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April 21, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

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State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: *Carr v. Walmart, Inc. (f/k/a Wal-Mart Stores, Inc.) and Wal-Mart Associates, Inc.*

To Whom It May Concern:

This office is counsel to Claudia Carr (“Plaintiff”). Plaintiff was formerly employed by Walmart, Inc. (f/k/a Wal-Mart Stores, Inc.) and Wal-Mart Associates, Inc. (“Defendants”). Defendants employed Plaintiff at their e-commerce fulfillment center in Chino, California. Plaintiff last performed worked for Defendants in August 2019. Pursuant to California Labor Code section 2699.3, we write to provide Plaintiff’s notice of certain Labor Code violations by Defendants. More specifically, Plaintiff alleges that Defendants:

Violated Labor Code section 510, 558, 1194, 1194.2, 1197, and 1197.1 by failing to pay all overtime and minimum wages. Plaintiff contends Defendants failed to pay her and other aggrieved employees for all hours worked and overtime wages for all hours worked over 8 hours in a day or 40 hours in a week. Specifically, Plaintiff contends that Defendants made downward adjustments to her and other and other aggrieved employees hours worked so as to deny them minimum and/or overtime wages. Plaintiff further contends that Defendants failed to pay her and other aggrieved employees with minimum and/or overtime wages for time spent off-the-clock subject to the control of the employer, including but not limited to, time spent waiting to go through and going through Defendants’ security check. Moreover, Defendants required Plaintiff and other aggrieved employees to work alternative work schedules without properly receiving approval or implementing the schedules, which prevented Plaintiff and other aggrieved employees from receiving all overtime wages due.

1. Violated Labor Code section 227.3 by failing to pay Plaintiff and other aggrieved employees all accrued unused Paid Time Off (“PTO”) hours upon termination. Plaintiff specifically contends that Defendants paid accrued, unused PTO hours on a date after Defendants terminated Plaintiff and other aggrieved employees.

Plaintiff further contends that Defendants failed to provide Plaintiff and other aggrieved employees the lump sum allocation of PTO that Defendants' policy obligated Defendants to provide. Instead, Defendants instituted a system under which Plaintiff and aggrieved employees accrued PTO hours. Alternately, if Defendants changed their PTO policy from a lump sum distribution to an accrual system, Plaintiff contends that Defendants failed to allow Plaintiff and other aggrieved employees to carry over accrued, unused PTO hours into the new system. Accordingly, when Defendants terminated Plaintiff and other aggrieved employees, Defendants failed to pay them for all accrued, unused PTO hours.

2. Violated Labor Code sections 204 and 246 by knowingly and intentionally failing to pay Plaintiff and other aggrieved employees at their regular rate of pay for sick time leave. Labor Code section 246 required Defendant to pay sick leave to its non-exempt employees at their regular rate of pay. Instead, Defendants compensated Plaintiff and other aggrieved employees at their straight-time rate of pay and did not include any incentive payments or non-discretionary bonuses such as the WHSE INCENTIVE and/or other compensation required to be included in the calculation of Plaintiff's and aggrieved employees' regular rate of pay. Plaintiff contends that she and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699. Defendant further violated Labor Code section 204 by failing to make semimonthly payments of all wages due to Plaintiff and other aggrieved employees who took sick leave. Plaintiff contends that pursuant to Labor Code section 210, she and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.
3. Violated Labor Code sections 226.7 and 512 by failing to provide adequate compensation for missed meal period breaks and rest breaks to Plaintiff and other aggrieved employees. Specifically, Plaintiff contends that Defendants knowing and willfully failed to pay missed meal period and rest break premiums. Defendants further paid missed meal periods and rest break premiums to Plaintiff and other aggrieved employees at their straight time rates and not their regular rates of compensation as section 226.7 requires. For example, Defendants did not include any incentive payments or non-discretionary bonuses such as the WHSE INCENTIVE and/or other compensation required to be included in the calculation of Plaintiff's and aggrieved employees' regular rates of compensation. In addition, Defendants failed to authorize and permit Plaintiff and other aggrieved employees to take all required off-duty net 10-minute rest breaks, and further did not fully relieve Plaintiff and aggrieved employees of all duty during rest breaks. Defendants further required Plaintiff and other aggrieved employees to undergo off-the-

- clock security checks during their meal breaks. Defendants also failed to authorize and permit Plaintiff and other aggrieved employees the required number of meal and rest period breaks when working shifts exceeding 10 hours, including second meal breaks and third rest breaks. Plaintiff contends that she and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699.
4. Violated Labor Code sections 203 and 256 by knowingly and intentionally failing to pay Plaintiff and other aggrieved employees all wages due at termination. Plaintiff contends that Plaintiff and other aggrieved employees were terminated by Defendants or otherwise ended their employment with Defendants. During Plaintiff and other aggrieved employees' employment, Defendants, as discussed above, failed to pay Plaintiff and other aggrieved employees minimum and overtime wages, and paid sick leave hours and meal break premiums at less than the required rate. As a result, Defendants failed to pay Plaintiff and other aggrieved employees all wages due at termination. Plaintiff contends that she and other aggrieved employees are due a civil penalty of in an amount not exceeding 30 days pay as waiting time pursuant to Labor Code section 256. Plaintiff further contends that she and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent pay period that Defendant failed to pay them all wages due pursuant to Labor Code section 2699.
 5. Violated Labor Code sections 226 and 226.3 by knowingly providing inaccurate itemized wage statements. For example, Plaintiff contends that as a result of Defendants' other Labor Code violations, Defendants failed to accurately record the gross wages earned, net wages, earned, hours worked, and rates of pay for Plaintiff and other aggrieved employees. Defendants further violated section 226 by failing to specify all applicable hourly rates in effect during the pay period and the corresponding number of hours worked for each pay rate used for calculating their "WHSE INCT" and/or "OT INCENTIVE" payments to Plaintiff and other aggrieved employees. Additionally, the pay stub that Defendants furnished Plaintiff and other aggrieved employees upon termination did not include the dates of the corresponding pay period. Plaintiff contends that she and other aggrieved employees are entitled to penalties in the amount of \$250 per employee per the initial violation of section 226 and \$1,000 per employee for each subsequent violation pursuant to Labor Code § 226.3 in addition to any other penalties provided by law.
 6. Violated Labor Code sections 201-204, 210, and 1194.5 by failing to make semi-monthly payment of Plaintiff and other aggrieved employees earned straight time and overtime wages, missed meal break premiums and sick leave hours taken either at all or at less than the required rate of pay. Plaintiff contends that

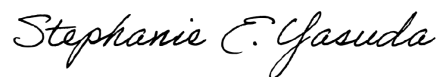
- pursuant to Labor Code section 210, she and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.
7. Violated Labor Code section 1174(d), which requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. Plaintiff contends that during the relevant time period, Defendants failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and other aggrieved employees. Plaintiff further contends that she and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation of section 1174(d) and \$250 for each subsequent pay period that Defendant failed to pay them all wages due pursuant to Labor Code section 2699.

California Labor Code section 558 allows recovery of civil penalties in a PAGA action. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

Plaintiff intends to pursue a claim under the Private Attorneys General Act of 2004 pursuant to Labor Code section 2698 *et seq.*

Please contact me when/if this matter is assigned to a staff member to discuss these issues.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie E. Yasuda".

Stephanie E. Yasuda

SEY:dj

cc: C T Corporation System (via Certified Mail, RRR)
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Agent for Service of Process for Walmart, Inc.
(f/k/a Wal-Mart Stores, Inc.)
and Wal-Mart Associates, Inc.