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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LARRY ROACH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC., a
Delaware Corporation, WALMART,
INC., a Delaware Corporation, and DOE ONE
through and including DOE ONE-
HUNDRED,

Defendants.

Case No. 5:18-CV-02536

FIRST AMENDED COMPLAINT
[Class-Action and PAGA Complaint]

1. Continuing Wages, Cal. Lab. Code §§ 201, 202 and 203
2. Failure to Provide Adequate Pay Stubs, Cal. Lab. Code § 226(a)
3. Failure to Provide Reporting-Time Pay, IWC Wage Order 7
4. Unfair Competition, Cal. Bus. & Prof. Code § 17200 *et seq.*
5. Violation of the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

DEMAND FOR TRIAL BY JURY

1 Plaintiff Larry Roach (“Plaintiff”) on behalf of himself as an individual, in his
2 representative capacity on behalf of the State of California Labor & Workforce
3 Development Agency (“LWDA”) under the Labor Code Private Attorneys General Act
4 of 2004 (“PAGA”), California Labor Code (“Labor Code”) § 2698 *et seq.*, and as a
5 proposed representative of a putative Class, alleges as follows:

6 **INTRODUCTION**

7 1. This is a PAGA law enforcement action and class action seeking continuing
8 wages, damages, penalties, and attorneys’ fees and costs, including such reasonable
9 reimbursement of fees and costs as may be authorized by section 218.5 of the California
10 Labor Code or otherwise. This Complaint asserts claims for violations of the California
11 Labor Code, violations of Wage Order 7 of the Industrial Welfare Commission,
12 violations of section 17200 *et seq.* of the California Business and Professions Code, and
13 otherwise as hereinafter alleged. The alleged violations include the failure to pay wages
14 upon the termination of employment, wage-statement violations, and unfair competition,
15 among other claims.

16 2. The California Labor Code requires employers to provide to their
17 employees, among other things, itemized wage statements, and to promptly pay wages
18 upon the termination of employment. Defendants Wal-Mart Stores, Inc. and Walmart,
19 Inc. (collectively “Wal-Mart” or “Defendant”) and Doe One through and including Doe
20 One-Hundred failed to comply with the California Labor Code requirements.¹
21 Accordingly, Plaintiff seeks civil penalties on behalf of the State of California and the
22 LWDA, to be shared with all impacted employees, all in accord with the extant statutory
23 scheme.

24
25 ¹ Effective February 1, 2018, Wal-Mart changed the company’s legal name from Wal-
26 Mart Stores, Inc. to Walmart, Inc. Although Plaintiff was employed by Wal-Mart after
27 its name change, his start paperwork still reflected the name Wal-Mart Stores, Inc. rather
28 than the name “Walmart, Inc. For example, the Cal. Lab. Code § 2810.5 Notice to
Employee provided to Plaintiff stated the, “Name of Employer” as “Wal-Mart Stores,
Inc.” not “Walmart, Inc. See Exhibit 1 (Cal. Lab. Code § 2810.5 Notice)

1 3. Wal-Mart has employed, and continues to employ, tens of thousands of non-
2 exempt employees who perform a variety of duties throughout California. Plaintiff is
3 bringing this action against Defendant on behalf of all non-exempt persons employed by
4 Wal-Mart from the period of four years prior to the filing of the initial Complaint, to the
5 date of judgment (collectively, these employees are the “Aggrieved Employees”).
6 Plaintiff is also bringing this action under PAGA on behalf of all Aggrieved Employees
7 for the period of one year prior to giving notice to the LWDA of Defendants’ violations
8 to date.

9 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay
10 timely its Aggrieved Employees with all wages and vacation pay due upon termination, (2)
11 knowingly and intentionally failing to furnish timely the proper itemized wage statements
12 to Aggrieved Employees, and (3) failing to pay reporting-time pay.

13 **JURISDICTION AND VENUE**

14 5. Jurisdiction is proper under the Class Action Fairness Act, 28 U.S.C.
15 § 1332(d)(2), because the amount in controversy exceeds \$5 million; Plaintiff is a citizen
16 of California; and Defendants is a corporation incorporated under the laws of the State of
17 Delaware, with its principal place of business in Arkansas.

18 6. Venue as to Defendant Wal-Mart is proper in this judicial district, pursuant
19 to 28 U.S.C. § 1391(b)(2). Wal-Mart maintains an office, transacts business, has an
20 agent, or is otherwise found in the State of California and the District and Division in
21 which this case is filed, and is within the jurisdiction of this Court for the purpose of
22 service of process. The unlawful acts alleged herein had a direct effect on, and were
23 committed within, the State of California.

24 7. This Court has jurisdiction over Wal-Mart because, upon information and
25 belief, Defendant either is a resident of California, has minimum contacts in California,
26 or otherwise intentionally avails itself of the protections of California so as to render
27 California’s exercise of jurisdiction over Defendant Wal-Mart consistent with traditional
28 notions of fair play and substantial justice.

PARTIES

8. Larry Roach is an individual who, during the time periods relevant to this Complaint, was employed by Wal-Mart within the State of California.

9. Wal-Mart Stores, Inc. was and is a Delaware corporation doing business within the State of California and having a principal place of business within the State of California. Wal-Mart Stores, Inc.'s corporate headquarters are located in Bentonville, Arkansas. Since at least 2015, Wal-Mart Associates, Inc. has been and is merely engaged in the business of processing payroll for Wal-Mart Stores, Inc. Wal-Mart Associates, Inc. was and is a Delaware corporation doing business within the State of California and having a principal place of business in Bentonville, Arkansas. Upon information and belief, Plaintiff alleges that effective February 1, 2018, Wal-Mart Stores, Inc. changed its name to Walmart, Inc. Upon information and belief, Wal-Mart Associates, Inc. has continued to be engaged in the business of processing payroll for Walmart, Inc. Wal-Mart Associates, Inc. is not, and never has been, the employer of Plaintiff, any of the Wal-Mart non-exempt retail workers who work for Defendant in the State of California, or any resident of California, at all.

10. Plaintiff is unaware of the true names, identities, or capacities, whether corporate, individual, or otherwise, of Defendants Doe One through One-Hundred, but leave of Court will be prayed to amend this pleading to insert the same herein when finally ascertained. Plaintiff is informed, believes, and thereupon alleges that each of the fictitiously named Defendants is an entity that, during the relevant time period, maintained a principal place of business in the County of Los Angeles, State of California, and that each of the said fictitiously named Defendants is legally responsible for the damages hereinafter more particularly alleged.

GENERAL ALLEGATIONS

11. Wal-Mart employed Plaintiff as an hourly employee, but, at termination, it did not provide him with all accrued reporting-time pay (in accord with the requirements articulated at https://www.dir.ca.gov/dlse/FAQ_ReportingTimePay.htm) and/or vacation

1 pay (in accord with the provisions of section 227.3 of the California Labor Code—
2 “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of
3 employment or employer policy provides for paid vacations, and an employee is
4 terminated without having taken off his vested vacation time, all vested vacation shall be
5 paid to him as wages at his final rate in accordance with such contract of employment or
6 employer policy respecting eligibility or time served.”). Nevertheless, Plaintiff and
7 others were not timely paid at termination, all giving rise to a right to continuing wages
8 under section 203 of the California Labor Code.

9 12. Plaintiff was terminated on or about November 18, 2018, but was not
10 immediately paid his full and final wages as required by law. Upon information and
11 belief, Wal-Mart also failed to timely pay other non-exempt employees (“Aggrieved
12 Employees”) who quit or were discharged by Wal-Mart all wages due and owing as
13 required by sections 201, 202 and 203 of the Labor Code.

14 13. Wal-Mart’s policy is to devote minimal resources to the payroll accounting
15 function, with the result that, in practice, its former employees are routinely not paid all
16 final wages owing to them in timely fashion.

17 14. When Plaintiff received his final wage statement, which Wal-Mart calls a
18 Statement of Final Pay, Wal-Mart failed to include certain required information,
19 including, but not limited to, the inclusive dates of the pay period, all accumulated pay in
20 the employee’s final pay statement, or the name and legal address of the employer, Wal-
21 Mart Stores, Inc. On information and belief, Wal-Mart failed to include required
22 information on the wage statements of other Aggrieved Employees as well, both on the
23 Statement of Final Pay and otherwise. Defendant’s failure to provide this statutorily
24 required information on wage statements has been deemed to cause injury under section
25 226(e)(2)(B) of the California Labor Code. Further, Aggrieved Employees were not
26 provided compliant wage statements when other tardy payments were made to them, after
27 their employ with Defendant had terminated. Wal-Mart also failed to provide the amount
28 of net wages earned in connection with post-termination, on-cycle pay stubs issued after

1 the Statement of Final Pay. Defendant's post-termination wage statements were
2 confusing in that it was impossible to determine from the wage statements alone whether
3 or not Aggrieved Employees were being paid wages or something else, such as a stock
4 purchase refund. The statements made it impossible for Aggrieved Employees to
5 determine whether they had being properly compensated for all hours worked.
6 Defendant's failure to provide accurate information regarding gross and net wages earned
7 has harmed Aggrieved Employees in that they have been unable to determine whether or
8 not they have been paid correctly by Defendant. The fact that these errors appear on
9 post-termination wage statements is especially egregious because Aggrieved Employees
10 have little recourse regarding obtaining accurate information after they no longer work
11 for the company, many of the low-wage workers not having ready access to a computer,
12 printer, and the internet. Defendant's failure to provide the accurate name of the
13 employer on wage statements has injured Plaintiff and Aggrieved Employees by causing
14 confusion as to who was his actual employer while Plaintiff was working for Defendant
15 and after termination. Plaintiff suffered confusion as to which was the entity that actually
16 employed him, especially considering that other documents provided to Plaintiff by
17 Defendant clearly indicated that Plaintiff was, in fact, employed by Wal-Mart Stores, Inc.
18 Even prior to the 2013 statutory amendment of section 226, clarifying that the injury
19 requirement was minimal, the law was clear that injury could be established if employees
20 were forced to review other documents to secure information that was required to be
21 provided on the wage statements. E.g. Jaimez v. Daiohs USA, Inc., 181 Cal. App. 4th
22 1286, 1306-07 (2010); McKenzie v. Federal Express Corp., 765 F.Supp.2d 1222, 1229
23 (C.D. Cal. 2011); Elliot v. Spherion Pac. Work, LLC, 572 F.Supp.2d 1169, 1181 (C.D.
24 Cal. 2008).

25 15. Upon information and belief, Plaintiff had reporting-time and/or vacation
26 time accrued but was not paid for such time at the termination of his employment. Upon
27 information and belief, other Aggrieved Employees were not paid their reporting-time
28 and/or accrued vacation time upon resignation or discharge as well.

1 16. Upon information and belief, on his final day of work, Plaintiff reported to
2 work but was sent home early without being paid proper reporting-time pay. Upon
3 information and belief, Wal-Mart also failed to pay other Aggrieved Employees for
4 reporting-time pay owed to them.

5 17. At all relevant times herein, section 201 of the California Labor Code has
6 stated that, “[i]f an employer discharges an employee, the wages earned and unpaid at the
7 time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Similarly,
8 section 202 of the Labor Code has stated that, “[i]f an employee . . . quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting.”
12 Id. § 202(a).

13 18. According to section 203 of the Labor Code, “[i]f an employer willfully fails
14 to pay, without abatement or reduction, in accordance with Sections 201[or] 202, . . . any
15 wages of an employee who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until paid or until an
17 action therefor is commenced; but the wages shall not continue for more than 30 days.”
18 Id. § 203(a).

19 19. At all relevant times herein, section 227.3 of the California Labor Code has
20 stated:

21 [W]henever a contract of employment or employer policy provides for paid
22 vacations, and an employee is terminated without having taken off his vested
23 vacation time, all vested vacation shall be paid to him as wages at his final
24 rate in accordance with such contract of employment or employer policy
25 respecting eligibility or time served

26 Id. § 227.3.

27 20. Wal-Mart did not compensate Plaintiff and Aggrieved Employees as
28 required by sections 201 through 203 of the Labor Code, nor did Wal-Mart compensate

1 them as required by section 227.3 of the Labor Code.

2 21. Plaintiff is informed, believes, and thereupon alleges that, in addition to
 3 failing to pay him all wages due and owing upon the end of his employment, Wal-Mart
 4 has failed to pay its quitting and/or discharged Aggrieved Employees as required by
 5 sections 201 through 203 of the Labor Code. Specifically, Wal-Mart's policy and
 6 practice is to pay its quitting and discharged Aggrieved Employees in tardy fashion, not
 7 on the date that the Aggrieved Employee quits or is terminated, but rather on a
 8 subsequent date, after Wal-Mart's underfunded payroll department assembles the data
 9 required to make the accrued payments. Furthermore, Wal-Mart failed to pay on time its
 10 resigning and discharged Aggrieved Employees all accrued vacation pay.

11 22. With respect to reporting time pay, Industrial Welfare Commission Wage
 12 Order 7, provided, in relevant part:

13 5. REPORTING TIME PAY

14 (A) Each workday an employee is required to report for work and does
 15 report, but is not put to work or is furnished less than half said employee's
 16 usual or scheduled day's work, the employee shall be paid for half the usual
 17 or scheduled day's work, but in no event for less than two (2) hours nor
 18 more than (4) hours, at the employee's regular rate of pay, which shall not
 19 be less than the minimum wage.

20

21 7. RECORDS

22 (A) Every employer shall keep accurate information with respect to each
 23 employee including the following:

- 24 (1) Full name, home address, occupation and social security number.
- 25 (2) Birth date, if under 18 years, and designation as a minor.
- 26 (3) Time records showing when the employee begins and ends each work
- 27 period. Meal periods, split shift intervals and total daily hours worked shall
- 28

1 also be recorded. Meal periods during which operations cease and
2 authorized rest periods need not be recorded.

3 (4) Total wages paid each payroll period, including value of board, lodging,
4 or other compensation actually furnished to the employee.

5 (5) Total hours worked in the payroll period and applicable rates of pay.
6 This information shall be made readily available to the employee upon
7 reasonable request.

8 (B) Every employer shall semimonthly or at the time of each payment of
9 wages furnish each employee, either as a detachable part of the check, draft,
10 or voucher paying the employee's wages, or separately, an itemized
11 statement in writing showing: (1) all deductions; (2) the inclusive dates of
12 the period for which the employee is paid; (3) the name of the employee or
13 the employee's social security number; and (4) the name of the employer,
14 provided all deductions made on written orders of the employee may be
15 aggregated and shown as one item.

16 8 Cal. Code Regs. § 11070. California's Industrial Welfare Commission Wage Orders
17 provide expansive protection to hourly workers.

18 23. At all relevant times mentioned herein, section 1198 of the California Labor
19 Code provided:

20 The maximum hours of work and the standard conditions of labor fixed by
21 the commission shall be the maximum hours of work and the standard
22 conditions of labor for employees. The employment of any employee for
23 longer hours than those fixed by the order or under conditions of labor
24 prohibited by the order is unlawful.

25 Cal. Lab. Code § 1198. Section 1198 refers to "conditions of labor prohibited by the
26 order [of the IWC]" and therefore incorporates by reference Wage Order Number 7 of the
27 IWC. On his last day of work, Plaintiff was scheduled to work but was sent home
28 without completing more than half of his regularly scheduled shift. By failing to pay

1 Plaintiff for his hours of reporting-time pay, Defendant violated section 1198 by
2 employing Plaintiff “under conditions of labor prohibited by the order.” Id. § 1198.

3 24. At all times relevant herein, section 204 of the California Labor Code
4 provided in part:

5 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
6 204.2, earned by any person in any employment are due and payable twice
7 during each calendar month, on days designated in advance by the employer
8 as the regular paydays. Labor performed between the 1st and 15th days,
9 inclusive, of any calendar month shall be paid for between the 16th and the
10 26th day of the month during which the labor was performed, and labor
11 performed between the 16th and the last day, inclusive, of any calendar
12 month, shall be paid for between the 1st and 10th day of the following
13 month.

14 Id. § 204.

15 25. In addition to failing to pay Plaintiff and the Aggrieved Employees on the
16 date contemplated by sections 201 through 203 of the Labor Code, Wal-Mart failed to
17 provide Plaintiff and the Aggrieved Employees pay stubs that contain all of the
18 information required by section 226 of the Labor Code. Section 226 states:

19 Every employer shall, semimonthly or at the time of each payment of wages,
20 furnish each of his or her employees, either as a detachable part of the check,
21 draft, or voucher paying the employee’s wages, or separately when wages
22 are paid by personal check or cash, an accurate itemized statement in writing
23 showing (1) gross wages earned, (2) total hours worked by the employee,
24 except for any employee whose compensation is solely based on a salary and
25 who is exempt from payment of overtime under subdivision (a) of Section
26 515 or any applicable order of the Industrial Welfare Commission, (3) the
27 number of piece-rate units earned and any applicable piece rate if the
28 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, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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.

Id. § 226(a). Plaintiff's pay stubs demonstrate that Wal-Mart fails to include the data required by section 226(a), including but not limited to the "inclusive dates of the period for which the employee is paid," all accumulated reporting-time and/or vacation pay earned in the employee's final pay statement, and the name and address of the entity that is the employer.

26. Plaintiff's employer was Walmart, Inc., formerly named Wal-Mart Stores, Inc. Nevertheless, his final wage statement, for example, incorrectly shows Wal-Mart Associates, Inc. as the employer. (Exhibit 2, Plaintiff's Statement of Final Pay.)

PLAINTIFF'S CLASS-ACTION ALLEGATIONS

27. The Class represented by Plaintiff consists of all individuals who received a pay stub from Wal-Mart in the State of California at any time during the four years before the filing of the Complaint to the date of judgment (the "Class," and the members are "Class Members"). On January 9, 2018, in Magadia v. Wal-Mart Associates, Inc., N.D. Cal. Case No. 17-CV-00062-LHK, the U.S. District Court for the Northern District Court granted the plaintiff's motion for class certification and certified the following Rule 23(b)(3) classes:

Meal Period Regular Rate Class: All current and former California non-exempt retail store employees of [Wal-Mart] who received non-discretionary remuneration, including "MYSHARE INCT," and w[ere] paid any meal

1 period premium payments in the same period that the non-discretionary
 2 renumeration was earned, at any time between December 2, 2012, through
 3 the present [January 9, 2018].

4 **OVERTIME/INCT Wage Statement Class:** All current and former
 5 California non-exempt employees of [Wal-Mart] who received
 6 “OVERTIME/INCT,” at any time between December 2, 2015, through the
 7 present [January 9, 2018].

8 **Final Wage Statement Class:** All former non-exempt employees who
 9 worked for [Wal-Mart] in the State of California and whose employment
 10 terminated (whether voluntarily or involuntarily) at any time from December
 11 2, 2015 to the present [January 9, 2018].

12 On February 20, 2019, in Mays v. Wal-Mart Associates, Inc., C.D. Cal. Case No.
 13 18-CV-02318-AB (KKx), the U.S. District Court for the Central District Court
 14 granted in part the plaintiff’s motion for class certification and certified the
 15 following Rule 23(b)(3) class:

16 **Wage Statement Class:** All California workers who received a wage
 17 statement between December 16, 2016 to January 31, 2018.

18 Plaintiff’s proposed Class is not intended to overlap with the classes certified in Magadia
 19 v. Wal-Mart Associates, Inc. and Mays v. Wal-Mart Associates, Inc. Therefore, with
 20 respect to any potentially overlapping class definitions, Plaintiff’s proposed class period
 21 shall commence on February 1, 2018, and continue to the date of judgment.

22 28. The number of persons within the Class is great, believed to be in excess of
 23 ten-thousand. It is therefore impractical to join each Class Member as a named plaintiff.
 24 Accordingly, the utilization of a class action is the most economically feasible means of
 25 determining the merits of this litigation.

26 29. Despite the numerosity of the Members of the Class, membership within it is
 27 readily ascertainable through an examination of the records that Wal-Mart is required by
 28 law to keep and that it has kept. Likewise, the dollar amounts owed to Plaintiff and Class

1 Members are readily ascertainable by an examination of the same records. For example,
2 with respect to Defendant's violations of section 226(a)(8) of the California Labor Code,
3 the damages owing to each Class Member equal the sum of \$50 (for the initial wage
4 statement issued to the employee during the period commencing one year prior to the
5 filing of the Complaint), on the one hand, and the product of the number of further wage
6 statements issued to the employee and \$100, on the other hand, with a per-employee cap
7 of \$4,000.

8 30. The Class is proper insofar as common questions of fact and of law
9 predominate over individual issues regarding the money owed to each Class Member.

10 31. There is a well-defined community of interest in the questions of law and
11 fact common to the Class. The key questions are the same for each Class Member,
12 namely, (a) whether such Class Member as an employee of Wal-Mart within California
13 was paid proper reporting-time pay; (b) whether such Class Member was discharged by
14 Wal-Mart or quit his or her employment with Wal-Mart; (c) whether such Class Member
15 was paid his or her wages at the time of discharge or quitting, as provided by sections
16 201, 202, and 203 227.3 of the Labor Code; (d) whether each Class Member received
17 proper wage statements; and (e) whether Wal-Mart's failure to show all accumulated
18 vacation pay earned in the employee's final pay statement, failure to show the "inclusive
19 dates of the of the period for which the employee is paid," or failure to list the legal name
20 and address of the employer constitutes a violation of section 226.

21 32. Plaintiff's claims are typical of the claims of Class Members, which all arise
22 out of the same general operative facts, namely, that Wal-Mart has a policy and practice
23 of devoting such insufficient funds to the payroll accounting function that it routinely
24 fails to pay its discharged and quitting employees according to the timing rules in
25 sections 201 and 202 of the Labor Code, that Wal-Mart's pay stubs fail to include all of
26 the information required by the Labor Code, and that Wal-Mart does not pay proper
27 reporting-time pay. Plaintiff has no conflict of interest with Class Members, and he is
28 able to represent their interests fairly and adequately.

33. A class action is a far-superior method for the fair and efficient adjudication of this controversy for a number of reasons. First, the persons within the Class are numerous, and joinder of all of them is impractical. Second, the disposition of all Class Members' claims in a single class action rather than in individual actions will benefit both the parties and the Court. In that regard, the claims of each individual Class Member are too small to litigate individually, and the commencement of thousands of separate actions would lead to an undue burden on scarce judicial and administrative resources. The alternative of individual proceedings before California's Labor Commissioner is impractical inasmuch as that agency has insufficient resources to process such claims promptly, and, under the provisions of California Labor Code section 98.2, if the individual Class Members were to succeed in obtaining awards in their favor, such awards would be appealable as a matter of right for a *de novo* trial in Superior Court, leading to a multiplicity of such trials in that court. In addition, absent class treatment, employees will most likely be unable to secure redress given the time and expense necessary to pursue individual claims, and individual Class Members will likely be unable to retain counsel willing to prosecute their claims on an individual basis given the small amount of recovery. As a practical matter, denial of class treatment will lead to denial of recovery to the individual Class Members.

34. The interest of each Class Member in controlling the prosecution of his or her individual claim against Wal-Mart is small when compared with the efficiency of a class action.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

35. On or about November 28, 2018, Plaintiff gave written notice by certified mail and online filing of Defendant's violations of various provisions of the California Labor Code as alleged in this Complaint to the Labor and Workforce Development Agency ("LWDA") and Defendant. Letter from Alan Harris to the LWDA and Defendant (November 28, 2018) attached hereto as Exhibit 3.

36. More than sixty-five days have passed from the date of Plaintiff's notice to

the LWDA and Plaintiff has not been notified by the LWDA that it intends to investigate Plaintiff's allegations. Therefore, pursuant to section 2699.3(a)(2)(A), Plaintiff "may commence a civil action pursuant to Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

37. Plaintiff is informed and believes and thereon alleges that Defendant has routinely failed to provide Plaintiff and other Aggrieved Employees with the prompt payment of wages and vacation pay upon termination of employment, reporting time pay, and proper itemized wage statements.

38. Plaintiff alleges that Defendant violated PAGA in the following ways: (1) failing to timely pay all wages in violation of Labor Code §§ 201, 202, 203, 204, and 227.3; (2) willfully failing to provide Aggrieved Employees with proper itemized wage statements in violation of Labor Code § 226(a); and (3) failing to pay proper reporting-time pay under Labor Code § 1198 and Wage Order 7. "PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage order or employment under conditions prohibited by a wage order)." Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

FIRST CAUSE OF ACTION

Continuing Wages, Cal. Lab. Code §§ 201, 202, 203, 227.3

(On Behalf of Plaintiff Individually and the Class Against All Defendants)

39. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every paragraph set forth in this Complaint.

40. Section 203 of the Labor Code states that, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 [or] 202, . . . 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 therefor is commenced; but the wages shall not continue for more than 30 days." Cal. Lab. Code § 203(a).

41. Wal-Mart did not compensate Plaintiff as required by sections 201 through

203 of the Labor Code, as he should have been paid all earned wages on the date of his termination. Wal-Mart did not pay Plaintiff's reporting-time pay and/or accrued vacation pay. In like regard, Wal-Mart has not compensated its other discharged and quitting employees as required by sections 201 through 203 and 227.3 of the Labor Code.

42. Wal-Mart's failure to compensate Plaintiff and Class Members within the time provided by sections 201 and 202 of the Labor Code, despite knowledge of its obligation to do so, was "willful" as the word is used in section 203 of the Labor Code.

43. Plaintiff and Class Members are, accordingly, entitled to continuing wages from Wal-Mart in an amount to be determined by proof. Plaintiff is also entitled to recover costs and reasonable attorneys' fees under section 218.5 of the California Labor Code.

SECOND CAUSE OF ACTION

Failure to Provide Adequate Pay Stubs, Cal. Lab. Code § 226(a)

(On Behalf of Plaintiff Individually and the Class Against All Defendants)

44. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every paragraph set forth in this Complaint.

45. Section 226 of the Labor Code states:

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 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Id. § 226(e).

46. Wal-Mart failed to provide Plaintiff and Class Members with pay stubs conforming to the requirements of section 226(a) of the Labor Code by failing to always designate "inclusive dates of the period for which the employee is paid," failing to show

1 all accumulated vacation pay earned in the employee's final pay statement, failing to
 2 accurately list the gross and net wages paid, and/or failing to list the name and address of
 3 the legal entity that is the employer. As described in Paragraph 14 above, Defendant's
 4 defective wage statements injured Plaintiff and Aggrieved Employees.

5 47. According to Plaintiff's employment records, the employer is Wal-Mart
 6 Stores, Inc. and/or Walmart, Inc. but his wage statements, and those issued to other
 7 Aggrieved Employees, incorrectly lists Wal-Mart Associates, Inc. as the employer.
 8 Accordingly, Plaintiff and Class Members are entitled to damages, costs, and reasonable
 9 attorney's fees in accordance with the provisions of Labor Code section 226(e). Plaintiff
 10 was not employed by Wal-Mart Associates, Inc.—an entity which merely was engaged in
 11 the business of "Payroll Processing," as detailed by it on the Statement of Information
 12 filed by it with the Secretary of State of the State of California on September 6, 2018
 13 (Exhibit 4).

14 **THIRD CAUSE OF ACTION**

15 Failure to Pay Reporting-Time Wages, Cal. Lab. Code §§ 204 and 1198, and Industrial
 16 Welfare Commission Wage Order 7

17 (On Behalf of Plaintiff Individually and the Class Against All Defendants)

18 48. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every
 19 allegation set forth in the Complaint.

20 49. Plaintiff was not paid his reporting-time wages as required by sections 204
 21 and 1198 of the California Labor Code and Industrial Welfare Commission Wage Order
 22 7. Upon information and belief, Plaintiff was not compensated for reporting-time pay
 23 when, for example, he came in to work but was sent home without completing more than
 24 half of his shift.

25 50. Plaintiff and Class Members who were not paid their reporting time wages
 26 are entitled to payment of same, along with interest, costs and reasonable attorneys' fees
 27 under section 218.5 of the California Labor Code.
 28

FOURTH CAUSE OF ACTION

Unfair Competition, Cal. Bus. & Prof. Code § 17200 *et seq.*

(On Behalf of Plaintiff Individually and the Class Against All Defendants)

51. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every paragraph set forth in this Complaint.

52. Plaintiff is suing both in his individual capacity and on behalf of the general public, and he is a proper representative plaintiff because he has suffered direct harm from the illegal business practices herein alleged.

53. Beginning at an exact date unknown to Plaintiff, Wal-Mart has committed acts of unlawful, unfair, and/or fraudulent business practices as defined in California Business and Professions Code section 17200 *et seq.* by failing to pay its quitting and discharged employees in accordance with sections 201, 202, 203, 204, and 227.3 of the Labor Code, by failing to pay employees reporting-time to which they are entitled, and by providing pay stubs that do not provide all of the data required by section 226 of the Labor Code.

54. The acts and practices as described in the paragraph above violate Business and Professions Code section 17200 *et seq.* in the following respects:

- (a) Wal-Mart's policy and practice of failing to pay its discharged and quitting employees at the time of termination all earned wages violates sections 201, 202, 203, and 227.3 of the Labor Code and, consequently, constitutes an unlawful business act or practice within the meaning of section 17200 *et seq.*;
- (b) Wal-Mart's policy and practice of failing to provide all required data on its pay stubs violates section 226 of the California Labor Code and, consequently, constitutes an unlawful business act or practice within the meaning of 17200 *et seq.*
- (c) Wal-Mart's policy and practice of failing to pay reporting-time pay upon as required by Wage Order 7 and Labor Code §§ 204 and 1198,

1 constitutes an unlawful business act or practice within the meaning of
2 17200 *et seq.*

3 55. Under section 17200 *et seq.*, this Court is authorized to enter such judgment
4 or order as may be necessary to restore to any person in interest the money or property
5 acquired by Wal-Mart through its unlawful and unfair business practices. Cal. Bus. &
6 Prof. Code § 17203.

7 56. Plaintiff and Class Members are, therefore, entitled to a judgment of this
8 Court requiring Wal-Mart to pay both the wages to which such individuals were and are
9 entitled but which have been denied them by reason of Wal-Mart's conduct alleged
10 herein. In other words, Wal-Mart's employees are entitled to restitution of the reporting-
11 time pay improperly withheld by Wal-Mart, as such funds should be distributed to the
12 individuals who are rightfully entitled to such monies.

13 57. Plaintiff is a proper person to bring this litigation as a "representative action"
14 to compel restitution. He is a person who has suffered damage as a result of the unlawful
15 actions of Wal-Mart herein alleged. The actions of Wal-Mart herein alleged are in
16 violation of statute and are in contravention of established public policy, and,
17 accordingly, a court order compelling Wal-Mart to cease and desist from such actions and
18 to make restitution is a vindication of an important public right. The extent to which
19 Wal-Mart has been unjustly enriched as a result of its unlawful and unfair business
20 practices is a matter that can be ascertained by an examination of the payroll and
21 accounting records that Wal-Mart is required by law to keep and maintain and that Wal-
22 Mart has kept and maintained.

23 58. The identity of the persons to whom restitution should be made is a matter
24 that can be ascertained from those records that Wal-Mart is required by law to keep and
25 maintain and that Wal-Mart has kept and maintained.

26 59. Plaintiff's efforts in securing the requested relief will result "in the
27 enforcement of an important right affecting the public interest," as "a significant benefit,
28 whether pecuniary or nonpecuniary, [will] be[] conferred on . . . a large class of persons."

1 Cal. Civ. Proc. Code § 1021.5. Moreover, because “the necessity and financial burden of
 2 private enforcement . . . are such as to make [an attorney’s fee] award appropriate, and
 3 [because attorney’s] fees should not in the interest of justice be paid out of the recovery,
 4 if any,” *id.*, Plaintiff requests that the Court also award reasonable attorney’s fees
 5 pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

6 60. Pursuant to section 17205, the remedies and penalties provided by section
 7 17200 *et seq.* are cumulative to the remedies and penalties available under all other laws
 8 of this state.

9 **FIFTH CAUSE OF ACTION**

10 Civil Penalties, Cal. Lab. Code §§ 2698 *et seq.*

11 (On Behalf of Plaintiff, the State of California and on behalf of the Aggrieved Employees
 12 Against Defendants Wal-Mart Stores, Inc. and Walmart, Inc.)

13 61. Plaintiff realleges and incorporates herein by reference the allegations
 14 contained in this Complaint as though fully set forth herein.

15 62. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
 16 Defendant during the applicable statutory period and suffered one or more of the Labor
 17 Code Violations set forth herein. Accordingly, he seeks to recover on behalf of himself
 18 and all other current and former Aggrieved Employees of Defendant, the civil penalties for
 19 which provision is made by PAGA, as well as reasonable attorney’s fees and costs.

20 63. Pursuant to section 2699.3(a)(1) of the Labor Code, on November 28, 2018,
 21 Plaintiff gave written notice to the California Labor and Workforce Development Agency
 22 (“LWDA”) of the specific provisions of the Labor Code alleged to have been violated by
 23 Defendants, including the theories set forth in the Complaint and this First Amended
 24 Complaint. Also on that day, Plaintiff gave written notice by certified mail to Defendant of
 25 the specific provisions of the Labor Code alleged to have been violated by Defendant.

26 64. More than sixty-five days have passed from the date of Plaintiff’s notice to
 27 the LWDA and Plaintiff has not been notified by the LWDA that it intends to investigate
 28 Plaintiff’s allegations. Therefore, Plaintiff, pursuant to section 2699.3(a)(2)(A), “may

commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A).

65. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

66. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to provide itemized wage statements to Aggrieved Employees in violation of Labor Code § 226(a), not even identifying the legal name and address of the employer;
- b. Failure to timely pay all wages due to Aggrieved Employees in violation of Labor Code §§ 201, 202, 203 and 227.3.
- c. Failure to pay reporting-time pay in violation of Labor Code §§ 204 and 1198.

67. Labor Code §§ 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including the applicable Wage Order.

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court certify the proposed Class.
2. With respect to the First Cause of Action, that it be adjudged that the failure of Defendant to make payments of wages in accordance with sections 201, 202, 203, and 227.3 of the Labor Code was and is “willful” as that word is used in section 203 of the Labor Code and that the Court award Plaintiff and Class Members continuing wages for up to thirty days, as well as attorney’s fees and costs pursuant to section 218.5 of the Labor Code.
3. With respect to the Second Cause of Action, that the Court enter judgment in favor of Plaintiff and Class Members in an amount to be established by proof, as well as costs and attorney’s fees, in accordance with section 226(e) of the Labor Code.

1 4. With respect to the Third Cause of Action, that it be adjudged that the failure
2 of Defendant to make payment of Plaintiff and Class Members' reporting-time wages
3 was in violation of sections 204 and 1198 and Industrial Welfare Commission Wage
4 Order 7 and entitles Plaintiff to a judgment against Defendant in the amount according to
5 proof, interest, and attorneys' fees and costs pursuant to section 218.5 of the Labor Code.

6 5. With respect to the Fourth Cause of Action, that it be adjudged that the
7 failure of Defendant to make payments of wages in accordance with sections 201, 202,
8 203, 204, 227.3, and 1198 of the Labor Code and Industrial Welfare Commission Wage
9 Order 7 violated section 17200 *et seq.* of the Business and Professions Code.

10 6. With respect to the Fifth Cause of Action, that the Court award Plaintiff and
11 other Aggrieved Employees their civil penalties, attorneys' fees and costs of suit, all
12 according to proof, pursuant to Labor Code Section 2698, *et seq.* Accordingly, Plaintiff
13 requests that the Court order Defendant to pay restitution to Members of the Class in the
14 form of the wages and continuing wages unlawfully retained by Defendant, with interest.
15 Finally, Plaintiff requests that the Court award him reasonable attorney's fees and costs
16 incurred in the prosecution of the fourth cause of action pursuant to section 1021.5 of the
17 Code of Civil Procedure.

18 7. For such other and further relief as this Court may deem fit and proper.

19 8. Plaintiff demands a trial by jury as to all causes of action.
20

21 DATED: April 18, 2019

HARRIS & RUBLE

22 /s/ Alan Harris

23 Alan Harris
24 Attorney for Plaintiff
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury as to all causes of action.

DATED: April 18, 2019

HARRIS & RUBLE

/s/ Alan Harris

Alan Harris
Attorney for Plaintiff

Index to Exhibits

Exhibit 1 – Labor Code section 2810.5 Notice to Employee

Exhibit 2 – Plaintiff’s Statement of Final Wages.

Exhibit 3 – November 28, 2018 PAGA letter to the California Labor & Workforce Development Agency

Exhibit 4 – Wal-Mart Associates, Inc. Statement of Information as filed with the California Secretary of State, dated September 6, 2018.

Exhibit 1

NOTICE TO EMPLOYEE**Labor Code section 2810.5**

Effective January 1, 2012, California Labor Code section 2810.5(a) requires that the following information be provided to each employee at the time of hire in the language the employer normally uses to communicate employment-related information. Exceptions to this requirement are indicated on the next page.

This notice is available in other languages at www.dir.ca.gov/DLSE.

EMPLOYEE

Employee Name: ROACH, LARRY D Hire Date: _____

EMPLOYER

Name of Employer: Wal-Mart Stores, Inc.

Business form of Employer: Corporation

Other Name Employer is doing business as (if applicable): _____

dba Wal-Mart Supercenter, Wal-Mart Neighborhood Market, Wal-Mart, Wal-Mart Vacations, Sam's Club, Wal-Mart Distribution Center #7033

Physical Address of Main Office: 702 SW 8th Street

City: Bentonville State: AR Zip: 72716

Facility Address: _____

Employer's Mailing Address: Same as above

Facility City: _____

Employer's Telephone Number: (479) 273-4000

Facility State: _____ Facility Zip: _____

The worksite employer does not use any other business entity to hire employees or administer wages or benefits.

WAGE INFORMATION

Rate of Pay: 11.00 Overtime Rate of Pay*: 16.50

Other rate(s) of pay

\$ _____ per hour for Sunday Premium

*The overtime rate is 1.5 times the rate of pay. If you work (a) over 12 hours in a day; or (b) a seventh consecutive day and over 8 hours on that day, you will be paid 2 times the rate of pay. The overtime rate may vary if you receive compensation other than the stated rate of pay. Such compensation may include:

- Sunday Premium Pay (associates hired after January 1, 2011 are not eligible)
- A different rate of pay due to a temporary assignment to a different shift or position
- Awards or bonuses

Rate by (check box): ☐ Hour ☐ Shift ☐ Day ☐ Week ☐ Salary ☐ Piece rate ☐ Commission

☐ Other (provide specifics): _____

Employment agreement* is (check box): ☐ Oral ☐ Written

*The agreement is the contract of employment defined by Cal. Lab. Code 2750. Employment with Wal-Mart is on an at-will basis, and Wal-Mart may change the starting rate of pay at its discretion, consistent with applicable law. Other terms of employment may be communicated either orally or in writing, but are not agreements unless required by law.

No allowances are claimed as part of minimum wage.

Regular Pay Day: _____ First Pay Day _____ Pay is biweekly thereafter.

Exhibit 2

Statement of Final Pay

Wal-Mart Associates, Inc. 702 S.W. 8th St., Bentonville, Arkansas 72716.

*****8372

LARRY D ROACH

Payee

LARRY D ROACH

Type

WSCHK

Account #**Amount**

863.28

Amount Due To Associate

863.28

Date

11-17-2018

W4 Withholding:**Tax Method:****Pay Category:****Exemptions:****Additional Withholding:**

Federal

Married

Hourly

4

\$0.00

Note: State and local W4 information is not available at this time.

Description	Rate	Hours	Earnings	Year to Date	Type of Deductions	Taxes / Deductions	Year to Date
REGULAR EARNING	\$11.0000	39.27	\$431.97	\$13,934.58	FEDERAL TAX	\$0.00	\$30.40
OVERTIME EARN	\$16.5000	0.20	\$3.30	\$1,773.64	SOCIAL SECURITY	\$71.88	\$1,245.30
CA MEAL PREM			\$0.00	\$66.00	CALIFORNIA	\$0.00	\$0.00
PTO P/O UNUSED	\$11.0000	45.84	\$504.24	\$504.24	SDI	\$4.35	\$157.77
					CRED GARN CGPN	\$0.00	\$287.29
					ADMIN FEE	\$0.00	\$6.00
					CHECK DEPOSIT	\$0.00	\$13,623.11

	Earnings	Taxes	Deductions	Net Pay	Advice No.	Amt. Due Associate
Current	\$939.51	\$76.23	\$0.00	\$863.28	232752198	\$ 863.28
Year to Date	\$16,278.46	\$1,433.47	\$293.29	\$14,551.70		

I have reviewed the above pay stub in its entirety and certify that I have received the payment of wages and other pay currently due.

Signature:**Date:****Method of Payment:** Money Network Check**Reference #:** 1613415312**Money Network**7000 Goodlett Farms Pkwy., Suite 200
Cordova, TN 38015-4917Payable without fee or discount at
any Walmart location or at:Walmart Store #1554
3223 E. Hammer Lane
Stockton, CA 95212

Check Number

161341531

Digit

2

Date November 17, 2018

25-209
840

PAY TO THE ORDER OF

Larry Roach

\$863.38

VOID AFTER 180 DAYS

THE SUM OF

Eight hundred sixty three dollars and 38/100

DOLLARS

ISSUE NUMBER

TRANSACTION NUMBER

188899

3538001-423

This check is not valid without a TRANSACTION NUMBER. For your protection, before cashing, collect the information requested on the back of this check and call 1-866-845-9322 to verify the TRANSACTION NUMBER and dollar amount are valid.

Issued by MetaBank, Member FDIC
MetaBank, 7000 Goodlett Farms Parkway, Suite 200 Cordova, TN 38015-4917

MetaBank

⑈161341531⑈ ⑆084003997⑆ 99000013120⑈

Exhibit 3

HARRIS & RUBLE

ATTORNEYS AND COUNSELORS AT LAW

SOUTHERN CALIFORNIA OFFICE:

655 NORTH CENTRAL AVE 17th FL
GLENDALE CA 91203
TELEPHONE: 323.962.3777
FAX: 323.962.3004
www.harrisandruble.com

ALAN HARRIS
MARCELLA RUBLE*

DAVID GARRETT
PRIYA MOHAN
MIN JI GAL

*RETIRED

NORTHERN CALIFORNIA OFFICE:

116 E. BLITHEDALE AVE SUITE 2
MILL VALLEY, CA 94941
TELEPHONE: 415.388.8788
FAX: 415.388.8770

November 28, 2018

California Labor & Workforce Development Agency

Re: *Larry Roach v. Wal-Mart Stores, Inc.*, PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Larry Roach ("Plaintiff"), hereby alleges with respect to his employment with Wal-Mart Stores, Inc. and according to wage statements issued to Plaintiff and other employees, Wal-Mart Associates, Inc. (collectively "Wal-Mart"), that Wal-Mart violated provisions of the California Labor Code.

The California Labor Code requires employers to provide to its employees, among other things, itemized wage statements, and prompt payment of wages upon termination. Wal-Mart failed to comply with the California Labor Code requirements and accordingly Plaintiff seeks civil penalties on behalf of the State of California Labor and Workforce Development Agency, to be shared with all impacted employees, all in accord with the extant statutory scheme.

Wal-Mart terminated Plaintiff's employment allegedly effective November 17, 2018 but did not pay him all wages owing to him, including wages owing for November 18, 2018. In addition to failing to pay Plaintiff all wages due and owing at the end of his employment, Wal-Mart has failed to pay its quitting and discharged Aggrieved Employees as required by sections 201, 202 and 203 of the Labor Code. Specifically, Wal-Mart's policy and practice is to pay its quitting and discharged Aggrieved Employees not on the date that the Aggrieved Employee quits or is terminated, but rather at a later date. Further, upon information and belief, Plaintiff alleges that Wal-Mart fails to timely pay its resigning and discharged Aggrieved Employees all accrued vacation pay and reporting time wages.

Wal-Mart failed to pay Plaintiff proper reporting time pay for his last day of work. Plaintiff reported for work on November 18, 2018 as scheduled by Defendant. When Plaintiff arrived for work that day, he was told he was terminated. However he was not paid proper reporting time work for that day.

At all relevant times herein, section 201 of the California Labor Code has stated that, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Similarly, section 202 of the Labor Code has stated that, “[i]f an employee . . . quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Id. § 202(a). According to section 203 of the Labor Code, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201[or] 202, . . . 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 therefor is commenced; but the wages shall not continue for more than 30 days.” Id. § 203(a).

At all relevant times herein, section 227.3 of the California Labor Code has stated: [W]henever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served

Id. § 227.3.

Wal-Mart did not compensate Plaintiff as required by sections 201 through 203 of the Labor Code, nor did Wal-Mart compensate her as required by section 227.3 of the Labor Code.

In addition to failing to pay Plaintiff and the Aggrieved Employees on the date contemplated by sections 201 through 203 of the Labor Code, Wal-Mart failed to provide Plaintiff and the Aggrieved Employees pay stubs that contain all of the information required by section 226 of the Labor Code. Section 226 states:

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, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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.

Cal. Lab. Code § 226(a). Plaintiff’s Statement of Final Pay shows that Wal-Mart fails to designate on certain wage statements the information required by Cal. Lab. Code § 226(a), such as the inclusive dates of the period for which the employee is paid. Further, Plaintiff’s Statement of Final Pay shows that the wage statement list Wal-Mart Associates, Inc. on the wage statement, rather than Plaintiff’s employer, Wal-Mart Stores, Inc.

Specifically, Plaintiff contends that Sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 1194 and 2699 et seq., of the California Labor Code enables him to recover civil penalties under

PAGA, as well as attorneys' fees and costs from Defendant through a civil action on behalf of himself and other Aggrieved Employees. Labor Code Section 2699.3 provides:

(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirement have been met:

(1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violations within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2599.

Plaintiff will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009). The enclosed draft Complaint includes additional detail regarding the labor code violations experienced by Plaintiff. These labor violations include:

- a. failure to provide itemized wage statements to Aggrieved Employees in violation of Labor Code § 226(a);
- b. failure to provide prompt payment of wages upon termination and/or resignation of Aggrieved Employees in violation of Labor Code §§ 201, 202, 203;
- c. failure to pay reporting time wages in violation of the applicable Industrial Wage Order; and
- d. failure to pay vacation pay in violation of Labor Code § 227.3.

Based on further investigation, Plaintiff may seek civil penalties for other violations committed by Defendant.

Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to Aggrieved Employees pursuant to Labor Code § 558(a)(3).

Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

Please advise whether you will proceed with an investigation of this matter or whether Plaintiff may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through his private counsel.

Very truly yours,



Alan Harris

Cc: (Via Certified Mail) Wal-Mart Stores, Inc. and Wal-Mart Associates, Inc. c/o Registered Agent CT Corporation System, 818 W. 7th Street, Ste. 930, Los Angeles, CA 90017; Wal-Mart Stores, Inc. and Wal-Mart Associates, Inc., Legal Dept., 702 S.W. 8th Street, Bentonville, AR 72716-0215

Exhibit 4



State of California Secretary of State

Statement of Information

(Foreign Corporation)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

F

G023969

FILED

In the office of the Secretary of State
of the State of California

SEP-06 2018

1. CORPORATE NAME

WAL-MART ASSOCIATES, INC.

2. CALIFORNIA CORPORATE NUMBER

C1990849

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 13**.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE
702 SW 8TH STREET, BENTONVILLE, AR 72716

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE
SCOTT SCHMIDT 702 SW 8TH STREET, BENTONVILLE, AR 72716

8. SECRETARY ADDRESS CITY STATE ZIP CODE
GORDON Y. ALLISON 702 SW 8TH STREET, BENTONVILLE, AR 72716

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE
MATTHEW ALLEN 702 SW 8TH STREET, BENTONVILLE, AR 72716

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS [Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.]
C T CORPORATION SYSTEM

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

Type of Business

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
PAYROLL PROCESSING FOR ASSOCIA

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

09/06/2018

KELLY LETTMANN

POWER OF ATTORNEY

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE