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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 9/26/2022 12:00 AM
Reviewed By: R. Walker
Case #21CV388124
Envelope: 10047576**

**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

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1]

**SECOND AMENDED 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”), James Marshall (“Marshall”), Fuad Altam
2 (“Altam”), Milagros Adrocich Vega (“Vega”), and Narender Gupta (“Gupta”) (collectively,
3 “Plaintiffs”) hereby submit this Second Amended Representative Action Complaint
4 (“Complaint”) against Defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores,
5 Inc. (collectively, “Defendant,” or “Walmart”), and DOES 1-50 (hereinafter collectively referred
6 to as “Defendants”), as proxies for the State of California and on behalf of all similarly aggrieved
7 employees of Defendants for penalties for violations of the California Labor Code, including
8 without limitation, failure to pay employees their meal period premiums, overtime wages, and
9 reporting time wages at the regular rate of pay, failing to pay minimum and overtime wages for
10 time spent undergoing COVID-19 temperature checks, and failing to reimburse business
11 expenses:

12 INTRODUCTION

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

15 JURISDICTION AND VENUE

16 2. This representative action is within the Court's jurisdiction pursuant to the Private
17 Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.* As alleged below, Plaintiffs have
18 exhausted their administrative remedies under the PAGA. Accordingly, this Court has jurisdiction
19 of Plaintiffs’ PAGA claims for violation of California Labor Code §§ 201-204, 226, 226.7, 510, 512,
20 558, 1194, 1197, 1197.1, 1199, and 2802 the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

21 3. Venue is proper in this Court as PAGA actions may be brought in any county in
22 which **any aggrieved employee worked**. *Crestwood Behav. Health, Inc. v. Superior Court*, 60
23 Cal. App. 5th 1069, 1075 (2021) (“Crestwood argues that venue is properly located in the county
24 where the representative plaintiff worked but not counties where other aggrieved employees
25 worked. We hold that venue is proper in any county in which an aggrieved employee worked and
26 Labor Code violations allegedly occurred.”). Here, Walmart operates retail stores in Santa Clara
27 County and employs aggrieved employees in this County. Therefore, Santa Clara County is the
28

1 appropriate venue.

2 **PARTIES**

3 4. All Plaintiffs worked for Walmart as non-exempt retail store employees. Marshall is
4 a citizen of the State of California and worked for Walmart at its Carson Store from in or around
5 October 2020, through March 3, 2021. Guzman is also a citizen of the State of California and
6 worked for Walmart at its Victorville Store from on or about August 27, 2019, through on or about
7 November 28, 2020. Altam is also a citizen of the State of California and worked for Walmart at its
8 Yuba City Store from on or about August 30, 2015, until on or about September 8, 2021. Gupta is
9 also a citizen of the State of California and worked for Walmart at its stores located in Fremont,
10 Pleasanton and Union City from on or about November 9, 2016, until on or about August 17, 2021.
11 Vega is also a citizen of the State of California and worked for Walmart at its Stevenson Ranch Store
12 from on or about June 6, 2001, until on or about August 14, 2021.

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

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

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

21 8. As such, and based upon all the facts and circumstances incident to Defendants'
22 business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7, 510,
23 512, 558, 1194, 1197, 1197.1, 1199, and 2802 and the Wage Orders.

24 9. Plaintiffs do not know the true names or capacities, whether individual, partner or
25 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
26 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
27 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
28 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

1 the illegal employment practices, wrongs and injuries complained of herein.

2 10. At all times herein mentioned, each of said Defendants participated in the doing of
3 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
4 Defendants, and each of them, were the agents, servants and employees of each of the other
5 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
6 within the course and scope of said agency and employment.

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

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

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

24 **FIRST CAUSE OF ACTION**

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

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

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

1 15. Pursuant to the Private Attorneys General Act (the “PAGA”), Plaintiffs bring this
2 cause of action on behalf of the State of California and on behalf of all similarly aggrieved
3 employees for the violations of California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194,
4 1197, 1197.1, 1199, 2802 and the Wage Orders.

5 16. Plaintiffs are aggrieved employees in that they were subjected to one or more of the
6 violations alleged herein. First, Marshall, Guzman, Gupta, and Vega were not paid their overtime
7 based on the correct, higher regular rate of pay because Defendants did not include all non-
8 discretionary remuneration into the regular rate, including Covid pay. Second, Guzman and Vega
9 were not paid meal period premium pay at the regular rate of pay because Defendants did not
10 include any non-discretionary remuneration into the regular rate, such as MYSHARE-INCT, Awards
11 and Covid pay. Rather, the meal period premium wages were paid at the base rate of pay. Third,
12 Guzman was not paid reporting time pay wages at the regular rate of pay. Specifically, Section 5 of
13 Wage Order No. 7-2001 states that reporting time pay shall be paid to the employee at the
14 employee’s “**regular rate of pay.**” Throughout Guzman’s employment with the Company, Guzman
15 and other non-exempt aggrieved employees earned non-discretionary remuneration, including, but
16 not limited to, MyShare Incentives, Awards and Covid pay. For example, for Guzman’s pay period
17 dated November 21, 2020, to December 4, 2020, Guzman was paid a COVID-19 bonus of \$893.52.
18 For this same pay period, Guzman was paid a meal period premium for one hour at \$22.00 which
19 was Guzman’s base rate of pay. Similarly, for Guzman’s pay period dated August 15, 2020, to
20 August 28, 2020, Guzman was paid a MyShare bonus of \$1,036.69. For this same pay period,
21 Guzman was paid 1 hour of meal period premium at his base rate of \$16.82. Guzman is informed
22 and believes and based thereon alleges that Walmart’s work constraints impeded Guzman’s ability to
23 take a full 30-minute off-duty meal period within the first 5 hours of his shift during the pay periods
24 of November 21, 2020, to December 4, 2020 and August 15, 2020, to August 28, 2020. More
25 specifically, due to Walmart’s failure to provide adequate staffing, Guzman was not relieved of all
26 duties by his supervisor in time to take a timely 30-minute meal period when the Victorville Store
27 was busy or was otherwise short-handed and Guzman was required to continue working to assist
28 customers. As these items are non-discretionary forms of remuneration, they should have been
included in the regular rate of pay for purposes of paying Guzman and aggrieved employees their

1 reporting time pay. However, whenever the Company paid Guzman and aggrieved employees their
2 reporting time pay during pay periods in which they earned such non-discretionary remuneration, the
3 reporting time pay was always paid at their base rate of pay. Marshall, Altam and Vega were also
4 not paid all wages, including minimum and overtime wages for time spent undergoing COVID-19
5 temperature checks before they were allowed to clock in. Lastly, Gupta and Altam were not
6 reimbursed business expenses by Defendants in violation of Labor Code § 2802. Specifically, Gupta
7 and Altam were required to use their personal cell phones in connection with performing their job.
8 Walmart required Gupta and Altam to download an app from which they helped customers.
9 Nevertheless, Walmart did not reimburse Altam and Gupta for the costs of using their own phones
10 for this work-related purpose. Thus, Plaintiffs qualify as aggrieved employees and have suffered the
11 alleged violations of California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197,
12 1197.1, 1199, and 2802, and the Wage Orders.

13 17. On or about July 28, 2021, Plaintiffs submitted written notice to the Labor Workforce
14 Development Agency (the “LWDA”) of the alleged violations of Labor Code §§ 201-204, 226,
15 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1199, the Wage Orders, and to Defendants via
16 certified mail. On or about February 24, 2022, Gupta, Altam, and Vega submitted their written
17 notice to the LWDA of the alleged violations of Labor Code §§ 201-204, 226, 226.7, 510, 512, 558,
18 1194, 1197, 1197.1, and 2802, and Section 5 of the applicable IWC Wage Order, and to Defendants
19 via certified mail. As of the date of this filing, the LWDA has not informed Plaintiffs whether the
20 LWDA will investigate the violations. Therefore, Plaintiffs may seek penalties, costs and attorneys’
21 fees for their PAGA claims in this Court pursuant to Labor Code §§ 226.3 and 2699.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment on behalf of the State of California and all
24 others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

- 25 1. Upon the First Cause of Action, for penalties pursuant to Labor Code §§ 226.3 and
26 2699, and for costs and attorneys’ fees;
- 27 2. On all causes of action, for attorneys’ fees and costs as provided by California
28 Labor Code § 2699, and Code of Civil Procedure § 1021.5; and
3. For such other and further relief as the Court may deem just and proper.

1 DATED: September 23, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

Attorneys for PLAINTIFFS

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On September 23, 2022, I served the following document(s) described as: **SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 23, 2022, at Los Angeles, California.



Erika Mejia