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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

SALVADOR GUZMAN and JAMES
MARSHALL, as proxies for the State of
California and on behalf of all similarly
aggrieved employees,

Plaintiffs,

v.

WALMART INC., a Delaware corporation;
WAL-MART ASSOCIATES, INC., a
Delaware corporation; WAL-MART
STORES, INC., a Delaware corporation
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 21CV388124

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND EXCEEDS \$25,000.00

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1 Plaintiffs Salvador Guzman (“Guzman”) and James Marshall (“Marshall”) (collectively,
2 “Plaintiffs”) hereby submit this Representative Action Complaint (“Complaint”) against
3 Defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores, Inc. (collectively,
4 “Defendant,” or “Walmart”), and Does 1-50 (hereinafter collectively referred to as “Defendants”),
5 as proxies for the State of California and on behalf of all similarly aggrieved employees of
6 Defendants for penalties for violations of the California Labor Code, including without limitation,
7 failure to pay employees their meal period premiums, overtime wages, and reporting time wages
8 at the regular rate of pay, and failing to pay minimum and overtime wages for time spent
9 undergoing COVID-19 temperature checks:

10 **INTRODUCTION**

11 1. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendants.

13 **JURISDICTION AND VENUE**

14 2. This representative action is within the Court's jurisdiction pursuant to the Private
15 Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.* As alleged below, Plaintiffs have
16 exhausted their administrative remedies under the PAGA. Accordingly, this Court has jurisdiction
17 of Plaintiffs’ PAGA claims for violation of California Labor Code §§ 201-204, 226, 226.7, 510, 512,
18 558, 1194, 1197, 1197.1, and 1199, the California Industrial Welfare Commission’s (“IWC”) Wage
19 Orders.

20 3. Venue is proper in this Court as PAGA actions may be brought in any county in
21 which **any aggrieved employee worked**. *Crestwood Behav. Health, Inc. v. Superior Court*, 60
22 Cal. App. 5th 1069, 1075 (2021) (“Crestwood argues that venue is properly located in the county
23 where the representative plaintiff worked but not counties where other aggrieved employees
24 worked. We hold that venue is proper in any county in which an aggrieved employee worked and
25 Labor Code violations allegedly occurred.”). Here, Walmart operates retail stores in Santa Clara
26 County and employs aggrieved employees in this County. Therefore, Santa Clara County is the
27 appropriate venue.

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PARTIES

4. All Plaintiffs worked for Walmart as non-exempt retail store employees. Marshall is a citizen of the State of California and worked for Walmart at its Carson Store from in or around October 2020, through March 3, 2021. Guzman is also a citizen of the State of California and worked for Walmart at its Victorville Store from on or about August 27, 2019, through on or about November 28, 2020.

5. Walmart is a global retailer headquartered in Bentonville, Arkansas, with numerous locations throughout the United States, including in Santa Clara County, California.

6. Plaintiffs were and are victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiffs of the rights guaranteed by the California Labor Code.

7. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

8. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1199, and the Wage Orders.

9. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint when the true names and capacities are known. Plaintiffs are informed and believe and based thereon allege that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiffs and aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

10. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting

1 within the course and scope of said agency and employment.

2 11. Plaintiffs are informed and believe and based thereon allege that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
5 the course and scope of such agency, employment, joint venture, or concerted activity. To the
6 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
7 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 12. At all times herein mentioned, Defendants, and each of them, were members of, and
10 engaged in, a joint venture, partnership and/or common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 13. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the violations as herein alleged. At all times herein
15 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
16 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
17 acts and omissions of each and all of the other Defendants in proximately causing the violations as
18 herein alleged.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

21 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFFS AS PROXIES FOR**
22 **THE STATE OF CALIFORNIA)**

23 14. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
24 fully set for herein.

25 15. Pursuant to the Private Attorneys General Act (the “PAGA”), Plaintiffs bring this
26 cause of action on behalf of the State of California and on behalf of all similarly aggrieved
27 employees for the violations of California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194,
28 1197, 1197.1, and 1199, and the Wage Orders.

1 16. Plaintiffs are aggrieved employees in that they were subjected to one or more of the
2 violations alleged herein. First, both Plaintiffs were not paid their overtime based on the correct,
3 higher regular rate of pay because Defendants did not include all non-discretionary remuneration
4 into the regular rate, including Covid pay. Second, Guzman was not paid meal period premium pay
5 at the regular rate of pay because Defendants did not include any non-discretionary remuneration
6 into the regular rate, such as MYSHARE-INCT, Awards and Covid pay. Rather, the meal period
7 premium wages were paid at the base rate of pay. Third, Guzman was not paid reporting time pay
8 wages at the regular rate of pay. Specifically, Section 5 of Wage Order No. 7-2001 states that
9 reporting time pay shall be paid to the employee at the employee's "**regular rate of pay.**"
10 Throughout Guzman's employment with the Company, Guzman and other non-exempt aggrieved
11 employees earned non-discretionary remuneration, including, but not limited to, MyShare
12 Incentives, Awards and Covid pay. As these items are non-discretionary forms of remuneration, they
13 should have been included in the regular rate of pay for purposes of paying Guzman and aggrieved
14 employees their reporting time pay. However, whenever the Company paid Guzman and aggrieved
15 employees their reporting time pay during pay periods in which they earned such non-discretionary
16 remuneration, the reporting time pay was always paid at their base rate of pay. Marshall was also
17 not paid all wages, including minimum and overtime wages for time spent undergoing COVID-19
18 temperature checks before he was allowed to clock in. Thus, Plaintiffs qualify as aggrieved
19 employees and have suffered the alleged violations of California Labor Code §§ 201-204, 226,
20 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1199, the Wage Orders.

21 17. On or about July 28, 2021, Plaintiffs submitted written notice to the Labor Workforce
22 Development Agency (the "LWDA") of the alleged violations of Labor Code §§ 201-204, 226,
23 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1199, the Wage Orders, and to Defendants via
24 certified mail. As of the date of this filing, the LWDA has not informed Plaintiffs whether the
25 LWDA will investigate the violations. Therefore, Plaintiffs may seek penalties, costs, and attorneys'
26 fees for their PAGA claims in this Court pursuant to Labor Code §§ 226.3 and 2699.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray for judgment on behalf of the State of California and all

1 others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2 1. Upon the First Cause of Action, for penalties pursuant to Labor Code §§ 226.3 and
3 2699, and for costs and attorneys' fees;

4 2. On all causes of action, for attorneys' fees and costs as provided by California
5 Labor Code § 2699, and Code of Civil Procedure § 1021.5; and

6 3. For such other and further relief as the Court may deem just and proper.
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8 DATED: October 14, 2021

DIVERSITY LAW GROUP, P.C.

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10 By: 

11 Larry W. Lee
12 Attorneys for Plaintiffs Salvador Guzman and
13 James Marshall
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