

TORUS LLP

December 21, 2023

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorneys General Act – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Walmart Inc.
C T Corporation System, Registered Agent for Service of Process
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Re: *Evelyn Boyce v. Walmart Inc., et al.*

Dear California Labor and Workforce Development Agency and Walmart Inc.:

Please be advised that Torus LLP represents Evelyn Boyce (“Claimant”). Claimant intends to seek penalties individually and on behalf of all other aggrieved employees against her former employer Walmart Inc. (“Employer”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698 *et seq.* This correspondence serves as Claimant’s written notice by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the Employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code Section 2699.3(a)(1).

Specific Provisions of the Labor Code Alleged to Have Been Violated

Claimant alleges Employer has violated Labor Code Sections 98.6, 201, 202, 203, 204, 206, 210, 221, 222.5, 223, 224, 226, 226.3, 226.7, 227.3, 230, 230.1, 232.5(c), 233, 234, 246, 351, 353, 510, 511, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804, and 2806.

Facts and Theories Supporting the Alleged Violations

Employer employed Claimant as a non-exempt employee in California within the past year. Specifically, Employer employed Claimant as a deli associate whose job duties consisted of, *inter alia*, ensuring products are available in deli, packing ready-to-sell products in proper containers and stock displays, preparing and serving ready-to-eat food, assisting customers in fulfilling deli orders, and keeping the deli area clean, sanitized, and customer-ready.

Employer employed and/or currently employs other aggrieved employees as exempt and non-exempt employees in California. The aggrieved employees consist of all employees employed

by Employer during the “PAGA Period,” which is defined as commencing from one year prior to the submission of this letter to the LWDA and certified mailing to Employer through the present.

During the PAGA Period, Employer failed to pay Claimant and/or other aggrieved employees minimum, regular, overtime, and/or double time wages for all hours worked at the legally mandated rates. During the PAGA Period, Claimant and/or other aggrieved employees regularly worked more than eight (8), 10, and/or 12 hours per workday and/or over 40 hours per workweek. Employer’s practices and policies deprived Claimant and/or other aggrieved employees of minimum, regular, overtime, and/or double time wages for work they performed off the clock. Employer required Claimant and/or other aggrieved employees to complete work-related tasks off the clock, such as communicating with Employer. Furthermore, Employer rounded Claimant and/or other aggrieved employees’ hours worked, thereby depriving them of wages for all hours worked at the legally mandated rates. Employer did not compensate Claimant and/or other aggrieved employees for all hours worked because Claimant and/or other aggrieved employees were regularly on-duty during their meal and/or rest periods. Finally, Employer failed to accurately calculate the regular rate of pay by, among other things, failing to include a remuneration when calculating the rate of pay for overtime, double time, meal and rest period premiums, vacation pay, and sick pay. Accordingly, Employer failed to pay Claimant and/or other aggrieved employees the proper minimum, regular, overtime, and double time wages for all hours worked, sick pay, and vacation pay, in violation of Labor Code Sections 204, 206, 210, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198, the applicable IWC Wage Orders and California Code of Regulations, and any applicable local or municipal ordinances or regulations.

During the PAGA Period, Employer failed to authorize and permit and/or make available to Claimant and/or other aggrieved employees timely off-duty 30-minute meal periods within the appropriate time intervals required by Labor Code Section 512 and Section 11 of the applicable IWC Wage Order(s). Specifically, Claimant and/or other aggrieved employees frequently had their meal periods shortened, interrupted, late, and/or missed altogether due to Employer’s practice of understaffing and prioritizing work demands over taking compliant breaks. Employer also failed to authorize and permit and/or make available to Claimant and/or other aggrieved employees second meal periods when they worked more than 10 hours. Moreover, Employer rounded Claimant and/or other aggrieved employees’ time punches for meal periods. Accordingly, Employer failed to authorize and permit and/or make available to Claimant and/or other aggrieved employees timely, uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Claimant and/or other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they were denied a compliant meal period, in violation of Labor Code Sections 226.7 and 512, and the applicable IWC Wage Orders.

During the PAGA Period, Employer failed to authorize and permit and/or make available ten-minute rest periods for every four (4) hours or major fraction thereof worked. Employer failed to implement a compliant rest break policy and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. Claimant and/or other aggrieved employees missed their rest breaks or had them interrupted or governed by Employer’s practices and policies. Specifically, Employer never scheduled rest breaks for Claimant and/or other aggrieved employees and Claimant and/or other aggrieved employees were never authorized and permitted to take rest

breaks. Employer also failed to adopt and implement a practice of providing third rest breaks when Claimant and/or other aggrieved employees worked over 10 hours. Notwithstanding the above rest break violations, Employer failed to compensate Claimant and/or other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they suffered a rest period violation. Accordingly, Employer violated Labor Code Section 226.7 and the applicable IWC Wage Orders.

During the PAGA Period, Employer failed to reimburse Claimant and/or other aggrieved employees for all business expenses incurred for Employer's benefit. First, Claimant and/or other aggrieved employees were required to use their personal cell phones to discuss work-related matters with Employer's representatives and for other work purposes without any reimbursement. Second, aggrieved employees who worked remotely were required to incur expenses for home internet service, electricity, and the purchase and/or maintenance of all hardware used for work-purposes, including laptops, keyboards, mouses, and Bluetooth headsets, used by the employees in the discharge of their job duties without any reimbursement. Similarly, Claimant and/or other aggrieved employees were required to incur expenses for home internet service and similar costs to view critical documents and policies concerning employment benefits because Employer and/or its agents only made such documents and policies available online. Accordingly, Employer violated Labor Code Sections 2800, 2802, and 2804.

During the PAGA Period, Employer discontinued coverage for medical, surgical, or hospital benefits for employees without notifying and advising all covered employees in writing of any discontinuation of coverage, inclusive of nonrenewal and cancellation, but not inclusive of employment termination or cases in which substitute coverage has been provided, at least 15 days in advance of such discontinuation. Accordingly, Employer violated Labor Code Section 2806.

During the PAGA Period, Employer failed to calculate and pay sick pay at the regular rate of pay for the workweek in which Claimant and/or other aggrieved employees used paid sick time, or by dividing the Claimant and/or other aggrieved employees' total wages, not including overtime premium pay, by the Claimant and/or other aggrieved employees' total hours worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014. Accordingly, Employer violated Labor Code Sections 226, 226.3, 1174, and 1174.5.

During the PAGA Period, Employer failed to permit Claimant and/or other aggrieved employees to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5. Accordingly, Employer violated Labor Code Sections 233 and 234.

During the PAGA Period, Employer failed to provide to Claimant and/or other aggrieved employees accrual of vacation wages and failed to pay to Claimant and/or other aggrieved employees vested vacation wages. Accordingly, Employer violated Labor Code Section 227.3.

During the PAGA Period, as a result of, and in addition to, the foregoing Labor Code violations, Employer secretly paid Claimant and/or aggrieved employees less than the statutory or

contractual rate. Accordingly, Employer violated Labor Code Sections 221, 223, and 234.

As a result of, and in addition to, the Labor Code violations, Employer failed to provide accurate itemized wage statements that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. As a result, Employer violated Labor Code Sections 226 and 226.3. Similarly, Employer failed to maintain accurate and complete records showing the hours worked daily by and the wages paid to Claimant and/or aggrieved employees due to the violations described above. Accordingly, Employer violated Labor Code Sections 1174 and 1174.5.

As a result of, and in addition to, the foregoing Labor Code violations, Employer failed to timely pay all wages owed throughout Claimant and/or other aggrieved employees' employment and following the end of their employment. Accordingly, Employer violated Labor Code Sections 201-204, and 210.

During the PAGA Period, Employer failed to properly pay out Claimant and/or other aggrieved employees' tips earned during regular working hours. Employer made unlawful deductions to Claimant and other aggrieved employees' tips. Accordingly, Employer violated Labor Code Section 351.

During the PAGA Period, Employer failed to keep accurate records of all gratuities, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Accordingly, Employer violated Labor Code Section 353.

During the PAGA Period, Employer violated Labor Code Section 222.5 for failure to pay costs to Plaintiff and/or other aggrieved employees for mandatory drug tests and/or physical examinations.

During the PAGA Period, Employer violated Labor Code Sections 1198 and 1199 and the applicable IWC Wage Order for failure to provide to Plaintiff and/or other aggrieved employees suitable seating during working hours when the nature of their work reasonably permitted the use of seats.

Every employer violates Labor Code Section 1199 if it: (a) requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. As a result of, and in addition to, the foregoing Labor Code violations, Employer has violated Labor Code Section 1199 and the applicable IWC Wage Order.

During the PAGA Period, Claimant and/or other aggrieved employees engaged in quintessential protected activity by making complaints to Employer regarding workplace conditions they reasonably believed to be illegal. For example, Claimant made protected complaints to Employer regarding a male employee sexually assaulting and battering her in the

workplace. Shortly after Claimant engaged in this protected activity, Employer discriminated, retaliated, and/or took adverse actions against Claimant, including terminating her employment. Accordingly, Employer violated Labor Code Sections 98.6, 232.5(c), and 1102.5.

Labor Code Section 230(c) prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, and/or stalking, who is a victim of a crime that caused physical injury or that caused mental injury and a threat of physical injury, or who is a person whose immediate family member is deceased as the direct result of a crime (regardless of whether there is an arrest, prosecution, or conviction for committing the crime), for taking time off from work to obtain or attempt to obtain relief to help ensure his or her health, safety, or welfare, or that of his or her child or children. Employer discharged Claimant and/or other aggrieved employees who were victims of sexual assault (a crime that caused physical injury) for taking time off from work to obtain or attempt to obtain relief to help ensure their health, safety, and welfare. Accordingly, Employer violated Labor Code Section 230(c).

Labor Code Section 230(e) prohibits an employer from discharging or retaliating against an employee because of his or her status as a victim of crime or abuse, provided that the victim provides notice to employer of the status or the employer has actual knowledge of the status. Employer discharged and retaliated against Claimant and/or other aggrieved employees who were victims of sexual assault (a crime that caused physical injury) because of their status as a victim of crime after they provided notice to Employer of their status as the victim of sexual assault or Employer had actual knowledge of such status. Accordingly, Employer violated Labor Code Section 230(e).

Labor Code Section 230(f) provide that an employer shall provide reasonable accommodations for a victim of domestic violence, sexual assault, and/or stalking, a victim of a crime that caused physical injury or that caused mental injury and a threat of physical injury, or a person whose immediate family member is deceased as the direct result of a crime (regardless of whether there is an arrest, prosecution, or conviction for committing the crime), who requests an accommodation for the victim's safety while at work. Reasonable accommodations may also include assistance in documenting domestic violence, sexual assault, stalking, or "other crime" that occurs at work, or another work adjustment in response to domestic violence, sexual assault, stalking, or "other crime." The employer shall engage in a timely, good faith, and reasonable process with the employee to determine effective reasonable accommodations. Employer failed to provide reasonable accommodations for Claimant, a victim of sexual assault (a crime that caused physical injury), and other aggrieved employees who requested a reasonable accommodation for her safety while at work. For example, after Claimant reported the sexual assault, Employer's supervisors made her finish her shift with her assaulter. Thus, Employer failed to engage in a timely, good faith, and reasonable process with Claimant and/or other aggrieved employees to determine effective reasonable accommodations. Accordingly, Employer violated Labor Code Section 230(f).

Under Labor Code Section 230.1, an employer with 25 or more employees is prohibited from retaliating against an employee who is a victim of domestic violence, sexual assault, and/or stalking, who is a victim of a crime that caused physical injury or that caused mental injury and a

threat of physical injury, or who is a person whose immediate family member is deceased as a direct result of a crime (regardless of whether there is an arrest, prosecution, or conviction for committing the crime), and who takes time off to seek medical attention, to obtain services from a domestic violence program or psychological counseling, or to participate in safety planning. Employer retaliated against Claimant and/or other aggrieved employees who were victims of sexual assault (a crime that caused physical injury) for taking time off to seek medical attention, to obtain services from a domestic violence program or psychological counseling, or to participate in safety planning. Accordingly, Employer violated Labor Code Section 230.1.

Based on these violations, Claimant will seek attorneys' fees, costs, and penalties under the Labor Code individually and on behalf of all other aggrieved employees who were employed by Employer during the PAGA Period. Please advise if the Labor and Workforce Development Agency has any objection to Claimant alleging PAGA claims in a lawsuit against Employer. Should you have any questions, comments, or concerns, please do not hesitate to contact the undersigned.

Sincerely,

TORUS LLP



David Alami

cc: Shaheen A. Etemadi