



43364 10th Street West, Lancaster, CA 93534
Tel: 661 949 2595 Fax: 661 949 7524
www.parrislawyers.com

May 21, 2024

VIA ONLINE & BY CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Re: Walmart Inc.

Dear Representative:

The Parris Law Firm has been retained to represent Maleeh Molstad against Walmart Inc. (“Walmart”) for violations of the California Labor Code. Ms. Molstad intends to seek penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of the State of California and all current and former employees of Walmart (“Aggrieved Employees”) based on the factual and legal allegations alleged in this letter. Ms. Molstad will not be pursuing an individual PAGA claim and will only be pursuing non-individual, representative PAGA claims on behalf of the State of California and Aggrieved Employees. This letter is sent in compliance with the requirements of California Labor Code section 2699.3.

Walmart is a corporation organized and existing under the laws of the State of Delaware and conducts business throughout the State of California. Its principal place of business is located at 702 SW 8th Street, Bentonville, Arkansas 72716. A copy of this letter was mailed there to SchoolsFirst by certified mail in satisfaction of the requirement under California Labor Code section 2699.3(a)(1)(A).

Walmart employed Ms. Molstad in California as a Spark Driver to shop for and deliver groceries and merchandise from Walmart retail stores directly to customers’ homes. Spark Drivers are compensated for each delivery based on the number of miles driven and the size of the order (“Trip Earnings”). Additionally, customers have the option of leaving a tip at the time they place the order, before the orders are actually delivered. To increase the number of deliveries and maximize its profits, Walmart guarantees that 100% of the tips would be paid to the Spark Driver.

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

Attorneys – R. Rex Parris | Alexander R. Wheeler | Jason P. Fowler | Kitty K. Szeto | Khail A. Parris
Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
Artur Aziev | Misak Chanchikyan | Evan C. Khoshnou | Curtis J. Crawford
Of Counsel – Bruce L. Schechter | Daniel Eli

[Earnings](#)
[Resources](#)

English

SIGN UP

Incentives

+

Referrals

+

Tips

-

Customers might choose to include a tip and you always keep 100% of confirmed customer tips.

[Learn more →](#)

← Trip #25

Confirmed Earnings

\$15.00

Trip Earnings ⓘ

\$15.00

Confirmed Tips ⓘ

\$4.00

Trip Details

✓

In-Store Pickup at

1:45 PM, Oct. 28

Walmart San Jose #5435

777 Story Rd,

San Jose, CA 95122

✓

1st Stop

2:05 PM, Oct. 28

OSN

Order

Status

#375

#49483940199483

Delivered

Despite guaranteeing Spark Drivers would receive 100% of the tips, Walmart would reduce the Confirmed Tips to \$0.00 after the Spark Driver completes the delivery and deduct that amount from their Trip Earnings, thereby depriving Spark Drivers of their hard-earned and guaranteed Confirmed Tips. This pay scheme violates Labor Code sections 351 and 353. Ms. Molstad, like the Aggrieved Employees, was employed by Walmart, and against whom one or more of the following Labor Code violations were committed.

Labor Code section 351 states: “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.” (Lab Code, § 351.)

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

Attorneys – R. Rex Parris | Alexander R. Wheeler | Jason P. Fowler | Kitty K. Szeto | Khail A. Parris
 Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
 Artur Aziev | Misak Chanchikyan | Evan C. Khoshnou | Curtis J. Crawford
Of Counsel – Bruce L. Schechter | Daniel Eli

Labor Code section 353 states: “Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.” (Lab Code, § 353.)

“Employer” is defined as “every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.” (Lab Code, § 350, subd. (a).)

“Employee” is defined as “every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.” (Lab Code, § 350, subd. (b).)

“Gratuity” is defined as “any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron.” (Lab Code, § 350, subd. (d).)

Walmart has violated Labor Code section 351 because despite guaranteeing Spark Drivers would receive 100% of the tips, Walmart would reduce the Confirmed Tips to \$0.00 after the Spark Driver completes the delivery and deduct that amount from their Trip Earnings, thereby depriving Spark Drivers of their hard-earned and guaranteed Confirmed Tips

Walmart has violated Labor Code section 353 because it would record a customer tip as a guaranteed and Confirmed Tip but then reduce it to zero after the Spark Driver completes the delivery and deduct that amount from their Trip Earnings, and therefore, does keep accurate records of the Spark Drivers’ tips. It also does not allow Spark Drivers to access records showing how much they have earned in Confirmed Tips.

By failing to pay Spark Drivers all guaranteed Confirmed Tips, Walmart also willfully failed to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, which constitutes a violation of California Labor Code section 2698, *et seq.*

By failing to pay Spark Drivers all guaranteed Confirmed Tips, Walmart also willfully failed to timely pay wages during employment in violation of California Labor Code section 204, which constitutes a violation of California Labor Code section 2698, *et seq.*

By failing to pay Spark Drivers all guaranteed Confirmed Tips, Walmart also failed to provide compliant wage statements in violation of California Labor Code section 226(a), which constitutes a violation of California Labor Code section 2698, *et seq.*

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

Attorneys – R. Rex Parris | Alexander R. Wheeler | Jason P. Fowler | Kitty K. Szeto | Khail A. Parris
Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
Artur Aziev | Misak Chanchikyan | Evan C. Khoshnou | Curtis J. Crawford
Of Counsel – Bruce L. Schechter | Daniel Eli

California Labor Code section 226 requires employers to make, keep and provide true, accurate, and complete wage statements. The violations of this section include, without limitation, the failure to include (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

During the relevant time period, Walmart did not provide Ms. Molstad and other Aggrieved Employees with properly itemized wage statements because Walmart's wage statements failed to include the correct rates of pay due to its failure to pay the guaranteed Confirmed Tips.

By failing to pay Spark Drivers all guaranteed Confirmed Tips, Walmart also failed to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), which constitutes a violation of California Labor Code section 2698, *et seq.*

California Labor Code section 1174, subdivision (d) requires employers 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

During the relevant time period, Walmart intentionally and willfully failed to keep accurate and complete payroll records, including but not limited to, failing to keep, at a central location in the State of California or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, or the number of piece rate united earned by or any applicable piece rate paid to, employees employed at the respective plants or establishments. Walmart's payroll records are incomplete and inaccurate because Walmart failed to pay the guaranteed Confirmed Tips.

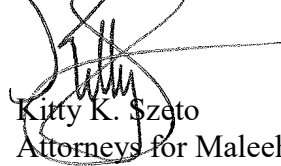
* * *

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

Attorneys – R. Rex Parris | Alexander R. Wheeler | Jason P. Fowler | Kitty K. Szeto | Khail A. Parris
Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
Artur Aziev | Misak Chanchikyan | Evan C. Khoshnou | Curtis J. Crawford
Of Counsel – Bruce L. Schechter | Daniel Eli

In light of the above, Ms. Molstad seeks, on behalf of the State of California and all Aggrieved Employees, all applicable penalties related to the above-mentioned violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

PARRIS LAW FIRM



Kitty K. Szeto

Attorneys for Maleeh Molstad

cc: Walmart Inc. (via U.S. Certified Mail)
702 SW 8th Street
Bentonville, Arkansas 72716

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

Attorneys – R. Rex Parris | Alexander R. Wheeler | Jason P. Fowler | Kitty K. Szeto | Khail A. Parris
Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
Artur Aziev | Misak Chanchikyan | Evan C. Khoshnou | Curtis J. Crawford
Of Counsel – Bruce L. Schechter | Daniel Eli