably believed were violations of the law. Instead of**  
3           **meaningfully investigating his concerns, Wal-Mart retaliates**  
4           **against Mr. Huynh.**

5           43. During his employment, Mr. Huynh observed and/or learned of what  
6 he reasonably believed were violations of the law, which he disclosed and/or  
7 reported to his superiors and others who had the authority to act upon his reports  
8 and/or disclosures. Mr. Huynh's conduct, his reports and his disclosures were  
9 protected by SOX's anti-retaliation provisions because Mr. Huynh reasonably  
10 believed the things he was reporting were, *inter alia*, violations of Wal-Mart's  
11 internal controls, an indication that Wal-Mart failed to have or maintain proper and  
12 sufficient internal controls, violations of generally accepted accounting principles  
13 (GAAP), potential fraud against shareholders, potential securities fraud, and/or mail  
14 and/or wire fraud, etc.

15           44. One example: Mr. Huynh reported concerns about the design of, and  
16 specifications used in, Wal-Mart's Global Marketplace Platform's (GMP),  
17 including (but not limited to) the GMP's inability to categorize properly sellers'  
18 products into the correct product contract categories.

19           45. When a customer purchases a "third-party" seller's item on Wal-Mart's  
20 online GMP, Wal-Mart charges a commission on the purchase to the "third-party"  
21 seller. The applicable commission percentage for the transaction is spelled-out in  
22 the contract between Wal-Mart and the "third-party" seller. When a transaction  
23 occurs, Wal-Mart's online GMP categorizes the product sold into a product  
24 category on a product-by-product basis. Wal-Mart's online GMP does this through  
25 a machine learning program that tries to identify the proper category for the item  
26 upon each transaction being made.

27           46. But Wal-Mart's online GMP's categorization process does not work as  
28 well as it should work. Rather, Wal-Mart's online GMP regularly fails to find the

1 correct category for the item, even though the correct category does exist and  
2 should be found. The result: the GMP categorizes the item as “unrecognized.”

3 47. The mis-categorization of products into an “unrecognized” category  
4 typically results in charging an excessive commission fee because the default  
5 commission percentage for “unrecognized” products was fifteen percent (15%). In  
6 contrast, many of the products that were truly driving Wal-Mart’s GMV of its  
7 online efforts were products that were subject to smaller commissions percentages.  
8 For example, electronics and personal computers typically constitute a significant  
9 percentage of Wal-Mart’s GMP. But these items tend to have smaller commission  
10 percentages in the six to eight percent (6-8%) range. Thus, by consistently mis-  
11 categorizing these items, Wal-Mart charged excessive commission fees on them  
12 (and many other items) to its third-party sellers.

13 48. The Securities and Exchange Commission (SEC) regulations define  
14 internal controls as including “a process designed ... to provide reasonable  
15 assurance regarding the reliability of financial reporting and the preparation of  
16 financial statements for external purposes in accordance with generally accepted  
17 accounting principles...” 17 C.F.R. §240.13a-15(f). These SEC regulations further  
18 state that internal controls include “those policies and procedures that” ... “(1)  
19 Pertain to the maintenance of records that in reasonable detail accurately and fairly  
20 reflect the transactions and dispositions of the assets of the issuer; (2) Provide  
21 reasonable assurance that transactions are recorded as necessary to permit  
22 preparation of financial statements in accordance with generally accepted  
23 accounting principles, and that receipts and expenditures of the issuer are being  
24 made only in accordance with authorizations of management and directors of the  
25 issuer ...” 17 C.F.R. §240.13a-15(f)(1), (2). Here, while Wal-Mart’s charging of  
26 excessive commissions resulted from a system design flaw, it also exposed a failure  
27 to have proper, robust controls and/or a control environment that would detect and  
28 promptly remedy the problems. These failures had a direct impact on financial

1 reporting because, by charging excessive commissions, Wal-Mart was actually  
2 over-stating its revenue to the extent that it would be later required to pay-back the  
3 excess commissions. Finally, by listing and stating to sellers that the commission  
4 charged one be one amount, yet by knowingly continuing to charge a different  
5 amount, these acts could constitute mail and/or wire fraud.

6 49. Mr. Huynh reported and disclosed his concerns that the GMP design  
7 and system flaws would cause negative consequences to Wal-Mart (and its  
8 shareholders), including, *inter alia*, because it would excessively mis-designate  
9 products as “unrecognized” products thereby overcharging third-party sellers.  
10 Overcharging sellers could create liability – including, but not limited to, mail  
11 and/or wire fraud liability for Wal-Mart – and it could overstate Wal-Mart’s  
12 revenues to the extent that the improperly charged commissions were included on  
13 Wal-Mart’s financials when, in fact, they were required to repaid back to the  
14 overcharged seller.

15 50. Mr. Huynh’s concerns about the improper design of Wal-Mart’s GMP  
16 were not theoretical, nor were they misplaced concerns. Rather, his concerns  
17 proved true. As just one example, and not by way of limitation, but merely by way  
18 of illustration, in March 2016, a “third-party” seller reported to Wal-Mart that  
19 “commission accuracy is a big issue” and that it had sixteen (16) open tickets for  
20 commission errors in the last sixteen (16) weeks. This “third-party” seller  
21 complained of having to spend a tremendous amount of time reconciling the  
22 commission fees charged by Wal-Mart to the “third-party” seller, and it estimated  
23 that only ten percent (10%) of the errors it spotted had been resolved.

24 51. Mr. Huynh also learned of another problem within Wal-Mart’s online  
25 Marketplace platform, including a major flaw or error within Wal-Mart’s Pangaea  
26 system. In or about March 2016, Wal-Mart received a complaint from a large third-  
27 party seller that Wal-Mart had failed to process three thousand (3,000) customer  
28 return orders. Wal-Mart looked into the complaint and concluded that there was a

1 coding and system error within the Pangaea system that caused Wal-Mart to serially  
2 and systematically fail to process certain returns or refund orders from certain  
3 “third-party” sellers since September 8, 2015. In short, Wal-Mart had improperly  
4 failed to process customer returns worth over seven million dollars (\$7,000,000),  
5 which resulted in an inflation of GMV/sales by that amount from September 2015  
6 through the discovery of the issue in March 2016.

7 52. Suffice it to say, the above issues were warning signs of potentially  
8 serious problems within Wal-Mart’s online Marketplace platform. And they were  
9 also serious signs of Wal-Mart’s failure to have proper internal controls for  
10 financial reporting purposes because, *inter alia*, Wal-Mart’s existing control system  
11 failed to detect and/or remedy the problems on a timely basis. Indeed, Wal-Mart’s  
12 leadership internally described the nearly half a year failure to process certain  
13 “third-party” seller returns as a “colossal issue,” and some within Wal-Mart  
14 acknowledged that these issues exposed the need to create an effective audit  
15 process within its Marketplace and to improve the existing controls within Wal-  
16 Mart’s Marketplace. Wal-Mart also internally questioned whether this failure to  
17 process returned item issues would require any additional, or corrected, financial  
18 reporting. Bottom line: These issues implicated Sarbanes-Oxley compliance  
19 concerns directly.

20 53. Throughout approximately March through May of 2016, Mr. Huynh  
21 continued to raise concerns and make disclosures about the above issues, pressing  
22 his superiors to address the bigger picture systemic flaws including the overall lack  
23 of effective internal controls regarding these issues. Mr. Huynh continued to press  
24 forward his concern that if Wal-Mart did not properly address these issues, its  
25 failure to do so could have serious long-term implications for its critically-  
26 important E-commerce business. Mr. Huynh also pressed the need to develop better  
27 internal controls for risk management, compliance and financial reporting purposes.  
28 In response, Mr. Huynh was told to stop raising these concerns and not to email at

1 all about them or document any similar concerns, and then he was retaliated against  
2 for continuing to press his concerns despite having been warned not to do so.

3  
4 **G. As Mr. Huynh continues to press his concerns forward, his**  
5 **management subtly turns on him.**

6 54. In early-2016, Marketplace Senior Vice President Seth Beal told Mr.  
7 Huynh that if he met his goal of recruiting three thousand (3,000) new sellers that  
8 year, he would be promoted the next fiscal year to Senior Director. To that end, Mr.  
9 Huynh was told he would undergo a 360-degree feedback process in calendar year  
10 2016 as a tool to prepare him for the anticipated promotion.

11 55. To this point in his time at Wal-Mart, the message Mr. Huynh had been  
12 told by his superiors since his hire by Wal-Mart was clear: He was performing  
13 above expectations and he would continue to have a promising future within Wal-  
14 Mart's growing E-commerce business. In fact, most recently, his FY 2016  
15 performance evaluation specifically noted that "FY16 marked a significant success  
16 for [Mr. Huynh] as a Marketplace leader and emerging organizational leader," and  
17 acknowledged that Mr. Huynh should "look to FY 17 to continue his progress and  
18 develop a broader more far reaching leadership profile."

19 56. But when, as discussed above, Mr. Huynh continued to press forward  
20 his concerns after he was told to stop doing so, things began to change. First, Mr.  
21 Huynh's superior told him directly and emphatically to stop reporting or disclosing  
22 things like the above issues and to not email about any concerns of this nature. In  
23 response to Mr. Huynh's continuing to raise these concerns, his direct supervisor  
24 threatened Mr. Huynh to "stay within your job's boundaries or I'll find someone  
25 else." Second, instead of the 360-degree feedback being used as a tool to train him  
26 for the future promotion, Mr. Huynh learned from a member of his team that the  
27 360-degree feedback process seemed designed to develop negative responses about  
28 Mr. Huynh more than anything else. Third, Mr. Huynh began to be isolated from

1 certain projects, meetings or parts of the job – often, and not coincidentally, this  
2 isolation had the effect of removing Mr. Huynh from areas of the job that would  
3 have naturally led him to discover more and more of the above described problems  
4 within Wal-Mart’s E-commerce business.

5  
6 **H. Mr. Huynh gives notice of his ADHD disability. Wal-Mart does**  
7 **not provide any accommodations. Instead, his superiors continue**  
8 **to criticize him for disability-based conduct.**

9 57. In late-May of 2016, after Mr. Huynh was criticized for refusing to  
10 follow the direction of “staying within the boundaries” of his job – even if that  
11 meant turning a blind-eye to concerns of unlawful conduct – Mr. Huynh shared  
12 with his direct supervisor and human resources that he suffered from a hidden  
13 mental disability – Attention Deficit Hyperactivity Disorder (ADHD). Mr. Huynh  
14 provided his supervisor and human resources with a detailed presentation about his  
15 ADHD, his progress in trying to treat and manage it, and how it impacts his day-to-  
16 day behavior and functioning. Mr. Huynh directly explained that his ADHD caused  
17 challenges and limitations in emotional self-regulation, but he also explained how  
18 he is and has been committed to improving himself in that regard.

19 58. Neither human resources, nor anyone from Wal-Mart, offered any  
20 accommodations to assist Mr. Huynh. Instead, later on, his management continued  
21 to criticize Mr. Huynh for disability-related conduct.

22  
23 **I. Fall of 2016: Senior leadership continues to report misleadingly**  
24 **optimistic E-commerce results to the investing public – still, based**  
25 **on indirect measures and notwithstanding the known (yet**  
26 **concealed) internal control and process and procedure failures.**

27 59. Wal-Mart files consolidated financials for all of its business segments,  
28 each of which wrap-up to the parent company’s financials. Wal-Mart’s E-



1 commerce business is a segment of Wal-Mart's global business. Thus, Wal-Mart's  
2 E-commerce financial results are reported as part of Wal-Mart's overall operations  
3 within its consolidated financials and filings. Therefore, Wal-Mart does not report  
4 to the investing public its actual E-commerce figures, nor does it breakdown the  
5 figures by "first-party" versus "third-party." However, traditionally, "third-party"  
6 marketplaces tend to be far more profitable than a "first-party" online business.

7 60. Consequently, when the investing public tries to determine the success  
8 or failure of Wal-Mart's E-commerce business, it must do so inferentially by  
9 extrapolating from indirect measures (*e.g.*, SKU number growth, seller number  
10 growth, GMV, etc.) rather than by simply reviewing actual, published financial  
11 results specific to the E-commerce segment and distinguishing between "first-party"  
12 versus "third-party" figures. Wal-Mart thus has an incentive to boost-up these  
13 indirect measures of the profitable "third-party" business even if doing so does not  
14 actually substantially contribute to Wal-Mart's actual E-commerce success. By  
15 boosting-up these indirect measures, Wal-Mart paints a picture of E-commerce  
16 growth and success (including specifically in the typically more profitable "third-  
17 party" Marketplace) that, in fact, misleads the investing public. And, these indirect  
18 measures are easy to manipulate to produce the appearance of growth even if the  
19 legitimate and sustainable growth is not truly occurring.

20 61. Keenly aware of the importance of these indirect measures, in the  
21 second half of 2016, Wal-Mart's leadership continued to report massive growth in  
22 them to the investing public. For example, and not by way of limitation but merely  
23 by way of illustration: In its August 18, 2016 second quarter FY17 earnings call,  
24 Wal-Mart's Chief Executive Officer Doug McMillon reported that Wal-Mart had  
25 added seven million (7,000,000) SKUs to its Marketplace offerings since the  
26 beginning of the year and now reached fifteen million (15,000,000) SKUs on its  
27 Marketplace. Thus, forty-six percent (46%) of the total SKUs Wal-Mart then  
28 offered were newly-obtained within the last eight (8) months.

1           62. Likewise, in an internal communication in early-October 2016, one  
2 senior leader within Wal-Mart's E-commerce business boasted that the "third-  
3 party" Marketplace had reached two thousand and seventy-four (2,074) sellers up  
4 from a mere one hundred and eighty (180) at the beginning of the year, that it  
5 expected to reach three thousand (3,000) sellers by the Holidays. This same senior  
6 leader also reported and boasted that Wal-Mart currently had sixteen million five  
7 hundred thousand (16,500,000) unique SKUs compared to six million two hundred  
8 thousand (6,200,000) at year's beginning. Mr. Huynh realized these numbers  
9 would be later reported to the public in a quarterly earnings call or otherwise.

10           63. Even these massive growth results were not enough in senior  
11 leadership's eyes. After all, to Wal-Mart, nothing was enough in its race to regain  
12 lost ground in E-commerce. When Mr. Huynh's recruiting team crushed aggressive  
13 targets, leadership just responded by increasing targets even more. Thus, for  
14 example and not by way of limitation but merely by way of illustration, while the  
15 goal for seller recruitment at Fiscal Year 2017's beginning (in March 2016) was to  
16 recruit an additional three thousand (3,000) new "third-party" sellers, that goal  
17 more than doubled during the fiscal year to a goal of recruiting seven thousand  
18 (7,000) new "third-party" sellers.

19           64. Mr. Huynh became increasingly concerned that the pressure to boost  
20 these indirect measures (*e.g.*, total number of sellers, total SKU numbers, etc.) was  
21 being met, at least in part, by improperly sacrificing quality by lowering standards  
22 for product listings and then failing to properly monitor the "third-party" seller's  
23 performance, and product listings, through a robust control system after the seller  
24 went live on Wal-Mart's Marketplace. An online Marketplace provider like Wal-  
25 Mart must balance the desire to have a large number of third-party sellers (and,  
26 therefore, likely a greater number of products as well as greater product availability)  
27 against the need to ensure quality sellers. Poor quality sellers – *e.g.*, poor customer  
28 service, excessive prices, low-quality products/SKUs, etc. – can impair the

1 customer experience and hurt customer development and retention. Failing to  
2 properly monitor poor quality “third-party” sellers can also result in those sellers  
3 listing inappropriate products and/or having their redundant SKUs improperly  
4 counted as unique SKUs (thereby falsely inflating SKU growth). Wal-Mart’s rush  
5 to appear in the short-term to be making astronomical strides in gaining ground  
6 long lost to Amazon made it reduce “third-party” seller standards to the point of  
7 compromising its Marketplace quality, thereby compromising and jeopardizing the  
8 Wal-Mart’s online Marketplace.

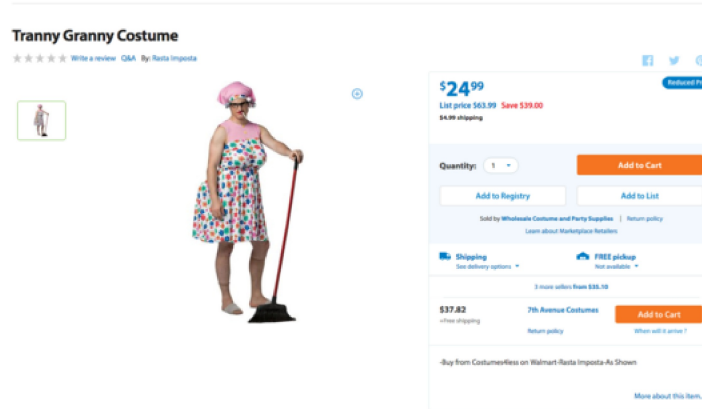
9 65. Mr. Huynh had previously reported concerns that the reduction in  
10 “third-party” seller pre-launch or go-live standards to accelerate the speed by which  
11 the sellers go-live on Wal-Mart’s Marketplace (thereby boosting total SKUs, etc.)  
12 would result in lower-quality sellers and SKUs infiltrating Wal-Mart’s Marketplace.  
13 Mr. Huynh also expressed concerns that this was being done in an environment  
14 which already lacked proper controls to mitigate against potential risks of this  
15 speedy ramp-up of go-live acceleration.

16 66. In fact, as Mr. Huynh knew, by early-October 2016, Wal-Mart’s E-  
17 commerce senior leadership could not deny the existence of these serious control  
18 problems. For example, the same senior leader who boasted in early-October 2016  
19 that the “third-party” Marketplace now had two thousand and seventy-four (2,074)  
20 and sixteen million five hundred thousand (16,500,000) unique SKUs  
21 acknowledged in this same supposed “good news” report that Wal-Mart’s E-  
22 commerce business had hit “some headwinds in the past couple of weeks” including  
23 that: (1) Wal-Mart had to suspend its third-largest “third-party” seller as a result of  
24 continued and repeated problems with poor customer service and an excessively  
25 high cancellation rate; and (2) Wal-Mart’s Marketplace had suffered serious public  
26 embarrassment when inappropriate items were listed on its Marketplace by “third-  
27 party” sellers.

28

1 67. Among other things, and merely by way of example and not by way of  
 2 limitation, Wal-Mart’s online “third-party” Marketplace had items listed such as:

- 3 ● “Tranny Granny” Costume: An offensive, inappropriate Halloween
- 4 costume mocking transgender people:



- 15 ● “Razor Blade Suicide Scar Wound Latex Costume Make Up”: A highly
- 16 disturbing supposed Halloween costume that mocks and makes light of the
- 17 tragedy of suicide and the challenge of mental health struggles:



26 68. Wal-Mart cannot defend products like this being listed on its site, nor  
 27 did it in real-time. Rather, it removed these items (belatedly) and publicly  
 28 acknowledged that they were inappropriate and never should have made their way

1 onto Wal-Mart's online offerings. For example, Wal-Mart has described the suicide  
2 costume as "appalling" and "unacceptable for a third-party seller to list it on our  
3 marketplace," which "clearly violated our prohibited items policy...."

4 69. But, Wal-Mart's action was too little, too late. It had already failed to  
5 prevent these inappropriate items from being listed on its site, and the public  
6 backlash to Wal-Mart's failure was already occurring as various media outlets  
7 reported that these inappropriate items were listed on Wal-Mart's online  
8 Marketplace.

9 70. Worse, while it acknowledged the inappropriate nature of these and  
10 other product listings, Wal-Mart continued to fail to address, or to address  
11 adequately, the underlying source of the problem. The aggressive push to ramp-up  
12 the indirect measures of E-commerce success (*e.g.*, SKU numbers, etc.) – including  
13 without proper controls in place to monitor them – had allowed unproven sellers to  
14 list low-quality assortments/SKUs resulting in their inappropriate products  
15 infiltrating Wal-Mart's online Marketplace.

16 71. With time, Mr. Huynh came to conclude that Wal-Mart was  
17 intentionally pushing for massive growth of these indirect measures (*e.g.*, SKU  
18 growth, etc.) as a way to misleading the investing public because Wal-Mart's E-  
19 commerce leadership knew that these indirect measures did not tell the true picture  
20 of the state of Wal-Mart's E-commerce growth and actually overstated that growth.  
21 One way to rapidly increase the number of SKUs offered was to rapidly recruit new  
22 "third-party" sellers all of which would bring a series of new SKUs onto Wal-  
23 Mart's Marketplace. The more "third-party" sellers operating in Wal-Mart's  
24 Marketplace, the more growth in SKUs would result. Yet, Mr. Huynh came to  
25 conclude that Wal-Mart's rapid push to recruit, without proper support post-  
26 recruitment, led to Wal-Mart falsely reporting its SKU growth, *inter alia* and not by  
27 way of limitation by: (a) covering-up the inability to properly scale for the majority  
28 of sellers post-recruitment, Wal-Mart resorted to catalogue stuffing – that is,

1 allowing a small number of lower-quality “third-party” sellers to upload a massive  
2 number of SKUs without ensuring the SKUs were quality (*e.g.*, relevant to  
3 customer, excessive pricing, buyable, etc.); (b) listing redundant SKU numbers (that  
4 is, identical SKUs were being treated as different, separate SKUs); and (c) allowing  
5 non-buyable SKUs to be included in its total Marketplace SKU count. Moreover,  
6 with the continued push to recruit at a meteoric pace, but without a corresponding  
7 ramp-up of back-end support at onboarding and seller management stages, these  
8 problems would simply continue and compound on themselves. In short, Wal-Mart  
9 was reporting a misleading picture of its online Marketplace growth.

10  
11 **J. Fall 2016: Mr. Huynh continues to press his concerns. Wal-Mart**  
12 **swiftly responds with more retaliation.**

13 72. Also during this time period and in recent months, Mr. Huynh  
14 continued to learn of both continued, as well as other troubling, concerns. For  
15 example, and without limitation and merely by way of illustration:

- 16  
17 ● Some sellers continued to report that Wal-Mart had continued to fail to  
18 timely pay it or them.
- 19  
20 ● In September 2016, a “third-party” seller reported continued examples of  
21 Wal-Mart’s failure to pay the proper and correct commission rates.  
22 Specifically, the seller provided evidence that Wal-Mart’s online platform  
23 stated that the commission rate Wal-Mart charged the “third-party” seller on  
24 a cell phone purchase would be fifteen percent (15%) – contrary to other  
25 documents and Wal-Mart’s representations that stated that a cell phone  
26 commission rate of eight percent (8%). Then, when the seller brought this to  
27 the attention of Wal-Mart, the internal dialogue within Wal-Mart revealed  
28 that certain associates within Wal-Mart’s E-commerce business claimed to

1 believe that the erroneous fifteen percent (15%) commission rate was actually  
2 correct. By this time, Mr. Huynh's concerns about the commission  
3 overcharge issue had become more serious in his mind. He had originally  
4 reported these concerns as early as December 2014. He then reiterated them  
5 in writing in December 2015. By March 2016, there were clear and  
6 documented examples of this issue occurring. Yet, six months later, Wal-  
7 Mart had not remedied the problem nor, to Mr. Huynh's understanding, had it  
8 taken serious and sufficient steps to try to remedy it. Given the entire history  
9 of the issue, Mr. Huynh had come to conclude that Wal-Mart had  
10 intentionally perpetrated this fraud or, at least, intentionally allowed it to  
11 continue after knowing it was occurring. Indeed, by continuing to represent a  
12 certain commission percentage for certain items to "third-party" sellers, while  
13 knowing its system would often overcharge, Mr. Huynh was concerned that  
14 Wal-Mart was committing a continuing mail and/or wire fraud: lying to the  
15 "third-party" sellers about what commission rate it would actually charge and  
16 then actually charging a higher commission.

17  
18 ● In September 2016, as part of the Marketplace's review of its third quarter  
19 FY2017 progress, Mr. Huynh received confirmation that:

20  
21 - Wal-Mart recognized that it needed to reduce its "refund failure rate."  
22 Specifically, Wal-Mart acknowledged its need to "[i]dentify root  
23 causes of GMP refund 'failures' and work with internal teams to  
24 resolve and implement future prevention steps." In other words, Wal-  
25 Mart recognized a known weakness in its E-commerce internal  
26 controls that needed to be fixed because it continued to leave the  
27 company vulnerable. Yet, though the issue was identified in March  
28



1           2016, half a year later the “status” on this necessary control fix was  
2           merely that Wal-Mart was now “ready to start.”

3  
4           - Wal-Mart likewise recognized that it needed to achieve a “resolution  
5           of chronic tech issues” and, to do this, it needed to “[l]everage data to  
6           drive resolution on chronic issues.” Even though this was admittedly a  
7           “chronic issue” – yet again – the status of this critical need was merely  
8           “ready to start.”

9  
10          - Wal-Mart recognized that it needed to increase its seller satisfaction  
11          scores by identifying, investigating and resolving “issues driving low  
12          seller satisfaction,” but – yet again – this chronic, longstanding issue  
13          was merely determined to be merely “ready to start.”

14  
15          - Wal-Mart similarly recognized it had needed to “improve level of  
16          support to Category Managers” by, among other things, revising its  
17          relevant internal controls so that they were based on Marketplace-  
18          centric parameters, which it had previously failed to do.

19  
20          - Wal-Mart also recognized the need to “[r]educe customer escalation  
21          rate” by identifying “poor performing sellers” and getting back to its  
22          roots of having a “customer-centric focus,” which its E-commerce  
23          business had not lived up to.

24  
25          73.    In or about October 2016, Mr. Huynh (contrary to his boss’ demand)  
26          steadfastly pressed forward his concerns about, *inter alia*: the lack of proper  
27          controls and weaknesses within Wal-Mart’s internal controls; commission  
28          overcharging concerns; structural flaws with Wal-Mart’s online platform which

1 were still unresolved and also exposed a lack of sufficient controls; Wal-Mart's  
2 inability to scale at the rate being demanded in terms of E-commerce growth – that  
3 is, the disconnect between the recruitment pace and the post-recruitment ability to  
4 onboard and manage the “third-party” seller quality; timely payment issues;  
5 misrepresentation of Wal-Mart's Marketplace true growth to the public; etc. Mr.  
6 Huynh raised these issues at this time both with his direct supervisor (who again  
7 told him to just worry about recruiting more sellers and not worry about what  
8 happens after recruitment) as well as with others.

9       74. Among other things in or about October and November 2016, Mr.  
10 Huynh disclosed that there was a serious disconnect between the push to continue  
11 recruiting new “third-party” sellers at a meteoric pace, and the ability of the  
12 onboarding and seller management teams to support that rapid seller growth. Yet,  
13 Wal-Mart continued to paint an overly-optimistic, misleading report about the  
14 success of Wal-Mart's rapid Marketplace expansion. In Mr. Huynh's words, it was  
15 like his business development (recruitment) team was at the front end operating  
16 with a twelve inch pipe but then the pipe narrowed to a two inch pipe in the back-  
17 end – hence, the systemic commission accuracy issues, seller satisfaction issues,  
18 reputational issues, refund and payment issues, etc. Mr. Huynh expressed concerns  
19 that the “pipe was going to burst,” all of which would expose that Wal-Mart was  
20 painting a false rosy picture about the status of its E-commerce business through the  
21 inflation of the indirect measures like SKU growth. Mr. Huynh also reported his  
22 concerns that negative word of mouth would spread through the seller community  
23 that Wal-Mart ripped-off “Mom and Pop” sellers by overcharging commissions or  
24 that, through the relaxed pre-launch/go-live standards necessary to achieve the rapid  
25 growth management demanded, had allowed price-gouging sellers into its  
26 Marketplace contrary to Wal-Mart's fundamental message: Save Money, Live  
27 Better.

28

1           75. In or about September 2016, Wal-Mart acquired one of its competitor  
2 online marketplaces (Jet.com) for \$3.3 billion dollars. Going forward, the plan was  
3 to integrate some aspects of Jet.com and Walmart.com. The Jet.com team, and the  
4 Wal-Mart E-commerce team, would work together in some respects. Among other  
5 things, Wal-Mart's E-commerce business would now have a new set of eyes  
6 looking over it – those of Jet.com's Founder Marc Lore who became Wal-Mart's  
7 Chief Executive Officer (CEO) of E-commerce U.S. This created an additional  
8 incentive for those who had created, contributed to, ignored, and/or allowed the  
9 concerns Mr. Huynh had pressed forward to continue without appropriate, timely  
10 fixes to hide or conceal their failures, and get rid of anyone who might expose their  
11 failures to new management. Presumably realizing that a fresh set of eyes may see  
12 things the way Mr. Huynh's eyes had seen them, soon after Mr. Huynh reiterated  
13 the above concerns to his boss in early-October 2014, Mr. Huynh's boss circulated  
14 an email acknowledging some of the concerns and asking questions like whether:  
15 "commissions [are] being correctly charged?"; "our financial systems correctly  
16 report[] commissions?,"; "our management systems [are] correctly reporting  
17 commissions"; etc.

18           76. But even though at least some of Mr. Huynh's concerns were thereby  
19 at least indirectly acknowledged by his superior to be valid and legitimate, his  
20 superiors were angry and annoyed at him for continuing to raise them – especially,  
21 because his direct boss had told him to stop doing so. They also knew or suspected  
22 that he would likely continue to express these same concerns to the new  
23 management team from the Jet.com acquisition if he continued to work with the  
24 new Jet.com team long enough. Thus, not surprisingly, the retaliation swiftly  
25 followed his continued raising of these issues (upon information and belief, likely  
26 to discourage him from reporting them to any new set of ears from the Jet.com  
27 management team).

28

1           77. For example, not by way of limitation but merely by way of example:  
2 In or about mid-October 2016, Mr. Huynh (in a meeting with a human resources  
3 representative) was accused of engaging in misconduct at a trade show. The  
4 accusation was either manufactured or blown out of proportion; the benign  
5 accusation did not rise to the level of justifying discipline. Likewise, around this  
6 same time Mr. Huynh was accused of a mishap during a press interview at a trade  
7 show. This, too, was an unfair attack. Nonetheless, ultimately, on November 17,  
8 2016, Mr. Huynh was presented with a “Written Warning (Coaching)” that made  
9 bogus attacks on him – including the bogus allegation that his conduct at a  
10 conference had “ultimately put into question [his] ability to exercise good  
11 judgment” and that his “documented behaviors and comments were inconsistent  
12 with [his] responsibilities as the leader of the Marketplace Business Development  
13 Team.” The write-up was the combined effort of Mr. Huynh’s direct boss and  
14 human resources. According to Wal-Mart’s policies, this write-up would remain on  
15 Mr. Huynh’s record for one year and would prevent or impede his ability to  
16 transfer, promote, etc. during that one year period.

17           78. The bogus write-up, alone, was bad enough. It was not deserved but  
18 instead was retaliatory for the ongoing disclosures of the above concerns. But,  
19 adding insult to injury, Wal-Mart also demanded that Mr. Huynh take a generic  
20 training course on “Emotional Intelligence” given to supervisors as part of basic  
21 management training.

22           79. “Emotional intelligence” is defined as “the capacity to be aware of,  
23 control, and express one’s emotions, and to handle interpersonal relationships  
24 judiciously and empathetically.” But, Mr. Huynh had specifically shared with his  
25 direct boss and human resources that emotional regulation and impulse control were  
26 symptoms of his underlying ADHD disability – indeed, he had even presented a  
27 Powerpoint presentation about his condition to them in an effort to educate them  
28 about his struggles with his disability. To the extent that there were any real issues

1 involving Mr. Huynh's emotional regulation or impulse control, they should have  
2 been dealt with through a proper interactive process that was appropriately tailored  
3 to his specific disability. But, instead, his disability's role was being ignored and he  
4 was told he must take this course that was inappropriate for him under the  
5 circumstances of his disability.

6 80. Moreover, the bogus allegations leveled against him in the November  
7 2016 write-up were not issues of "emotional intelligence," emotional regulation or  
8 impulse control. Thus, forcing him to attend an "emotional intelligence" class was  
9 a non-sequitur in terms of addressing the purported issues set forth in the November  
10 2016 Written Warning.

11 81. After the November 2016 write-up, Mr. Huynh reported both to his  
12 direct boss, and to human resources, that he believed he had been subject to  
13 discrimination based on his disability and that the discipline was discriminatory and  
14 retaliatory. He made such reports or protected opposition on multiple occasions  
15 thereafter.

16  
17 **K. November - December 2016: Mr. Huynh continues to see more and**  
18 **more troubling information, and he continues to make protected**  
19 **disclosures.**

20 82. In November and December 2016, Mr. Huynh continued to observe  
21 more of the same type of troubling concerns, as well as others, including by way of  
22 illustration and not by way of limitation, the examples set forth below.

23 83. Seller feedback indicated that Wal-Mart's Marketplace was incorrectly  
24 merging product listings. Wal-Mart's system was treating variations of the seller's  
25 products as all being one single and identical product type when, in fact, they were  
26 different variations of a single product type. The customer also explained to Wal-  
27 Mart the "[r]amifications if this [issue] is not fixed" – including that:

1 ● “Customers will regularly receive incorrect orders, disappointing them, and  
2 perhaps making them go elsewhere.”

3  
4 ● “Merchants will have to deal with a greater number of returns & refunds  
5 than necessary, raising costs.”

6  
7 ● “Merchants will be forced to cancel more orders than necessary, skewing  
8 your metrics.”

9  
10 ● “If the scope of the problem turns out to be really bad, and unfixable, it  
11 might force larger merchants to withdraw form the marketplace to avoid  
12 problems with automation. It is impossible to scale order management when  
13 every single order needs to be human checked for accuracy.”

14  
15 84. This customer further warned Wal-Mart that others could not “take on  
16 Amazon ... only Walmart can. But if too many customers have bad experiences  
17 purchasing products from third party merchants due to data problems ... Walmart  
18 will not win this battle.”

19 85. Also in December 2016, Wal-Mart received reports of more “third-  
20 party” seller discontent because Wal-Mart had failed to pay, or failed to correctly  
21 pay, sellers. This particular week, the aggregate amount of seller payments Wal-  
22 Mart was required to make was its single-week largest to date. Wal-Mart’s  
23 payment system “failed under that much load” due to the “payment system being  
24 unreliable.”

25 86. Still, despite these and other known systemic post-recruitment  
26 scalability problems that were continuing to be exposed, management still  
27 demanded even more aggressive E-commerce growth. The Fiscal Year 2018 Plan  
28 set operational targets of ending Fiscal Year 2018 (*i.e.*, February 2018) with twenty

1 thousand (20,000) Marketplace “third-party” sellers and one hundred million  
2 (100,000,000) SKUs – this, even though the Marketplace’s control system was still  
3 showing significant weaknesses and/or voids.

4 87. Mr. Huynh also continued to see more and more evidence confirming  
5 his previous beliefs that senior leadership was presenting a false, overly-optimistic  
6 view of Wal-Mart’s E-commerce growth. For example, in its November 18, 2016  
7 third quarter FY17 earnings call, Wal-Mart’s Chief Executive Officer Doug  
8 McMillon began his portion of the earnings report highlighting “some recent  
9 developments in e-commerce” including that Wal-Mart was “scaling fast – adding 8  
10 million SKUs over the past 3 months alone” within its Marketplace.

11 88. But just a month or so later, Mr. Huynh observed an internal  
12 presentation where it was reported that “[s]eller SKU ramp up [was] not progressing  
13 as aggressively as we would have liked,” which was attributed to the fact that  
14 “[m]any sellers aren’t ramping up their SKU count to the number of SKUs  
15 committed in their applications.” This internal presentation was contrary to the  
16 message being delivered externally. In other words, there was a disconnect  
17 between what Wal-Mart was telling the investing public about its SKU ramp-up  
18 versus what Wal-Mart internally recognized was actually the case.

19 89. Indeed, Wal-Mart was misrepresenting the true SKU count numbers  
20 including, by way of illustration and not by way of limitation:

- 21
- 22 ● Wal-Mart’s publicly reported SKU numbers include SKUs that are not  
23 actually buyable to the public via its Marketplace. That is, Wal-Mart reports  
24 to the public the SKU totals listed in its internal product catalogue databases.  
25 However, significant portions of the SKUs listed in Wal-Mart’s internal  
26 product catalogue databases are not offered to the public to be purchased on  
27 the Marketplace. That is, the SKUs are not buyable. By reporting to the  
28 public SKU growth numbers that includes non-buyable SKUs not even listed

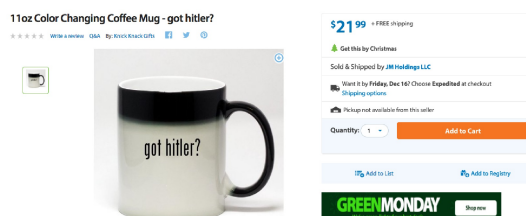


1 for purchase on the Marketplace, Wal-Mart was misrepresenting its true SKU  
2 growth.

3  
4 ● A significant portion of Wal-Mart's reported massive SKU growth during  
5 Fiscal Year 2017 was attributable to Wal-Mart's acquisition of Jet.com and  
6 its product listings. Indeed, Wal-Mart's Fiscal Year 2017 Annual Report  
7 reported that "[t]he acquisition of jet.com is in line with the Company's  
8 strategic framework of accelerating e-commerce growth." But in conducting  
9 post-merger due diligence and strategy research, Mr. Huynh compared  
10 internal salesforce.com data for Jet.com and Walmart.com. Mr. Huynh  
11 determined that a high percentage of the product sale lists between Jet.com  
12 and Walmart.com overlapped – that is, they contained redundant SKUs. Yet  
13 Wal-Mart was reporting the redundant SKU numbers as if they were separate,  
14 non-redundant, thereby misrepresenting and artificially and falsely inflating  
15 SKU growth numbers.

16  
17 90. Likewise, Mr. Huynh continued to see evidence that the lowering of  
18 seller go-live or pre-launch standards had continued to bring low-quality sellers into  
19 Wal-Mart's Marketplace. Some examples – again, merely by way of illustration  
20 and not by way of limitation:

21  
22 ● Wal-Mart continued to be plagued by offensive and inappropriate products  
23 being listed on its Marketplace, such as mugs displaying the offensive  
24 phrases "got hitler?" and "got retard?":



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91. The foregoing concerns were material in that, *inter alia* and not by way of limitation but merely by way of example, they would influence the judgment of a reasonable investor. Among other things, and not by way of limitation but merely by way of example:

- Wal-Mart’s E-commerce business is recognized by Wal-Mart, and the investing community, as a key component of Wal-Mart’s future success – indeed, perhaps more so than any other segment of Wal-Mart’s operations. Wal-Mart’s leadership has repeatedly publicly emphasized the long-term importance of its E-commerce growth including “organic growth” in Wal-Mart’s profitability outlook. And, in doing so, Wal-Mart’s senior executives have repeatedly and consistently highlighted the indirect measures such as SKU growth as signs of the company’s positive profitability outlook.
- Given the critical role of its E-commerce business in long-term profitability and success, Wal-Mart knew and expected that statements regarding its E-commerce growth or lack thereof would produce either a positive or negative market-reaction. Analysts consistently considered Wal-Mart’s E-commerce growth in analyzing whether to buy or sell Wal-Mart stock.
- Product assortment and SKU growth – including the inflated SKU numbers – have been relied on by key analysts in evaluating Wal-Mart’s stock. For example, and not by way of limitation but merely by way of illustration, Bank

1 of America Merrill Lynch gave a positive buy rating and reported that  
2 Walmart “remains a top pick” relying on Wal-Mart’s representation that “the  
3 majority of Walmart’s US online growth was organic and came through  
4 Walmart.com and was supported by” four factors with the first listed factor  
5 being “continued marketplace expansion (now 40mn online SKUs vs. 35 mn  
6 in F4Q and 10mn last year ....”

7  
8 ● In recent times, discussions between analysts and Wal-Mart’s management  
9 have largely focused on Wal-Mart’s E-commerce performance and outlook  
10 more so than any other single segment or factor in Wal-Mart’s business.

11  
12 ● Upon information and belief, some of the misrepresentations may have  
13 been essential to management’s hitting incentive compensation. They thus  
14 were a strategy of “earnings management” to maximize the likelihood of  
15 executives hitting incentive compensation targets. In some of the relevant  
16 time periods, Wal-Mart’s senior executives narrowly hit their financial  
17 incentive compensation targets and, upon information and belief, some of the  
18 misrepresentations were necessary to achieve those incentive compensation  
19 targets.

20  
21 ● During most of the relevant time period since Wal-Mart has begun to  
22 report its alleged “organic growth” within its E-commerce segment, Wal-  
23 Mart’s stock price had skyrocketed. From approximately November 2015  
24 through January 2018, Wal-Mart’s stock typically rose (without only slight  
25 and occasional declines) until it reached a record-high of over \$109 dollar per  
26 share in late-January 2018. But then, then on February 20, 2018, Wal-Mart’s  
27 stock plummeted over ten percent (10%) in a single day in response to its  
28 quarterly earnings call’s revelation that the company failed to meet its E-

1 commerce projections. As one analyst noted, “[t]he most eye-catching  
2 development was Walmart’s e-commerce sales growth in the United States  
3 that slowed to 23% in the fourth quarter, making a sharp decline from 50% in  
4 the prior quarter.” Articles immediately filled the world wide web with titles  
5 such as “Walmart’s online sales growth slips, rattling investors.” And,  
6 according to one report, “CEO Doug McMillon struggled on this morning’s  
7 conference call to provide a succinct reason for the online sales miss.”

8  
9 92. In October and November 2016, Mr. Huynh continued to report and  
10 disclose some of the above concerns to his superiors or those with authority to take  
11 remedial action.

12  
13 **L. December 2016: Mr. Huynh escalates his disclosures through a**  
14 **formal report to Wal-Mart’s Global Ethics Hotline.**

15 93. On or about December 20, 2016, Mr. Huynh submitted a formal,  
16 detailed disclosure to Wal-Mart’s Global Ethics department formally reporting  
17 concerns, *inter alia*, that “Marketplace Business and Walmart Labs leadership team  
18 members have been manipulating various operating levers to portray an inaccurate  
19 picture of the state of Walmart in the long run.”

20 94. In this formal complaint, and an attached detailed PowerPoint  
21 presentation with detailed and specific data presented in it, Mr. Huynh  
22 demonstrated how Wal-Mart’s Marketplace was still plagued by serious concerns  
23 such as, without limitation and merely by way of example:

- 24  
25 ● Contrary to its core mantra of “Every Day Low Prices” so its customers can  
26 “Save Money, Live Better,” Wal-Mart’s push to ramp-up SKU numbers  
27 allowed a known price-gouging seller to load one million (1,000,000) SKUs  
28 onto Wal-Mart’s Marketplace platform in FY 2017. Mr. Huynh had

1 previously raised concerns about this price-gouging seller back in November  
2 2014, citing specific examples of this seller listing some products on Wal-  
3 Mart's Marketplace at triple the price as the identical item could be  
4 purchased at Amazon.com or Toys R' Us. Yet, as of December 2016, this  
5 seller still had excessively priced products on Wal-Mart's site. Worse, this  
6 known price-gouging seller was actually ranked as the second-highest seller  
7 in terms of the total number of newly-published SKUs added YTD compared  
8 to all other "third-party" sellers on Wal-Mart's Marketplace. Allowing a  
9 known price-gouger to dump a ton of low-quality, high-priced SKUs on Wal-  
10 Mart's Marketplace was the fundamental opposite of Wal-Mart's core  
11 message: "Every Day Low Prices."

12  
13 ● The push to ramp-up SKU and seller growth had brought about low-quality  
14 sellers, such as the offensive "got Hitler?" and "got retard" mugs. Mr. Huynh  
15 presented evidence that this third-tier seller with no established market track  
16 record and doing less than one million dollars (\$1,000,000) in sales in other  
17 Marketplaces was somehow allowed to add one million (1,000,000) SKUs  
18 into Wal-Mart's Marketplace making it the fourth-ranked seller in terms of  
19 the total number of newly-published SKUs added YTD compared to all other  
20 "third-party" sellers on Wal-Mart's Marketplace.

21  
22 ● The failure to fully and finally resolve the issue of incorrect commission  
23 charges "could result in both financial and PR Risks."

24  
25 95. Mr. Huynh specifically reported in the attached PowerPoint  
26 presentation his concerns that "Marketplace Business and Walmart Labs leadership  
27 team members manipulated various operating levers to hype up the Marketplace  
28 KPIs including:

1           ● “Accelerated the weekly rate of new sellers going live by relaxing the  
2 enforcement of prelaunch standards such as lowering the number of required  
3 published SKUs, % of published items that are discoverable, % of  
4 commission accuracy rate, % of image with acceptable quality, etc.”

5  
6           ● “A large percentage of live sellers got stuck with a limited number of  
7 published SKUs ... on Walmart.com given the complexity of [Wal-Mart’s]  
8 Universal Spec/Item ingestion process” but that “[t]o compensate for this  
9 limitation, [E-commerce leaders] accelerated the total number of published  
10 SKUs on Walmart.com from (6.2 Million SKUs to 30 Million SKUs by ...  
11 [a]llowing a small number of sellers (the top 1% of sellers [50] added 50% of  
12 the new published SKUs) to stuff our catalog with items that are not [Every  
13 Day Low Price] [3X the market price], non-relevant assortment for  
14 customers, and High PR risk items such as ‘Got Hitler’ and ‘Got Retard’  
15 Mugs.”

16  
17           ● “Sellers were not charged and/or overcharged for commission fees on  
18 items sold on Walmart.com in the last several months because their published  
19 items could not be categorized properly. This could lead to financial  
20 compliance and/or PR risks for Walmart.com.” Most important, Mr. Huynh  
21 specifically emphasized the point that “[t]here is no solution in sight to  
22 increase accuracy,” and that Wal-Mart had been clawing back overpayments  
23 from sellers without giving them adequate notice.

24  
25           96. Given these and other concerns, Mr. Huynh reported that leadership  
26 had misrepresented the true status of Wal-Mart’s E-commerce business, and its  
27 success and progress, to the investing public. Mr. Huynh explicitly raised the  
28 concern of “[s]hareholder trust/dissatisfaction,” noting that “[i]naccurately

1 communicating the state of the Marketplace Business will set the wrong future  
2 expectation for investors which could lead to dissatisfaction and legal/regulatory  
3 risks.” Mr. Huynh requested that the Global Ethics team “investigate further into  
4 this matter and ensure Walmart acts with integrity and ethics toward our  
5 shareholders, customers, and seller community” and noted that “taking the  
6 appropriate corrective actions in a timely manner will protect our great institution  
7 from risks so we can continue to fulfill our mission to Millions of American  
8 families (Saving People Money So They Can Live Better).”

9 97. Thereafter, Mr. Huynh supplemented his initial report with additional  
10 details. However, initially, he received no substantive response other than mere  
11 boilerplate acknowledgments of receipt of his report and his additional submissions.

12  
13 **M. January 4, 2017: Given Global Ethics’ inaction, Mr. Huynh**  
14 **reports his concerns directly to Marc Lore (Wal-Mart U.S. E-**  
15 **commerce’s Chief Executive Officer) and Michael Bender**  
16 **(Executive Vice President & Chief Operations Officer).**

17 98. Given the apparent failure of the Global Ethics office to take his report  
18 seriously, on January 4, 2017 at 8:00 a.m., Mr. Huynh emailed another formal,  
19 detailed report (with an even more detailed and expanded version of the PowerPoint  
20 presentation attached to his Global Ethics complaint) directly to Wal-Mart U.S.’s E-  
21 commerce C.E.O. Marc Lore as well as its Executive Vice President and Chief  
22 Operations Officer Michael Bender.

23 99. In the body of the email, Mr. Huynh explained that he was reporting  
24 “ethics violation/intentional dishonesty at the executive level” that was “already  
25 negatively impacting Walmart’s brand/reputation with our customers, employees,  
26 shareholders, and sellers as well as exposing Walmart to PR, financial, legal, and  
27 compliance risks (GAAP and SOX) and will continue to do so unless we take  
28 appropriate corrective action soon.” Mr. Huynh explained he had already reported



1 issues to the Global Ethics team, but was reaching out to C.E.O Lore and E.V.P.  
2 and COO Bender to make them “aware of the deceptive actions ... to manipulate  
3 various operating levers (falsely inflating the KPIs) to portray an inaccurate/rosy  
4 picture of the state of the MP Business to Walmart’s Senior Leaders.”

5 100. In the body of the email, Mr. Huynh further explained that E-  
6 commerce leaders “inflated the total # of new sellers launched and the rapid MP  
7 assortment expansion on Walmart.com to overstate the MP KPIs,” which Mr.  
8 Huynh opined was why “the GMV (output) only grew at 118% YOY even though  
9 the inputs such as total # of new sellers launched, and the total # of published SKUs  
10 grew rapidly at 2,500% and 400% YOY respectively.” In other words, Mr. Huynh  
11 illustrated what was obvious to Wal-Mart (yet ignored): the numbers did not make  
12 sense. The extreme disconnect between the year-over-year growth on the input  
13 versus output sides reflected the fact that the input numbers were not legitimate.  
14 They were manipulated and inflated.

15 101. Mr. Huynh explained that the lax pre-launch or go-live standards  
16 increased the “weekly throughput rate for new sellers launched and the total # of  
17 live sellers on the platform (trading quality for quantity), but does not adequately  
18 prepare the live sellers to navigate and operate efficiently within the complexities of  
19 the Global MP platform (Universal Item spec, item ingestion and categorization)  
20 and an insufficient seller support model (the Business Development team spent  
21 about 10-15% of our bandwidth to help connect sellers to the right support  
22 person).” Mr. Huynh also explained that Wal-Mart had allowed its Marketplace  
23 catalogue to be stuffed “with many published SKUs that are not buyable by  
24 customers (non-buyable published SKUs are useless for customers),” and noted the  
25 extreme disconnect between this metric on Wal-Mart’s own “first-party” system  
26 versus its “third-party” Marketplace: “The ratio of total # of buyable SKUs to total  
27 # of in-stock SKUs for 1P and Marketplace are 99% and 29% respectively (a 70%  
28 delta).

1           102. Finally, Mr. Huynh also pointed out in the body of the email serious  
2 concerns regarding the overall function and adequacy of Wal-Mart's E-commerce  
3 internal controls. For example, he pointed out that leadership had "covered up the  
4 inadequacies/insufficient controls of key systems and business processes like seller  
5 payment, commission billing, and customer return chargeback." Likewise, he noted  
6 that "key Marketplace internal systems and processes such as commission fee  
7 billing, seller payment, and customer returns charged back to sellers etc. are not  
8 robust and scalable enough which resulted in an environment with insufficient  
9 controls to support the current 4,702 live sellers let alone [the] plan of having  
10 20,000 live sellers and 100 Mil SKUs on Walmart.com in FY 18 (further exposing  
11 Walmart to PR, shareholder, financial, legal, and compliance risk."

12           103. In the detailed, forty-two (42) page PowerPoint presentation that  
13 accompanied his email to Lore and Bender, Mr. Huynh gave detailed, specific and  
14 concrete examples of the above concerns.

15           104. Additionally, after he submitted this report to Lore and Bender, Mr.  
16 Huynh accessed his Global Ethics complaint on Wal-Mart's online system and  
17 submitted additional supplemental materials consisting of the content of his report  
18 email to Lore and Bender.

19  
20           **N. Within days of his formal report to E-commerce C.E.O. Lore and**  
21           **E.V.P. and C.O.O. Bender, Mr. Huynh is abruptly terminated**  
22           **allegedly as part of a reduction-in-force that had not yet occurred.**  
23           **The very day before his termination, RetailLeader.com honored**  
24           **Mr. Huynh as one of "17 [Retail] Leaders to Watch in 2017."**

25           105. Mr. Huynh hoped that his report to Lore and Bender would result in his  
26 concerns being addressed. Instead, however, at 4:40 p.m. the very day that Mr.  
27 Huynh reported his concerns to Lore and Bender, Mr. Huynh received an out-of-  
28

1 the-blue email entitled informing him that the Global Ethics “investigation is now  
2 complete, and appropriate action has been taken in response to your concerns.”

3 106. This made little sense. First, Mr. Huynh had not even been  
4 interviewed or spoken with by anyone involved in the purported “investigation.”  
5 Second, Mr. Huynh had not heard from anyone else in E-commerce that they had  
6 been spoken with or interviewed as part of any so-called “investigation.” The  
7 “investigation” was apparently a phantom investigation done without speaking to  
8 those who logically would have been spoken to had a real investigation been done.  
9 Third, of course, given the scope and magnitude of the allegations Mr. Huynh had  
10 brought forward, it simply defied credibility to believe that these issues were  
11 investigated in any meaningful fashion between his December 20, 2016 complaint  
12 and January 4, 2017 – smack in the middle of the year-end Holiday rush that  
13 typically produced chaos in retail environment like Wal-Mart.

14 107. Thus, the next day, January 5, 2017, Mr. Huynh reached back-out to  
15 the Global Ethics office via the online portal and inquired: “Hi, I sent the PDF  
16 presentation to [ethics@wal-mart.com](mailto:ethics@wal-mart.com) that I sent to Michael [Bender] and Marc  
17 [Lore]. Did you receive the presentation? Please advise. Tri.”

18 108. Mr. Huynh request’s was ignored. Thus, during the day of January 10,  
19 2017, he followed-up again. Again, this request also was ignored.

20 109. But then that same afternoon (January 10, 2017), Wal-Mart delivered  
21 Mr. Huynh the final, permanent response to his repeated reports and disclosures: he  
22 was terminated abruptly under false pretenses. In short, Mr. Huynh was told he was  
23 being terminated because of the combination of alleged recent performance issues  
24 (the November 2016 write-up) and a company reorganization and restructuring.  
25 Mr. Huynh was then presented a termination letter dated January 24, 2017 –  
26 basically, a form letter for lay-offs that were set to occur on January 24, 2017 as a  
27 result of the referenced restructuring.

28

1           110. Mr. Huynh’s abrupt termination on January 10, 2017 overshadowed a  
2 significant event that occurred the day before. On January 9, 2017,  
3 RetailLeader.com published its list of “17 Leaders to Watch in 2017” nationwide.  
4 One Wal-Mart employee made the list: Mr. Huynh. Indeed, the day before his  
5 abrupt termination, the industry honored Mr. Huynh as one of the key industry  
6 leaders to watch in the upcoming year.

7           111. Mr. Huynh’s January 4, 2017 report to U.S. E-commerce C.E.O. Lore  
8 and E.V.P. and C.O.O. Bender contained additional evidence, support and back-up  
9 for his reports that was not contained in his December 20, 2016 submission to  
10 Global Ethics. By rushing to terminate Mr. Huynh within days of his report to Lore  
11 and Bender (and without any investigation into the new or expanded reported  
12 concerns), Wal-Mart prevented Mr. Huynh from obtaining any additional internal  
13 Wal-Mart evidence of its wrongdoing and shut down any investigation into the  
14 allegations in the January 4, 2017 before it even began. This way, upon information  
15 and belief, Wal-Mart could avoid having to conduct a real investigation that would  
16 have confirmed the validity of Mr. Huynh’s concerns.

17           112. The termination reasons were pretextual. They were false reasons  
18 offered to cover-up the truth: retaliation and discrimination motivated the  
19 termination. Among other things, and not by way of limitation but merely by way  
20 of limitation: (a) the issues that led to the November 2016 written warning were  
21 bogus – either manufactured or blown out of proportion in order to justify  
22 discipline; (b) Mr. Huynh was terminated before the restructuring terminations  
23 actually occurred – to his understanding, anyone else terminated as part of the  
24 restructuring was not notified until weeks later; (c) there was still an ongoing need  
25 for the work Mr. Huynh was performing; duties were not restructured away but  
26 remained essential following the restructuring and he was more than qualified to  
27 continue to perform; and (d) others at his level in the organizational structure who  
28 were not perceived as whistleblowers were treated more favorably than Mr. Huynh

1 in the restructuring either because they were retained or alternative positions  
2 secured for them.

3 113. Moreover, Wal-Mart did not stop at termination. Adding more insult  
4 to injury, Wal-Mart then used the bogus November 2016 Written Warning to reduce  
5 Mr. Huynh's incentive compensation for the prior year's work.

6  
7 **O. Mr. Huynh reaches back out to Wal-Mart's Global Ethics after his**  
8 **termination. Nobody helps. Instead, he learns that the claimed**  
9 **"investigation" consisted of the "fox guard the henhouse."**  
10 **Apparently, Wal-Mart chose *not* to learn the billion dollar lesson**  
11 **from its Mexico bribery scandal.**

12 114. After he was terminated, Mr. Huynh again reached out to Global Ethics  
13 reporting that he has "been terminated ... on January 10, 2017" yet still "[n]o one  
14 from the Global Ethics Team has reached out to interview me and my direct reports  
15 regarding the case." Global Ethics ignored this too.

16 115. Then, Mr. Huynh followed-up again on January 18, 2017 noting that  
17 "[i]t has been more than a month since I have opened this case but I have not heard  
18 anything back from Global Ethics on the status."

19 116. Finally, on January 30, 2017, Mr. Huynh heard back from Global  
20 Ethics by an entry on Wal-Mart's online portal signed by "Global Ethics" (without  
21 identifying a human being responsible for it) stating: "We have reviewed and  
22 appropriately handled this matter. ... We partnered with the business to address the  
23 concerns."

24 117. If any investigation was truly done, and if it consisted as stated of Wal-  
25 Mart "partnering with the business to address [Mr. Huynh's] concerns," this was  
26 totally inappropriate, and Wal-Mart knew better. The "business" was a key part of  
27 the alleged wrongdoer here. Thus, upon information and belief, the supposedly  
28 neutral Global Ethics office "partnering with the business" was an exercise in "the

1 fox guarding the henhouse.” A core purpose of the Global Ethics department was  
2 (supposedly) to provide a neutral, unbiased set of eyes, including specifically to  
3 investigate serious allegations against high-ranking executive leadership. This was  
4 precisely such a situation. By, upon information and belief, involving the  
5 wrongdoers in the investigation into themselves, any semblance of neutrality was  
6 destroyed.

7 118. By December 2016, Wal-Mart cannot claim it did not know better than  
8 to let the “fox guard the henhouse” in a situation like Mr. Huynh brought forward.  
9 Upon information and belief, choosing to do a biased, skewed “investigation” that  
10 allowed the wrongdoers to participate in and/or otherwise control the so-called  
11 investigation into themselves was one of the core problems with how Wal-Mart  
12 responded when, in 2005, an internal whistleblower reported that Wal-Mart’s rapid  
13 expansion into Mexico was paved by widespread bribery of Mexican government  
14 officials.

15 119. Upon information and belief, after Wal-Mart’s Mexico bribery scandal  
16 broke publicly, one of revelations was that initial efforts to investigate the  
17 allegations were swept under the rug by Wal-Mart. Among other things, it was  
18 reported that Wal-Mart retained a reputable international law firm skilled in Foreign  
19 Corrupt Practice Act (FCPA) investigations. This law firm proposed a detailed  
20 “investigation plan” for a “thorough investigation” that would take a number of  
21 months to complete given the scope of the allegations. Wal-Mart rejected that  
22 proposed comprehensive investigation plan, and instead decided it should merely  
23 conduct a “far more limited” internal two-week “Preliminary Inquiry” done by Wal-  
24 Mart’s internal Corporate Investigations and International Internal Audit Services  
25 (“IAS”) departments.” By keeping the investigation in-house, and allowing those  
26 who were the wrongdoers to be involved in or otherwise control the investigation,  
27 Wal-Mart concealed the allegations from the public and investors, and chose not to  
28 remedy them – until the news media broke the story. Nonetheless, even though it

1 kept the investigation in-house rejecting the outside law firm’s recommendation to  
2 do a “thorough investigation,” Wal-Mart’s own inadequate investigation  
3 nonetheless concluded that “There is reasonable suspicion to believe that Mexican  
4 and USA laws have been violated.” Wal-Mart’s choice to conceal the allegations  
5 was wrong, and it made the problem worse.

6 120. Upon information and belief, Wal-Mart did not expand the  
7 investigation even after its inadequate internal investigation still found “reasonable  
8 suspicion to believe that Mexican and USA laws have been violated. Instead, Wal-  
9 Mart executives dismissed the investigators as “overly aggressive” and control over  
10 the investigation was transferred to one of the investigation’s initial targets. It was  
11 obviously wrong to transfer the investigation’s oversight to the business unit being  
12 investigated – let alone, to a particular person alleged to have been part of the  
13 problem. Thus, the General Counsel of Wal-Mart’s Mexican operations reported to  
14 senior Wal-Mart executives that “[t]he wisdom of assigning any investigative role  
15 to management of the business unit being investigated escapes me.” This General  
16 Counsel then resigned from Wal-Mart soon after this. Predictably, Wal-Mart’s “fox  
17 guarding the henhouse” investigation soon cleared Wal-Mart’s Mexican operations  
18 of any wrongdoing.

19 121. Upon information and belief, cleared of any wrongdoing by its biased  
20 internal investigation done by partnering with the accused to investigate  
21 themselves, Wal-Mart did not disclose the Mexican bribery allegations to investors  
22 until 2012 – over six years later – and only after the *New York Times* broke the  
23 story.

24 122. Upon information and belief, Wal-Mart eventually had to acknowledge  
25 it did wrong in dealing with the Mexican bribery scandal. It has been reported that  
26 Wal-Mart spent over eight hundred million dollars (\$800,000,000) investigating the  
27 FCPA allegations and overhauling its entire Global Ethics and Compliance  
28 programs as a result. Wal-Mart has also disclosed in public filings that it has



1 reserved almost three hundred million dollars (\$300,000,000) to resolve the FCPA  
2 action brought against it by the Department of Justice and the Securities and  
3 Exchange Commission. Thus, the FCPA scandal was a more than billion dollar  
4 lesson.

5 123. Upon information and belief, one result of this billion dollar lesson  
6 was supposedly the complete overhaul of Wal-Mart's Global Ethics and  
7 Compliance program. One of the apparent architects of this complete overhaul of  
8 Wal-Mart's compliance program was Jay Jorgensen, now Wal-Mart's Executive  
9 Vice President and Global Chief Ethics and Compliance Officer. Jorgensen was  
10 recently quoted as stating that he and Wal-Mart have built "a world-class global  
11 ethics and compliance program." Jorgensen was also recently quoted as  
12 acknowledging that "[f]rom the earliest days of the company Walmart has  
13 considered even the appearance of impropriety unacceptable...."

14 124. Upon information and belief, Jorgensen apparently has chosen to  
15 ignore the billion dollar lesson, and Wal-Mart has continued to say one thing while  
16 doing another. Its actions continue to speak louder than its words.

17 125. Specifically, Mr. Huynh's December 20, 2016 formal report to Global  
18 Ethics was not just sent to the Global Ethics hotline through an online submission,  
19 but Mr. Huynh also separately emailed the report directly to E.V.P. and Global  
20 Ethics and Compliance Officer Jorgensen. Jorgensen obviously knew better than to  
21 do what Wal-Mart had done in Mexico: allow the "fox to guard the henhouse" and  
22 conduct an investigation that does not even afford adequate time to investigate the  
23 nature of what is being alleged. Yet, upon information and belief, Jorgensen  
24 apparently allowed exactly this to happen; he allowed Wal-Mart to repeat history in  
25 a very, very bad way. Upon information and belief, just like happened in Mexico  
26 after it learned its employees were bribing the Mexican officials, Wal-Mart  
27 responded in the same way to Mr. Huynh's reports to Jorgensen and his Global  
28 Ethics department. First, Global Ethics "partnered with the business" to permit the

1 “fox to guard the henhouse.” Second, an investigation that should have taken  
2 months to complete – if a thorough, fair and honest process was occurring – was  
3 wrapped up relatively instantaneously with no evidence of any actual investigation  
4 occurring.

5 126. Indeed, Mr. Huynh has no reason to believe, and has seen no evidence  
6 to suggest, that his concerns were reported to Wal-Mart’s Audit Committee in real-  
7 time as a result of his disclosures even though under Wal-Mart’s policies they  
8 clearly should have been. Without any question, the serious allegations Mr. Huynh  
9 raised were required to be reported not only to Wal-Mart’s Audit Committee, but  
10 also to Wal-Mart’s external auditors at Earnst & Young. However, upon  
11 information and belief, this did not occur.

12 127. In short, upon information and belief, while Wal-Mart has long told the  
13 world that it learned its lesson from its FCPA scandal, this case proves that Wal-  
14 Mart’s actions speak louder than its words. Over a decade later, it resorted to the  
15 same improper tactics to silence and cover-up serious allegations of corporate  
16 wrongdoing that reach the highest-levels of the corporation. And, to this day, Wal-  
17 Mart’s senior leaders and outside auditors continue to certify that Wal-Mart’s  
18 internal controls are adequate and contain no material weaknesses, contrary to all of  
19 the evidence disclosed by Mr. Huynh and others.

20 128. Finally, and upon information and belief, both this latest chapter and  
21 Wal-Mart’s Mexican bribery scandal share another feature in common: the same  
22 underlying core motive. In both cases, instead of competing with ethics, honesty,  
23 integrity and merit like Sam Walton taught, Wal-Mart cut corners and cheated in a  
24 race to expand and gain market-share. It cheated in Mexico by bribing public  
25 officials to expedite its rapid expansion. It is cheating today in the race with  
26 Amazon by lying to the investing public about its real progress in E-commerce.

27  
28

1 **FIRST CLAIM FOR RELIEF FOR**  
2 **WHISTLEBLOWER RETALIATION IN VIOLATION**  
3 **OF THE SARBANES-OXLEY ACT OF 2002**  
4 **( 18 U.S.C. § 1514A, et seq.)**

5 129. Plaintiff repeats and realleges each and every allegation contained in  
6 all paragraphs before and after this paragraph as though set forth in full in this  
7 Claim for Relief.

8 130. Plaintiff was an employee, and Defendants are employers, within the  
9 meaning of the Sarbanes-Oxley Act of 2002, Public Law 107-204, 18 U.S.C.  
10 section 1514A, et seq.

11 131. Plaintiff engaged in activity that is legally-protected under the  
12 Sarbanes-Oxley Act by, *inter alia*, and not by way of limitation but merely by way  
13 of example, reporting or disclosing to his supervisors or individuals with authority  
14 to investigate/remedy the following concerns which he reasonably and in good faith  
15 believed violated the law as detailed above including, without limitation and merely  
16 by way of example:

- 17
- 18 ● Securities fraud, violations of the rules and regulations of the SEC and/or
- 19 any provision of law relating to fraud against shareholders with respect to the
- 20 misrepresentations detailed herein relating to E-commerce growth and status;
- 21
- 22 ● Mail and/or wire fraud relating to commission overcharging, including the
- 23 continued overcharging after Wal-Mart was clearly aware of the problem.
- 24 Relatedly, securities fraud, violations of the rules and regulations of the SEC
- 25 and/or any provision of law relating to fraud against shareholders with
- 26 respect to the commission overcharging issue given the fact that Wal-Mart
- 27 retained the excess commissions and reported them on their public financials;
- 28

1           ● Mail and/or wire fraud in failing to process customer returns on a timely  
2 basis yet retaining the funds collected from the underlying purchases.  
3 Relatedly, securities fraud, violations of the rules and regulations of the SEC  
4 and/or any provision of law relating to fraud against shareholders with  
5 respect to the customer returns issue given the fact that Wal-Mart retained the  
6 funds that should have been returned to customers and reported them on their  
7 public financials; and

8  
9           ● Violations of internal controls, failure to have a sufficient system of  
10 internal controls, and/or the failure to correct and remedy known  
11 inadequacies in key controls. Specifically, as detailed herein, Mr. Huynh’s  
12 reports and disclosures included reports of Wal-Mart’s failure to “devise and  
13 maintain a system of internal accounting controls sufficient to provide  
14 reasonable assurance that – (i) transactions are executed in accordance with  
15 management’s general or specific authorization; (ii) transactions are recorded  
16 as necessary (I) to permit preparation of financial statements in conformity  
17 with generally accepted accounting principles or any other criteria applicable  
18 to such statements, and (II) to maintain accountability for assets; (iii) access  
19 to assets is permitted only in accordance with management’s general or  
20 specific authorization....” 15 U.S.C. §78m(b)(2)(B); *see also* 17 C.F.R.  
21 §240.13a-15(f). Moreover, Mr. Huynh disclosed instances of and/or attempts  
22 to “knowingly circumvent or knowingly fail to implement a system of  
23 internal accounting controls ....” 15 U.S.C. §78m(b)(3)(5). Finally, these  
24 disclosures were also reasonably believed to be disclosures that Wal-Mart’s  
25 senior corporate executives and outside auditors had been improperly  
26 certifying the effectiveness of Wal-Mart’s key controls as required as part of  
27 regular financial reporting, despite the lack of a proper factual basis to make  
28 such certifications. *See e.g.*, 15 U.S.C. §§7241 & 7262.

1 132. Plaintiff's protected activities as detailed herein were a contributing  
2 factor to Defendants' decision to take adverse actions including: (1) the pattern of  
3 ostracism, exclusion, etc.; (2) the November 2016 write-up; and (3) the termination.

4 133. As a proximate result of the foregoing retaliatory actions, Mr. Huynh  
5 has been damaged (economically and otherwise) and seeks all appropriate relief  
6 available under the whistleblower retaliation provisions of the Sarbanes-Oxley Act  
7 of 2002, including but not limited to full compensatory relief and all other  
8 necessary make-whole relief in an amount according to proof.

9 134. Moreover, Plaintiff has been forced to and has incurred attorney's fees  
10 and costs to prosecute this action, which Plaintiff seeks to recover on this claim.

11  
12 **SECOND CLAIM FOR RELIEF FOR**  
13 **WHISTLEBLOWER RETALIATION IN VIOLATION**  
14 **OF THE CALIFORNIA LABOR CODE**  
15 **(Cal. Labor Code § 1102.5)**

16 135. Plaintiff repeats and realleges each and every allegation contained in  
17 all paragraphs before and after this paragraph as though set forth in full in this  
18 Claim for Relief.

19 136. During his employment, Plaintiff engaged in activities protected under  
20 California Labor Code section 1102.5 as set forth herein. For example, without  
21 limitation and merely by way of example, among other things, Plaintiff engaged in  
22 activity that is legally-protected under the Sarbanes-Oxley Act by, *inter alia*, and  
23 not by way of limitation but merely by way of example, reporting or disclosing to  
24 his supervisors or individuals with authority to investigate/remedy the following  
25 concerns which he reasonably and in good faith believed violated the law as  
26 detailed above including, without limitation and merely by way of example:

1           ● Securities fraud, violations of the rules and regulations of the SEC and/or  
2 any provision of law relating to fraud against shareholders with respect to the  
3 misrepresentations detailed herein relating to E-commerce growth and status;

4  
5           ● Mail and/or wire fraud relating to commission overcharging, including the  
6 continued overcharging after Wal-Mart was clearly aware of the problem.  
7 Relatedly, securities fraud, violations of the rules and regulations of the SEC  
8 and/or any provision of law relating to fraud against shareholders with  
9 respect to the commission overcharging issue given the fact that Wal-Mart  
10 retained the excess commissions and reported them on their public financials;

11  
12           ● Mail and/or wire fraud in failing to process customer returns on a timely  
13 basis yet retaining the funds collected from the underlying purchases.  
14 Relatedly, securities fraud, violations of the rules and regulations of the SEC  
15 and/or any provision of law relating to fraud against shareholders with  
16 respect to the customer returns issue given the fact that Wal-Mart retained the  
17 funds that should have been returned to customers and reported them on their  
18 public financials<sup>5</sup>; and

19  
20           ● Violations of internal controls, failure to have a sufficient system of  
21 internal controls, and/or the failure to correct and remedy known  
22 inadequacies in key controls. Specifically, as detailed herein, Mr. Huynh’s  
23 reports and disclosures included reports of Wal-Mart’s failure to “devise and  
24 maintain a system of internal accounting controls sufficient to provide  
25 reasonable assurance that – (i) transactions are executed in accordance with

---

26  
27           <sup>5</sup> These same reports or disclosures were also disclosures of information Mr.  
28 Huynh reasonably and in good faith believed violated state laws regarding unlawful  
business practices, fraudulent or dishonest sales practices and other similar laws.

1 management's general or specific authorization; (ii) transactions are recorded  
2 as necessary (I) to permit preparation of financial statements in conformity  
3 with generally accepted accounting principles or any other criteria applicable  
4 to such statements, and (II) to maintain accountability for assets; (iii) access  
5 to assets is permitted only in accordance with management's general or  
6 specific authorization....” 15 U.S.C. §78m(b)(2)(B); *see also* 17 C.F.R.  
7 §240.13a-15(f). Moreover, Mr. Huynh disclosed instances of and/or attempts  
8 to “knowingly circumvent or knowingly fail to implement a system of  
9 internal accounting controls ....” 15 U.S.C. §78m(b)(3)(5). Finally, these  
10 disclosures were also reasonably believed to be disclosures that Wal-Mart's  
11 senior corporate executives and outside auditors had been improperly  
12 certifying the effectiveness of Wal-Mart's key controls as required as part of  
13 regular financial reporting, despite the lack of a proper factual basis to make  
14 such certifications. *See e.g.*, 15 U.S.C. §§7241 & 7262.

15  
16 137. Plaintiff's conduct constituted a disclosure of and/or opposition to  
17 conduct that Plaintiff had reasonable cause to believe disclosed a violation of state,  
18 local and/or federal laws, rules, or regulations. Plaintiff made such disclosures to  
19 person(s) with authority over Plaintiff or other employee(s) who had the authority  
20 to investigate, discover, or correct the violation or non-compliance. Plaintiff also  
21 refused to engage in activity that was illegal. Defendants also perceived, feared  
22 and/or believed that Plaintiff may make protected disclosures in the future.  
23 Plaintiff's conduct was thus protected under section California Labor Code section  
24 1102.5.

25 138. Defendants took adverse action against Plaintiff as detailed herein  
26 (including the pattern of systematic retaliation, the November 2016 write-up and the  
27 termination of Plaintiff's employment), and Plaintiff's protected activities, refusals  
28



1 and/or opposition was/were a contributing factor to Defendants' decision to take  
2 those adverse actions against Plaintiff.

3 139. As a direct and foreseeable result of the aforesaid acts of said  
4 Defendants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled  
5 to general and special damages and all appropriate compensatory relief.  
6 Defendants' conduct was a substantial factor in causing that harm.

7 140. The above described acts of Defendants, including by and through  
8 their managing agents, officers, or directors, were engaged in with a deliberate,  
9 cold, callous, fraudulent, and intentional manner in order to injure and damage  
10 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
11 despicable and constitute malice, fraud, and/or oppression within the meaning of  
12 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
13 against Defendants in an amount to be assessed at time of trial.

14  
15 **THIRD CLAIM FOR RELIEF FOR**  
16 **DISABILITY DISCRIMINATION IN**  
17 **VIOLATION OF CALIFORNIA FAIR**  
18 **EMPLOYMENT AND HOUSING ACT**  
19 **(Cal. Gov. Code §12940(a))**

20 141. Plaintiff repeats and realleges each and every allegation contained in  
21 all paragraphs before and after this paragraph as though set forth in full in this  
22 Claim for Relief.

23 142. Defendants are entities and/or employers governed by the Fair  
24 Employment and Housing Act (FEHA), Government Code section 12900 et seq.,  
25 including section 12940.

26 143. At all relevant times, Plaintiff had one or more mental and/or physical  
27 disabilities; had a history of one or more disabilities; had a record of one or more  
28 disabilities; and/or was perceived or regarded as having one or more disabilities that

1 constituted protected characteristics under the FEHA including but not limited to  
2 because of either present or future disabling effects.

3 144. Despite his disabilities, Plaintiff was able to perform the essential  
4 functions of his job with or without reasonable accommodations.

5 145. Defendants, and each of them, knew of Plaintiff's disabilities and knew  
6 or should have known that Plaintiff's disabilities fell within the definition of a  
7 disability under Government Code section 12926. Defendants further knew or  
8 should have known that despite his disability, Plaintiff could perform the essential  
9 functions of her job with or without reasonable accommodations.

10 146. Despite their knowledge of the foregoing, Defendants took adverse  
11 action against Plaintiff, including, but not limited to the pattern of mistreatment, the  
12 November 2016 write-up and terminating Plaintiff's employment. Plaintiff's  
13 disabilities were a substantial motivating reason for Defendants' conduct.

14 147. In engaging in the foregoing conduct, Defendants aided, abetted,  
15 incited, participated in, coerced, and/or compelled unlawful employment practices  
16 in violation of the FEHA and the announced policy of this State against such  
17 practices.

18 148. As a direct and foreseeable result of the aforesaid acts of said  
19 Defendants, Plaintiff has suffered and will suffer harm for which he is entitled to  
20 general and special damages. Defendants' conduct was a substantial factor in  
21 causing that harm.

22 149. The above described acts of Defendants, including by and through  
23 their managing agents, officers, or directors, were engaged in with a deliberate,  
24 cold, callous, fraudulent, and intentional manner in order to injure and damage  
25 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
26 despicable and constitute malice, fraud, and/or oppression within the meaning of  
27 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
28 against Defendants in an amount to be assessed at time of trial.

1 150. Plaintiff will also seek and is entitled to recover attorney's fees in  
2 connection with this cause of action under the FEHA.

3 151. Plaintiff specifically seeks declaratory and/or injunctive relief on this  
4 claim to the extent that Defendants' assert a mixed-motive affirmative defense.  
5

6 **FOURTH CLAIM FOR RELIEF FOR**  
7 **FAILURE TO ACCOMMODATE IN VIOLATION OF**  
8 **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**  
9 **(Cal. Gov. Code §12940(m))**

10 152. Plaintiff repeats and realleges each and every allegation contained in  
11 all paragraphs before and after this paragraph as though set forth in full in this  
12 Claim for Relief.

13 153. Defendants are entities and/or employers governed by the Fair  
14 Employment and Housing Act, Government Code section 12900 et seq., including  
15 section 12940.

16 154. At all relevant times, Plaintiff had one or more mental and/or physical  
17 disabilities; had a history of one or more disabilities; had a record of one or more  
18 disabilities; and/or was perceived or regarded as having one or more disabilities that  
19 constituted protected characteristics under the FEHA including but not limited to  
20 because of either present or future disabling effects.

21 155. Despite his disabilities, Plaintiff was able to perform the essential  
22 functions of his job with or without reasonable  
23 accommodations.

24 156. Defendants, and each of them, knew of Plaintiff's disabilities and knew  
25 or should have known that Plaintiff's disabilities fell within the definition of a  
26 disability under Government Code section 12926. Defendants further knew or  
27 should have known that despite his disability, Plaintiff could perform the essential  
28 functions of her job with or without reasonable accommodations.

1 157. Despite their knowledge of the foregoing, Defendants failed to  
2 accommodate Plaintiff's disabilities.

3 158. In engaging in the foregoing conduct, Defendants aided, abetted,  
4 incited, participated in, coerced, and/or compelled unlawful employment practices  
5 in violation of the FEHA and the announced policy of this State against such  
6 practices.

7 159. As a direct and foreseeable result of the aforesaid acts of said  
8 Defendants, Plaintiff has suffered and will suffer harm for which he is entitled to  
9 general and special damages. Defendants' conduct was a substantial factor in  
10 causing that harm.

11 160. The above described acts of Defendants, including by and through  
12 their managing agents, officers, or directors, were engaged in with a deliberate,  
13 cold, callous, fraudulent, and intentional manner in order to injure and damage  
14 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
15 despicable and constitute malice, fraud, and/or oppression within the meaning of  
16 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
17 against Defendants in an amount to be assessed at time of trial.

18 161. Plaintiff will also seek and is entitled to recover attorney's fees in  
19 connection with this cause of action under the FEHA.

20  
21 **FIFTH CLAIM FOR RELIEF FOR**  
22 **FAILURE TO ENGAGE IN TIMELY, GOOD FAITH**  
23 **INTERACTIVE PROCESS IN VIOLATION OF CALIFORNIA**  
24 **FAIR EMPLOYMENT AND HOUSING ACT**  
25 **(Cal. Gov. Code §12940(n))**

26 162. Plaintiff repeats and realleges each and every allegation contained in  
27 all paragraphs before and after this paragraph as though set forth in full in this  
28 Claim for Relief.

1 163. Defendants are entities and/or employers governed by the Fair  
2 Employment and Housing Act, Government Code section 12900 et seq., including  
3 section 12940.

4 164. At all relevant times, Plaintiff had one or more mental and/or physical  
5 disabilities; had a history of one or more disabilities; had a record of one or more  
6 disabilities; and/or was perceived or regarded as having one or more disabilities that  
7 constituted protected characteristics under the FEHA including but not limited to  
8 because of either present or future disabling effects.

9 165. Despite his disabilities, Plaintiff was able to perform the essential  
10 functions of his job with or without reasonable accommodations.

11 166. Defendants also knew, or should have known, of the need to  
12 accommodate Plaintiff's disabilities, including the need to engage in the interactive  
13 process to determine how to achieve a reasonable accommodation for Plaintiff.  
14 However, Defendants failed and refused to engage in the interactive process with  
15 Plaintiff despite notice of his disability and a need to consider accommodations.

16 167. Instead of engaging in the interactive process, Defendants took adverse  
17 action against Plaintiff and failed to reasonably accommodate his disabilities.

18 168. In engaging in the foregoing conduct, Defendants aided, abetted,  
19 incited, participated in, coerced and/or compelled unlawful employment practices in  
20 violation of the FEHA and the announced policy of this State against such  
21 practices.

22 169. As a direct and foreseeable result of the aforesaid acts of said  
23 Defendants, Plaintiff has suffered and will suffer harm for which he is entitled to  
24 general and special damages. Defendants' conduct was a substantial factor in  
25 causing that harm.

26 170. The above described acts of Defendants, including by and through  
27 their managing agents, officers, or directors, were engaged in with a deliberate,  
28 cold, callous, fraudulent, and intentional manner in order to injure and damage

1 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
2 despicable and constitute malice, fraud, and/or oppression within the meaning of  
3 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
4 against Defendants in an amount to be assessed at time of trial.

5 171. Plaintiff will also seek and is entitled to recover attorney's fees in  
6 connection with this cause of action under the FEHA.

7  
8 **SIXTH CLAIM FOR RELIEF FOR**  
9 **RETALIATION IN VIOLATION OF CALIFORNIA**  
10 **FAIR EMPLOYMENT AND HOUSING ACT**  
11 **(Cal. Gov. Code §12940(h))**

12 172. Plaintiff repeats and realleges each and every allegation contained in  
13 all paragraphs before and after this paragraph as though set forth in full in this  
14 Claim for Relief.

15 173. Defendants are entities and/or employers governed by the Fair  
16 Employment and Housing Act, Government Code section 12900 et seq., including  
17 section 12940.

18 174. During his employment by Defendants, Plaintiff opposed and objected  
19 to what he reasonably believed were unlawful discriminatory and retaliatory  
20 practices. Plaintiff also disclosed a disability and effectively sought  
21 accommodations of his disabilities under the California Fair Employment &  
22 Housing Act to the extent necessary.

23 175. After Plaintiff engaged in protected activities, he was subjected to  
24 adverse employment actions as described herein.

25 176. The foregoing described adverse employment actions were  
26 substantially motivated by Plaintiff's protected activities described above.

27 177. In engaging in the aforementioned conduct, Defendants, and each of  
28 them, aided, abetted, incited, compelled, and/or coerced unlawful employment

1 practices in violation of the FEHA and the announced policy of this State against  
2 such practices.

3 178. As a direct and foreseeable result of the aforesaid acts of said  
4 Defendants, Plaintiff has suffered and will suffer harm for which he is entitled to  
5 general and special damages. Defendants' conduct was a substantial factor in  
6 causing that harm.

7 179. The above described acts of Defendants, including by and through  
8 their managing agents, officers, or directors, were engaged in with a deliberate,  
9 cold, callous, fraudulent, and intentional manner in order to injure and damage  
10 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
11 despicable and constitute malice, fraud, and/or oppression within the meaning of  
12 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
13 against Defendants in an amount to be assessed at time of trial.

14 180. Plaintiff will also seek and is entitled to recover attorney's fees in  
15 connection with this cause of action under the FEHA.

16 181. Plaintiff specifically seeks declaratory and/or injunctive relief on this  
17 claim to the extent that Defendants' assert a mixed-motive affirmative defense.

18  
19 **SEVENTH CLAIM FOR RELIEF FOR**  
20 **FAILURE TO PREVENT DISCRIMINATION**  
21 **AND RETALIATION IN VIOLATION OF CALIFORNIA**  
22 **FAIR EMPLOYMENT AND HOUSING ACT**  
23 **(Cal. Gov. Code §12940(k))**

24 181. Plaintiff repeats and realleges each and every allegation contained in  
25 all paragraphs before and after this paragraph as though set forth in full in this  
26 Claim for Relief.

27 182. Defendants, and/or their agents/employees, failed to take all reasonable  
28 steps necessary to prevent discrimination and retaliation in employment from



1 occurring. Further, said Defendants knew or should have known of the  
2 discrimination and retaliation against Plaintiff described above, yet failed to  
3 conduct an adequate investigation into the nature and substance of the  
4 discrimination and retaliation and failed to take immediate and appropriate  
5 corrective action so as to discipline any of the offenders.

6 183. The response of Defendants, and/or their agents/employees, to that  
7 knowledge was so inadequate as to establish a deliberate indifference to, or tacit  
8 authorization of, the offensive practices, and an affirmative causal link existed  
9 between Defendants' inaction and the injuries suffered by Plaintiff.

10 184. By failing to take all reasonable steps necessary to prevent  
11 discrimination and retaliation, and by failing to properly investigate and remedy the  
12 discrimination and retaliation that occurred, Defendants committed unlawful  
13 employment practices as described and prohibited in Government Code section  
14 12940(k).

15 185. In engaging in the aforementioned conduct, Defendants, and each of  
16 them, aided, abetted, incited, compelled, and/or coerced unlawful employment  
17 practices in violation of the FEHA and the announced policy of this State against  
18 such practices.

19 186. As a direct and foreseeable result of the aforesaid acts of said  
20 Defendants, Plaintiff has suffered and will suffer harm for which he is entitled to  
21 general and special damages. Defendants' conduct was a substantial factor in  
22 causing that harm.

23 187. The above described acts of Defendants, including by and through  
24 their managing agents, officers, or directors, were engaged in with a deliberate,  
25 cold, callous, fraudulent, and intentional manner in order to injure and damage  
26 Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were  
27 despicable and constitute malice, fraud, and/or oppression within the meaning of  
28

1 Civil Code section 3294. Plaintiff requests an assessment of punitive damages  
2 against Defendants in an amount to be assessed at time of trial.

3 188. Plaintiff will also seek and is entitled to recover attorney's fees in  
4 connection with this cause of action under the FEHA.

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6 **EIGHTH CLAIM FOR RELIEF FOR**  
7 **WRONGFUL TERMINATION VIOLATION**  
8 **OF PUBLIC POLICY**

9 189. Plaintiff repeats and realleges each and every allegation contained in  
10 all paragraphs before and after this paragraph as though set forth in full in this  
11 Claim for Relief.

12 190. Defendants terminated Plaintiff's employment in violation of  
13 fundamental public policies of the State of California and the United States of  
14 America including, without limitation and merely by way of illustration: the right to  
15 engage in protected activity under the Sarbanes-Oxley Act of 2002; the right to  
16 protections against discrimination in employment because of a disability; the right  
17 to accommodations of a disability (including a good faith interactive process); the  
18 right to freedom from retaliation for engaging in protected activity under the Fair  
19 Employment and Housing Act; the right to report or disclose suspected unlawful  
20 activity; (including the California Family Rights Act, which is part of the FEHA);  
21 the right to freedom from retaliation for opposing, complaining, disclosing,  
22 protesting, or refusing to participate in an activity constituting (or that the employee  
23 reasonably believes constitutes) a violation of a state or federal statute, rule, or  
24 regulation (including but not limited to, and offered as illustrations and not by way  
25 of example, securities laws, securities fraud laws, mail and/or wire fraud laws,  
26 consumer fraud laws, common law fraud laws, unfair and fraudulent business  
27 practice laws, etc.).

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- 1           2.     Damages for emotional distress and other general damages;
- 2           3.     Special damages according to proof at trial;
- 3           4.     Pre-judgment interest;
- 4           5.     Reasonable costs, including reasonable attorney's fees and expert
- 5 witness fees, as permitted by the relevant statutes;
- 6           6.     For punitive damages according to proof; and
- 7           7.     For injunctive and/or declaratory relief;
- 8           8.     For such other and further relief as the court deems just and proper.

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Dated: March 15, 2018

**The deRubertis Law Firm, APC**

/ s / David M. deRubertis  
By \_\_\_\_\_  
David M. deRubertis  
Attorneys for Plaintiff  
Tri Huynh

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in this complaint or any subsequent amended complaint or any other pleading filed in this action.

Dated: March 15, 2018

**The deRubertis Law Firm, APC**

/ s / David M. deRubertis  
By \_\_\_\_\_  
David M. deRubertis  
Attorneys for Plaintiff  
Tri Huynh