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REBECCA WELKER and SAMUEL RUVALCABA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

REBECCA WELKER and SAMUEL
RUVALCABA, on behalf of all similarly
aggrieved employees,

Plaintiffs,

v.

WAL-MART ASSOCIATES, INC.; and
DOES 1 through 50, inclusive,
Defendants.

Case No. **23CV409397**

REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
(Labor Code § 2698 *et seq.*)**

COMES NOW Plaintiffs REBECCA WELKER and SAMUEL RUVALCABA (“Plaintiffs”) on behalf of themselves and all current and former aggrieved employees (collectively referred to as the “employees”), who complains and alleges against the above-captioned Defendants as follows:

1. Plaintiff REBECCA WELKER (“Plaintiff Welker”) is a competent adult who is, and at all times mentioned in this complaint has been, employed by Defendants in the State of California. Plaintiff Welker was employed by Defendants from approximately October 2021, through the present, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and always as an employee not exempted from the California Labor Code.

2. Plaintiff SAMUEL RUVALCABA (“Plaintiff Ruvalcaba”) is a competent adult who is, and at all times mentioned in this complaint has been, employed by Defendants in the State of California. Plaintiff Ruvalcaba was employed by Defendants from March 18, 2022, through approximately March 30, 2022, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and at all times as an employee not exempted from the California Labor Code.

3. Defendant WAL-MART ASSOCIATES, INC. (“WALMART”) is, and at all times mentioned in this complaint has been, a corporation incorporated under the laws of the State of Delaware and registered to do business in the State of California. Plaintiffs are informed and believe and thereon allege that WALMART is authorized to and does conduct business in numerous counties throughout the State of California, has purposefully availed itself of the privileges and benefits of doing business in the State of California.

4. Plaintiffs are ignorant of the true names, identities, capacities and relationships of the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants

1 by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of
2 these fictitiously named Defendants are responsible in some manner for the occurrences herein
3 alleged, and that Plaintiffs' damages as herein alleged were proximately caused by DOES 1
4 through 50. Plaintiffs will amend this Complaint to allege the true names and capacities of
5 said DOE Defendants when such information is ascertained. Each reference to "Defendants,"
6 and each reference to any particular Defendant herein, shall be construed to refer to all
7 Defendants, including, but not limited to, all of those fictitiously named herein as a "DOE"
8 Defendant, and each of them.

9 5. Plaintiffs are informed and believe, and thereon allege, that each of the
10 Defendants herein was at all times relevant to this action the agent, employee, representative,
11 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
12 the Defendants herein was at all times acting within the course and scope of that relationship.
13 Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants
14 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
15 herein. The conduct of each of the Defendants was at all times herein in accordance with and
16 represents the official policy of Defendants. Additionally, at all times herein mentioned,
17 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
18 other Defendants, which proximately caused the violations herein alleged. Plaintiffs are
19 further informed and believe, and thereon allege, that all of the Defendants jointly employed
20 Plaintiffs herein and/or carried out a joint scheme, business plan and/or uniform policy, and
21 the acts and omissions of each Defendant are legally attributable to the other Defendants such
22 that they are deemed a single integrated enterprise and agents of one another so that all
23 Defendants are each jointly and severally liable for the acts and omissions hereinafter alleged.

24 6. At all times herein, Defendants directly or indirectly, or through an agent or
25 representative, exercised control over the wages, hours and/or working conditions of Plaintiffs
26 and the employees, and directly or indirectly or through an agent or other person engaged,
27 suffered, or permitted Plaintiffs and the employees to work.

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1 Regulations, title 8, section 11170) (“the Wage Order”).

2 12. At all times relevant herein, Plaintiffs and the employees were employees of
3 Defendants under the California Labor Code and were protected by to the provisions of the Wage
4 Order.

5 13. At all times relevant herein, Defendants violated Labor Code § 1024.5 by using an
6 improper background check for employment purposes. Specifically, due to the nature of Plaintiffs
7 and the employees’ jobs and employment positions, WALMART should not have used a
8 background check for their employment purposes. The positions Plaintiffs held did not allow
9 Plaintiffs to have regular access to bank/credit card information, social security numbers or dates
10 of birth; nor did Plaintiffs’ jobs allow Plaintiffs to have regular access to cash totaling ten thousand
11 dollars or more during the workday.

12 **FIRST CAUSE OF ACTION**
13 **California Labor Code Private Attorneys General Act of 2004**
14 **(California Labor Code § 2698)**
15 **(Plaintiffs against Defendant WALMART)**

16 14. Plaintiffs allege and incorporate by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth herein.

18 15. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiffs to recover
19 civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code
20 Section 2699.5.

21 16. Plaintiffs are “aggrieved employees” pursuant to Labor Code § 2699, as
22 Plaintiffs have suffered violations including, but not limited to, Labor Code §§ 1024.5, 2698 et
23 seq., and 2699(f) and (g), and the Wage Order. Defendants violated Labor Code § 1024.5 by
24 using an improper background check for employment purposes. Specifically, due to the nature of
25 Plaintiffs and the employees’ jobs and employment positions, WALMART should not have used a
26 background check for their employment purposes. The positions Plaintiffs held did not allow
27 Plaintiffs to have regular access to bank/credit card information, social security numbers or dates
28 of birth; nor did Plaintiffs’ jobs allow Plaintiffs to have regular access to cash totaling ten thousand
dollars or more during the workday.

17. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,

1 and 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seek
2 assessment and collection of civil penalties for Plaintiffs and the employees, and the State of
3 California against Defendants on behalf of themselves and the employees.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray as follows:

- 6 1. That the Court declare, adjudge and decree that Defendants violated the
7 California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 et seq.;
- 8 2. For civil penalties as prescribed by the Labor Code Private Attorneys General
9 Act of 2004;
- 10 3. For statutory penalties pursuant to California Labor Code § 2699(f);
- 11 4. For all civil penalties and reasonable attorneys' fees and costs of suit incurred
12 herein pursuant to California Labor Code § 2699(g); and
- 13 5. For such other further relief as the Court may deem equitable and appropriate.

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15 Dated: January 3, 2023

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17 By: 

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REBECCA WELKER and
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