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LAW OFFICES OF  
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December 28, 2015

VIA U.S. CERTIFIED MAIL

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94162

Subject: *Brittney Johnson v. Walmart Stores, Inc.*

Dear Representative:

This office represents Brittney Johnson in connection with her claims under the California Labor Code. Ms. Johnson was an employee of WAL-MART STORES, INC. ("WALMART").

The employer may be contacted directly:

WAL-MART STORES, INC.  
818 WEST SEVENTH STREET, STE 930  
LOS ANGELES CA 90017

The address where Ms. Johnson worked from February 18, 2014 through February 26, 2015:

WAL-MART  
12234 PALMDALE RD  
VICTORVILLE CA 92392

Ms. Johnson intends to seek civil penalties, attorneys' fees, costs and interest thereon for WALMART'S violations of the California Labor Code, which are recoverable under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, et seq. Ms. Johnson seeks relief on behalf of herself, the State of California, and other persons who were employed by WALMART in California as a non-exempt, hourly-paid employee at WALMART retail stores ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

Ms. Johnson worked for WALMART as an hourly, non-exempt employee from February 18, 2014 through February 26, 2015. Specifically, she worked as an associate in the jewelry department of the WALMART store located at 12234 Palmdale Road, Victorville, California 92392. During her tenure, Ms. Johnson was routinely prevented from taking full, ten (10) minute uninterrupted rest breaks, and she also worked off the clock when, at the conclusion of

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manager to retrieve her sales associate's keys. Ms. Johnson was not compensated for this time, either at an overtime or standard rate.

Specifically, Ms. Johnson's claims are as follows:

**Violation of California Labor Code §§ 510 and 1198**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

During the relevant time period, WALMART willfully failed to pay all overtime wages owed to Ms. Johnson and other aggrieved employees. During the relevant time period, Ms. Johnson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded. WALMART'S policy is that employees are not permitted to work overtime. However, after clocking out at the end of eight hour shifts Ms. Johnson and other aggrieved employees were required to wait off-the-clock for a management level employee to come by and retrieve their keys (*i.e.* keys to merchandise stands or other company property). As a result, Ms. Johnson and other aggrieved employees were subject to WALMART'S control until they were released by a manager. Only a manager could retrieve the keys, and Ms. Johnson and other aggrieved employees were required to wait for WALMART'S managers before leaving the premises, for as long as half an hour after they had clocked out after an eight (8) hour shift. WALMART did not compensate Ms. Johnson and other aggrieved employees for that time.

Because Ms. Johnson and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work and time spent waiting off-the-clock qualified for overtime premium pay. Therefore, Ms. Johnson and other aggrieved employees were not paid overtime wages for all of the overtime hours they worked. WALMART'S failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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Ms. Johnson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 1182.12, 1194, 1197, and 1197.1**

California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful.

As set forth above, WALMART required Ms. Johnson and other aggrieved employees to wait off-the-clock until managers retrieved corporate keys. WALMART did not pay at least minimum wages for off-the-clock hours in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, WALMART regularly failed to pay at least minimum wages to Ms. Johnson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197 and 1197.1.

Ms. Johnson and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226.7 and 512(a)**

California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7, specifically, provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

WALMART did not authorize and permit Ms. Johnson and other aggrieved employees to take all the ten (10) minute rest periods to which they were entitled. Routinely, on days Ms. Johnson worked in excess of three and one half (3.5) hours, she was not relieved of her duties and instead had to work during rest breaks even though the company's stated policy was to allow for fifteen (15) minute rest periods. Ms. Johnson and other aggrieved employees were unable to take uninterrupted rest periods because they were paged by managers and had to return to work. In Ms. Johnson's case, there was no one to cover for her, and her rest periods were dependent on

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whether or not customers were present. If customers were present, Ms. Johnson was not permitted to take rest periods at all. The arrival of one or more customers after Ms. Johnson started a rest period meant that the rest period was cancelled, oftentimes after as little as four (4) minutes, less than half the statutorily mandated time.

As a result of WALMART'S systemic scheduling policies and/or practices, Ms. Johnson and other aggrieved employees were denied ten (10) minute rest periods to which they were entitled to and Ms. Johnson regularly worked through her ten (10) minute rest periods during her employment.

WALMART also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods were not authorized and permitted. Because of this practice and/or policy, Ms. Johnson and other aggrieved employees have not received premium pay for all missed rest periods.

Ms. Johnson and other aggrieved employees are entitled to civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a) and 1174(d)**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WALMART has not provided Ms. Johnson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violations occurs and \$100 per employee for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WALMART knowingly and intentionally provided Ms. Johnson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. The wage statement deficiencies include, among other things, failing to state all hours worked as a result of not recording or stating the hours Ms. Johnson and other aggrieved employees worked off-the-clock; failing to list gross wages earned; failing to list all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate.

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California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments....” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WALMART willfully failed to maintain accurate payroll records for Ms. Johnson and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

Because WALMART failed to provide the accurate number of total hours worked on wage statements as a result of failing to record time during which Ms. Johnson and other aggrieved employees were subject to WALMART’S control after clocking out, Ms. Johnson and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Johnson and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Johnson and other aggrieved employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 204**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly,

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biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WALMART failed to pay Ms. Johnson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Johnson and aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 201, 202, and 203**

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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. WALMART willfully failed to pay Ms. Johnson and other aggrieved employees who are no longer employed by WALMART all their earned wages, including, but not limited to, overtime wages, minimum wages, and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving WALMART'S employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Johnson and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

**Violation of California Labor Code § 2810.5**

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday, the name of the employer, including any "doing business as" names used by the employer, the physical address of the employer's main office or principal place of business, the telephone number of the employer, the name, address, and telephone number of the employer's workers' compensation insurance carrier. Effective January 1, 2015, an employer's written notice pursuant

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to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WALMART failed to provide Ms. Johnson and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5. WALMART'S failure to provide other aggrieved employees with written notice of basic information regarding their employment with WALMART is in violation of Labor Code section 2810.5. Ms. Johnson and other aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

**California Labor Code § 558(a)**

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee." Labor code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." WALMART, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Johnson's and other aggrieved employees' rights by violating various sections of the California Labor Code and applicable IWC wage orders.

Accordingly, Ms. Johnson seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Ms. Johnson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against WALMART for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Johnson seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

LAW OFFICES OF  
**MARK YABLONOVICH**

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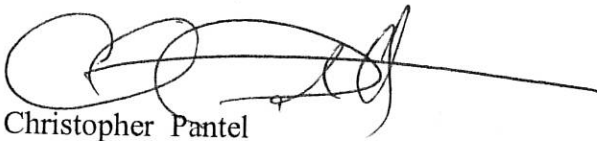
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Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Christopher Pantel  
Law Offices of Mark Yablonovich  
1875 Century Park East, Suite 700  
Los Angeles, CA 90067  
(310) 286-0246

Very Truly Yours,



Christopher Pantel

LAW OFFICES OF MARK YABLONOVICH

Copy: WAL-MART STORES, INC. (via Certified Mail)

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