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June 4, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/411>)

Subject: *Carlos Sierra v. Wal-Mart Associates, Inc., et al.*

Dear PAGA Administrator:

This office represents Carlos Sierra in connection with his claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Mr. Sierra was an employee of WAL-MART ASSOCIATES, INC. and/or WALMART INC. For the purpose of this letter, Mr. Sierra collectively refers to these entities as "WALMART."

The employers may be contacted directly at the addresses below:

WAL-MART ASSOCIATES, INC.
702 SW 8TH STREET
BENTONVILLE, AR 72716

WALMART INC.
1 CUSTOMER DR
BENTONVILLE, AR 72716

Mr. Sierra intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Sierra seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WALMART as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WALMART employed Mr. Sierra as a non-exempt employee from approximately September 22, 2019, to January 28, 2025. Mr. Sierra worked for WALMART as a Cashier at its Walmart Supercenter location in Bakersfield, California (5075 Gosford Road, Bakersfield, California 93313). Mr. Sierra typically worked four (4) hours or more per day and four (4) to five (5) days per week. Mr. Sierra's job duties included, without limitation, operating the cash register, performing customer service functions, and replacing bags in the bagging area.

WALMART committed each of the following Labor Code violations against Mr. Sierra, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).¹ Mr. Sierra’s relevant claims are as follows:

WALMART’s Company-Wide and Uniform HR Practices

WAL-MART ASSOCIATES, INC. and WALMART INC. are Delaware corporations that operate the nation’s largest chain of retail stores under various Walmart store brands, including approximately 144 Supercenter locations, 65 Discount store locations, and 64 Neighborhood Market locations in California. Upon information and belief, WALMART maintains a centralized Human Resources (HR) department at its corporate headquarters in Bentonville, Arkansas, for all non-exempt employees working for WALMART at retail stores in California, including Mr. Sierra and other aggrieved employees. WALMART maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Mr. Sierra and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Industrial Welfare Commission (“IWC”) Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

¹ These facts, theories, and claims are based on Mr. Sierra’s experience and counsel’s review of those records currently available relating to Mr. Sierra’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Sierra reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

WALMART's California retail stores are generally similar in their layout and design, and there was, and continues to be, space at the cashwraps would allow for the presence and use of a seat or stool by Mr. Sierra and other aggrieved employees during the performance of their work duties at these cashwraps. However, WALMART designed its cashwraps to require Mr. Sierra and other aggrieved employees to stand while performing their work duties at those locations. WALMART could have designed its cashwraps in a manner that allowed Mr. Sierra and other aggrieved employees to sit while performing their duties and could have placed suitable seats or stools at or near each cashwrap for use by Mr. Sierra and other aggrieved employees. Instead, WALMART designed its cashwraps to require Mr. Sierra and other aggrieved employees to stand at the work area(s) and did not provide suitable seats or stools they could use while working at the cashwrap. In addition, WALMART prohibited Mr. Sierra and other aggrieved employees from sitting while working, and WALMART's management did not inform Mr. Sierra and other aggrieved employees that they could utilize seats while performing their duties.

During his employment, Mr. Sierra performed cashiering duties at the cashwrap and spent a significant portion of his day behind the cashwrap. Other aggrieved employees similarly spent a portion of their day at cashwraps performing cash register duties. The nature of the work of an employee performing cashier and/or customer service duties can reasonably be accomplished from a seated position. Mr. Sierra and other aggrieved employees could have provided customer service, handled cash register transactions, and performed other similar tasks at cashwraps at any of WALMART's retail stores while seated without affecting the quality and effectiveness of the performance of their job duties. However, as stated, WALMART, on a company-wide basis, designed cashwraps to require employees to stand while performing their cashier duties and did not provide suitable seats at cashwraps, forcing Mr. Sierra and other aggrieved employees to stand throughout their work shifts.

WALMART violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Sierra and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. WALMART's management did not inform Mr. Sierra and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting. WALMART's failure to provide suitable seating to Mr. Sierra and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Sierra and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WALMART into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the

nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat placed within reasonable proximity to their work area under subdivision 14(B) during “lulls in operation.” *Id.*

WALMART has not placed an adequate number of suitable seats within reasonable proximity to the work areas of employees who perform duties whose nature require standing and therefore has not permitted employees to use those seats when not actively engaged in performing their standing duties (i.e., during “lulls in operation”), even though sitting would not interfere with the performance of their job duties.

During his employment, Mr. Sierra experienced lulls in his work at various times during a typical shift, especially when the store was not busy in the evening. During these lulls, when Mr. Sierra was not actively performing tasks (the nature of which require standing), Mr. Sierra could have taken a moment to sit and rest his legs, back, and feet if seating was provided. WALMART could provide Mr. Sierra and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seating and forces Mr. Sierra and other aggrieved employees to stand throughout the day. Moreover, WALMART did not inform Mr. Sierra and other aggrieved employees of their rights to a seat or stool under California law. WALMART’s failure to provide suitable seating to Mr. Sierra and other aggrieved employees within reasonable proximity of their work areas and failure to permit them to use those seats when not actively engaged in their standing duties violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Sierra and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WALMART into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Mr. Sierra, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against WALMART for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

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

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

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a long horizontal flourish extending to the right.

Alexander Lima

Copy: WAL-MART ASSOCIATES, INC. (via U.S. Certified Mail); WALMART INC. (via U.S. Certified Mail)

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