

From: Schneider Wallace

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 5 of 15

08/18/2020 12:48 PM

FILED BY FAX

ALAMEDA COUNTY

August 18, 2020

CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG20071190

Carolyn Hunt Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Ryan M. Hecht (SBN 322396)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
rhecht@schneiderwallace.com

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

TOMMIE HUNT, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

vs.

WALMART, INC.; WAL-MART ASSOCIATES,
INC., and DOES 1 through 50, inclusive

Defendants.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

COMPLAINT FOR PENALTIES PURSUANT TO SECTION 2699(a) and (f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL

Hunt v. Walmart, Inc., et al.

1 Plaintiff Tommie Hunt (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff Tommie Hunt, individually and on behalf the State of California and the
5 Aggrieved Employees, brings this enforcement action against Defendant Walmart, Inc. and Wal-Mart
6 Associates, Inc. (collectively “Defendants”) on behalf of individuals who have worked for
7 Defendants as non-exempt hourly employees and have been subject to Defendants’ security-check
8 policies and practices (the “Aggrieved Employees”). Throughout the relevant time period, Plaintiff
9 and the Aggrieved Employees have been denied payment for all hours worked, including overtime,
10 and have been forced to wait in security-check lines while off-the-clock. This case implicates
11 Defendants’ longstanding policies and practices, which fails to properly compensate non-exempt
12 employees for work performed while “off-the-clock.”

13 2. Defendants’ conduct violates California law by knowingly and willfully requiring
14 Plaintiff and Aggrieved Employees to perform work and/or remain on duty for the benefit of
15 Defendants while off-the-clock. Plaintiff and Aggrieved Employees bring these claims to challenge
16 Defendants’ policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all
17 minimum wages owed; (2) failing to pay Plaintiff and Aggrieved Employees overtime wages; (3)
18 failing to compensate Plaintiff and Aggrieved Employees for all hours worked; and (4) failing to
19 provide Plaintiff and Aggrieved Employees accurate, itemized wage statements.

20 3. Plaintiff files this action to recover all penalties, and other damages on behalf of himself
21 and the Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendants have
22 integrated into its time tracking, payroll, and security policies across their stores throughout
23 California that have deprived Plaintiff and Aggrieved Employees of their lawfully-earned wages.

24 **PARTIES**

25 4. Plaintiff Tommie Hunt is an individual over the age of eighteen, and at all times
26 relevant to this Complaint was a resident of the State of California, County of Los Angeles. Plaintiff
27

1 was employed as a non-exempt overnight stocker by Defendants at Walmart locations in Norwalk,
2 California from approximately July 2005 to September 2019 and in Cerritos, California from
3 September 2019 to the present.

4 5. Plaintiff is informed, believes, and thereon alleges that Defendant Walmart, Inc. is a
5 Delaware corporation with its principal place of business located in Bentonville, Arkansas, and is
6 registered to do business in California. Defendant Walmart, Inc. may be served with process by
7 serving its registered agent, C T Corporation System, 818 West Seventh Street, Suite 930, Los
8 Angeles, California 90017.

9 6. Plaintiff is informed, believes, and thereon alleges that Defendant Wal-Mart
10 Associates, Inc. is a Delaware corporation with its principal place of business located in Bentonville,
11 Arkansas, and is registered to do business in California. Defendant Wal-Mart Associates, Inc. may
12 be served with process by serving its registered agent, C T Corporation System, 818 West Seventh
13 Street, Suite 930, Los Angeles, California 90017.

14 7. Plaintiff is informed, believes, and thereon alleges that Defendants own, operate, and/or
15 manage a chain of retail stores throughout the United States, including Walmart stores throughout
16 California. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved
17 Employees, among other hourly employees, throughout California.

18 8. Plaintiff is informed and believes that each and every one of the acts and omissions
19 alleged herein were performed by, and/or attributable to, Defendants, acting through their agents
20 and/or employees, and/or under the direction and control of each of the other, and that said acts and
21 failures to act were within the course and scope of said agency, employment and/or direction and
22 control.

23 9. Plaintiff is informed, believes, and thereon alleges that Defendants directly control the
24 operations of its agents, managers, and employees throughout all of its stores in California.

25 10. At all material times, Defendants have done business under the laws of California, have
26 had places of business in California, including in this County, and have employed Aggrieved
27

1 Employees in this County and elsewhere in California. Defendants are “person[s]” as defined in
2 Labor Code § 18 and California Business and Professions Code § 17201, and “employer[s]” as that
3 term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working
4 conditions. Upon information and belief, Defendants employ Aggrieved Employees, because
5 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
6 practices, and daily work of Plaintiff and similarly situated employees.

7 **SUBJECT MATTER JURISDICTION AND VENUE**

8 11. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
9 The Court also has jurisdiction over Defendants because Defendants do business in the State of
10 California, are authorized to do business in California, and are registered with the California
11 Secretary of State.

12 12. Defendants operate multiple retail stores and employ Aggrieved Employees in
13 California.

14 13. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
15 and/or 395.5. Defendants conduct business, employ Aggrieved Employees, have jobsites, and
16 therefore liability arose in this County. Specifically, Defendants employ Aggrieved Employees at
17 Walmart locations in Oakland, Hayward, San Leandro, and several additional locations throughout
18 Alameda County.

19 **FACTUAL ALLEGATIONS**

20 14. Defendants operates a chain of retail stores throughout the United States and California,
21 including but not limited to the retail store located at 12701 Towne Center Drive, Cerritos, California
22 90703. Defendants also operated the Norwalk, California location with the address 11729 Imperial
23 Highway, though it is now permanently closed. Defendants employ thousands of hourly non-exempt
24 workers similarly situated to Plaintiff across these facilities throughout the State of California.

25 15. Plaintiff worked as a non-exempt overnight stocker from July 2005 through the present.
26 Plaintiff is paid at an hourly rate of \$16.25 and regularly works in excess of eight (8) hours a day and
27

1 forty 40 hours a week. Plaintiff works approximately eight (8) to ten (10) hours per shift and typically
2 worked five shifts per week for an average of forty-two (42) to forty-five (45) hours per week. Also,
3 Plaintiff observed other Aggrieved Employees work in excess of eight (8) hours in a day and/or forty
4 (40) hours in a single week.

5 16. As a matter of course, Defendants routinely make their employees wait in security-
6 check lines for an average of five minutes while its employees are clocked out and off-the-clock. The
7 time spent waiting in these security check lines is compensable, but nevertheless goes unpaid.

8 17. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees
9 compensation which they are lawfully owed, as well as the overtime premiums resulting from the
10 additional off-the-clock, post-shift work.

11 18. Plaintiff is informed, believes, and thereon alleges that this same security-check system
12 is used across all Defendants' facilities throughout California.

13 19. Defendants' common course of wage-and-hour abuse includes routinely failing to
14 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
15 Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked off the clock.

16 20. Aggrieved Employees report to a facility owned, operated, or managed by Defendants
17 to perform their jobs.

18 21. Aggrieved Employees perform their jobs under Defendants' supervision and using
19 materials and technology approved and supplied by Defendant.

20 22. Aggrieved Employees are required to follow and abide by common work, time, pay,
21 and overtime policies and procedures in the performance of their jobs.

22 23. At the end of each pay period, Aggrieved Employees receive wages from Defendants
23 that are determined by common systems and methods that Defendants selects and controls.

24 24. Defendants pay Aggrieved Employees on an hourly rate basis.

25 25. Upon information and belief, Aggrieved Employees worked more than eight (8) hours
26 a day, and more than forty (40) hours in at least one workweek during the year before this Complaint
27

1 was filed.

2 26. Defendants' conduct is willful, is carried out in bad faith, and causes significant
3 damages to non-exempt hourly employees in an amount to be determined at trial.

4 **FIRST CAUSE OF ACTION**
5 **Penalties Pursuant to California Labor Code § 2699(a)**
6 **(On Behalf of the State of California and the Aggrieved Employees)**

7 27. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
8 herein.

9 28. Labor Code § 2699(a) provides:

10 Notwithstanding any other provision of law, any provision of this code
11 that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions,
13 commissions, boards, agencies or employees, for a violation of this code,
14 may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other current or
16 former employees.

17 29. Labor Code § 226(a) provides:

18 Every employer shall, semimonthly or at the time of each payment of
19 wages, furnish each of his or her employees, either as a detachable part of
20 the check, draft, or voucher paying the employee's wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours worked
23 by the employee, except for any employee whose compensation is solely
24 based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial
26 Welfare Commission, (3) the number of piece-rate units earned and any
27 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
28 deductions, provided that all deductions made on written orders of the
29 employee may be aggregated and shown as one item, (5) net wages earned,
30 (6) the inclusive dates of the period for which the employee is paid, (7) the
31 name of the employee and his or her social security number, (8) the name
32 and address of the legal entity that is the employer, and (9) all applicable
33 hourly rates in effect during the pay period and the corresponding number
34 of hours worked at each hourly rate by the employee.

35 30. Labor Code § 226.3 provides:

36 Any employer who violates subdivision (a) of Section 226 shall be subject
37 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
38 employee per violation in an initial citation and one thousand dollars

1 (\$1,000) per employee for each violation in a subsequent citation, for which
2 the employer fails to provide the employee a wage deduction statement or
3 fails to keep the records required in subdivision (a) of Section 226. The civil
penalties provided for in this section are in addition to any other penalty
provided by law.

4 31. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
5 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
6 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code §
7 226.3.

8 32. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
9 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-
10 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
11 prerequisites to commence this civil action in compliance with § 2699.3(a).

12 33. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
13 Employees, and herself as set forth in Labor Code § 2699(g)(i).

14 34. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
15 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
16 award of attorneys’ fees and costs as set forth below.

17 35. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter
18 provided.

19 **SECOND CAUSE OF ACTION**
20 **Penalties Pursuant to Labor Code § 2699(f)**
(On Behalf of the State of California and Aggrieved Employees)

21 36. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 37. Labor Code § 2699(f) provides:

24 For all provisions of this code except those for which a civil penalty is
25 specifically provided, there is established a civil penalty for a violation of
26 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
27 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

38. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

39. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

40. Labor Code § 510(a) provides as follows:

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.

41. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

...shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than ... [o]ne and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek....

42. Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, 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 attorneys’ fees, and costs of suit.

43. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

44. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

45. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendants' violation of Labor Code §§ 204, 510, and 1194.

46. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of her intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

47. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

48. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

49. Wherefore, Plaintiff and Aggrieved Employees request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit;

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

- 4. For interest on any penalties awarded, as provided by applicable law; and
- 5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: August 18, 2020



Carolyn H. Cottrell
David C. Leimbach
Ryan M. Hecht
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

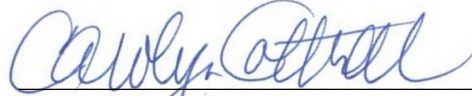
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: August 18, 2020

6 

7 Carolyn H. Cottrell
8 David C. Leimbach
9 Ryan M. Hecht
10 SCHNEIDER WALLACE
11 COTTRELL KONECKY LLP

12 *Attorneys for Plaintiff, on behalf of the State of*
13 *California and Aggrieved Employees*