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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAY 13 2024

BY: 
Alyssa Leber, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MIQIVEL MARTIN, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; and DOES 1 through
100,

Defendants.

Case No. **CIV SB 2414887**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Miqivel Martin (“Plaintiff”), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendant Wal-Mart
3 Associates, Inc., a Delaware Corporation and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
8 *seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
11 or otherwise intentionally avail themselves to the California market so as to render the exercise
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of San Bernardino. Further, at all times relevant
18 herein Plaintiff was employed by Defendants within the County of San Bernardino.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of San Bernardino.
22 During the one year immediately preceding Plaintiff’s giving of the required notice under the
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
24 Plaintiff was employed by Defendants as a salaried exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business by operating a chain of commercial retail centers, and
28 employed Plaintiff and other similarly-situated salaried exempt employees within the County of

1 San Bernardino, and, therefore, were (and are) doing business in the County of San Bernardino
2 and the State of California.

3 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 mentioned herein, Defendants were licensed to do business in California and the County of San
5 Bernardino, and were the employers of Plaintiff and the Aggrieved Employees (as defined in
6 Paragraph 15).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are discovered.
11 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
12 whether individual, partners, or corporate, were responsible in some manner for the acts and
13 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
14 defined in Paragraph 15) to be subject to the unlawful employment practices, wrongs, injuries,
15 and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 15).

19 9. At all times herein mentioned, Defendants participated in the doing of the acts
20 hereinafter alleged to have been done by the named Defendant; and furthermore, the Defendants,
21 and each of them, were the agents, servants, and employees of each and every one of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
23 within the course and scope of said agency and employment. Defendants, and each of them,
24 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
25 complained of herein.

26 10. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 Aggrieved Employees (as defined in Paragraph 15).

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. Plaintiff was employed by Defendants as an Area Manager in Chino, California,
5 from approximately November 22, 2021, through approximately September 2023 and was
6 classified as an exempt employee during this time.

7 12. During his employment with Defendants, Plaintiff and other aggrieved employees
8 were not provided all required meal periods, which include duty-free 30-minute meal periods
9 commencing prior to the beginning of the fifth hour of work, due to Defendants' classification of
10 Plaintiff and other aggrieved employees as exempt employees. When Plaintiff and other
11 aggrieved employees worked shifts in excess of 10.0 hours, Defendants did not provide a second
12 duty-free 30-minute meal period. Moreover, Defendants did not require Plaintiff or any other
13 aggrieved employees to clock out for their meal periods, nor did they track the time that meal
14 periods were being provided.

15 13. Labor Code Section 512(a) states that: "An employer shall not employ an
16 employee for a work period of more than five hours per day without providing the employee with
17 a meal period of not less than 30 minutes, except that if the total work period per day of the
18 employee is no more than six hours, the meal period may be waived by mutual consent of both
19 the employer and employee. An employer shall not employ an employee for a work period of
20 more than 10 hours per day without providing the employee with a second meal period of not less
21 than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
22 period may be waived by mutual consent of the employer and the employee only if the first meal
23 period was not waived."

24 14. Notably, Labor Code Section 512(a) makes no distinction between exempt and
25 non-exempt employees, although Section 512(c) and (e) exclude other classes of workers, and
26 other Sections of the Labor Code (e.g., Sections 204.3, 2810.3, and 2810.5, do expressly exclude
27 exempt workers from coverage). Similarly, the DLSE Manual at Section 45.2.2 confirms that
28 Section 512(a) does not exclude any class of employee. Id. ("Note: Labor Code § 512, requiring

1 an employer to provide a meal period, does not exclude any class of employee. Consequently, it
2 would appear that exempt employees are also entitled to meal periods in accordance with that
3 section.”).

4 15. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
5 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
6 violations discussed herein.

7 **FIRST CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **(AGAINST ALL DEFENDANTS)**

10 16. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
11 fully set forth herein.

12 17. Defendants have committed several Labor Code violations against Plaintiff and
13 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
14 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
15 representative action against Defendants to recover the civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof, including, but not limited
17 to: (1) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor
18 Code § 558 per employee per pay period; and/or (2) \$100.00 for each initial violation and \$200.00
19 for each subsequent violation per employee per pay period for those violations of the Labor Code
20 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 21 a. Failing to provide meal periods to Plaintiff and other aggrieved employees in
22 violation of Labor Code § 512; and
- 23 b. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
24 employees of hours worked, including the times that they began and ended the
25 workday and the beginning and end of their meal periods, in violation of Labor
26 Code § 1174.

27 18. On or about March 7, 2024, Plaintiff notified Defendant Wal-Mart Associates,
28 Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”)

1 via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to
2 bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to
3 violations of the California Labor Code identified in Paragraph 17 (a)-(b). Now that sixty-five
4 days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted
5 his administrative requirements for bringing a claim under the Private Attorneys General Act with
6 respect to these violations.

7 19. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and the interests of other aggrieved employees, and to assess and collect the
9 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
10 he is entitled to receive under California Labor Code § 2699.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
13 this suit is brought against Defendants, jointly and severally, as follows:

14 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
15 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
16 2699(a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and \$100 for
17 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (2)
18 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
19 period for those violations of the Labor Code for which no civil penalty is specifically provided,
20 based on the Labor Code violations identified in Paragraph 17 (a)-(b);

21 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
22 2699(g) and Code of Civil Procedure § 1021.5; and

23 3. For such other and further relief the Court may deem just and proper.

24
25 Dated: May 13, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



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Sean M. Blakely
Attorneys for Plaintiff