



MATERN LAW GROUP, PC

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September 24, 2024

Via Online Submission

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

**Via Certified U.S. Mail – Return
Receipt Requested**

Wal-Mart Associates, Inc.
C T Corporation System
330 N Brand Blvd Suite 700
Glendale, CA 91203

**Via Certified U.S. Mail – Return
Receipt Requested**

Wal-Mart Associates, Inc.
702 SW 8th Street
Bentonville, AR 72716

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Obed Villatoro

Employer: Wal-Mart Associates, Inc.

To Whom It May Concern:

This office represents Obed Villatoro (“Mr. Villatoro”), who was employed by Wal-Mart Associates, Inc. (“Wal-Mart”) as a Facility Service Associate from approximately March 2020 to June 2024. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001, which Mr. Villatoro alleges Wal-Mart violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A), and may lead to immediate action against Wal-Mart in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Wal-Mart.

This letter also serves as notice of Mr. Villatoro’s demand for preservation and non-spoilation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents related to Mr. Villatoro’s employment and potential

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claims be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential class and representative action on behalf of Wal-Mart’s current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, §§ 11-12; failure to pay one additional hour of compensation at the regular rate of compensation for each work day a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B); failure to pay minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 7-2001, § 4; failure to pay overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; failure to timely pay all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 7-2001, § 7; failure to indemnify for all necessary expenditure and losses in violation of Labor Code § 2802; and unlawful deductions and withholdings from employees’ wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Mr. Villatoro on behalf of herself and all other current and former non-exempt employees of Wal-Mart in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than 30 minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after 10 hours of work), or interrupted; rest periods were less than 10 minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each work day a meal period was not provided; employees were not provided one hour of pay for each work day a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the minimum wage, overtime, meal period and rest period violations and Wal-Mart’s failure to compensate its employees fully, as set forth above, employees’ wage statements were inaccurate and failed to comply with California law. In short, Wal-Mart’s unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

¹ “[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory.” *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five hours and a second meal period to any employee who works a shift of more than 10 hours. Furthermore, an employer must pay one extra hour of compensation for each work day a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have agreed in writing to on duty meal periods.

Mr. Villatoro and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 7-2001, § 11. Wal-Mart failed to provide its employees timely and uninterrupted 30-minute meal breaks. Mr. Villatoro’s and other aggrieved employees’ meal periods were short (less than 30 minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed.

Wal-Mart consistently failed to provide Mr. Villatoro and other aggrieved employees meal periods because Mr. Villatoro and other aggrieved employees were given too much work to perform to take meal periods. Mr. Villatoro and other aggrieved employees also were frequently interrupted during their meal periods and required to go back to work. Wal-Mart failed to record the time that each employee began and ended each meal period. Rather, Wal-Mart automatically deducted 30 minutes from Mr. Villatoro’s and other aggrieved employees’ wages each shift they worked, even on days Mr. Villatoro and other employees were unable to take a 30-minute meal period.

Wal-Mart failed to maintain records of the true and actual timekeeping entries of Mr. Villatoro and other aggrieved employees, in violation of Labor Code §§ 226 and 1174 and IWC Wage Order No. 7-2001, § 7, by engaging in a pattern and practice of adjusting the timekeeping entries of Mr. Villatoro and other aggrieved employees so as to make it appear Mr. Villatoro and other aggrieved employees received compliant meal periods when in fact they did not.

Wal-Mart further violated Labor Code § 226.7 and Wage Order No. 7-2001 by failing to compensate Mr. Villatoro and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each work day a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a 10-minute rest period for

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every 4 hours worked or major fraction thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each work day a rest period is not authorized and permitted.

Mr. Villatoro and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 7-2001. Wal-Mart failed to authorize and permit its employees to take required rest periods. Wal-Mart maintained a policy or practice of not authorizing and permitting Mr. Villatoro and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Wal-Mart consistently failed to authorize and permit Mr. Villatoro and other aggrieved employees to take rest breaks.

Wal-Mart further violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to pay Mr. Villatoro and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each work day a rest period was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Villatoro and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4. Wal-Mart failed to pay Mr. Villatoro and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Villatoro and other aggrieved employees to work through their meal breaks without compensation; failing to relieve Mr. Villatoro and other aggrieved employees of all duty during statutorily mandated meal and/or rest periods; illegally and inaccurately recording time worked by Mr. Villatoro and other aggrieved employees; and other methods to be discovered.

Wal-Mart's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 7-2001, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half times the regular rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh consecutive work day, with double time for all hours worked in excess of eight hours on the seventh day of any workweek, or after 12 hours in any work day.

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Mr. Villatoro and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 7-2001. Wal-Mart failed to compensate Mr. Villatoro and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; requiring, suffering or permitting Mr. Villatoro and other aggrieved employees work through meal periods without compensation; failing to relieve Mr. Villatoro and other aggrieved employees of all duty during statutorily mandated meal and/or rest periods; illegally and inaccurately recording time worked by Mr. Villatoro and other aggrieved employees; and other methods to be discovered.

In violation of California law, Wal-Mart has refused to perform its obligations to compensate Mr. Villatoro and other aggrieved employees for all wages earned and all hours worked. Wal-Mart's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Wal-Mart failed to pay Mr. Villatoro and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. For example, Wal-Mart required Mr. Villatoro and other aggrieved employees to work through required meal breaks without compensation. Additionally, Wal-Mart failed to pay Mr. Villatoro and other aggrieved employees premium wages owed for each work day a meal period was not provided and each work day a rest period was not authorized and permitted.

Wal-Mart also failed to pay Mr. Villatoro and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Wal-Mart knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. Villatoro and other aggrieved employees overtime wages on any payday.

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Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code §§ 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 days.

Wal-Mart also failed to pay Mr. Villatoro and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Wal-Mart knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. Villatoro and other aggrieved employees overtime wages on any payday.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (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, (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 (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.

Wal-Mart failed to timely provide Mr. Villatoro and other aggrieved employees accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Mr. Villatoro and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 7-2001, § 7.

Wal-Mart failed to provide its employees lawful meal and rest breaks; nevertheless, Wal-Mart failed to include in the wage statements the extra hour of compensation owed for each work day a meal break was not provided and each work day a rest break was not authorized and permitted. In addition, Wal-Mart required employees to work through meal periods and

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unlawfully deducted 30 minutes from employees' time on days employees were required to work through meal periods. Wal-Mart also did not properly calculate Mr. Villatoro's and other aggrieved employees' regular rate of pay. As a result, Mr. Villatoro's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Failure to Maintain Required Records

Wal-Mart failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 7-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Wal-Mart failed to provide its employees lawful meal and rest breaks; nevertheless, Wal-Mart failed to include in the wage statements the extra hour of compensation owed for each work day a meal break was not provided and each work day a rest break was not authorized and permitted. In addition, Mr. Villatoro and other aggrieved employees performed work during meal breaks and were compensated for such time. As a result, Wal-Mart failed to maintain accurate records of the total daily hours worked by each employee, meals periods, and when each employees began and ended each work period. Employees' wage statements also were inaccurate. In addition, Wal-Mart did not properly calculate Mr. Villatoro's and other aggrieved employees' regular rate of pay.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Wal-Mart failed to indemnify Mr. Villatoro and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Wal-Mart, including but not limited to expenses for cell phone use, mileage, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

This notice is hereby given to Wal-Mart and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

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This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Wal-Mart, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Mr. Villatoro's reasonable attempt to settle his dispute with Wal-Mart prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Wal-Mart of Mr. Villatoro's aforementioned grievances and the proposed remedies as detailed below, while affording Wal-Mart reasonable opportunity to meet Mr. Villatoro's demands.

Demand is hereby made that Wal-Mart shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Wal-Mart shall pay Mr. Villatoro and all other similarly-situated persons employed by Wal-Mart at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Wal-Mart shall comply with all California labor laws and ensure that its non-exempt employees are provided lawful meal and rest breaks and paid minimum and overtime wages for all hours worked.
3. Wal-Mart shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, mileage, uniforms, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. Wal-Mart shall pay each employee one hour of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Wal-Mart also shall pay each employee one hour of pay for each work day he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.
5. Wal-Mart shall reimburse those employees who were required to pay for any business expenses incurred for Wal-Mart's benefit, including but not limited to costs of cell phones, mileage, and uniforms.

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6. Wal-Mart shall pay accrued interest to all employees at the rate of 10% per annum for said unpaid wages.

7. Wal-Mart shall pay waiting time penalties, equal to 30 days of pay, to each former employee who was not paid all wages due as described herein.

8. Wal-Mart shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698, *et seq.*, including but not limited to penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and 2699 and Wage Order No. 7-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the Agency or Wal-Mart requires additional information regarding Mr. Villatoro's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC



Mikael H. Stahle