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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 30 2022

BY: *Sophia A. Smith*
Sophia A. Smith, Deputy

Attorneys for Plaintiff MARTHA
WASHINGTON individually, and on behalf
of other aggrieved employees

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

MARTHA WASHINGTON, individually, and
on behalf of other aggrieved employees,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. **CIV SB 2228833**

COMPLAINT

- 1. Penalties pursuant to California
Labor Code Private Attorneys
General Act ("PAGA") (Cal. Lab.
Code §§ 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

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1 DEFENDANTS' Walmart retail stores in the State of California during the period of October
2 25, 2021 through the time this action settles or proceeds to final judgment ("PAGA
3 PERIOD").

4 DEFENDANTS

5 6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
6 WAL-MART ASSOCIATES, INC. is, and at all times relevant hereto was, a Delaware
7 corporation organized and existing under the laws of the State of California. PLAINTIFF is
8 further informed and believes, and thereon alleges, that DEFENDANT WAL-MART
9 ASSOCIATES, INC. is authorized to conduct business in the State of California, and does conduct
10 business in the State of California. Specifically, DEFENDANT WAL-MART ASSOCIATES,
11 INC. maintains offices and facilities and conducts business in, and engages in illegal payroll
12 practices or policies in, the County of San Bernardino, State of California.

13 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
14 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious
15 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
16 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
17 that PLAINTIFF and the AGGRIEVED EMPLOYEES' injuries, as alleged herein, were
18 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
19 court to amend this Complaint to allege their true names and capacities of such DOE Defendants
20 when ascertained.

21 8. At all relevant times herein, DEFENDANTS were the joint employers of
22 PLAINTIFF and AGGRIEVED EMPLOYEES. PLAINTIFF is informed and believes, and
23 thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos,
24 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
25 related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors,
26 actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its
27 co-Defendant, and each was the alter ego of the other.

28 9. At all relevant times herein, PLAINTIFF and the AGGRIEVED EMPLOYEES

1 were employed by DEFENDANTS under employment agreements that were partly written, partly
2 oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS,
3 and each of them, acted pursuant to, and in furtherance of, their policies and practices of failing to
4 properly compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all necessary
5 expenditures; in violation of the California Labor Code and the applicable Welfare Commission
6 (“IWC”) Orders.

7 10. PLAINTIFF is informed and believes, and thereon allege, that each and every one
8 of the acts and omissions alleged herein were performed by, and/or attributable to, all
9 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
10 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
11 and scope of said agency, employment and/or direction and control.

12 11. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
13 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
14 provision regulating minimum wages or hours and days of work in any order of the Industrial
15 Welfare Commission, or Labor Code § 2802.

16 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,
17 PLAINTIFF and the AGGRIEVED EMPLOYEES have suffered, and continue to suffer, from
18 loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the
19 jurisdiction of this Court.

20 **BACKGROUND**

21 13. PLAINTIFF brings this representative action on behalf of WALMART’s current
22 and former non-exempt employees in the State of California regarding WALMART’s failure to
23 reimburse non-exempt employees for cell phone expenditures incurred in direct consequence of
24 the discharge of their duties or of their obedience to the directions of WALMART, in violation of
25 Labor Code § 2802. Section 2802 is designed to ensure an employer bears the entire cost of its
26 operations and does not pass the cost of doing business onto its employees.

27 14. WALMART has for years been utilizing its employees’ personal cell phones as an
28 integral part of store operations. Because this practice so pervades the work environment at

1 WALMART's stores, the benefits WALMART derives from incorporating employees' personal
2 cell phones into store operations are compelling. Indeed, on June 3, 2021, WALMART publicly
3 announced that its reliance on employees' personal cell phones in store operations was so great
4 that it finally was willing to pay for it by giving its employees free cell phones to use during and
5 after work, along with a mobile app that incorporates the many work-related functions that
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for years have been compelled to perform
7 from their personal cell phones. WALMART acknowledged that "shared company handheld
8 devices" and walkie-talkies never were sufficient for store employees to do their jobs:

9 "Constant communication is essential for our business. Walkie talkies were one
10 solution, but not every associate has one. Push to talk enables associates to
11 instantly connect with one another, helping them work as a team to stay nimble
12 and react to customers' needs."

13 "It's more critical than ever to equip our people with the tools and technology they
14 need for success."

15 15. Despite acknowledging its reliance on cell phone use by employees in store
16 operations and despite committing to providing free cell phones to all store associates to avoid
17 having to reimburse them for using their own cell phones, WALMART has failed to provide the
18 promised cell phones to PLAINTIFF and the other AGGRIEVED EMPLOYEES, who make up
19 the majority of WALMART's store employees in California. As a result, PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES have had no choice but to continue to use their own personal
21 cell phones in WALMART's store operations during the applicable statutory period under PAGA.

22 16. WALMART has thus created an environment in which it was reasonable for
23 PLAINTIFF and other AGGRIEVED EMPLOYEES to incur expenses by using their own
24 personal cell phones to (1) download and operate cell phone apps specifically designated and
25 intended by WALMART to be used to perform work related tasks, including but not limited to
26 checking schedules, requesting shift changes, locating merchandise, and helping customers; and
27 (2) receive and respond to cell phone calls and text messages from management regarding work
28 related matters in the course and scope of store operations.

17. Despite knowing or having reason to know that PLAINTIFF and the other
AGGRIEVED EMPLOYEES incurred expenses by using their personal cell phones in the service

1 of WALMART's store operations, WALMART failed to indemnify PLAINTIFF and other
2 AGGRIEVED EMPLOYEES for the cell phone expenses they reasonably incurred in direct
3 consequence of the discharge of their duties while working under the direction of WALMART.

4 18. In addition to liability under Labor Code § 2802, Labor Code § 558.1 imposes
5 liability for violating, or causing the violation of, Labor Code § 2802.

6 **FIRST CAUSE OF ACTION**

7 **Representative Action for Civil Penalties**

8 **[Cal. Labor Code §§ 2698-2699.5]**

9 **(Against All DEFENDANTS)**

10 19. PLAINTIFF incorporates herein by specific reference as though fully set forth the
11 allegations in all preceding paragraphs.

12 14. PLAINTIFF is an "aggrieved employee" within the meaning of California Labor
13 Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other
14 current and former employees of DEFENDANTS pursuant to the procedures specified in
15 California Labor Code § 2699.3, because PLAINTIFF and the AGGRIEVED EMPLOYEES were
16 employed by DEFENDANTS and the alleged violations of the California Labor Code were
17 committed against PLAINTIFF and the AGGRIEVED EMPLOYEES.

18 15. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
19 Labor Code §§ 2698-2699.5, PLAINTIFF and the AGGRIEVED EMPLOYEES seeks to recover
20 civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210,
21 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 7-2001, § 20, from DEFENDANTS in a
22 representative action for the violations set forth above, including but not limited to violations of
23 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
24 2802. PLAINTIFF and the AGGRIEVED EMPLOYEES are also entitled to an award of
25 reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

26 16. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
27 October 25, 2022 by online filing to the California Labor and Workforce Development Agency
28 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California

1 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
2 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
3 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

4 17. Therefore, PLAINTIFF has complied with all of the requirements set forth in
5 California Labor Code § 2699.3 to commence a representative action under PAGA.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other AGGRIEVED
8 EMPLOYEES, respectfully prays for relief against DEFENDANTS, and each of them, as
9 follows:

10 1. For civil penalties according to proof, including but not limited to all penalties
11 authorized by the California Labor Code §§ 2698-2699.5;

12 2. For reasonable attorneys' fees and costs pursuant to California Labor Code
13 §§ 2699 and California Civil Code § 1021.5, and any other applicable provisions providing for
14 attorneys' fees and costs; and

15 3. For such further relief that the Court may deem just and proper.

16
17 DATED: December 30, 2022

Respectfully submitted,

18 **MATERN LAW GROUP, PC**

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21 By:


Matthew J. Matern
Mikael H. Stahle
Attorneys for Plaintiff
MARTHA WASHINGTON, individually,
and on behalf of other aggrieved employees

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DATED: December 30, 2022

MATERN LAW GROUP, PC

Hubert Stahl

Matthew J. Matern
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