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October 4, 2021

California Labor & Workforce Development Agency

Re: *Michelle Roach v. Walmart, Inc.*, PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Michelle Roach ("Plaintiff"), hereby alleges with respect to her employment with Walmart, Inc., Wal-Mart Stores, Inc. and 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.

Plaintiff alleges that Wal-Mart has terminated the employment of aggrieved employees without paying them all wages due and owing at the end of their employment, Wal-Mart has failed to pay its quitting and discharged Aggrieved Employees as required by sections 201 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.

Wal-Mart also has failed to pay Plaintiff and Aggrieved Employees proper reporting time pay.

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 does not compensate Aggrieved Employees as required by sections 201 through 203 of the Labor Code, nor does Wal-Mart compensate Aggrieved Employees as required by section 227.3 of the Labor Code.

In addition to failing to pay 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 and Aggrieved Employees’ wage statements show 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, all accumulated reporting-time and/or vacation pay earned in the employee’s final wage statement, and the correct name and address of the entity that is the employer.

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

Specifically, Plaintiff contends that Sections 201, 203, 204, 227.3 and 2699 *et seq.*, of the California Labor Code enables her to recover civil penalties under PAGA, as well as attorneys' fees and costs from Defendant through a civil action on behalf of herself 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). Plaintiff will seek 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);
- b. failure to provide prompt payment of wages upon termination and/or resignation of Aggrieved Employees in violation of Labor Code §§ 201, 202, 203;

Facts supporting Plaintiff's claims are detailed in the First Amended Complaint filed in Mays v. Wal-Mart Stores, Inc., C.D. Cal. Case No. 2:18-CV-02318-AB-KK and the First Amended Complaint filed in Roach v. Wal-Mart Stores, Inc., C.D. Cal. Case No. 5:18-CV-02536-AB-KK. Copies of the First Amended Complaints filed in Mays and Roach are attached hereto and incorporated by reference. In Mays, the Court certified a wage statement class based on plaintiff's theory that Defendant did not include the proper name and address of the employer on its wage statements. This decision was later reversed on appeal on standing grounds. See Mays v. Wal-Mart Stores, Inc., 330 F.R.D. 562, 584 (C.D. Cal. 2019), rev'd and remanded, 804 F. App'x 641 (9th Cir. 2020)

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 her private counsel.

Very truly yours,

A handwritten signature in cursive script that reads "Alan Harris".

Alan Harris

Enclosures.

Cc: (Via Certified Mail) Walmart, Inc. and Wal-Mart Associates, Inc. c/o Registered Agent CT Corporation System, 818 W. 7th Street, Ste. 930, Los Angeles, CA 90017