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March 13, 2020

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

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Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
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28 Liberty Street
New York, New York 10005
Certified Mail Number: **7019 0700 0002 2123 1559**

Wal-Mart Associates, Inc.
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28 Liberty Street
New York, New York 10005
Certified Mail Number: **7019 0700 0002 2123 1566**

Walmart Fulfillment Center
Attn: Human Resources
6750 Kimball Avenue
Chino, California 91708
Certified Mail Number: **7019 0700 0002 2123 1573**

From: Sharon Ortiz, on behalf of herself and all other aggrieved current and former California-based hourly, non-exempt employees who worked in distribution centers of Walmart, Inc., Wal-Mart Associates, Inc., and Walmart Fulfillment Center
c/o Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Anwar D. Burton, Esq.

James Yoo, Esq.
Lavi & Ebrahimian, LLP
8889 West Olympic Boulevard, Suite 200
Beverly Hills, California 90211

Sahag Majarian II, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Boulevard
Tarzana, California 91356

Factual Statement and Theories of Labor Code Violations

Aggrieved employee Sharon Ortiz (“Plaintiff” or “Employee”) was formerly employed by Walmart, Inc., Wal-Mart Associates, Inc., and Walmart Fulfillment Center (“Defendants” or “Employers”) from on or around December 8, 2019 through on or around February 8, 2020 in Employers’ Chino, California distribution center.

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked

First, Employee maintains that Employers fail to pay her and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers with compensation at the minimum wage rate of pay for all the hours that they work in violation of California Labor Code sections 1194 and 1197. Labor Code section 1197 provides, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code section 1194 states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

In this case, Employee maintains that she and other current and former aggrieved, California-based, hourly non-exempt employees who worked in in Employers’ distribution centers worked more hours per day than Employers credited them for having worked because Employers maintained a policy, practice, and/or procedure whereby Employers required Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers to enter Employers’ premises, walk from the entrance to a security checkpoint in order to undergo a security check/bag check prior to clocking in for the start of their shift. Similarly, when Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers left Employers’ premises for meal breaks or at the end of their shift, Employers maintained a policy, practice, and/or procedure whereby they were required required to clock out and thereafter be subjected to a security check/bag check prior to being permitted to leave Employers’ premises. Employers’ policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in Employers’

distribution centers are subject to the control of Employers' without being compensated for that time.

Based on these violations, Employee intends to seek civil penalties pursuant to the Private Attorney General Act ("PAGA"), California Labor Code §2698, et seq. and Labor Code §1197.1, subds. (a)(1)-(2), on behalf of the Labor and Workforce Development Agency ("LWDA") against Employers if authorized to file a representative action on behalf of the State of California. Employee will also seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such minimum wages for all hours worked rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees who worked in Employers' distribution centers' pay calculations inaccurate and in violation of Labor Code § 226(e)(2)(B)(i).

2. *Failure to Pay the Overtime Rate of Pay for Overtime Hours Worked*

Second, Employee maintains, Employer fails to pay him and other current and former aggrieved, California-based, hourly non-exempt employees for the overtime hours that they work at their overtime rate of pay.

Labor Code section 510 provides:

"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

Finally, Labor Code section 1194 provides, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

As stated above, In this case, Employee maintains that she and other current and former aggrieved, California-based, hourly non-exempt employees who worked in in Employers' distribution centers worked more hours per day than Employers credited them for having worked because Employers maintained a policy, practice, and/or procedure whereby Employers required

Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers to enter Employers' premises, walk from the entrance to a security checkpoint in order to undergo a security check/bag check prior to clocking in for the start of their shift. Similarly, when Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers left Employers' premises for meal breaks or at the end of their shift, Employers maintained a policy, practice, and/or procedure whereby Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in their distribution centers were required to clock out and thereafter be subjected to a security check/bag check prior to being permitted to leave Employers' premises. Employers' policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in Employers' distribution centers are subject to the control of Employers' without being compensated for that time. To the extent that the foregoing unpaid time resulted Employee and other current and former aggrieved, California-based, hourly non-exempt employees being subject to the control of Employers who worked in Employers' distribution centers when they worked more than eight (8) hours in a workday or 40 hours in a workweek, Employers fail to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in Employers' distribution centers for all of the overtime hours that they worked at their overtime rate of pay.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, California Labor Code §§ 2698, et seq. and 558, subds. (a)(1)-(2). on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to pay overtime wages for overtime hours worked, Employee will seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such overtime wages rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers' pay calculations inaccurate and in violation of Labor Code § 226(e)(2)(B)(i).

3. *Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7*

Third, Employee maintains that Employers fail to maintain compliant meal period policies. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order 7, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code Section 226.7 provides that if an employee does not receive a required meal or rest period that "the employer shall pay the employee one

additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

In this case, Employee alleges that Employers maintain a policy, practice, and/or procedure whereby Employers require Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers to go through security checks and/or bag checks after clocking out for meal periods. As a result of Employers' policy, practice, and/or procedures, Employers fail to authorize or permit Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers to take meal periods of at least 30 minutes as required by California law. Further, Employee alleges, that Employers maintain a policy, practice, and/or procedure whereby they fail to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers a meal period premium wage of one additional hour of pay at their regular rate of compensation for each work day that Employers fail to authorize or permit 30 minute meal periods due to security checks and/or bag checks as required by Labor Code section 226.7.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, California Labor Code §§ 2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to authorize or permit meal periods or pay meal period premium wages, Employee will seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such meal period premiums rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers' pay calculations inaccurate and in violation of Labor Code § 226(e)(2)(B)(i).

4. *Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7*

Fourth, Employee maintains that, during her employment, Employers failed to maintain compliant rest period policies. California law requires that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." Wage Order 10, § 12. Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7. Additionally, the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided." Wage Order 7, § 12; Lab. Code § 226.7

In this case, Employee alleges that Employers maintain a policy, practice, and/or procedure whereby Employers require Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers to go through security checks and/or bag checks before leaving Employers' premises for rest periods. As a result of Employers' policy, practice, and/or procedures Employers fail to authorize or permit Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers to take rest periods of at least at net 10 minutes as required by California law. Further, Employee alleges, Employers maintained a policy, practice, and/or procedure whereby they failed to authorize or permit Employee and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers to take third rest periods when they worked shifts in excess of 10 hours. Finally, Employee alleges, that Employers maintain a policy, practice, and/or procedure whereby they fail to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees who work in distribution centers a rest period premium wage of one additional hour of pay at their regular rate of compensation for each work day that Employers fail to authorize or permit a net 10 minute rest periods due to security checks and/or bag checks or failure to authorize third rest periods for qualifying shifts as required by Labor Code section 226.7.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, California Labor Code § 2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to pay authorize or permit rest periods of a net 10 minutes or pay rest period premium wages, Employee will seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such rest period premiums rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees who worked in distribution centers' pay calculations inaccurate and in violation of Labor Code § 226(e)(2)(B)(i).

5. *Failure to Provide Complete and Accurate Wage Statements*

Labor Code section 226(a) requires,

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer...and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....”

Based on aforementioned violations of Labor Code § 226, Plaintiff will seek recovery of civil penalties under Labor Code § 226.3 and PAGA, Labor Code § 2698, et seq., on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

6. *Failure to Timely Pay Final Wages*

Labor Code section 201(a) reads, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202(a) continues, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter....” Finally, Labor Code section 203(a) provides, “[i]f an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days....”

As a result of the aforementioned violations of the California Labor Code, Employee is informed and believes that she and other former aggrieved, California-based hourly non-exempt employees of Employers who worked in distribution centers were not paid their final wages pay in a timely manner as required by Labor Code §§ 201, 202, and 203. Specifically, Employee maintains, the wages for all hours worked, overtime wages, meal period premium wages, and rest period premium wages detailed above were not paid at the time of former aggrieved California-based hourly, non-exempt employees who worked in distribution centers’ separation from Employers, as required by Labor Code §§ 201, 202, and 203. Employee will seek recovery of civil penalties under Labor Code §§ 201, 202, 203, and PAGA, Labor Code § 2698, et seq., on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

7. *Other Violations of the California Labor Code*

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 (“*Huff*”), as an aggrieved employee, Plaintiff has standing to, and intends to, on behalf of the LWDA, pursue civil penalties against Employers for any and all other violations Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the California Labor Code under the PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Plaintiff, as an “aggrieved” employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of the LWDA for unrelated Labor Code violations by Employers.

Conclusion

My client intends to file a putative wage and hour class action as well as a representative action pursuant PAGA concerning her wage claims as warranted by Employers’ violations of

Labor & Workforce Development Agency

Re: *Ortiz v. Walmart, Inc., et al.*

March 13, 2020

Page 8 of 8

Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1198 and the IWC Wage Orders. This letter is being sent to you as an inquiry into whether the LWDA wishes to investigate my client's allegations for any civil penalties associated with the Employers' alleged violations of the Labor Code. Thank you for your assistance and cooperation in this matter. Please contact me at the above-listed information.

Very truly yours,

LAVI & EBRAHIMIAN, LLP



Vincent C. Granberry, Esq.

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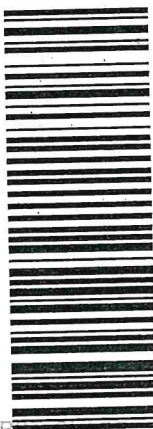
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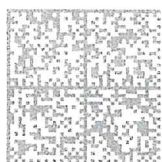
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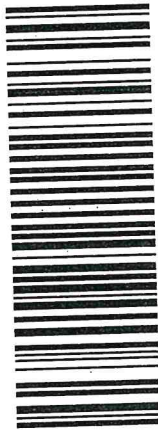
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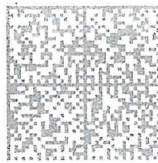
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Lavi & Ebrahimian, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211

Ortiz v. Walmart / PAGA / VG / YR

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Wal-Mart Associates, Inc.
c/o CT Corporation System,
Agent for Service of Process
28 Liberty Street
New York, New York 10005



9590 9402 5541 9249 4066 54

2. Article Number (Transfer from service label)

7019 0700 0002 2123 1566

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

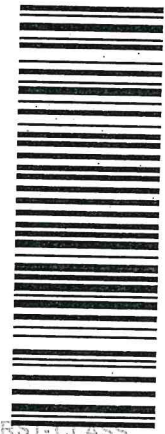
Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

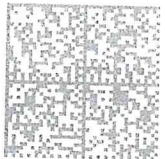
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BEVERLY HILLS, CALIFORNIA 90211

CERTIFIED MAIL®



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MAR 13 2020

Wal-Mart Associates, Inc.
c/o CT Corporation System, Agent for Service of
Process
28 Liberty Street
New York, New York 10005

7019 0700 0002 2123 1573

U.S. Postal ServiceTM CERTIFIED MAIL[®] RECEIPT Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	
\$	

Postmark
Here

Total F	
\$	
Sent to	Walmart Fulfillment Center
Street	Attn: Human Resources
City, State	6750 Kimball Avenue
	Chino, California 91708
PS Form	Instructions

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1. Article Addressed to:

Walmart Fulfillment Center
Attn: Human Resources
6750 Kimball Avenue
Chino, California 91708



9590 9402 5541 9249 4066 47

2. Article Number (Transfer from service label)

7019 0700 0002 2123 1573

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

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☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express[®]
☐ Registered MailTM
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

USPS TRACKING #



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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

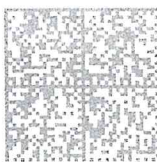
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MAR 13 2020
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