

1 William M. Hogg (SBN 338196)
HODGES & FOTY LLP
2 4409 Montrose Boulevard, Suite 200
Houston, Texas 77006
3 Tel: (713) 523-0001; Fax: (713) 523-1116
whogg@hftrialfirm.com

4 Matthew S. Parmet (SBN 296742)
PARMET PC
5 340 South Lemon Avenue, Ste. 1228
Walnut, California 91789
6 Tel: (310) 928-1277
7 matt@parmet.law

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

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11 AMADO HARO, On Behalf of the State of
12 California and Aggrieved Employees,

13 Plaintiffs,

14 vs.

15 WALMART, INC.,

16 Defendant.
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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

03/23/2022 at 12:51:11 PM

By: Xian-xii Bowie, Deputy Clerk

Case No. 22CV008823

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

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

3 **INTRODUCTION**

4 1. Plaintiff, individually and on behalf the State of California and the Aggrieved
5 Employees, brings this enforcement action against Defendant Walmart, Inc. (“Walmart”) on behalf
6 of individuals who have worked for Walmart as non-exempt hourly employees and have been subject
7 to Walmart’s COVID-19 screening policies and practices during any workweek since one year before
8 the filing of this Complaint until final resolution of the action (the “Aggrieved Employees”).
9 Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been denied
10 payment for all hours worked, including overtime, and have been forced to wait in COVID-19 health
11 screening lines and were otherwise subject to Walmart’s control related to such COVID-19 health
12 screenings prior to clocking in for their shifts. This case implicates Walmart’s common policies and
13 practices, which fails to properly compensate non-exempt employees for time spent under Walmart’s
14 control during these COVID-19 screenings.

15 2. Walmart’s conduct violates California law by knowingly and willfully requiring
16 Plaintiff and Aggrieved Employees to perform work and/or submit to Walmart’s control and direction
17 prior to clocking in for their shifts. Plaintiff and Aggrieved Employees bring these claims to challenge
18 Walmart’s policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all
19 minimum wages owed; (2) failing to pay Plaintiff and Aggrieved Employees overtime wages; (3)
20 failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (4) failing to pay
21 Aggrieved Employees all wages owed upon separation from employment; and (5) failing to provide
22 Plaintiff and Aggrieved Employees accurate, itemized wage statements.

23 3. Plaintiff files this action to recover all penalties, and other PAGA damages on behalf
24 of himself and the Aggrieved Employees. Plaintiff seeks to remedy the sweeping COVID-19
25 screening practices Walmart has implemented for their workers in California, which have deprived
26 Plaintiff and Aggrieved Employees of their lawfully-earned wages.

PARTIES

4. Plaintiff Amado Haro is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff has been employed by Walmart as an hourly, non-exempt employee since approximately May 2014. Plaintiff worked for Walmart in the store located in Merced, California, and was paid approximately \$15.05 per hour.

5. Plaintiff is informed, believes, and thereon alleges that Defendant Walmart, Inc. is a Delaware corporation with its principal place of business located in Arkansas, and is registered to do business in California. Walmart, Inc. may be served with process through its registered agent C T Corporation System, 330 North Brand Boulevard, Suite 700, Glendale, California 91203.

6. Plaintiff is informed, believes, and thereon alleges that Walmart owns, operates, and/or manages a chain of retail stores throughout the United States, including Walmart stores throughout California. Plaintiff is informed, believes, and thereon alleges that Walmart employs Aggrieved Employees, among other hourly employees, throughout California.

7. Plaintiff is informed and believes that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Walmart, acting through its agents and/or employees, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

8. Plaintiff is informed, believes, and thereon alleges that Walmart directly controls the operations of its agents, managers, and employees throughout California.

9. At all material times, Walmart has done business under the laws of California, and has employed Aggrieved Employees in this County and elsewhere in California. Walmart is considered a “person” as defined in Labor Code § 18, and an “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions. Upon information and belief, Walmart employs Aggrieved Employees, because Walmart, directly or indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

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1 to screen the workers for symptoms of COVID-19. The time spent waiting in these COVID-19
2 screening lines, undergoing the COVID-19 screening itself, and the time between completing the
3 COVID-19 screening and walking through the store to clock in is compensable, but nevertheless is
4 not paid in full.

5 16. At the Walmart retail stores, employees are required to undergo a COVID-19 screening
6 in one of a few designated areas, such as the garden center, the automobile center, or near the
7 manager's office. The employees are required to arrive at Walmart approximately 30 minutes prior
8 to the start of their scheduled shift so they can complete the COVID-19 screening with enough time
9 to clock in by the scheduled start time for their shifts. After arriving at Walmart, the employees enter
10 the store at a certain location, such as the garden center, the auto center, or at a back door near the
11 manager's office, where a line usually forms for employees to be screened for COVID-19 symptoms.

12 17. The screening process involves another Walmart employee taking the temperature¹ of
13 each employee whose shift is about to start and asking a series of questions related to their health
14 condition, such as whether they had trouble breathing, were coughing, had a runny nose, chest pain,
15 and other questions about their health. The employees were also asked questions such as (1) whether
16 the employee had travelled recently, (2) whether the employee was exposed to someone with
17 COVID-19, and (3) other similar questions. If the employee passes the examination, he/she is given
18 a sticker to wear with the date on its indicating that he/she has cleared the COVID-19 screening. The
19 employee is also given a face mask and gloves that he/she must put on before entering the store.
20 After the employee enters the store, the employee is allowed to clock in for the day. The employees
21

22 ¹ Walmart often uses a hand-held thermometer to take the employees' temperatures. Upon information and belief,
23 Walmart at some point also incorporated a badge scanner during the screenings, where the screener would scan the
24 employees' badge at the same time as the screener is taking the employee's temperature and asking the screening questions.
25 This badge-scanning process does not clock the employee in for work and Walmart does not use this initial badge-scanning
26 time stamp for payroll purposes—the employees are still required to clock in after the COVID-19 screening at a designated
27 location(s) in the store. In other words, Walmart is believed to have internal data that would indicate the precise time that
employees undergo the COVID-19 screening and are readily capable of comparing that data with the employees' actual
clock-in times to pay them for all hours worked. Walmart, however, does not pay the workers for all of this known time
difference, as explained further below. Even in stores where Walmart may not utilize such a badge-scanning process,
Walmart is fully capable of doing so to accurately track the amount of time that workers spend in COVID-19 screenings
before clocking in for the day.

1 normally walk some distance where the time clock is located.

2 18. If an employee does not initially pass the physical and medical examination, that
3 employee is generally required to undergo a second examination where the employee is asked a
4 series of follow-up questions to identify whether the worker has COVID-19 symptoms and poses a
5 potential health hazard to the store. If the employee passes the second examination, the employee is
6 then given a face mask and gloves and is allowed to clock-in for the day. If not, the employee is not
7 permitted to work that day.

8 19. The amount of time it takes to undergo the COVID-19 examination is approximately
9 10 minutes on average, and sometimes upwards of 15 minutes, prior to the Aggrieved Employees
10 clocking in for work. This amount of time could be longer if there are other Walmart employees in
11 line for the COVID-19 screenings or if the screening location takes place a distance from the time
12 clock where employees can clock in for the day.

13 20. This COVID-19 screening should have been fully paid by Walmart because it
14 constitutes compensable time worked. During this time, Plaintiff and Aggrieved Employees were
15 and are subject to Walmart's control.

16 21. Plaintiff and Aggrieved Employees were and are required to follow Walmart's
17 instructions while awaiting and during the COVID-19 screening. Walmart requires every employee
18 to complete the COVID-19 screening and it is not optional. Indeed, the COVID-19 screening is
19 required by Walmart and its employees must comply under threat of discipline, including possible
20 termination.

21 22. Additionally, Plaintiff and Aggrieved Employees are confined to Walmart's premises
22 when they wait for the COVID-19 screening, during the COVID-19 screening, and during the time
23 they walk from the screening area to the time clock.

24 23. Moreover, Walmart compels its employees to perform specific tasks during the
25 examinations. Employees must answer questions, submit to have their temperature taken, and are
26 required to wear masks and gloves.

24. In other words, Walmart directs, commands, and restrains its employees during the COVID-19 examination, prevents them from using that time effectively for their own purposes, and the employees remain subject to Walmart's control during the examination. Walmart, however, does not compensate these workers for all of this time related to the COVID-19 screening.

25. As a result of these policies, Walmart denies Plaintiff and Aggrieved Employees compensation which they are lawfully owed, as well as overtime premiums resulting from the additional off-the-clock, pre-shift work. Under California law, the time spent undergoing the COVID-19 screening is compensable time that should have been paid in full by Walmart. (See *Frlekin v. Apple, Inc.* (2020) 8 Cal. 5th 1038, 457 P.3d 526.)

26. The COVID-19 screenings were also necessary to the principal work performed by Plaintiff and Aggrieved Employees, and were necessary to ensure a safe workplace. The COVID-19 examinations were also undertaken on Walmart's premises, were controlled and required by Walmart, and were undertaken primarily for the benefit of Walmart.

27. Indeed, Walmart requires Plaintiff and Aggrieved Employees to undergo this screening for the purposes of overall safety in the Walmart facilities and to prevent Plaintiff and Aggrieved Employees from inadvertently or unintentionally infecting the Walmart facilities and/or Walmart's customers.

28. These COVID-19 examinations were necessary to ensure the virus did not infect the Walmart facilities or customers. The examinations were also necessary to ensure the virus did not disrupt the work performed by Plaintiff and Aggrieved Employees, or effect Walmart's business operations. If Walmart did not have the COVID-19 screening, workers could inadvertently or unintentionally bring the virus into the Walmart facilities causing a mass breakout of the virus infecting hundreds or thousands of other workers and customers of Walmart.

29. Plaintiff is informed, believes, and thereon alleges that this same pre-shift COVID-19 screening system, or a substantially similar system, is used across all of Walmart's facilities throughout California.

30. Although Walmart employed electronic “clocking in” technology, this technology was not made accessible to Plaintiff and Aggrieved Employees before the COVID-19 screening.

31. Due to the substantial pre-shift work, Plaintiff and Aggrieved Employees are and were not paid for all time worked each day and are owed significant unpaid wages.

32. Aggrieved Employees report to a facility owned, operated, and/or managed by Walmart to perform their jobs.

33. Aggrieved Employees perform their jobs under Walmart's supervision and using materials and technology approved by supplied by Walmart.

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

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

36. Walmart pays Aggrieved Employees on an hourly rate basis.

37. Upon information and belief, Aggrieved Employees worked more than eight (8) hours in a day, and/or more than forty (40) hours in at least one workweek during the year before this Complaint was filed.

38. Upon information and belief, Walmart failed to pay Aggrieved Employees that separated from their employment with Walmart all of their wages due at the time of separation. Specifically, Walmart failed to pay such terminated/separated Aggrieved Employees for all of the time spent waiting in line, undergoing the COVID-19 screening, and the time spent walking from the screening location to the time clock.

39. Walmart's common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Aggrieved Employees. In particular, Walmart has failed to record hours that Plaintiff and Aggrieved Employees worked off the clock. Even though Walmart is fully capable of tracking the time spent undergoing the COVID-19 screening, Walmart fails to do so for purposes of paying Plaintiff and Aggrieved Employees.

40. Walmart's conduct is willful, is carried out in bad faith, and causes significant damages to non-exempt hourly employees in an amount to be determined at trial.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)

41. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

42. Labor Code § 2699(a) provides:

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

43. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

44. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 his or her 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.

45. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each

violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

46. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or 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. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

47. Labor Code § 558(a) and (c) provide:

(a) Any employer [] who violates, or causes to be violated, a section of this chapter or any provisions 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. . . . (c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

48. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Walmart, as alleged above, to timely pay all wages owed to Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available to individual litigants under Labor Code § 203 where applicable, as prayed for herein.

49. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Walmart, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).

50. Plaintiff also seeks civil penalties in the amounts described under Labor Code § 558 pursuant to Labor Code § 2699(a) for each pay period in which Walmart, as alleged above, failed to

1 pay Plaintiff and Aggrieved Employees for all hours worked, all minimum wages owed, and/or all
2 overtime wages owed related to the off-the-clock COVID-19 screening process.

3 51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
4 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. More than
5 sixty-five (65) calendar days have passed without notice from the LWDA. As such, Plaintiff satisfied
6 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

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

9 53. Walmart is liable to Plaintiff, Aggrieved Employees, and the State of California for the
10 civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
11 of attorneys’ fees and costs as set forth below.

12 54. Wherefore, Plaintiff and the Aggrieved Employees requests relief as hereinafter
13 provided.

14 **SECOND CAUSE OF ACTION**
15 **Penalties Pursuant to Labor Code § 2699(f)**

16 55. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

17 56. Labor Code § 2699(f) provides:

18 For all provisions of this code except those for which a civil penalty is
19 specifically provided, there is established a civil penalty for a violation of
20 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
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.

21 57. Labor Code § 200 defines wages as “all amounts of labor performed by employees of
22 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
23 commission basis or other method of calculation.” All such wages are subject to California’s
24 overtime requirements, including those set forth above.

25 58. Labor Code § 204(a) provides that “[a]ll wages . . . earned by any person in any
26 employment are due and payable twice during each calendar month[.]”
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1 59. Labor Code § 510(a) provides as follows:

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

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

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

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

22 Notwithstanding any agreement to work for a lesser wage, any employee
23 receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil
25 action the unpaid balance of the full amount of this minimum wage or
26 overtime compensation, including interest thereon, reasonable attorneys'
27 fees, and costs of suit.

28 62. Labro Code § 1198 makes it unlawful for employers to employ employees under
conditions that violate the Wage Order.

 63. 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."

 64. To the extent that 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 for each pay period in which he/she was aggrieved, in the amounts established
by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Walmart's

violations of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1197.1, and 1198.

65. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of his intention to file this claim. More than sixty-five (65) 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).

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

67. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

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

69. Wherefore, Plaintiff and the Aggrieved Employees requests 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;

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- 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: March 23, 2022

William M. Hogg
HODGES & FOTY, LLP

Matthew C. Parmet
PARMET, P.C.

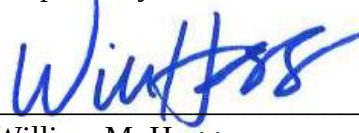
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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
5 Date: March 23, 2022

Respectfully submitted,

6 

7 William M. Hogg
HODGES & FOTY, LLP

8 Matthew C. Parmet
9 PARMET, P.C.

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