

Paloma P. Peracchio, CA Bar No. 259034
paloma.peracchio@ogletree.com
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-239-9800
Facsimile: 213-239-9045

Mitchell A. Wrosch, CA Bar No. 262230
mitchell.wrosch@ogletree.com
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
Park Tower, Fifteenth Floor
695 Town Center Drive
Costa Mesa, CA 92626
Telephone: 714-800-7900
Facsimile: 714-754-1298

Attorneys for Defendant Walmart Inc.
formerly known as Wal-Mart Stores, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

LERNA MAYS AND LARRY ROACH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

WALMART, INC., a Delaware
Corporation formerly known as WAL-
MART STORES, INC. and DOE ONE
through and including DOE ONE-
HUNDRED,

Defendants.

Case No. 2:21-cv-00015

**DEFENDANT WALMART INC.'S
NOTICE OF REMOVAL OF CIVIL
ACTION**

*[Filed Concurrently with Certificate of
Interested Parties; Civil Cover Sheet;
Corporate Disclosure Statement;
Declaration of Mitchell A. Wrosch;
Declaration of Laura Kish; Notice of
Related Cases; and Notice of Pendency
of Other Actions or Proceedings]*

Action Filed: September 30, 2020
Trial Date: None Set
District Judge: Hon. TBD
Magistrate Judge: Hon. TBD

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFFS AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, 1711, Defendant Walmart Inc. formerly known as Wal-Mart Stores, Inc. (“Walmart” or Defendant”) hereby removes this action, originally filed as Case No. 20STCV37527 in the Superior Court of the State of California for the County of Los Angeles, to the United States District Court for the Central District of California. Removal is proper for the reasons explained below.

TIMELINESS OF REMOVAL

1. Plaintiffs Lerna Mays and Larry Roach (together, “Plaintiffs”) filed a putative Class Action Complaint against Walmart Inc. on September 30, 2020 in the Superior Court of the State of California for the County of Los Angeles. (*See* Declaration of Mitchell Wrosch (“Wrosch Decl.”), ¶ 2.) Plaintiffs filed a First Amended Complaint (“FAC”) on November 25, 2020 and served the FAC on December 2, 2020. (*Id.* at ¶ 3.) Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of any and all process, pleadings and orders served upon Walmart are attached as Exhibit A to the Wrosch Declaration, filed concurrently herewith. This notice of removal is timely pursuant to 28 U.S.C. § 1446(b) because Defendant has removed this action within 30 days of being served.

GROUND FOR REMOVAL

2. Defendant is authorized to remove this action to this Court pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711 (“CAFA”) and since Plaintiffs have filed a class action complaint where the amount in controversy exceeds five million dollars and Defendant is a citizen of a state different from Plaintiffs.

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A. Plaintiffs Bring This Case As A Class Action Against Defendant

3. Plaintiffs' FAC is titled "FIRST AMENDED COMPLAINT [*Class-Action and PAGA Complaint*]." (See FAC, Caption) (emphasis in original).

4. Plaintiffs' FAC alleges that "Plaintiff Mays is bringing this action against Defendants on behalf of Walmart non-exempt employees who, during the relevant period, at any time during the period of one year prior to the filing of her December 18, 2017 original Complaint, to January 31, 2018, the date before Wal-Mart Stores, Inc. effectively changed its name to Walmart, Inc., have worked at one or more of the following Walmart retail facilities in California: the Walmart Supercenter #3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA 92571 ("Mays Class")." (FAC ¶ 3.)

5. Plaintiffs' FAC further alleges that "Plaintiff Roach is bringing this action against Defendants on behalf of Walmart non-exempt employees who, during the relevant period, from February 1, 2018, the effective date of Defendant's name change from Wal-Mart Stores, Inc. to Walmart, Inc., to the mailing of the class notice, have worked at one or more of the following Walmart retail facilities in California: the Walmart Supercenter #3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA 92571 ("Roach Class")." (FAC ¶ 4.)

6. Plaintiffs identify the two putative classes they seek to represent as the "Mays Class" and the "Roach Class." The class definitions of both classes are nearly identical, with substantive differences only in the relevant time periods for each class based upon Walmart's name change. The time periods are consecutive when combined (December 18, 2016 to January 31, 2018 and February 1, 2018 to the present). Therefore, for purposes of this Notice of Removal, Defendant will refer to the Mays

1 and Roach Classes collectively (the “Mays/Roach Class”) and use a combined relevant
2 time period from December 18, 2016 to present.

3 7. On behalf of Mays/Roach Class, the Complaint alleges one cause of
4 action for Failure to Provide Adequate Pay Stubs [Cal. Lab. Code § 226(a)]. (FAC ¶¶
5 39-43.)¹

6 8. Defendant denies any liability in this case, as to Plaintiffs’ individual,
7 class, and representative claims, and will present compelling defenses to these claims
8 on the merits. Defendant intends to oppose class certification. Defendant expressly
9 reserves all rights in this regard. However, for purposes of the jurisdictional
10 requirements for removal only, Defendant states that, as set forth in more detail below,
11 the allegations in Plaintiffs’ FAC that they seek to represent Walmart non-exempt
12 employees who, at any time during the period of one year prior to the filing of
13 December 18, 2017 to the mailing of the class notice, have worked at one or more of
14 the following Walmart retail facilities in California: the Walmart Supercenter #3522
15 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at
16 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San
17 Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris
18 Blvd, Perris, CA 92571, puts in controversy an amount that exceeds \$5 million. *See*
19 28 U.S.C. § 1332(d)(6).

20 **B. There Are More than 100 Members In The Proposed Class**

21 9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in
22 addition to the other requirements of § 1332(d), the action involves a putative class of
23 at least 100 persons. Plaintiffs allege that this action is brought on behalf of all
24 Walmart non-exempt employees who, at any time during the period of one year prior
25 to December 18, 2017 to the mailing of the class notice, have worked at one or more
26

27
28 ¹ Plaintiff also brings a representative action for civil penalties under the California
Private Attorneys General Act (“PAGA”) [Cal. Lab. Code §§ 2698 *et seq.*].
(Complaint ¶¶ 44-50.)

of the following Walmart retail facilities in California: “the Walmart Supercenter #3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA 92571.” (FAC ¶¶ 26-27.)

10. There are approximately 4,916 current and former non-exempt employees who worked at one or more of the following Walmart retail facilities in California during the relevant time period: the Walmart Supercenter #3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at 1861 S. San Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA 92571 anytime from December 18, 2016 to the present.² (Declaration of Laura Kish (“Kish Decl.”) ¶ 6.) Although Defendant denies that class treatment is appropriate, Plaintiff’s proposed class, if certified, would consist of more than 100 members.

C. Defendant Is A Citizen Of A Different State Than Plaintiff

11. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in addition to the other requirements of § 1332(d), a member of the class is a citizen of a state different from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

12. A person is a “citizen” of the state in which he/she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person’s domicile is the place she resides with the intention to remain or to which she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

13. Plaintiff Mays began her Walmart employment on September 11, 2007 and ended her Walmart employment on or about February 10, 2017. (FAC ¶18; Kish

² The Complaint alleges that “Wal-Mart has and continues to employ tens of thousands of non-exempt employees who perform a variety of duties throughout California.” (Complaint ¶ 3.) For purposes of this Notice of Removal, Defendant focuses only on the Mays/Roach Class alleged to have worked at the four specifically identified stores.

Decl. ¶ 4.) Throughout her employment, Plaintiff Mays worked at Walmart in Los Angeles County, California. (Kish Decl. ¶ 4.) Furthermore, Plaintiff Mays is now and/or at all times relevant to the Complaint was a citizen of the State of California. (FAC ¶ 14; Kish Decl. ¶ 4.) As such, Plaintiff Mays is a citizen of California.³

14. Plaintiff Roach began his Walmart employment on March 30, 2018 and ended his Walmart employment on November 17, 2018. (FAC ¶ 18; Kish Decl. ¶ 5.) Throughout his employment, Plaintiff Roach worked at Walmart in Riverside County, California. (Kish Decl. ¶ 5.) Furthermore, Plaintiff Roach is now and/or at all times relevant to the Complaint was a citizen of the State of California. (FAC ¶ 14; Kish Decl. ¶ 5.) As such, Plaintiff Roach is a citizen of California.⁴

15. Additionally, the Mays/Roach Class is defined to include only nonexempt employees who worked at four California Walmart stores.” (FAC ¶¶ 26-27.) Indeed, the FAC makes clear that Plaintiffs “are individuals who, during the time periods relevant to this Complaint, was employed by Wal-Mart within the State of California.” (Id. ¶ 26-27.)

16. A corporation is a citizen of its state of incorporation and the state of its principal place of business. 28 U.S.C. § 1332(c)(1). Defendant Walmart Inc. is incorporated in the State of Delaware has its principal place of business in Bentonville, Arkansas. (Kish Decl. ¶ 3.)

17. Defendant’s “principal place of business,” which the Supreme Court has interpreted to mean “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities” (*Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010); 28 U.S.C. § 1332(c)(1)) is Bentonville, Arkansas. Thus, Defendant is a citizen

³ In alleging that the requirements of CAFA are satisfied, Defendant does not concede in any way the allegations in the Complaint are true and accurate.

⁴ Both Mays and Roach admit that they are citizens of California. *See Larry Roach v. Wal-Mart Stores, Inc., et al.*, No. 5:18-CV-02536-AB-KK, (ECF No. 16 ¶ 5) (“Plaintiff is a citizen of California”); and *Lerna Mays v. Wal-Mart Stores, Inc., et al.*, No. 2:18-cv-02318-AB-KK, (ECF No. 64 ¶ 6) (“Plaintiff is a citizen of California”).

of Delaware and Arkansas – not California, and there is accordingly minimal jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d)(2)(A); *Hertz*, 130 S. Ct. at 1192; *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1230 n.2 (9th Cir. 2011).

D. The Amount in Controversy Exceeds \$5 Million

18. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because, in addition to the other requirements of § 1332(d), the amount in controversy exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2).

1. Wage Statements

19. California Labor Code section 226(a) states that every employer shall furnish his or her employees an accurate itemized wage statement in writing showing nine specific categories of information. Plaintiffs allege that Defendant has “a consistent policy and/or practice of knowingly and intentionally failing to furnish timely the proper itemized wage statements to Aggrieved Employees.” (FAC ¶ 10.) The FAC also alleges that “Plaintiffs’ pay stubs demonstrate that Wal-Mart fails to include the data required by section 226(a), including but not limited to the ‘inclusive dates of the period for which the employee is paid,’ all accumulated vacation pay earned in the employee’s final pay statement, and the name and address of the entity that is the employer.” (FAC ¶ 22.) The FAC further states that “Plaintiffs’ claims are typical of the claims of Class Members, which all arise out of the same general operative facts, namely, that Wal-Mart’s pay stubs fail to include all of the information required by the Labor Code.” (FAC ¶ 32.)

20. The FAC additionally states that “with respect to Defendant’s violations of section 226(a)(8) of the California Labor Code, the damages owing to each Class Member equals the sum of \$50 (for the initial wage statement issued to the employee during the period commencing one year prior to the filing of the Complaint) and the product of the number of further wage statements issued to the employee and \$100, with a per employee cap of \$4,000.” (FAC ¶ 29.)

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1 21. The FAC also states that “Mays and the Mays Class Members are entitled
2 to damages, to costs, and to reasonable attorney’s fees in accordance with the
3 provisions of Labor Code section 226(e)” and that “Roach and the Roach Class
4 Members are entitled to damages, costs, and reasonable attorney’s fees in accordance
5 with the provisions of Labor Code section 226(e).” (FAC ¶¶ 42-43.)

6 22. California Labor Code section 226(e) provides for the greater of all actual
7 damages or fifty dollars (\$50) for the initial pay period in which a violation occurred
8 and one hundred dollars (\$100) for each subsequent pay period. The applicable statute
9 of limitations is one year. *See* Cal. Code Civ. Proc. § 340(a).

10 23. In light of Plaintiff’s unqualified allegation that Walmart failed to provide
11 accurate wage statements as a “consistent policy and/or practice” and that the wage
12 statements are inaccurate, in part, because of the failure to include the inclusive dates
13 of the pay period, all accumulated pay in the employee’s final pay statement, and the
14 name and legal address of the employer, suggests conduct that applies uniformly to
15 every wage statement issued during this time period. In *Altamirano v. Shaw Industries,*
16 *Inc.*, 2013 WL 2950600, *11 (N.D. Cal. June 14, 2013), the district court held that it
17 was “reasonable to assume that each putative class member suffered at least one
18 violation during any given pay period, resulting in an inaccurate wage statement,” in
19 light of the plaintiff’s allegations “about the pervasiveness of the policies that are the
20 subject of the first three causes of actions.” *Id.* Thus, “it is reasonable to assume a
21 100% violation rate in calculating the amount in controversy for this cause of action.”
22 *Id.*

23 24. Therefore, Defendant could properly utilize an alleged violation rate of
24 100%, as Plaintiffs have alleged a section 226 violation that occurred on every wage
25 statement.

26 25. For purposes of removal, however, Walmart will conservatively apply
27 wage statement penalties just for the years 2018, 2019, and 2020, representing just
28 72% of the wage statements alleged to be at issue.

26. In 2018, 2019, and 2020, Walmart issued 111,726 wage statements to putative class members. (Kish Decl. ¶ 8.)

27. Applying the initial violation rate of \$50 penalty per wage statement to the wage statements issued from 2018, 2019, and 2020 results in an amount in controversy for this claim of **\$5,586,300** (\$50 x 111,726 wage statements issued).⁵

2. Attorney's Fees

28. Plaintiffs' Complaint requests attorneys' fees pursuant to California Labor Code Section 226 (Complaint, Prayer for Relief; *see also* Complaint ¶¶ 1, 11, 42, 43.)

29. Under Ninth Circuit precedent, 25% of the common fund is generally used as a benchmark for an award of attorney fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17119, at *15 (S.D. Cal., Mar. 6, 2009) ("In wage and hour cases, '[t]wenty-five percent is considered a benchmark for attorneys' fees in common fund cases.'") (citations omitted). Here, Defendant has shown that the claimed amount in controversy is in excess of **\$5,586,300**, and Plaintiffs have not indicated that they will seek less than 25% of a common fund in attorneys' fees. (*See generally* Complaint, Prayer for Relief.) Although Defendant has shown that the amount in controversy absent attorneys' fees surpasses the jurisdictional threshold, this Court should nevertheless include the potential attorneys' fees in evaluating jurisdiction. *Gugielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Giannini v. Nw. Mut. Life Ins. Co.*, 2012 WL 1535196, at *4 (N.D. Cal. 2012) (holding that defendants' inclusion of attorneys' fees to satisfy amount in controversy was reasonable where defendants "base this amount by multiplying by twenty-five percent the sum of the amounts placed in controversy by the four claims" asserted by

⁵ If Defendant were to include violations from 2016 and 2017, the amount in controversy for this claim rises to **\$7,689,350** (\$5,586,300 + [\$50 x 42,061 wage statements issued in 2016 and 2017]). (Kish Decl. ¶ 9.)

plaintiff.); *Jasso v. Money Mart Express, Inc.*, 2012 WL 699465, at *6-7 (N.D. Cal. 2012) (holding that “it was not unreasonable for [Defendant] to rely on” an “assumption about the attorneys’ fees recovery as a percentage of the total amount in controversy” and noting that “it is well established that the Ninth Circuit ‘has established 25% of the common fund as a benchmark award for attorney fees.’”).

30. Defendant denies that attorneys’ fees are owed to Plaintiffs or putative class members, and Defendant further reserves the right to contest the application of the 25% benchmark in this case. However, for purposes of this jurisdictional analysis only, Defendant relies on Plaintiffs’ allegations that attorneys’ fees are owed. *Guglielmino*, 506 F.3d at 700; *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 579 F.3d 994, 1000 (9th Cir. 2007), *overruled on other grounds by Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013).

31. Using a 25% benchmark figure for attorneys’ fees for Plaintiffs’ allegations results in estimated attorneys’ fees of **\$1,396,575**.

E. Summary Of Amount In Controversy

32. Defendant denies any liability in this case, as to Plaintiffs’ individual, class, and representative claims, and will present compelling defenses to these claims on the merits. Defendant intends to oppose class certification. Accordingly, as set forth above, the FAC places in actual controversy more than the required \$5 million for purposes of removal under CAFA, even without considering the amounts placed in controversy by attorney fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (attorneys’ fees may properly be included in calculation of the amount of controversy where an underlying statute authorizes an award of attorneys’ fees). This calculation is a conservative estimate of the wage statement violation rate that excludes any wage statements issued during the relevant periods in 2016 and 2017.

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1 **F. This Removal Satisfies The Procedural Requirements Of 28 U.S.C. §**
2 **1446**

3 33. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is filed
4 in the District in which the action is pending. The Los Angeles County Superior Court
5 is located within the Central District of California. Therefore, venue is proper in this
6 Court because it is the “district and division embracing the place where such action is
7 pending.” 28 U.S.C. § 1441(a).

8 34. In accordance with 28 U.S.C. § 1146(a), copies of all process, pleadings,
9 and orders served upon Defendant are attached as **Exhibit A** to the Wrosch
10 Declaration.

11 35. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice is being
12 served upon counsel for Plaintiffs, and a notice will be filed with the Clerk of the
13 Superior Court of California for the County of Los Angeles. Notice of Compliance
14 shall be filed promptly afterwards with this Court.

15 36. As required by Federal Rule of Civil Procedure 7.1, Defendant
16 concurrently filed its Certificate of Interested Parties.

17 **II. CONCLUSION**

18 For the foregoing reasons, Defendant hereby removes the above-entitled action
19 to the United States District Court for the Central District of California.

20
21
22 DATED: January 4, 2021

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

23
24
25 By: /s/ Mitchell A. Wrosch
26 Mitchell A. Wrosch
Paloma P. Peracchio

27 Attorneys for Defendant Walmart Inc.
28 formerly known as Wal-Mart Stores, Inc.

PROOF OF SERVICE

Lerna Mays, et al. v. Walmart, Inc., et al.
Case No. 2:21-cv-00015

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Orange in the office of a member of the bar of this court at whose direction the service was made. My business address is Park Tower, Fifteenth Floor, 695 Town Center Drive, Costa Mesa, CA 92626.

On January 4, 2021, I served the following document(s):

**DEFENDANT WALMART INC.'S NOTICE OF REMOVAL OF
CIVIL ACTION**

by placing ☐ (the original) ☒ (a true copy thereof) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY MAIL:** I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at Park Tower, Fifteenth Floor, 695 Town Center Drive, Costa Mesa, CA 92626.

☐ **BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Costa Mesa, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

☐ **BY MESSENGER SERVICE:** (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **BY FACSIMILE:** by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:

☐ the written confirmation of counsel in this action:
☐ **[Federal Court]** the written confirmation of counsel in this action and order of the court:

☐ **BY CM/ECF:** With the Clerk of the United States District Court of California, using the CM/ECF System. The Court's CM/ECF System will send an e-mail notification of the foregoing filing to the parties and counsel of record who are registered with the Court's CM/ECF System.

☒ **(Federal)** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

☐ **(Federal)** I declare that I am a **member** of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 4, 2021, at Costa Mesa, California.



Lisa Sles

SERVICE LIST

Alan Harris, Esq.
Priya Mohan, Esq.
Min Ji Gal, Esq.
HARRIS & RUBLE
655 N. Central Ave., 17th Floor
Glendale, CA 91203
Telephone: 323-962-3777
Facsimile: 323-962-3004
aharris@harrisandruble.com
pmohan@harrisandruble.com
mgal@harrisandruble.com

Attorneys for Plaintiffs

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SUM-100

SUMMONS BY FAX
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):**WALMART, INC.,** a Delaware Corporation formerly known as WAL-MART STORES, INC. and
DOE ONE through and including DOE ONE HUNDRED**YOU ARE BEING SUED BY PLAINTIFF:**
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**LERNA MAYS AND LARRY ROACH,** individually and on behalf of all others similarly situatedFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER: (Número del Caso):

20STCV37527

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alan Harris, Harris & Ruble, 655 North Central Avenue, 17th Floor, Glendale, CA 91203

DATE: **SEP 30 2020**
(Fecha)**SHERRI R. CARTER**Clerk, by
(Secretario)**Kristina Vargas**Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify): **Walmart, Inc., a Delaware Corporation formerly known as Wal-Mart Stores, Inc.,**
- ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date)

COPY

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

1 Alan Harris (SBN 146079)
2 Priya Mohan (SBN 228984)
3 Min Ji Gal (SBN 311963)
4 HARRIS & RUBLE
5 655 N. Central Ave., 17th Floor
6 Glendale, CA 91203
7 Tel: 323.962.3777
8 Fax: 323.962.3004
9 aharris@harrisandruble.com
10 pmohan@harrisandruble.com
11 mgal@harrisandruble.com

12 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LERNA MAYS AND LARRY ROACH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

WALMART, INC., a Delaware
Corporation formerly known as
WAL-MART STORES, INC. and DOE
ONE through and including DOE ONE-
HUNDRED,

Defendants.

Case No. **20STCV37527**

COMPLAINT

[Class-Action and PAGA Complaint]

1. Failure to Provide Adequate Pay
Stubs, Cal. Lab. Code § 226(a)
2. Violation of the Private Attorneys
General Act of 2004, California
Labor Code §§ 2698 *et seq.*

1 Plaintiffs Lerna Mays (“Mays”) and Larry Roach (“Roach”) (collectively
 2 “Plaintiffs”) on behalf of themselves as individuals, in their representative capacities on
 3 behalf of the State of California Labor & Workforce Development Agency (“LWDA”)
 4 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), California
 5 Labor Code (“Labor Code”) § 2698 *et seq.*, and as proposed representatives of a putative
 6 class, alleges as follows:

7 INTRODUCTION

8 1. This is a PAGA law enforcement action and class action seeking damages,
 9 penalties, civil penalties and attorneys’ fees and costs, including such reasonable
 10 reimbursement of fees and costs as may be authorized by Section 218.5 of the California
 11 Labor Code or otherwise. The alleged violations include wage statement violations, and
 12 associated penalties.

13 2. The California Labor Code requires employers to provide to its employees;
 14 among other things, itemized wage statements. Defendants Walmart, Inc., formerly
 15 known as Wal-Mart Stores, Inc. and Doe One through and including Doe One-Hundred
 16 (“Wal-Mart” or “Defendants”) failed to comply with the California Labor Code
 17 requirements.¹ Accordingly, Plaintiffs seeks civil penalties on behalf of the State of
 18 California and the LWDA, to be shared with all impacted employees, all in accord with
 19 the extant statutory scheme.

20 3. Wal-Mart has and continues to employ tens of thousands of non-exempt
 21 employees who perform a variety of duties throughout California. Plaintiff Mays is
 22 bringing this action against Defendants on behalf of all individuals who received a pay
 23 stub from Wal-Mart in the State of California at any time during the period of one year
 24 prior to the filing of her December 18, 2017 original Complaint, to January 31, 2018, the
 25 date before Wal-Mart Stores, Inc. effectively changed its name to Walmart, Inc.
 26 (collectively, these employees are the “Aggrieved Employees”). Plaintiff Roach is

27
 28 ¹ The legal name of the company Wal-Mart Stores, Inc. was changed to Walmart, Inc.
 effective February 1, 2018.

1 bringing this action against Defendants on behalf of Aggrieved Employees from the
2 period of February 1, 2018, the effective date of Defendant's name change from Wal-
3 Mart Stores, Inc. to Walmart, Inc., to the mailing of the class notice. Plaintiff Roach is
4 also bringing this action under PAGA on behalf of all Aggrieved Employees from the
5 period of one year prior to his giving notice to the LWDA of Defendant's violations,
6 November 28, 2018, to date. The statutes of limitation applicable herein have been tolled
7 by the pendency of Mays v. Wal-Mart Stores, Inc., United States District Court for the
8 Central District of California Case No. Case No. 2:18-cv-02318-AB-KK and/or Roach v.
9 Wal-Mart Stores, Inc., United States District Court for the Central District of California
10 Case No. 5:18-cv-02536-AB-KK. On April 10, 2020, pursuant to a mandate of the
11 Ninth Circuit Court of Appeal, the federal court dismissed Plaintiff Mays' wage
12 statement claim without prejudice following the Ninth Circuit's April 8, 2020 decision
13 reversing the district court's class certification order as to the Wage Statement Class due
14 to lack of Article III standing.

15 4. Plaintiffs' tolling argument is supported by controlling decisions of the
16 United States Supreme Court. Crown, Cork & Seal v. Parker, 462 U.S. 345, 354 (1983)
17 ("We conclude, as did the Court in American Pipe, that 'the commencement of a class
18 action suspends the applicable statute of limitations as to all asserted members of the
19 class who would have been parties had the suit been permitted to continue as a class
20 action.' Once the statute of limitations has been tolled, it remains tolled for all members
21 of the putative class until class certification is denied. At that point, class members may
22 choose to file their own suits") (quoting Am. Pipe & Const. Co. v. Utah, 414 U.S.
23 538, 554 (1974).

24 5. The pendency of the federal cases previously filed by Plaintiffs and
25 effectively dismissed by the Ninth Circuit decision that they did not have federal Article III
26 standing to pursue the matters in federal court has tolled all applicable statutes of
27 limitations with respect to the claims articulated herein.
28

6. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (Effective on May 29, 2020), provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The term “civil causes of action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions)], is construed “as including a special proceeding of a civil nature”). . . . The rule also applies to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil Procedure.”

7. Due to the illegal employment practices as more fully described herein, Plaintiffs, in their representative capacity, seeks civil penalties on behalf of themselves and other Aggrieved Employees pursuant to PAGA, against all Defendants.

8. Defendants have had a consistent policy and/or practice of knowingly and intentionally failing to furnish timely the proper itemized wage statements to Aggrieved Employees.

JURISDICTION AND VENUE

9. This is a civil class action and representative action brought under the California Labor Code Private Attorneys General Act (“PAGA”), seeking damages, civil penalties, statutory penalties and attorneys’ fees and costs. Venue as to Defendants is proper in this judicial district, pursuant to California Code of Civil Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business, have an agent, or are found in the County of Los Angeles and are within the jurisdiction of this Court for purposes of service of process. The violations of PAGA alleged herein had a direct effect on, and were committed within the State of California, impacting Plaintiffs and the Aggrieved Employees.

1 named Defendants is legally responsible for the damages hereinafter more particularly
2 alleged.

3 **GENERAL ALLEGATIONS**

4 15. Defendants employed Mays as an hourly employee until her employment
5 was terminated by Defendants. Defendants employed Roach as an hourly employee until
6 his employment was terminated by Defendants.

7 16. Plaintiff Mays was terminated on or about February 10, 2017 but was not
8 paid her full and final wages until many days later. Similarly, Plaintiff Roach was
9 terminated on or about November 18, 2018, and not paid his full and final wages until a
10 later date.

11 17. Wal-Mart's policy is to devote minimal resources to the payroll accounting
12 function with the result that in practice its former employees are routinely not paid all
13 final wages owing to them in proper fashion.

14 18. When Plaintiffs received their final wage statements, Wal-Mart failed to
15 include certain required information, including but not limited to, the inclusive dates of
16 the pay period, all accumulated pay in the employee's final pay statement, which Wal-
17 Mart calls a Final Statement of Wages, or the name and legal address of the employer,
18 Wal-Mart Stores, Inc. for Mays and Walmart, Inc. for Plaintiff Roach. On information
19 and belief, Wal-Mart failed to include required information on the wage statements of
20 other Aggrieved Employees as well, both on the final pay statement and otherwise.
21 Defendant's failure to provide this statutorily required information on wage statements
22 has been deemed to cause injury under section 226(e)(2)(B) of the California Labor
23 Code. Further, Plaintiffs and other Aggrieved Employees were not provided compliant
24 wage statements when other tardy payments were made to them, after their employ with
25 Defendant had terminated. Wal-Mart also failed to provide the amount of net wages
26 earned in connection with post-termination, on-cycle pay stubs issued to Plaintiffs and
27 Aggrieved Employees after the Final Statement of Wages. Defendant's post-termination
28 wage statements were confusing in that it was impossible to determine from the wage

1 statements alone whether or not Plaintiff Mays was being paid wages or something else,
2 such as a stock purchase refund. The wage statement of February 23, 2017 claims that
3 she is being paid for "REGULAR EARNINGS," "OVERTIME EARN," and a "CA
4 MEAL PREM," along with some accrued, unused vacation and "PERS pay." The
5 deductions portion of the February 23, 2017 wage statement reflects typical Social
6 Security and SDI deductions associated with the payment of wages. The wage statement
7 of March 9, 2017 indicates that Plaintiff Mays was being paid for "OVERTIME/INCT,"
8 and her "MYSHARE INCT" bonus. The deductions portion of the March 9, 2017 wage
9 statement reflects typical Social Security and SDI deductions associated with the
10 payment of wages. Defendant's Senior Director of Payroll Services, Diana McChristian
11 has declared that Plaintiff May's wage statement dated February 23, 2017 included an,
12 "additional \$100 reflecting a stock purchase withholding that she [Mays] had set up to be
13 regularly deducted from paychecks, including her final pay, but which was turned off
14 before the payroll run that held the February 23, 2017 pay date, resulting in a
15 "reimbursement" of the stock purchase withholding when her final pay was deducted
16 from the "true up" payment." Jul. 30, 2018 McChristian Decl. [ECF Doc. 56-1] ¶ 16.²
17 Despite the McChristian testimony, there is nothing on the wage statement that reflects
18 this payment. The statements made it impossible for Plaintiff to determine whether she
19 had being properly compensated for all hours worked. Further, Defendant disputes that
20 the post-termination payments made to Plaintiff are wages even though amounts are
21 listed for "Gross Pay" and "Net Pay" on the February 23, 2017 and March 9, 2017 wage
22 statements provided to Plaintiff Mays. Defendant's failure to provide accurate
23 information regarding gross and net wages earned has harmed Plaintiff Mays in that she
24 has been unable to determine whether or not she has been paid correctly by Defendants.
25 The fact that these errors appear on post-termination wage statements is especially

26
27 ² The referenced McChristian Declaration was filed as Docket Entry 56-1 in the U.S.
28 District Court for the Central District of California, in Mays v. Wal-Mart Stores, Inc.,
C.D. Cal. Case No. 2:18-cv-02318-AB-KK.

1 egregious because Plaintiff has little recourse regarding obtaining accurate information
2 since she no longer works for the company. Defendants' failure to provide the accurate
3 name of the employer on wage statements has injured Plaintiff Mays by causing
4 confusion as to who was her actual employer while Plaintiff Mays was working for
5 Defendant. Defendant claims that Plaintiff Mays has "admitted" that Wal-Mart
6 Associates, Inc., was her employer. However, this "admission" by Plaintiff Mays only
7 illustrates her confusion from Defendant's deceptive wage statements. During the
8 course of Plaintiff May's employment with Defendant, wage statements provided to
9 Plaintiff Mays previously listed "Wal-Mart Stores, Inc." on the statements.

10 Subsequently, Defendant made the decision to list "Wal-Mart Associates, Inc." on the
11 statements. Obviously, this change caused confusion to Plaintiff Mays and Aggrieved
12 Employees as to which was the entity that actually employed them, especially
13 considering that other documents provided to Plaintiff Mays by Defendant clearly
14 indicated that Plaintiff Mays was in fact employed by Wal-Mart Stores, Inc.

15 19. When Plaintiff Roach received his final wage statement, which Wal-Mart
16 calls a Statement of Final Pay, Wal-Mart failed to include certain required information,
17 including, but not limited to, the inclusive dates of the pay period, all accumulated pay in
18 the employee's final pay statement, or the name and legal address of the employer, Wal-
19 Mart Stores, Inc. On information and belief, Wal-Mart failed to include required
20 information on the wage statements of other Aggrieved Employees as well, both on the
21 Statement of Final Pay and otherwise. Defendants' failure to provide this statutorily
22 required information on wage statements has been deemed to cause injury under section
23 226(e)(2)(B) of the California Labor Code. Further, Aggrieved Employees were not
24 provided compliant wage statements when other tardy payments were made to them, after
25 their employ with Defendant had terminated. Wal-Mart also failed to provide the amount
26 of net wages earned in connection with post-termination, on-cycle pay stubs issued after
27 the Statement of Final Pay. Defendants' post-termination wage statements were
28 confusing in that it was impossible to determine from the wage statements alone whether

1 or not Aggrieved Employees were being paid wages or something else, such as a stock
2 purchase refund. The statements made it impossible for Aggrieved Employees to
3 determine whether they had being properly compensated for all hours worked.
4 Defendants' failure to provide accurate information regarding gross and net wages earned
5 has harmed Aggrieved Employees in that they have been unable to determine whether or
6 not they have been paid correctly by Defendants. The fact that these errors appear on
7 post-termination wage statements is especially egregious because Aggrieved Employees
8 have little recourse regarding obtaining accurate information after they no longer work
9 for the company, many of the low-wage workers not having ready access to a computer,
10 printer, and the internet. Defendants' failure to provide the accurate name of the
11 employer on wage statements has injured Plaintiff Roach and Aggrieved Employees by
12 causing confusion as to who was his actual employer while Plaintiff was working for
13 Defendants and after termination. Plaintiff Roach suffered confusion as to which was the
14 entity that actually employed him, especially considering that other documents provided
15 to Plaintiff Roach by Defendants clearly indicated that Plaintiff was, in fact, employed by
16 Wal-Mart Stores, Inc.

17 20. Wal-Mart failed to provide Plaintiffs and the Aggrieved Employees pay
18 stubs that contain all of the information required by section 226 of the Labor Code.
19 Section 226 states:

20 Every employer shall, semimonthly or at the time of each payment of wages,
21 furnish each of his or her employees, either as a detachable part of the check,
22 draft, or voucher paying the employee's wages, or separately when wages
23 are paid by personal check or cash, an accurate itemized statement in writing
24 showing (1) gross wages earned, (2) total hours worked by the employee,
25 except for any employee whose compensation is solely based on a salary and
26 who is exempt from payment of overtime under subdivision (a) of Section
27 515 or any applicable order of the Industrial Welfare Commission, (3) the
28 number of piece-rate units earned and any applicable piece rate if the

1 employee is paid on a piece-rate basis, (4) all deductions, provided that all
2 deductions made on written orders of the employee may be aggregated and
3 shown as one item, (5) net wages earned, (6) the inclusive dates of the
4 period for which the employee is paid, (7) the name of the employee and his
5 or her social security number, except that by January 1, 2008, only the last
6 four digits of his or her social security number or an employee identification
7 number other than a social security number may be shown on the itemized
8 statement, (8) the name and address of the legal entity that is the employer,
9 and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.

11 Cal. Lab. Code § 226(a). Plaintiffs' pay stubs demonstrate that Wal-Mart fails to include
12 the data required by section 226(a), including but not limited to the "inclusive dates of the
13 period for which the employee is paid," all accumulated vacation pay earned in the
14 employee's final pay statement, and the name and address of the entity that is the
15 employer.

16 21. Mays's employer was Wal-Mart Stores, Inc. Nevertheless, her final wage
17 statement and others issued to her incorrectly show Wal-Mart Associates, Inc. as the
18 employer.

19 22. Similarly, Plaintiff Roach's employer was Walmart, Inc., formerly named
20 Wal-Mart Stores, Inc. Nevertheless, his final wage statement, for example, and others
21 issued to him incorrectly show Wal-Mart Associates, Inc. as the employer.

22 23. At all times relevant herein, sections 226 (b), (c), and (f) of the California
23 Labor Code further provided in part:

24 (b) An employer that is required by this code or any regulation adopted pursuant to
25 this code to keep the information required by subdivision (a) shall afford current
26 and former employees the right to inspect or copy records pertaining to their
27 employment, upon reasonable request to the employer.

28 ...

1 (c) An employer who receives a written or oral request to inspect or copy records
2 pursuant to subdivision (b) pertaining to a current or former employee shall
3 comply with the request as soon as practicable, but no later than 21 calendar days
4 from the date of the request.

5 . . .

6 (f) A failure by an employer to permit a current or former employee to inspect or
7 copy records within the time set forth in subdivision (c) entitles the current or
8 former employee or the Labor Commissioner to recover a seven-hundred-fifty-
9 dollar (\$750) penalty from the employer.

10 **PLAINTIFF'S CLASS-ACTION ALLEGATIONS**

11 24. The Class represented by Mays consists of all individuals who received a
12 pay stub from Wal-Mart in the State of California at any time during the one year prior to
13 the filing of her December 18, 2017 original Complaint, to January 31, 2018, the date
14 before Defendant Wal-Mart Stores, Inc. effectively changed its name to Walmart, Inc.
15 and the members are "Mays Class Members").

16 25. The Class represented by Roach consists of all individuals who received a
17 pay stub from Wal-Mart in the State of California from the period of February 1, 2018,
18 the effective date of Defendant's name change from Wal-Mart Stores, Inc. to Walmart,
19 Inc. to the mailing of the class notice (the "Roach Class" and the members are the "Roach
20 Class Members").

21 26. The number of persons within the Classes is great, believed to be in excess
22 of ten thousand. It is therefore impractical to join each Class Member as a named
23 plaintiff. Accordingly, the utilization of a class action is the most economically feasible
24 means of determining the merits of this litigation.

25 27. Despite the numerosity of the Members of the Classes, membership within
26 them is readily ascertainable through an examination of the records that Wal-Mart is
27 required by law to keep and that it has kept. Likewise, the dollar amounts owed to
28 Plaintiffs and Class Members are readily ascertainable by an examination of the same.

1 records. For example, with respect to Defendant's violations of section 226(a)(8) of the
2 California Labor Code, the damages owing to each Class Member equals the sum of \$50
3 (for the initial wage statement issued to the employee during the period commencing one
4 year prior to the filing of the Complaint) and the product of the number of further wage
5 statements issued to the employee and \$100, with a per employee cap of \$4,000.

6 28. The Class is proper insofar as common questions of fact and of law
7 predominate over individual issues regarding the money owed to each Class Member.

8 29. There is a well-defined community of interest in the questions of law and
9 fact common to the Class. The key questions are the same for each Class Member,
10 namely, (a) Whether each Class Member received proper wage statements; and (e)
11 Whether Wal-Mart's failure to show all accumulated vacation pay earned in the
12 employee's final pay statement, failure to show the "inclusive dates of the of the period
13 for which the employee is paid," or failure to list the legal name and address of the
14 employer constitutes a violation of section 226.

15 30. Plaintiffs' claims are typical of the claims of Class Members, which all arise
16 out of the same general operative facts, namely, that Wal-Mart's pay stubs fail to include
17 all of the information required by the Labor Code. Plaintiffs have no conflict of interest
18 with Class Members, and they are able to represent the interests of the Mays Class
19 Members and Roach Class Members fairly and adequately.

20 31. A class action is a far-superior method for the fair and efficient adjudication
21 of this controversy for a number of reasons. First, the persons within the Class are
22 numerous, and joinder of all of them is impractical. Second, the disposition of all Class
23 Members' claims in a single class action rather than in individual actions will benefit
24 both the parties and the Court. In that regard, the claims of each individual Class
25 Member are too small to litigate individually, and the commencement of thousands of
26 separate actions would lead to an undue burden on scarce judicial and administrative
27 resources. The alternative of individual proceedings before California's Labor
28 Commissioner is impractical inasmuch as that agency has insufficient resources to

1 process such claims promptly, and, under the provisions of California Labor Code section
2 98.2, if the individual Class Members were to succeed in obtaining awards in their favor,
3 such awards would be appealable as a matter of right for a *de novo* trial in Superior
4 Court, leading to a multiplicity of such trials in that court. In addition, absent class
5 treatment, employees will most likely be unable to secure redress given the time and
6 expense necessary to pursue individual claims, and individual Class Members will likely
7 be unable to retain counsel willing to prosecute their claims on an individual basis given
8 the small amount of recovery. As a practical matter, denial of class treatment will lead to
9 denial of recovery to the individual Class Members.

10 32. The interest of each Class Member in controlling the prosecution of his or
11 her individual claim against Wal-Mart is small when compared with the efficiency of a
12 class action.

13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

14 33. On or about June 14, 2017, Plaintiff Mays gave written notice by certified
15 mail and online filing of Defendant's violations of various provisions of the California
16 Labor Code as alleged in this Complaint to the Labor and Workforce Development
17 Agency ("LWDA") and Defendant. On or about November 28, 2018, Plaintiff Roach
18 gave written notice by certified mail and online filing of Defendants' violations of
19 various provisions of the California Labor Code as alleged in this Complaint to the
20 LWDA and Defendant.

21 34. More than sixty-five days have passed from the date of Plaintiffs' notices to
22 the LWDA and Plaintiffs have not been notified by the LWDA that it intends to
23 investigate Plaintiffs' allegations. Therefore, pursuant to section 2699.3(a)(2)(A),
24 Plaintiffs "may commence a civil action pursuant to Section 2699." Cal. Lab. Code §
25 2699.3(a)(2)(A).

26 35. Plaintiffs are informed and believe and thereon alleges that Defendants have
27 routinely failed to provide Plaintiffs and other Aggrieved Employees with proper
28 itemized wage statements.

36. Plaintiffs allege that Defendant violated PAGA by willfully failing to provide Aggrieved Employees with proper itemized wage statements in violation of Labor Code § 226(a). “PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage order or employment under conditions prohibited by a wage order).” Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

FIRST CAUSE OF ACTION

Failure to Provide Adequate Pay Stubs, Cal. Lab. Code § 226(a)
(On Behalf of Plaintiffs Individually, the Mays Class and the Roach Class Against All
Defendants)

37. Plaintiffs re-plead, re-allege, and incorporate by reference each and every paragraph set forth in this Complaint.

38. Section 226 of the Labor Code states:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Id. § 226(e).

39. Wal-Mart failed to provide Mays, Roach and Class Members with pay stubs conforming to the requirements of section 226(a) of the Labor Code by failing to always designate “inclusive dates of the period for which the employee is paid,” failure to show all accumulated vacation pay earned in the employee’s final pay statement, failure to accurately list the gross and net wages paid, or the name and address of the legal entity that is the employer. As described in this Complaint, Defendants’ defective wage

1 statements injured Plaintiffs and Aggrieved Employees.

2 40. According to Mays's employment records, the employer is Wal-Mart Stores,
3 Inc. but her wage statements, and those issued to other Aggrieved Employees, incorrectly
4 lists Wal-Mart Associates, Inc. as the employer. For example, see the document showing
5 Wal-Mart Stores, Inc. as the employer in Mays's application in 2007; the document
6 showing Wal-Mart Stores, Inc. as the employer in 2016 in her promotion papers; and the
7 document showing Wal-Mart Stores, Inc. as the employer at the time she was terminated
8 in February 2017. Accordingly, Mays and the Mays Class Members are entitled to
9 damages, to costs, and to reasonable attorney's fees in accordance with the provisions of
10 Labor Code section 226(e). Plaintiff Mays was not employed by Wal-Mart Associates,
11 Inc., an entity which merely was engaged in the business of "Payroll Processing," as
12 detailed by it on the Statement of Information filed by it with the Secretary of State of the
13 State of California on September 8, 2017 and on August 30, 2016.

14 41. According to Plaintiff Roach's employment records, his employer is Wal-
15 Mart Stores, Inc. and/or Walmart, Inc. but his wage statements, and those issued to other
16 Aggrieved Employees, incorrectly lists Wal-Mart Associates, Inc. as the employer.
17 Accordingly, Plaintiff Roach and the Roach Class Members are entitled to damages,
18 costs, and reasonable attorney's fees in accordance with the provisions of Labor Code
19 section 226(e). Plaintiff Roach was not employed by Wal-Mart Associates, Inc.—an
20 entity which merely was engaged in the business of "Payroll Processing," as detailed by
21 it on the Statement of Information filed by it with the Secretary of State of the State of
22 California on September 6, 2018.

23 **SECOND CAUSE OF ACTION**

24 Civil Penalties, Cal. Lab. Code §§ 2698 *et seq.*

25 (On behalf of Plaintiffs, the State of California and on behalf of the Aggrieved
26 Employees Against Defendants)

27 42. Plaintiffs replead, reallege, and incorporate by reference each and every
28 allegation set forth in the Complaint.

1 43. Plaintiffs are “aggrieved employees” under PAGA, as they were employed by
2 Defendant during the applicable statutory period and suffered one or more of the Labor
3 Code Violations set forth herein. Accordingly, they seek to recover on behalf of
4 themselves and all other current and former Aggrieved Employees of Defendant, the civil
5 penalties for which provision is made by PAGA, as well as reasonable attorney’s fees and
6 costs.

7 44. Pursuant to section 2699.3(a)(1) of the Labor Code, on June 14, 2017,
8 Plaintiff Mays gave written notice to the California Labor and Workforce Development
9 Agency (“LWDA”) of the specific provisions of the Labor Code alleged to have been
10 violated by Defendants, including the theories set forth in this Complaint. Also on that
11 day, Plaintiff gave written notice by certified mail to Defendant Wal-Mart Stores, Inc. of
12 the specific provisions of the Labor Code alleged to have been violated by Defendant Wal-
13 Mart Stores, Inc. On or about November 28, 2018, Plaintiff Roach gave written notice by
14 certified mail and online filing of Defendants’ violations of various provisions of the
15 California Labor Code as alleged in this Complaint to the LWDA and Defendants.

16 45. More than sixty-five days have passed from the date of Plaintiffs’ notice to
17 the LWDA and Plaintiffs have not been notified by the LWDA that it intends to
18 investigate Plaintiffs’ allegations. Therefore, Plaintiffs, pursuant to section
19 2699.3(a)(2)(A), “may commence a civil action pursuant to Section 2699.” Cal. Lab.
20 Code § 2699.3(a)(2)(A).

21 46. Plaintiffs seek to recover the PAGA civil penalties through a representative
22 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
23 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

24 47. Plaintiffs seeks civil penalties pursuant to PAGA for violations of the
25 following Labor Code provisions:

26 Failure to provide itemized wage statements to Aggrieved Employees in
27 violation of Labor Code § 226(a), not even identifying the legal name and
28 address of the employer;

1 48. Labor Code §§ 2699 *et seq.* imposes a civil penalty of one hundred dollars
2 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred
3 dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all
4 Labor Code provisions for which a civil penalty is not specifically provided, including the
5 applicable Wage Order.

6 **WHEREFORE**, Plaintiff prays for judgment as follows:

7 1. That the Court certify the proposed Classes.

8 2. With respect to the First Cause of Action, that it be adjudged that the Court
9 enter judgment in favor of Plaintiffs and Class Members in an amount to be established
10 by proof, in at least the amount of \$250,000, as well as costs and attorney's fees, in
11 accordance with section 226(e) of the Labor Code.

12 3. With respect to the Second Cause of Action, that this Court award Plaintiffs
13 and other Aggrieved Employees their civil penalties, attorneys' fees, and costs of suit, all
14 according to proof, in at least the amount of \$250,000, pursuant to Labor Code Section
15 2698, *et seq.*

16 4. For such other and further relief as this Court may deem fit and proper.
17

18 DATED: September 30, 2020

HARRIS & RUBLE

19
20 

21
22

Alan Harris
23 *Attorney for Plaintiffs*
24
25
26
27
28

1 Alan Harris (SBN 146079)
2 Priya Mohan (SBN 228984)
3 Min Ji Gal (SBN 311963)
4 HARRIS & RUBLE
5 655 N. Central Ave., 17th Floor
6 Glendale, CA 91203
7 Tel: 323.962.3777
8 Fax: 323.962.3004
9 aharris@harrisandruble.com
10 pmohan@harrisandruble.com
11 mgal@harrisandruble.com

12 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

1 LERNA MAYS and LARRY ROACH,
2 individually and on behalf of all others
3 similarly situated,

4 Plaintiffs,

5 v.

6 WALMART, INC., a Delaware
7 Corporation formerly known as
8 WAL-MART STORES, INC. and DOE
9 ONE through and including DOE ONE-
10 HUNDRED,

11 Defendants.

Case No. 20STCV37527
Assigned to Hon. Daniel J. Buckley

FIRST AMENDED COMPLAINT
[Class-Action and PAGA Complaint]

1. Failure to Provide Adequate Pay
Stubs, Cal. Lab. Code § 226(a)
2. Violation of the Private Attorneys
General Act of 2004, California
Labor Code §§ 2698 *et seq.*

1 Plaintiffs Lerna Mays ("Mays") and Larry Roach ("Roach") (collectively
2 "Plaintiffs") on behalf of themselves as individuals, in their representative capacities on
3 behalf of the State of California Labor & Workforce Development Agency ("LWDA")
4 under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), California
5 Labor Code ("Labor Code") § 2698 *et seq.*, and as proposed representatives of a putative
6 class, alleges as follows:

7 INTRODUCTION

8 1. This is a PAGA law enforcement action and class action seeking damages,
9 penalties, civil penalties and attorneys' fees and costs, including such reasonable
10 reimbursement of fees and costs as may be authorized by Section 218.5 of the California
11 Labor Code or otherwise. The alleged violations include wage statement violations, and
12 associated penalties.

13 2. The California Labor Code requires employers to provide to its employees,
14 among other things, itemized wage statements. Defendants Walmart, Inc., formerly
15 known as Wal-Mart Stores, Inc. and Doe One through and including Doe One-Hundred
16 ("Wal-Mart" or "Defendants") failed to comply with the California Labor Code
17 requirements.¹ Accordingly, Plaintiffs seeks civil penalties on behalf of the State of
18 California and the LWDA, to be shared with all impacted employees, all in accord with
19 the extant statutory scheme.

20 3. Wal-Mart has and continues to employ tens of thousands of non-exempt
21 employees who perform a variety of duties throughout California. Plaintiff Mays is
22 bringing this action against Defendants on behalf of Walmart non-exempt employees who,
23 during the relevant period, at any time during the period of one year prior to the filing of
24 her December 18, 2017 original Complaint, to January 31, 2018, the date before Wal-Mart
25 Stores, Inc. effectively changed its name to Walmart, Inc., have worked at one or more of
26 the following Walmart retail facilities in California: the Walmart Supercenter # 3522 at
27

28 ¹ The legal name of the company Wal-Mart Stores, Inc. was changed to Walmart, Inc.,
effective February 1, 2018.

1 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S.
2 Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San Jacinto Ave.,
3 San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA
4 92571 (collectively, these employees are the "Aggrieved Employees") Plaintiff Mays is
5 also bringing this action under PAGA on behalf of all Aggrieved Employees from the
6 period of one year prior to her giving notice to the LWDA of Defendant's violations, June
7 14, 2017, to date.

8 4. Plaintiff Roach is bringing this action against Defendants on behalf of
9 Walmart non-exempt employees who, during the relevant period, from the period of
10 February 1, 2018, the effective date of Defendant's name change from Wal-Mart Stores,
11 Inc. to Walmart, Inc., to the mailing of the class notice, have worked at one or more of
12 the following Walmart retail facilities in California: the Walmart Supercenter # 3522 at
13 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S.
14 Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San Jacinto Ave.,
15 San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris Blvd, Perris, CA
16 92571. Plaintiff Roach is also bringing this action under PAGA on behalf of all
17 Aggrieved Employees from the period of one year prior to his giving notice to the LWDA
18 of Defendant's violations, November 28, 2018, to date.

19 5. The statutes of limitation applicable herein have been tolled by the pendency
20 of Mays v. Wal-Mart Stores, Inc., United States District Court for the Central District of
21 California Case No. Case No. 2:18-cv-02318-AB-KK and/or Roach v. Wal-Mart Stores,
22 Inc., United States District Court for the Central District of California Case No. 5:18-cv-
23 02536-AB-KK. On April 10, 2020, pursuant to a mandate of the Ninth Circuit Court of
24 Appeal, the federal court dismissed Plaintiff Mays' wage statement claim without
25 prejudice following the Ninth Circuit's April 8, 2020 decision reversing the district
26 court's class certification order as to the Wage Statement Class due to lack of Article III
27 standing.
28

1 6. Plaintiffs' tolling argument is supported by controlling decisions of the
2 United States Supreme Court. Crown, Cork & Seal v. Parker, 462 U.S. 345, 354 (1983)
3 ("We conclude, as did the Court in American Pipe, that 'the commencement of a class
4 action suspends the applicable statute of limitations as to all asserted members of the
5 class who would have been parties had the suit been permitted to continue as a class
6 action.' Once the statute of limitations has been tolled, it remains tolled for all members
7 of the putative class until class certification is denied. At that point, class members may
8 choose to file their own suits . . .") (quoting Am. Pipe & Const. Co. v. Utah, 414 U.S.
9 538, 554 (1974).

10 7. The pendency of the federal cases previously filed by Plaintiffs and
11 effectively dismissed by the Ninth Circuit decision that they did not have federal Article III
12 standing to pursue the matters in federal court has tolled all applicable statutes of
13 limitations with respect to the claims articulated herein.

14 8. The Judicial Council of California (JCC)'s amended Emergency Rule 9
15 (Effective on May 29, 2020) also tolls the applicable time periods insofar as it
16 provides: "Notwithstanding any other law, the statutes of limitations and repose for civil
17 causes of action that exceed 180 days are tolled from April 6, 2020, until October 1,
18 2020." The Advisory Committee Comment notes that: "Emergency rule 9 is intended to
19 apply broadly to toll any statute of limitations on the filing of a pleading in court
20 asserting a civil cause of action. The term "civil causes of action" includes special
21 proceedings. (See Code Civ. Proc., §§ 312, 363 ["action," as used in title 2 of the code
22 (Of the Time of Commencing Civil Actions)], is construed "as including a special
23 proceeding of a civil nature"). . . . The rule also applies to statutes of limitations on filing
24 of causes of action in court found in codes other than the Code of Civil Procedure."

25 9. Due to the illegal employment practices as more fully described herein,
26 Plaintiffs, in their representative capacity, seeks civil penalties on behalf of themselves
27 and other Aggrieved Employees pursuant to PAGA, against all Defendants:
28

10. Defendants have had a consistent policy and/or practice of knowingly and intentionally failing to furnish timely the proper itemized wage statements to Aggrieved Employees.

JURISDICTION AND VENUE

11. This is a civil class action and representative action brought under the California Labor Code Private Attorneys General Act ("PAGA"), seeking damages, civil penalties, statutory penalties and attorneys' fees and costs. Venue as to Defendants is proper in this judicial district, pursuant to California Code of Civil Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business, have an agent, or are found in the County of Los Angeles and are within the jurisdiction of this Court for purposes of service of process. The violations of PAGA alleged herein had a direct effect on, and were committed within the State of California, impacting Plaintiffs and the Aggrieved Employees.

12. Venue as to Defendants is proper in this judicial district. Wal-Mart maintains an office, transacts business, has an agent or is otherwise found in the State of California and the District and Division in which this case is filed and is within the jurisdiction of this court for the purpose of service of process. The unlawful acts alleged herein had a direct effect on and were committed within the State of California.

13. This Court has jurisdiction over Wal-Mart because, upon information and belief, Defendants are either residents of California, have minimum contacts in California, or otherwise intentionally avail themselves of the protections of California so as to render California's exercise of jurisdiction over Defendants consistent with traditional notions of fair play and substantial justice.

PARTIES

14. Lerna Mays and Larry Roach are individuals who, during the time periods relevant to this Complaint, was employed by Wal-Mart within the State of California.

15. Defendant Walmart, Inc., formerly Wal-Mart Stores, Inc., was and is a Delaware corporation doing business within the State of California and having a principal

1 place of business within the State of California. Wal-Mart's corporate headquarters are
2 located in Bentonville, Arkansas. Wal-Mart Associates, Inc. was and is a Delaware
3 corporation doing business within the State of California and having a principal place of
4 business in Bentonville, Arkansas. Wal-Mart Associates, Inc. is merely engaged in the
5 business of processing payroll for Defendants.

6 16. Defendants Doe One through and including Doe One-Hundred are sued
7 herein under the provisions of section 474 of the California Code of Civil Procedure.
8 Mays is unaware of the true names, identities, or capacities, whether corporate,
9 individual, or otherwise, of said fictitiously named Defendants, but leave of Court will be
10 prayed to amend this pleading to insert the same herein when finally ascertained. Mays is
11 informed, believes, and thereupon alleges that each of the fictitiously named Defendants
12 is an entity that, during the relevant time period, maintained a principal place of business
13 in the County of Los Angeles, State of California, and that each of the said fictitiously
14 named Defendants is legally responsible for the damages hereinafter more particularly
15 alleged.

16 GENERAL ALLEGATIONS

17 17. Defendants employed Mays as an hourly employee until her employment
18 was terminated by Defendants. Defendants employed Roach as an hourly employee until
19 his employment was terminated by Defendants.

20 18. Plaintiff Mays was terminated on or about February 10, 2017 but was not
21 paid her full and final wages until many days later. Similarly, Plaintiff Roach was
22 terminated on or about November 18, 2018, and not paid his full and final wages until a
23 later date.

24 19. Wal-Mart's policy is to devote minimal resources to the payroll accounting
25 function with the result that in practice its former employees are routinely not paid all
26 final wages owing to them in proper fashion.

27 20. When Plaintiffs received their final wage statements, Wal-Mart failed to
28 include certain required information, including but not limited to, the inclusive dates of

1 the pay period, all accumulated pay in the employee's final pay statement, which Wal-
2 Mart calls a Final Statement of Wages, or the name and legal address of the employer,
3 Wal-Mart Stores, Inc. for Mays and Walmart, Inc. for Plaintiff Roach. On information
4 and belief, Wal-Mart failed to include required information on the wage statements of
5 other Aggrieved Employees as well, both on the final pay statement and otherwise.
6 Defendant's failure to provide this statutorily required information on wage statements
7 has been deemed to cause injury under section 226(e)(2)(B) of the California Labor
8 Code. Further, Plaintiffs and other Aggrieved Employees were not provided compliant
9 wage statements when other tardy payments were made to them, after their employ with
10 Defendant had terminated. Wal-Mart also failed to provide the amount of net wages
11 earned in connection with post-termination, on-cycle pay stubs issued to Plaintiffs and
12 Aggrieved Employees after the Final Statement of Wages. Defendant's post-termination
13 wage statements were confusing in that it was impossible to determine from the wage
14 statements alone whether or not Plaintiff Mays was being paid wages or something else,
15 such as a stock purchase refund. The wage statement of February 23, 2017 claims that
16 she is being paid for "REGULAR EARNINGS," "OVERTIME EARN," and a "CA
17 MEAL PREM," along with some accrued, unused vacation and "PERS pay." The
18 deductions portion of the February 23, 2017 wage statement reflects typical Social
19 Security and SDI deductions associated with the payment of wages. The wage statement
20 of March 9, 2017 indicates that Plaintiff Mays was being paid for "OVERTIME/INCT,"
21 and her "MYSHARE INCT" bonus. The deductions portion of the March 9, 2017 wage
22 statement reflects typical Social Security and SDI deductions associated with the
23 payment of wages. Defendant's Senior Director of Payroll Services, Diana McChristian
24 has declared that Plaintiff May's wage statement dated February 23, 2017 included an,
25 "additional \$100 reflecting a stock purchase withholding that she [Mays] had set up to be
26 regularly deducted from paychecks, including her final pay, but which was turned off
27 before the payroll run that held the February 23, 2017 pay date, resulting in a
28 "reimbursement" of the stock purchase withholding when her final pay was deducted

1 from the “true up” payment.” Jul. 30, 2018 McChristian Decl. [ECF Doc. 56-1] ¶ 16.²
2 Despite the McChristian testimony, there is nothing on the wage statement that reflects
3 this payment. The statements made it impossible for Plaintiff to determine whether she
4 had being properly compensated for all hours worked. Further, Defendant disputes that
5 the post-termination payments made to Plaintiff are wages even though amounts are
6 listed for “Gross Pay” and “Net Pay” on the February 23, 2017 and March 9, 2017 wage
7 statements provided to Plaintiff Mays. Defendant’s failure to provide accurate
8 information regarding gross and net wages earned has harmed Plaintiff Mays in that she
9 has been unable to determine whether or not she has been paid correctly by Defendants.
10 The fact that these errors appear on post-termination wage statements is especially
11 egregious because Plaintiff has little recourse regarding obtaining accurate information
12 since she no longer works for the company. Defendants’ failure to provide the accurate
13 name of the employer on wage statements has injured Plaintiff Mays by causing
14 confusion as to who was her actual employer while Plaintiff Mays was working for
15 Defendant. Defendant claims that Plaintiff Mays has “admitted” that Wal-Mart
16 Associates, Inc., was her employer. However, this “admission” by Plaintiff Mays only
17 illustrates her confusion from Defendant’s deceptive wage statements. During the course
18 of Plaintiff May’s employment with Defendant, wage statements provided to Plaintiff
19 Mays previously listed “Wal-Mart Stores, Inc.” on the statements. Subsequently,
20 Defendant made the decision to list “Wal-Mart Associates, Inc.” on the statements.
21 Obviously, this change caused confusion to Plaintiff Mays and Aggrieved Employees as
22 to which was the entity that actually employed them, especially considering that other
23 documents provided to Plaintiff Mays by Defendant clearly indicated that Plaintiff Mays
24 was in fact employed by Wal-Mart Stores, Inc.

25 21. When Plaintiff Roach received his final wage statement, which Wal-Mart
26

27 ² The referenced McChristian Declaration was filed as Docket Entry 56-1 in the U.S.
28 District Court for the Central District of California, in Mays v. Wal-Mart Stores, Inc.,
C.D. Cal. Case No. 2:18-cv-02318-AB-KK.

1 calls a Statement of Final Pay, Wal-Mart failed to include certain required information,
2 including, but not limited to, the inclusive dates of the pay period, all accumulated pay in
3 the employee's final pay statement, or the name and legal address of the employer, Wal-
4 Mart Stores, Inc. On information and belief, Wal-Mart failed to include required
5 information on the wage statements of other Aggrieved Employees as well, both on the
6 Statement of Final Pay and otherwise. Defendants' failure to provide this statutorily
7 required information on wage statements has been deemed to cause injury under section
8 226(e)(2)(B) of the California Labor Code. Further, Aggrieved Employees were not
9 provided compliant wage statements when other tardy payments were made to them, after
10 their employ with Defendant had terminated. Wal-Mart also failed to provide the amount
11 of net wages earned in connection with post-termination, on-cycle pay stubs issued after
12 the Statement of Final Pay. Defendants' post-termination wage statements were
13 confusing in that it was impossible to determine from the wage statements alone whether
14 or not Aggrieved Employees were being paid wages or something else, such as a stock
15 purchase refund. The statements made it impossible for Aggrieved Employees to
16 determine whether they had being properly compensated for all hours worked.
17 Defendants' failure to provide accurate information regarding gross and net wages earned
18 has harmed Aggrieved Employees in that they have been unable to determine whether or
19 not they have been paid correctly by Defendants. The fact that these errors appear on
20 post-termination wage statements is especially egregious because Aggrieved Employees
21 have little recourse regarding obtaining accurate information after they no longer work
22 for the company, many of the low-wage workers not having ready access to a computer,
23 printer, and the internet. Defendants' failure to provide the accurate name of the
24 employer on wage statements has injured Plaintiff Roach and Aggrieved Employees by
25 causing confusion as to who was his actual employer while Plaintiff was working for
26 Defendants and after termination. Plaintiff Roach suffered confusion as to which was the
27 entity that actually employed him, especially considering that other documents provided
28 to Plaintiff Roach by Defendants clearly indicated that Plaintiff was, in fact, employed by

1 Wal-Mart Stores, Inc.

2 22. Wal-Mart failed to provide Plaintiffs and the Aggrieved Employees pay
3 stubs that contain all of the information required by section 226 of the Labor Code.

4 Section 226 states:

5 Every employer shall, semimonthly or at the time of each payment of wages,
6 furnish each of his or her employees, either as a detachable part of the check,
7 draft, or voucher paying the employee's wages, or separately when wages
8 are paid by personal check or cash, an accurate itemized statement in writing
9 showing (1) gross wages earned, (2) total hours worked by the employee,
10 except for any employee whose compensation is solely based on a salary and
11 who is exempt from payment of overtime under subdivision (a) of Section
12 515 or any applicable order of the Industrial Welfare Commission, (3) the
13 number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece-rate basis, (4) all deductions, provided that all
15 deductions made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates of the
17 period for which the employee is paid, (7) the name of the employee and his
18 or her social security number, except that by January 1, 2008, only the last
19 four digits of his or her social security number or an employee identification
20 number other than a social security number may be shown on the itemized
21 statement, (8) the name and address of the legal entity that is the employer,
22 and (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 Cal. Lab. Code § 226(a). Plaintiffs' pay stubs demonstrate that Wal-Mart fails to include
25 the data required by section 226(a), including but not limited to the "inclusive dates of the
26 period for which the employee is paid," all accumulated vacation pay earned in the
27 employee's final pay statement, and the name and address of the entity that is the
28 employer.

23. Mays's employer was Wal-Mart Stores, Inc, Nevertheless, her final wage statement and others issued to her incorrectly show Wal-Mart Associates, Inc. as the employer.

24. Similarly, Plaintiff Roach's employer was Walmart, Inc., formerly named Wal-Mart Stores, Inc. Nevertheless, his final wage statement, for example, and others issued to him incorrectly show Wal-Mart Associates, Inc. as the employer.

25. At all times relevant herein, sections 226 (b), (c), and (f) of the California Labor Code further provided in part:

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer.

...

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

...

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

PLAINTIFF'S CLASS-ACTION ALLEGATIONS

26. The Class represented by Mays consists of all Walmart non-exempt employees who, at any time from December 18, 2016 to January 31, 2018, worked at one or more of the following Walmart retail facilities in California: the Walmart Supercenter # 3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart Supercenter at S. San

1 Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter at 1800 N. Perris
2 Blvd., Perris, CA 92571. (the "Mays Class" and the members are "Mays Class
3 Members").

4 27. The Class represented by Roach consists of all Walmart non-exempt
5 employees who, at any time from February 1, 2018 to the mailing of the class notice,
6 worked at one or more of the following Walmart retail facilities in California: the
7 Walmart Supercenter # 3522 at 3250 Big Dalton Avenue, Baldwin Park, CA 91706; the
8 Walmart Supercenter at 1231 S. Sanderson Avenue, Hemet, CA 92545; the Walmart
9 Supercenter at S. San Jacinto Ave., San Jacinto, CA 92583; or the Walmart Supercenter
10 at 1800 N. Perris Blvd., Perris, CA 92571 (the "Roach Class" and the members are the
11 "Roach Class Members").

12 28. The number of persons within the Classes is great, believed to be in excess
13 of ten thousand. It is therefore impractical to join each Class Member as a named
14 plaintiff. Accordingly, the utilization of a class action is the most economically feasible
15 means of determining the merits of this litigation.

16 29. Despite the numerosity of the Members of the Classes, membership within
17 them is readily ascertainable through an examination of the records that Wal-Mart is
18 required by law to keep and that it has kept. Likewise, the dollar amounts owed to
19 Plaintiffs and Class Members are readily ascertainable by an examination of the same
20 records. For example, with respect to Defendant's violations of section 226(a)(8) of the
21 California Labor Code, the damages owing to each Class Member equals the sum of \$50
22 (for the initial wage statement issued to the employee during the period commencing one
23 year prior to the filing of the Complaint) and the product of the number of further wage
24 statements issued to the employee and \$100, with a per employee cap of \$4,000.

25 30. The Classes are proper insofar as common questions of fact and of law
26 predominate over individual issues regarding the money owed to each Class Member.

27 31. There is a well-defined community of interest in the questions of law and
28 fact common to the Classes. The key questions are the same for each Class Member,

1 namely, (a) Whether each Class Member received proper wage statements; and (e)
2 Whether Wal-Mart's failure to show all accumulated vacation pay earned in the
3 employee's final pay statement, failure to show the "inclusive dates of the of the period
4 for which the employee is paid," or failure to list the legal name and address of the
5 employer constitutes a violation of section 226.

6 32. Plaintiffs' claims are typical of the claims of Class Members, which all arise
7 out of the same general operative facts, namely, that Wal-Mart's pay stubs fail to include
8 all of the information required by the Labor Code. Plaintiffs have no conflict of interest
9 with Class Members, and they are able to represent the interests of the Mays Class
10 Members and Roach Class Members fairly and adequately.

11 33. A class action is a far-superior method for the fair and efficient adjudication
12 of this controversy for a number of reasons. First, the persons within the Class are
13 numerous, and joinder of all of them is impractical. Second, the disposition of all Class
14 Members' claims in a single class action rather than in individual actions will benefit
15 both the parties and the Court. In that regard, the claims of each individual Class
16 Member are too small to litigate individually, and the commencement of thousands of
17 separate actions would lead to an undue burden on scarce judicial and administrative
18 resources. The alternative of individual proceedings before California's Labor
19 Commissioner is impractical inasmuch as that agency has insufficient resources to
20 process such claims promptly, and, under the provisions of California Labor Code section
21 98.2, if the individual Class Members were to succeed in obtaining awards in their favor,
22 such awards would be appealable as a matter of right for a *de novo* trial in Superior
23 Court, leading to a multiplicity of such trials in that court. In addition, absent class
24 treatment, employees will most likely be unable to secure redress given the time and
25 expense necessary to pursue individual claims, and individual Class Members will likely
26 be unable to retain counsel willing to prosecute their claims on an individual basis given
27 the small amount of recovery. As a practical matter, denial of class treatment will lead to
28 denial of recovery to the individual Class Members.

34. The interest of each Class Member in controlling the prosecution of his or her individual claim against Wal-Mart is small when compared with the efficiency of a class action.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

35. On or about June 14, 2017, Plaintiff Mays gave written notice by certified mail and online filing of Defendant's violations of various provisions of the California Labor Code as alleged in this Complaint to the Labor and Workforce Development Agency ("LWDA") and Defendant. On or about November 28, 2018, Plaintiff Roach gave written notice by certified mail and online filing of Defendants' violations of various provisions of the California Labor Code as alleged in this Complaint to the LWDA and Defendant.

36. More than sixty-five days have passed from the date of Plaintiffs' notices to the LWDA and Plaintiffs have not been notified by the LWDA that it intends to investigate Plaintiffs' allegations. Therefore, pursuant to section 2699.3(a)(2)(A), Plaintiffs "may commence a civil action pursuant to Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

37. Plaintiffs are informed and believe and thereon alleges that Defendants have routinely failed to provide Plaintiffs and other Aggrieved Employees with proper itemized wage statements.

38. Plaintiffs allege that Defendant violated PAGA by willfully failing to provide Aggrieved Employees with proper itemized wage statements in violation of Labor Code § 226(a). "PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage order or employment under conditions prohibited by a wage order)." Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

FIRST CAUSE OF ACTION

Failure to Provide Adequate Pay Stubs, Cal. Lab. Code § 226(a)
(On Behalf of Plaintiffs Individually, the Mays Class and the Roach Class Against All
Defendants)

39. Plaintiffs re-plead, re-allege, and incorporate by reference each and every paragraph set forth in this Complaint.

40. Section 226 of the Labor Code states:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Id. § 226(e).

41. Wal-Mart failed to provide Mays, Roach and Class Members with pay stubs conforming to the requirements of section 226(a) of the Labor Code by failing to always designate "inclusive dates of the period for which the employee is paid," failure to show all accumulated vacation pay earned in the employee's final pay statement, failure to accurately list the gross and net wages paid, or the name and address of the legal entity that is the employer. As described in this Complaint, Defendants' defective wage statements injured Plaintiffs and Aggrieved Employees.

42. According to Mays's employment records, the employer is Wal-Mart Stores, Inc. but her wage statements, and those issued to other Aggrieved Employees, incorrectly lists Wal-Mart Associates, Inc. as the employer. For example, see the document showing Wal-Mart Stores, Inc. as the employer in Mays's application in 2007; the document showing Wal-Mart Stores, Inc. as the employer in 2016 in her promotion papers; and the document showing Wal-Mart Stores, Inc. as the employer at the time she was terminated

1 in February 2017. Accordingly, Mays and the Mays Class Members are entitled to
 2 damages, to costs, and to reasonable attorney's fees in accordance with the provisions of
 3 Labor Code section 226(e). Plaintiff Mays was not employed by Wal-Mart Associates,
 4 Inc., an entity which merely was engaged in the business of "Payroll Processing," as
 5 detailed by it on the Statement of Information filed by it with the Secretary of State of the
 6 State of California on September 8, 2017 and on August 30, 2016.

7 43. According to Plaintiff Roach's employment records, his employer is Wal-
 8 Mart Stores, Inc. and/or Walmart, Inc. but his wage statements, and those issued to other
 9 Aggrieved Employees, incorrectly lists Wal-Mart Associates, Inc. as the employer.
 10 Accordingly, Plaintiff Roach and the Roach Class Members are entitled to damages,
 11 costs, and reasonable attorney's fees in accordance with the provisions of Labor Code
 12 section 226(e). Plaintiff Roach was not employed by Wal-Mart Associates, Inc.—an
 13 entity which merely was engaged in the business of "Payroll Processing," as detailed by
 14 it on the Statement of Information filed by it with the Secretary of State of the State of
 15 California on September 6, 2018.

16 SECOND CAUSE OF ACTION

17 Civil Penalties, Cal. Lab. Code §§ 2698 *et seq.*

18 (On behalf of Plaintiffs, the State of California and on behalf of the Aggrieved
 19 Employees Against Defendants)

20 44. Plaintiffs replead, reallege, and incorporate by reference each and every
 21 allegation set forth in the Complaint.

22 45. Plaintiffs are "aggrieved employees" under PAGA, as they were employed by
 23 Defendant during the applicable statutory period and suffered one or more of the Labor
 24 Code Violations set forth herein. Accordingly, they seek to recover on behalf of
 25 themselves and all other current and former Aggrieved Employees of Defendant, the civil
 26 penalties for which provision is made by PAGA, as well as reasonable attorney's fees and
 27 costs.
 28

1 46. Pursuant to section 2699.3(a)(1) of the Labor Code, on June 14, 2017,
 2 Plaintiff Mays gave written notice to the California Labor and Workforce Development
 3 Agency ("LWDA") of the specific provisions of the Labor Code alleged to have been
 4 violated by Defendants, including the theories set forth in this Complaint. Also on that
 5 day, Plaintiff gave written notice by certified mail to Defendant Wal-Mart Stores, Inc. of
 6 the specific provisions of the Labor Code alleged to have been violated by Defendant Wal-
 7 Mart Stores, Inc. On or about November 28, 2018, Plaintiff Roach gave written notice by
 8 certified mail and online filing of Defendants' violations of various provisions of the
 9 California Labor Code as alleged in this Complaint to the LWDA and Defendants.

10 47. More than sixty-five days have passed from the date of Plaintiffs' notice to
 11 the LWDA and Plaintiffs have not been notified by the LWDA that it intends to
 12 investigate Plaintiffs' allegations. Therefore, Plaintiffs, pursuant to section
 13 2699.3(a)(2)(A), "may commence a civil action pursuant to Section 2699." Cal. Lab.
 14 Code § 2699.3(a)(2)(A).

15 48. Plaintiffs seek to recover the PAGA civil penalties through a representative
 16 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
 17 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

18 49. Plaintiffs seeks civil penalties pursuant to PAGA for violations of the
 19 following Labor Code provisions:

20 Failure to provide itemized wage statements to Aggrieved Employees in
 21 violation of Labor Code § 226(a), not even identifying the legal name and
 22 address of the employer;

23 50. Labor Code §§ 2699 *et seq.* imposes a civil penalty of one hundred dollars
 24 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred
 25 dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all
 26 Labor Code provisions for which a civil penalty is not specifically provided, including the
 27 applicable Wage Order.
 28

1 **WHEREFORE**, Plaintiffs pray for judgment as follows:

2 1. That the Court certify the proposed Classes.

3 2. With respect to the First Cause of Action, that it be adjudged that the Court
4 enter judgment in favor of Plaintiffs and Class Members in an amount to be established
5 by proof, in at least the amount of \$250,000, as well as costs and attorney's fees, in
6 accordance with section 226(e) of the Labor Code.

7 3. With respect to the Second Cause of Action, that this Court award Plaintiffs
8 and other Aggrieved Employees their civil penalties, attorneys' fees, and costs of suit, all
9 according to proof, in at least the amount of \$250,000, pursuant to Labor Code Section
10 2698, *et seq.*

11 4. For such other and further relief as this Court may deem fit and proper.

12
13 DATED: November 24, 2020

HARRIS & RUBLE

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17 _____
18 Alan Harris
19 *Attorney for Plaintiffs*
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Walmart Failed to Issue Proper Wage Statements to Calif. Workers](#)
