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March 27, 2019

VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Email: PAGAfilings@dir.ca.gov

**Re: Notice Pursuant to Labor Code Section 2699.3
Violation of Labor Code Section 1198 by Wal-Mart Associates, Inc.**

To Whom It May Concern:

This letter is intended to comply with the requirements of California Labor Code Private Attorneys General Act of 2004 (PAGA), California Labor Code section 2698, *et seq.*, including section 2699.3 with respect to notice of violations of the Labor Code by **Wal-Mart Associates, Inc.** (hereinafter "Wal-Mart"). Unless the Labor & Workforce Development Agency proceeds against the employer, my client, Walter Johnson, intends to pursue a civil action against the employer, seeking attorney fees and penalties under PAGA.

Claimant worked full time for Employer as a Freezer and Cooler Associate from on or about November 24, 2014 until he was terminated on or about April 19, 2018.

In approximately early 2017, Claimant complained to Manager Claudia [LNU], Manager Leslie [LNU], and Supervisor Ozzy [LNU] about the rotted wooden threshold believing that someone could get hurt if a pallet jack or other piece of equipment became stuck on it. No repairs were made.

On or about September 23, 2017, Claimant suffered injuries at work, including, but not limited to, strained abdominal muscles and an inguinal hernia, when an ice pallet he was moving became stuck on the rotted wooden threshold between the freezer and store. Claimant's doctor released him to return to work on September 24, 2017 with restrictions including, but not limited to, no lifting, pushing, or pulling over 10 pounds and the ability to change positions to relieve discomfort. Claimant returned to work. Each time Claimant received a doctor's note, he submitted it to Employer.

On or about October 2, 2017, Claimant's doctor released him to return to work with restrictions including, but not limited to, sitting 50% of his shift, no lifting, pushing, or pulling over 10 pounds and the ability to change positions to relieve discomfort. Claimant took his

October 2, 2017 doctor's note to Personnel Manager [REDACTED] who told him that the restrictions regarding sitting were not possible. [REDACTED] called General Manager [REDACTED] in Claimant's presence and reiterated that there were no positions in which he could sit for half his shift.

Claimant was moved to various positions as an attempt to accommodate, many requiring him to stand the entire shift, when Employer stated that Claimant could no longer be accommodated and placed him on a leave of absence on October 19, 2017. On or about November 7, 2017, Claimant was placed off work by Dr. [REDACTED] Chin until after surgery for his hernia which was scheduled for February 23, 2018.

On or about February 13, 2018, Claimant received another doctor's note from Dr. Chin again stating that Claimant could not return to work until after surgery. On or about February 16, 2018, [REDACTED] contacted Claimant and informed him that his work restrictions had been changed and that he would need to return to work. [REDACTED] told Claimant words to the effect that the insurance company contacted Dr. Chin and had the work restrictions changed from no work to no lifting, pushing, or pulling over 10 pounds until Claimant's surgery on February 23, 2018. Goodwin told Claimant that he would be deemed to have voluntarily quit his position if he did not return to work. Claimant reported to work on or about February 18, 2018.

Claimant reported for surgery on or about February 23, 2018. Claimant's doctor stated that it appeared that Claimant had a heart attack that same day and that he could not perform the surgery. The surgery was then postponed. Later on or about February 23, 2018 and without Claimant informing Employer that the surgery had been postponed, [REDACTED] called Claimant to demand he return to work immediately on February 23, 2018.

On or about February 26, 2018, Claimant reported to work and was given duties including, but not limited to, floor duties, go backs, member services, gathering boxes, and cleaning. Employer required Claimant to stand all day. After a few days, Manager [REDACTED] [LNU] informed Claimant that he could only work as a cashier in the food court where he was required to stand the entire day. Manager [REDACTED] [LNU], [REDACTED], and [REDACTED] told Claimant there were no other positions for him and that if he did not want to work the position, he would be considered to have quit.

Claimant continued working but had to take days off for pain and medical treatment. On or about April 19, 2018, Claimant was terminated for alleged "excessive absences."

Claimant believes Employer violated Labor Code § 1198 and 8 CCR §§ 11040, 11070.

Labor Code section 1198 required 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, sections 11040(14)(A) and 11070(14)(A) provided that "[a]ll working

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employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." California Code of Regulations, Title 8, sections 11040(14)(B) and 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." Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, sections 11040(14) and 11070(14) because Plaintiff was not permitted to sit during times when sitting would not interfere with his duties. Defendants do not provide chairs at cash register work stations or in other departments. As a result, although there were times that Plaintiff could have sat without otherwise interfering with their job duties, but he was unable to sit as a result of Defendants' failure to provide adequate seating.

As a direct and proximate result of the forgoing (set forth without limitation), Claimant has suffered severe emotional distress and other damages, including but not limited to, loss of back pay, front pay, and other financial losses. Claimant is thus entitled to applicable damages, penalties, attorneys' fees, and interest set forth in PAGA, Cal. Labor Code section 2698, *et seq.* We would appreciate hearing from the Labor & Workforce Development Agency at your earliest convenience.

Very truly yours,

THE MYERS LAW GROUP, A.P.C.



David P. Myers, Esq.

Attorneys for Walter Johnson

cc: Wal-Mart Associates, Inc.
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Bentonville, AR 72716