

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
WELLS FARGO TOWER  
SUITE 1500, 3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169  
TELEPHONE: 702.369.6800

1 Anthony L. Martin  
Nevada Bar No. 8177  
2 [anthony.martin@ogletreedeakins.com](mailto:anthony.martin@ogletreedeakins.com)  
3 Dana B. Salmonson  
Nevada Bar No. 11180  
4 [dana.salmonson@ogletreedeakins.com](mailto:dana.salmonson@ogletreedeakins.com)  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
5 Wells Fargo Tower  
Suite 1500  
6 3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
7 Telephone: 702.369.6800  
8 Fax: 702.369.6888

9 *Attorneys for Defendant Wal-Mart Associates, Inc.*

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

12 CHRISTOPHER NELSON, on behalf of  
13 himself and all others similarly situated,  
14  
Plaintiff,  
15  
vs.  
16 WAL-MART ASSOCIATES, INC. and DOES  
1 through 50, inclusive,  
17  
Defendant(s).  
18

Case No.:  
[District Court Case No. 20-TRT 00004 1E]

**NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1331, 1367,  
AND 1441**

19 PLEASE TAKE NOTICE that Wal-Mart Associates, Inc. (“Defendant”), by and through  
20 undersigned counsel, hereby files this Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1331,  
21 1367, and 1441 (“Notice”) of this case from the First Judicial District Court of the State of Nevada,  
22 in which it is now pending, to the United States District Court for the District of Nevada. The federal  
23 question jurisdiction of this Court is invoked under 28 U.S.C. § 1331 and supplemental jurisdiction  
24 over state law claims is invoked under 28 U.S.C. § 1367.

25 **I. State Court Action**

26 Plaintiff Christopher Nelson (“Plaintiff”) filed this action against Defendant in the First  
27 Judicial District Court of the State of Nevada on December 23, 2020, Case No. 20-TRT 00004 1E  
28 (the “State Court Action”). (*See* true and correct copies of the Plaintiff’s Collective and Class Action

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
 WELLS FARGO TOWER  
 SUITE 1500, 3800 HOWARD HUGHES PARKWAY  
 LAS VEGAS, NV 89169  
 TELEPHONE: 702.369.6800

1 Complaint against Defendant (“Complaint”) attached hereto as **Exhibit A** and Plaintiff’s Civil Cover  
 2 Sheet, attached hereto as **Exhibit B.**) A copy of the Summons and Complaint was served on the  
 3 registered agents for Defendant on December 31, 2020. (*See* a true and correct copy of the  
 4 Declaration of Service filed on January 20, 2021, attached hereto as **Exhibit C.**) To date, it does not  
 5 appear that the Summons been returned to the Court for docketing. (*See* as true and correct copy of  
 6 the Docket, attached hereto as **Exhibit D.**)

7 The State Court Action generally alleges that Defendant required Plaintiff and all warehouse  
 8 workers at Defendant’s food distribution warehouses in the “dry” and “cold” sections of the  
 9 warehouse to engage in various pre-shift work activities off the clock and without compensation.  
 10 (*See generally*, **Exhibit A.**) Thus, Plaintiff filed this suit alleging the following causes of action: (1)  
 11 failure to pay overtime wages in violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C.  
 12 §207; (2) failure to pay minimum wages in violation of the Nevada Constitution; (3) failure to pay  
 13 wages for all hours worked in violation of NRS 608.140 and 608.016; (4) failure to pay overtime  
 14 wages in violation of NRS 608.140 and 608.018; and (5) failure to timely pay all wages due and  
 15 owing upon termination pursuant to NRS 608.140 and 608.020-.050. (*See id.*)

16 **II. This Court Has Federal Question Jurisdiction Under 28 U.S.C. § 1331**

17 **A. Plaintiff’s Claims Assert a Federal Question**

18 Plaintiff’s First Cause of Action alleges violations of the FLSA; specifically, failure to pay  
 19 overtime wages in violation of the FLSA, 29 U.S.C. §207. (*See* Ex. A, ¶¶ 39-43.) The FLSA is a  
 20 federal law. Accordingly, Plaintiff’s Complaint presents federal question jurisdiction under 28  
 21 U.S.C. § 1331.

22 **B. This Court Has Supplemental Jurisdiction Over Plaintiff’s Remaining State**  
 23 **Law Claims Under 28 U.S.C. § 1367**

24 Plaintiff’s Complaint also alleges state law wage claims, including Defendants’ alleged  
 25 failure (i) to pay minimum wages in violation of the Nevada Constitution; (ii) to pay wages for all  
 26 hours worked in violation of NRS 608.140 and 608.016; (iii) to pay overtime wages in violation of  
 27 NRS 608.140 and 608.018; and (iv) to pay all wages due and owing upon termination pursuant to  
 28 NRS 608.140 and 608.020-.050. These state law claims arise from the same alleged occurrences

1 and/or common nucleus of operative facts that underlie Plaintiff’s federal FLSA claims. The  
2 Complaint makes clear that each of Plaintiff’s claims, including the state law claims, are related to  
3 allegations of Defendant’s alleged failure to pay Plaintiff and other employees for pre-shift work  
4 performed off the clock. This Court, therefore, has supplemental jurisdiction over Plaintiff’s  
5 remaining state law claims pursuant to 28 U.S.C. § 1367.

6 **III. This Removal Is Timely**

7 Plaintiff served Defendant on December 31, 2020. As this Notice is being filed on January  
8 29, 2021, less than 30 calendar days after the Complaint was served on Defendant, the removal is  
9 timely.

10 **IV. Requirements For Removal**

11 Defendant has met all other requirements for removal as follows:

12 A. Defendant attaches to this Notice as **Exhibits A through D**, copies of “all process,  
13 pleadings and orders” served upon it pursuant to 28 U.S.C. § 1446(a).

14 B. Defendant has also concurrently filed a copy of this Notice in the First Judicial  
15 District Court for the State of Nevada.

16 C. Defendant has served a copy of this Notice upon Plaintiff’s counsel.

17 D. All named Defendants have been served and consent to the removal of Plaintiff’s  
18 action.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
WELLS FARGO TOWER  
SUITE 1500, 3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169  
TELEPHONE: 702.369.6800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E. This Notice is executed pursuant to Federal Rule of Civil Procedure 11.

DATED this 29th day of January, 2021.

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

*/s/ Dana B. Salmonson*

---

Anthony L. Martin  
Nevada Bar No. 8177  
Dana B. Salmonson  
Nevada Bar No. 11180  
Wells Fargo Tower  
Suite 1500  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attorneys for Defendant Wal-Mart Associates, Inc.*

**OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**  
WELLS FARGO TOWER  
SUITE 1500, 3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169  
TELEPHONE: 702.369.6800

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
WELLS FARGO TOWER  
SUITE 1500, 3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169  
TELEPHONE: 702.369.6800

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically transmitted the foregoing **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1367, AND 1441** to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

- Mark R. Thierman
- Joshua D. Buck
- Leah L. Jones
- Joshua R. Hendrickson

Pursuant to FRCP 5(b), I hereby further certify that service of the foregoing document was also made by depositing a true and correct copy of same for mailing, first class mail, postage prepaid thereon, at Las Vegas, Nevada, to the following:

- Mark R. Thierman
- Joshua D. Buck
- Leah L. Jones
- Joshua R. Hendrickson
- Thierman Buck LLP
- 7287 Lakeside Drive
- Reno, NV 89511
- Attorneys for Plaintiff*

DATED this 29th day of January, 2021.

*/s/ Carol Rojas*

\_\_\_\_\_  
An Employee of OGLETREE, DEAKINS,  
NASH, SMOAK & STEWART, P.C.

**EXHIBIT A**  
**PLAINTIFF'S COLLECTIVE AND CLASS ACTION**  
**COMPLAINT**

FILED

2020 DEC 23 PM 1:50

STOREY COUNTY CLERK

BY *D. New*  
DEPUTY

1 Mark R. Thierman, Nev. Bar No. 8285  
 2 mark@thiermanbuck.com  
 3 Joshua D. Buck, Nev. Bar No. 12187  
 4 josh@thiermanbuck.com  
 5 Leah L. Jones, Nev. Bar No. 13161  
 6 leah@thiermanbuck.com  
 7 Joshua R. Hendrickson, Nev. Bar No. 12225  
 8 joshh@thiermanbuck.com  
 9 **THIERMAN BUCK LLP**  
 10 7287 Lakeside Drive  
 11 Reno, Nevada 89511  
 12 Tel. (775) 284-1500  
 13 Fax. (775) 703-5027  
 14 *Attorneys for Plaintiff and the Putative Classes*

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF**  
 11 **THE STATE OF NEVADA IN AND FOR THE**  
 12 **COUNTY OF STOREY**

12 CHRISTOPHER NELSON, on behalf of  
 13 himself and all others similarly situated,

14 Plaintiff,

15 vs.

16 WAL-MART ASSOCIATES, INC., and  
 17 DOES 1 through 50, inclusive,

18 Defendant(s).

Case No.: 20-TRT 00004 1E

Dept. No.: 1

**COLLECTIVE AND CLASS ACTION COMPLAINT**

**(EXEMPT FROM ARBITRATION PURSUANT TO NAR 5)**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 3) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 4) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and
- 5) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050.

**LIEN REQUESTED PURSUANT TO NRS 608.050**

**JURY TRIAL DEMANDED**

1 COMES NOW Plaintiff CHRISTOPHER NELSON on behalf of himself and all other  
2 similarly situated and typical persons and alleges the following:

3 All allegations in the Complaint are based upon information and belief except for those  
4 allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in the  
5 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable  
6 opportunity for further investigation and discovery.

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over the federal claim alleged herein pursuant  
9 to the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 216(b) which states: "An action to recover  
10 the liability prescribed in either of the preceding sentences may be maintained against any  
11 employer (including a public agency) in any Federal or State court of competent jurisdiction by  
12 any one or more employees for and in behalf of himself or themselves and other employees  
13 similarly situated."

14 2. The Court has original jurisdiction over the state law claims alleged herein because  
15 the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid wages has a  
16 private right of action pursuant to Nevada Revised Statute ("NRS") sections 608.140, 608.018,  
17 and 608.020-.050. *See Neville v. Eighth Judicial Dist., Terrible Herbst, Inc.*, 133 Nev. Adv. Op.  
18 95 (Dec. 7, 2017), 406 P.3d 499 (2017). Plaintiff made a proper demand for wages due pursuant  
19 to NRS 608.140.

20 3. Plaintiff also claims a private cause of action to foreclose a lien against the  
21 property owner for wages due pursuant to NRS 608.050.

22 4. Venue is proper in the Court because the Defendant named herein maintains a  
23 principal place of business or otherwise is found in the judicial district and many of the acts  
24 complained of herein occurred in Storey County, Nevada.

25 **PARTIES**

26 5. Plaintiff CHRISTOPHER NELSON (hereinafter "Plaintiff" or "Mr. Nelson") is a  
27 natural person who is and was a resident of the State of Nevada at all relevant times herein. Mr.  
28



1 Nelson was employed by Defendant as a non-exempt hourly employee from on or about October  
2 1, 2007 to the present.

3 6. Defendant WAL-MART ASSOCIATES, INC. (hereinafter "Defendant" or  
4 "Walmart") is a foreign corporation incorporated in the state of Delaware, with a principal place  
5 of business in Bentonville, Arkansas, and is an employer engaged in commerce under the  
6 provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et. seq.* and is an employer  
7 under NRS 608.011.

8 7. The identity of DOES 1-50 is unknown at the time and the Complaint will be  
9 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes  
10 that each Defendant sued herein as DOE is responsible in some manner for the acts, omissions,  
11 or representations alleged herein and any reference to "Defendant," "Defendants," "Walmart"  
12 herein shall mean "Defendant and each of them."

13 **FACTUAL ALLEGATIONS**

14 8. Defendant operates approximately 44 food distribution warehouses across the  
15 country.

16 9. Plaintiff has been employed by Defendant as a non-exempt hourly paid warehouse  
17 worker at Defendant's food distribution warehouse located at 2195 NV-439, Sparks, NV 89434.

18 10. Defendant's food distribution warehouses are divided into "dry" and "cold"  
19 sections; Plaintiff has worked in both.

20 11. Plaintiff is currently assigned to the dry section as a "Processor". Plaintiff's  
21 current rate of pay is \$22.35 an hour; his base overtime rate is \$33.53.

22 12. Prior to his current assignment, Plaintiff was assigned to the cold section as a  
23 "Processor." Plaintiff's rate of pay in the cold section at the time of his transfer to the dry section  
24 was \$22.60 an hour; his base overtime rate was \$33.90.

25 13. Plaintiff is currently assigned to work four (4) shifts per workweek, for ten (10)  
26 hours each shift. Plaintiff's currently scheduled shift time is from 4:00 a.m. to 2:30 p.m., with a  
27 thirty (30) minute unpaid lunch break.  
28



1           21. For example, in the pay period from October 10, 2020 to October 23, 2020,  
2 Plaintiff worked 81.35 hours.<sup>1</sup> During that pay period, Plaintiff worked Tuesday October 13,  
3 2020 through Friday October 16, 2020 and then again from Tuesday October 20, 2020 through  
4 Friday October 23, 2020. He worked a total of four (4) shifts each of those workweeks. Because  
5 he was not compensated for the dry section pre shift work activities described above, and since  
6 Plaintiff worked at least forty (40) hours for each workweek, the unpaid dry section pre shift  
7 activities are owed at Plaintiff's overtime rate of \$33.53. Plaintiff is owed 1 hour for each  
8 workweek (15-minutes per shift) at his overtime rate. Therefore, Plaintiff must be compensated  
9 \$33.53 for each of these two exemplar workweeks.

10           22. While the above exemplar demonstrates one pay period and two workweeks  
11 wherein Plaintiff is owed unpaid wages, he seeks all the owed and unpaid wages due and owing  
12 to him and to all other similarly situated employees over the full course of the relevant time period  
13 alleged in this complaint.

14   **Cold Section Pre-Shift Activities**

15           23. Prior to his re-assignment to the dry section on or about August 18, 2020, Plaintiff  
16 worked for years in the cold section.

17           24. As with its “ready for work” policy in the dry section, Defendant required Plaintiff  
18 and all other similarly situated employees to be ready to work at shift start time in the cold section  
19 too.

20           25. While Plaintiff was not required to retrieve a scanner or printer prior to his shift in  
21 the cold section, he and all other similarly situated employees were required to don personal  
22 protective equipment (PPE)—i.e., freezer gear—prior to the start of their respective shifts.

23           26. The cold section is the freezer/refrigerator section of the food warehouse wherein  
24 freezer and refrigerated items are distributed. Understandably, Defendant requires all employees  
25 who work in the cold section to wear “cold store clothing” or “freezer wear” as PPE to prevent  
26 workplace illness due to the cold environment. Therefore, Defendant requires Plaintiff and all  
27

28           <sup>1</sup> A true and correct copy of this online paystub for the pay period of October 10, 2020 to  
October 23, 2020 is attached hereto as Exhibit 2.

1 other similarly situated employees to don the following PPE prior to the start of their respective  
2 shifts:

- 3 • RefrigiWear insulated bibs<sup>2</sup>;
- 4 • RefrigiWear thermal jacket;
- 5 • Thermal hooded sweatshirt;
- 6 • Stocking hat; and
- 7 • Wool socks.

8 27. Plaintiff and all other similarly situated employees were not compensated for the  
9 time they spent to don this PPE. Plaintiff and all other similarly situated employees were expected  
10 to don this PPE with enough time prior to the start of their respective shifts so that their PPE was  
11 fully donned and they were ready to start working at the beginning of the shift.

12 28. Plaintiff estimates that it regularly took him approximately fifteen (15) minutes  
13 prior to his scheduled shift so that he has sufficient time to (i) don his PPE and (ii) proceed to his  
14 station for his start-up meeting at the start of his shift. Because Plaintiff was not compensated for  
15 these cold section pre-shift activities, Plaintiff alleges that he is entitled to recover 15-minutes in  
16 wages for each and every shift that he has worked over the relevant time period alleged herein.

17 ///

18 ///

19  
20 <sup>2</sup> RefrigiWear markets their PPE to cold storage employers and employees:

21 Cold storage employees are dedicated to ensuring the proper care  
22 and storage of customers' products, which means a cold working  
23 environment no matter the season. RefrigiWear has spent the last 60  
24 years helping cold storage employees stay warm and protected in  
25 the cooler and freezer while they work. We offer cold apparel like  
26 our iconic Iron-Tuff line and our stylish softshell options. We help  
27 you keep a professional look with embroidery services and stylish  
28 cooler and freezer gear that helps you master the cold. Whether it is  
jackets, pants, base layers, boots, or one of our many other products,  
RefrigiWear has the gear to keep cold storage employees protected  
from the cold.

See <https://www.refrigiwear.com/view/cold-storage> (last visited Dec. 2, 2020).

1           29. For example, in the pay period from June 20, 2020 to July 3, 2020, Plaintiff worked  
 2 80.68 hours.<sup>3</sup> During that pay period, Plaintiff is informed and believes that he worked Tuesday  
 3 June 23, 2020 through June 26, 2020 and then again from Tuesday June 30, 2020 through Friday  
 4 July 3, 2020. He worked a total of four (4) shifts each of those workweeks. Because he was not  
 5 compensated for the cold section pre shift work activities described above, and since Plaintiff  
 6 worked at least forty (40) hours for each workweek, the unpaid cold section pre shift activities  
 7 are owed at Plaintiff's overtime rate of \$33.90. Plaintiff is owed 1 hour for each workweek (15-  
 8 minutes per shift) at his overtime rate. Therefore, Plaintiff must be compensated \$33.90 for each  
 9 of these two exemplar workweeks.

10           30. While the above exemplar demonstrates one pay period and two workweeks  
 11 wherein Plaintiff is owed unpaid wages, he seeks all the owed and unpaid wages due and owing  
 12 to him and to all other similarly situated employees over the full course of the relevant time period  
 13 alleged in this complaint.

#### 14                           CLASS AND COLLECTIVE ACTION ALLEGATIONS

15           31. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
 16 this Complaint as though fully set forth herein.

17           32. Plaintiff brings this action on behalf of himself and all other similarly situated and  
 18 typical employees as a collective action under the federal Fair Labor Standards Act ("FLSA").  
 19 Plaintiff brings this action on behalf of himself and the following Classes of individuals  
 20 (hereinafter collectively referred to as the "FLSA Classes"):

21                   **FLSA Dry Section Class:** All non-exempt hourly paid food  
 22 distribution warehouse employees who  
 23 (i) were employed by Defendant in the  
 24 United States at any time within 3 years  
 25 from the filing of the original complaint  
 26 in this action, (ii) worked in the dry  
 27 section of the food distribution  
 warehouse, and (iii) were required to  
 retrieve a scanner, printer, or other  
 electronic device, pre-shift.

28           <sup>3</sup> A true and correct copy of this online paystub for the pay period of June 20, 2020 to  
 July 3, 2020, is attached hereto as Exhibit 3.

1           **FLSA Cold Section Class:** All non-exempt hourly paid food  
 2    distribution warehouse employees who  
 3    (i) were employed by Defendant in the  
 4    United States at any time within 3 years  
 5    from the filing of the original complaint  
 6    in this action, (ii) worked in the cold  
 7    section of the food distribution  
 8    warehouse, and (iii) were required to don  
 9    cold storage personal protective  
 10   equipment (PPE) pre-shift.

7           33. With regard to the conditional certification mechanism under the FLSA, Plaintiff  
 8 is similarly situated to those he seeks to represent because Plaintiff and all potential FLSA Dry  
 9 Section and Cold Section Class members are alleged victims of Defendant’s allegedly unlawful  
 10 pre-shift work requirements.

11           34. The statute of limitations under the FLSA is 3 years for willful violations.  
 12 Defendant’s policies of denying compensation for the time spent (i) retrieving equipment pre-  
 13 shift in the dry section of the food distribution warehouse and (ii) donning PPE pre-shift, are  
 14 legally untenable. Defendant has sought to avoid its wage-hour obligations by neglecting to  
 15 compensate employees for these pre-shift work activities. Defendant’s reasons for denying  
 16 compensation for these activities was a financial decision and Defendant has unlawfully retained  
 17 wages that should otherwise have been paid out to Plaintiff and all putative FLSA Dry Section  
 18 and Cold Section Class members. Accordingly, Defendant’s conduct in this regard has been  
 19 willful.

20           35. Plaintiff has signed a Consent to Sue form, which is attached hereto as Exhibit 1.

21   **CLASS ACTION ALLEGATIONS**

22           36. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
 23 this Complaint as though fully set forth herein.

24           37. Plaintiff brings this action on behalf of himself and the following Classes of  
 25 individuals (hereinafter collectively referred to as the “Nevada Classes”):

1 **Nevada Dry Section Class:** All non-exempt hourly paid food  
2 distribution warehouse employees who  
3 (i) were employed by Defendant in the  
4 State of Nevada at any time within 3  
5 years from the filing of the original  
6 complaint in this action, (ii) worked in  
7 the dry section of the food distribution  
8 warehouse, and (iii) were required to  
9 retrieve a scanner, printer, or other  
10 electronic device, pre-shift.

11 **Nevada Cold Section Class:** All non-exempt hourly paid food  
12 distribution warehouse employees who  
13 (i) were employed by Defendant in the  
14 State of Nevada at any time within 3  
15 years from the filing of the original  
16 complaint in this action, (ii) worked in  
17 the cold section of the food distribution  
18 warehouse, and (iii) were required to don  
19 cold storage personal protective  
20 equipment (PPE) pre-shift.

21 38. NRCP Rule 23 Class treatment for all claims alleged in this complaint is  
22 appropriate in this case for the following reasons:

23 A. The Class is Sufficiently Numerous: Upon information and belief,  
24 Defendant employs, and has employed, in excess of 1,000 Nevada Class Members within the  
25 applicable statute of limitations. Because Defendant is legally obligated to keep accurate payroll  
26 records, Plaintiff alleges that Defendant's records will establish the identity and ascertainability  
27 of members of the Nevada Classes as well as their numerosity.

28 B. Common Questions of Law and Fact Exist: Common questions of law and  
fact exist and predominate as to Plaintiff and the Class, including, without limitation, the  
following: Whether the dry section pre-shift activities are compensable under Nevada law;  
Whether the cold section pre-shift donning of PPE is compensable under Nevada law; Whether  
members of the Nevada Classes who are former employees are entitled to continuation wages in  
the event that they are successful in the underlying claims for compensation.

C. Plaintiff's Claims are Typical to Those of Fellow Class Members: Each  
member of the Nevada Classes is and was subject to the same practices, plans, and/or policies as

1 Plaintiff, as follows: Defendant required Plaintiff and all members of the Nevada Dry Section  
2 Class to retrieve equipment pre-shift without compensation; Defendant required Plaintiff and all  
3 members of the Nevada Cold Section Class to don PPE pre-shift without compensation.

4 D. Plaintiff is an Adequate Representatives of the Class: Plaintiff will fairly  
5 and adequately represent the interests of the Classes because Plaintiff is a member of the Nevada  
6 Classes, he has issues of law and fact in common with all members of the Nevada Classes, and  
7 he does not have any interests antagonistic to members of the Nevada Classes. Plaintiff and  
8 counsel are aware of their fiduciary responsibilities to Class Members and are determined to  
9 discharge those duties diligently and vigorously by seeking the maximum possible recovery for  
10 Class Members as a group.

11 E. Predominance/Superiority: Common questions predominate over  
12 individualized issues. A class action is also superior to other available means for the fair and  
13 efficient adjudication of their controversy. Each Class Member has been damaged and is entitled  
14 to recovery by reason of Defendant's illegal policy and/or practice of failing to compensate its  
15 employees in accordance with federal and Nevada wage and hour law. The prosecution of  
16 individual remedies by each Class Member will be cost prohibitive and may lead to inconsistent  
17 standards of conduct for Defendant and result in the impairment of Class Members' rights and  
18 the disposition of their interest through actions to which they were not parties.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207**

21 (On Behalf of Plaintiff and Members of the FLSA Classes Against Defendant)

22 39. Plaintiff realleges and incorporates by reference all the paragraphs above in the  
23 Complaint as though fully set forth herein.

24 40. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided  
25 in the section, no employer shall employ any of his employees who in any workweek is engaged  
26 in commerce or in the production of goods for commerce, or is employed in an enterprise engaged  
27 in commerce or in the production of goods for commerce, for a workweek longer than forty hours  
28



1 unless such employee receives compensation for his employment in excess of the hours above  
2 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

3 41. By failing to compensate Plaintiff and FLSA Class Members for time spent  
4 engaging in pre-shift activities set forth above, Defendant failed to pay Plaintiff and members of  
5 the FLSA Classes overtime for all hours worked in excess of forty (40) hours in a week in  
6 violation of 29 U.S.C. Section 207(a)(1).

7 42. Defendant’s unlawful conduct has been widespread, repeated, and willful.  
8 Defendant knew or should have known that its policies and practices have been unlawful and  
9 unfair.

10 43. Wherefore, Plaintiff demands for himself and for all others similarly situated, that  
11 Defendant pay Plaintiff and all members of the FLSA Classes one and one-half times their regular  
12 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant  
13 time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by  
14 law.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution**

17 (On Behalf of Plaintiff and Members of the Nevada Classes Against Defendant)

18 44. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
19 this Complaint as though fully set forth herein.

20 45. Article 15 Section 16 of the Nevada Constitution sets forth the minimum wage  
21 requirements in the State of Nevada and further provides that “[t]he provisions of the section may  
22 not be waived by agreement between an individual employee and an employer. . . . An employee  
23 claiming violation of the section may bring an action against his or her employer in the courts of  
24 the State to enforce the provisions of the section and shall be entitled to all remedies available  
25 under the law or in equity appropriate to remedy any violation of the section, including but not  
26 limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in  
27 any action to enforce the section shall be awarded his or her reasonable attorney’s fees and costs.”  
28

1           46. By failing to compensate Plaintiff and all other members of the Nevada Classes  
2 for the time spent engaging in pre-shift activities set forth above, Defendant failed to pay Plaintiff  
3 and members of the Nevada Classes the minimum wage amount for all hours worked in violation  
4 of the Nevada Constitution.

5           47. Wherefore, Plaintiff demands for himself and for all other Class Members that  
6 Defendant pays Plaintiff and members of the Nevada Classes their unpaid minimum wages for  
7 all hours worked during the relevant time period alleged herein, together with attorneys' fees,  
8 costs, interest, and punitive damages, as provided by law.

9   **THIRD CAUSE OF ACTION**

10           **Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016**

11                                   (On Behalf of Plaintiff and Members of the Nevada Classes Against Defendant)

12           48. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
13 the Complaint as though fully set forth herein.

14           49. NRS 608.140 provides that an employee has a private right of action for unpaid  
15 wages.

16           50. NRS 608.016 entitled, "Payment for each hour of work; trial or break-in period  
17 not excepted" states that: "An employer shall pay to the employee wages for each hour the  
18 employee works. An employer shall not require an employee to work without wages during a  
19 trial or break-in period."

20           51. Nevada Administrative Code ("NAC") 608.115(1), entitled "Payment for time  
21 worked. (NRS 607.160, 608.016, 608.250)" states: "An employer shall pay an employee for all  
22 time worked by the employee at the direction of the employer, including time worked by the  
23 employee that is outside the scheduled hours of work of the employee."

24           52. By failing to compensate Plaintiff and members of the Nevada Classes for the time  
25 spent engaging in the pre-shift activities set forth above, Defendant failed to pay Plaintiff and  
26 members of the Nevada Classes for all hours worked in violation of NRS 608.140 and 608.016.

27           53. Wherefore, Plaintiff demands for himself and for all Class Members payment by  
28 Defendant at their regular rate of pay, or any applicable overtime premium rate, whichever is

1 higher, for all hours worked but not paid during the relevant time period alleged herein, together  
2 with attorneys' fees, costs, and interest as provided by law.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018**

5 (On Behalf of Plaintiff and all members of the Nevada Classes)

6 54. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
7 this Complaint as though fully set forth herein.

8 55. NRS 608.140 provides that an employee has a private right of action for unpaid  
9 wages.

10 56. NRS 608.018(1) provides as follows:

11 An employer shall pay 1 1/2 times an employee's regular wage rate  
12 whenever an employee who receives compensation for employment at a rate  
13 less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250  
14 works: (a) More than 40 hours in any scheduled week of work; or (b) More  
15 than 8 hours in any workday unless by mutual agreement the employee  
works a scheduled 10 hours per day for 4 calendar days within any  
scheduled week of work.

16 57. NRS 608.018(2) provides as follows:

17 An employer shall pay 1 1/2 times an employee's regular wage rate  
18 whenever an employee who receives compensation for employment at a rate  
19 not less than 1 1/2 times the minimum rate prescribed pursuant to NRS  
608.250 works more than 40 hours in any scheduled week of work.

20 58. By failing to compensate Plaintiff and all other members of the Nevada Classes  
21 for the time spent engaging in pre-shift activities as set forth above, Defendant failed to pay  
22 Plaintiff and members of the Nevada Classes daily overtime premium pay to those members of  
23 the Nevada Classes who were paid a regular rate of less than one and one-half times the minimum  
24 wage premium pay and, failed to pay a weekly premium overtime rate of pay of time and one half  
25 their regular rate for all members of the Nevada Classes who worked in excess of forty (40) hours  
26 in a week in violation of NRS 608.140 and 608.018.

27 59. Wherefore, Plaintiff demands for himself and for all members of the Nevada  
28 Classes payment by Defendant at their applicable overtime premium rate for all hours worked but

1 not paid during the relevant time period alleged herein, together with attorneys' fees, costs, and  
2 interest as provided by law.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS**  
5 **608.140 and 608.020-.050**

6 (On Behalf of Plaintiff and Members of the Nevada Classes Against Defendant)

7 60. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
8 this Complaint as though fully set forth herein.

9 61. NRS 608.140 provides that an employee has a private right of action for unpaid  
10 wages.

11 62. NRS 608.020 provides that “[w]henver an employer discharges an employee, the  
12 wages and compensation earned and unpaid at the time of such discharge shall become due and  
13 payable immediately.”

14 63. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who  
15 fails to pay a discharged or quitting employee: “Within 3 days after the wages or compensation  
16 of a discharged employee becomes due; or on the day the wages or compensation is due to an  
17 employee who resigns or quits, the wages or compensation of the employee continues at the same  
18 rate from the day the employee resigned, quit, or was discharged until paid for 30-days,  
19 whichever is less.”

20 64. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee  
21 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon  
22 in the contract of employment for each day the employer is in default, until the employee is paid  
23 in full, without rendering any service therefor; but the employee shall cease to draw such wages  
24 or salary 30 days after such default.”

25 65. By failing to pay members of the Nevada Classes their applicable wages as  
26 described above, Defendant has failed to pay members of the Nevada Classes who are former  
27 employees all their wages due and owing at the time of their separation from employment.  
28

1           66. Despite demand, Defendant willfully refuses and continues to refuse to pay all  
2 members of the Nevada Classes who are former employees their full wages due and owing to  
3 them upon the termination of their employment.

4           67. There is no good-faith defense to the imposition of continuation wages under NRS  
5 608.040-.050. See *D'Amore v. Caesars Enterprise Svcs, LLC, et al.*, Case No. 2:18-cv-01990-  
6 JCM (Dec. 16, 2019).

7           68. Wherefore, Plaintiff demands thirty (30) days wages under NRS 608.140 and  
8 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, for all  
9 members of the Nevada Classes during the relevant time period alleged herein, together with  
10 attorneys' fees, costs, and interest as provided by law.

11                                   **JURY TRIAL DEMANDED**

12           Plaintiff hereby demands a jury trial pursuant to Nevada Rule of Civil Procedure 38.

13                                   **PRAYER FOR RELIEF**

14           Wherefore Plaintiff, by himself and on behalf of all members of the Classes, pray for relief  
15 as follows relating to their class action allegations:

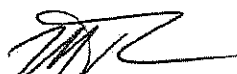
- 16           1. For an order conditionally certifying the action under the FLSA and providing
- 17                           notice to all members of the FLSA Classes so they may participate in the lawsuit;
- 18           2. For an order appointing Plaintiff as the Representative of the FLSA Classes and
- 19                           his counsel as Class Counsel;
- 20           3. For damages according to proof for overtime compensation for all hours worked
- 21                           over 40 per week;
- 22           4. For liquidated damages pursuant to 29 U.S.C. § 261(b);
- 23           5. For an order certifying the Nevada Classes under Nevada Rule of Civil Procedure
- 24                           23;
- 25           6. For an order appointing Plaintiff as the Representative of the Classes and his
- 26                           counsel as Class Counsel;
- 27           7. For damages according to proof for the applicable minimum rate pay under the
- 28                           Nevada Constitution for all hours worked;

- 1 8. For damages according to proof for regular rate pay under NRS 608.140 and  
2 608.016 for all hours worked;
- 3 9. For damages according to proof for overtime compensation under NRS 608.140  
4 and 608.018 for all hours worked for those employees who earned a regular rate  
5 of less than one and one-half times the minimum wage for hours worked in excess  
6 of 8 hours per day and/or for all class members for overtime premium pay of one  
7 and one half their regular rate for all hours worked in excess of 40 hours per week;
- 8 10. For continuation wages pursuant to NRS 608.140 and 608.040-.050;
- 9 11. For a lien on the property where Plaintiff and all members of the Nevada Classes  
10 labored pursuant to NRS 608.050;
- 11 12. For interest as provided by law at the maximum legal rate;
- 12 13. For punitive damages;
- 13 14. For reasonable attorneys' fees authorized by statute;
- 14 15. For costs of suit incurred herein;
- 15 16. For pre-judgment and post-judgment interest, as provided by law, and
- 16 17. For such other and further relief as the Court may deem just and proper.

17 **AFFIRMATION**

18 *The undersigned does hereby affirm that the preceding document does not contain*  
19 *“Personal Information” and agrees that upon the filing of additional documents in the above*  
20 *matter, an Affirmation will be provided only if the document contains a social security number*  
21 *(NRS 239B.030) or “personal information” (NRS 603A.04).*

22 DATED: 12/23/2020

23  
24   
25 \_\_\_\_\_  
26 Mark R. Thierman  
27 Joshua D. Buck  
28 Leah L. Jones  
Joshua R. Hendrickson

*Attorneys for Plaintiff*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Index of Exhibits**

NO.	DESCRIPTION	NO. OF PAGES
1	Consent to Join Form by Christopher Nelson	1
2	October 10, 2020 to October 23, 2020 Online Paystub	2
3	June 20, 2020 to July 3, 2020 Online Paystub	2





THIERMAN | BUCK  
LAW FIRM

Thierman Buck  
7287 Lakeside Drive  
Reno, NV 89511


The Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), states, "No employee shall be a party plaintiff to any such action [under the FLSA] unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought" and unless the Court provides otherwise, the statute of limitations is tolled on the FLSA claims only when the Consent to Sue is filed with the Court.

Therefore, pursuant to the Fair Labor Standards Act, ("FLSA") 29 U.S.C. § 216(b), I Christopher Nelson hereby give my consent in writing to become a party plaintiff against my employer, former employer, and/or any and all of its affiliated entities, currently identified as WalMart (Company). I authorize the filing of a copy of this Consent form in Court, with my personal information redacted. I further consent to join this and/or any subsequent or amended suit against the same or related defendants for wage and hour violations.

Signature: 

Date signed: 10/13/20

Print Name: Christopher Nelson

Address: 

Reno, NV 

Telephone number: 

Email: cmelson\_06@yahoo.com

Employer/Former Employer: Walmart







## Audit Trail

<b>TITLE</b>	Hello
<b>FILE NAME</b>	Template_Consent_...1013-1-yug5pg.pdf
<b>DOCUMENT ID</b>	a4cf7d3b1313a51c6a7a432e3ba1cef47d402e50
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	◆ Completed

This document was requested on [thiermanbuck.clilogrow.com](https://thiermanbuck.clilogrow.com) and signed on [thiermanbuck.clilogrow.com](https://thiermanbuck.clilogrow.com)

### Document History

 SENT	<b>10 / 13 / 2020</b> 21:16:04 UTC	Sent for signature to Christopher Nelson ( <a href="mailto:crnelson_06@yahoo.com">crnelson_06@yahoo.com</a> ) from <a href="mailto:jennifer@thiermanbuck.com">jennifer@thiermanbuck.com</a> IP: 24.176.187.110
 VIEWED	<b>10 / 13 / 2020</b> 23:12:08 UTC	Viewed by Christopher Nelson ( <a href="mailto:crnelson_06@yahoo.com">crnelson_06@yahoo.com</a> ) IP: 174.248.180.143
 SIGNED	<b>10 / 13 / 2020</b> 23:14:31 UTC	Signed by Christopher Nelson ( <a href="mailto:crnelson_06@yahoo.com">crnelson_06@yahoo.com</a> ) IP: 174.248.180.143
 COMPLETED	<b>10 / 13 / 2020</b> 23:14:31 UTC	The document has been completed.



Statement of Earnings and Deductions.

Wal-Mart Associates, Inc., 702 S.W. 8th St., Bentonville, Arkansas 72716. ☎ 479-273-4000

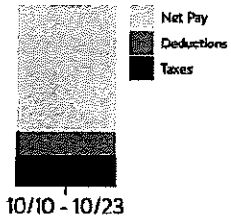
Pay Period: 10/10/2020 - 10/23/2020

PAID TO <b>CHRISTOPHER R NELSON</b>		Deposit Date: 10-29-2020 Advice # 542586917  <b>\$1,283.82</b>
[REDACTED] RENO, NV [REDACTED]		
Wells Fargo THIS IS NOT A REAL CHECK	CHECK DEPOSIT	[REDACTED] \$1,283.82

EARNINGS	HOURS	RATE	CURRENT	YEAR TO DATE	DEDUCTIONS	CURRENT	YEAR TO DATE
REGULAR EARNING	80.00	\$22.2500	\$1,780.00	\$34,214.24	INS MEDICAL *	\$29.20	\$641.29
OVERTIME EARN	1.35	\$33.3750	\$45.06	\$99.64	INS DENTAL *	\$8.30	\$182.59
COVID-LS			\$0.00	\$300.00	INS AD&D *	\$0.97	\$21.33
LUMP SUM HRLY			\$0.00	\$600.00	INS STD	\$5.21	\$134.00
OVERTIME/INCT			\$0.00	\$0.42	401K *	\$109.50	\$2,365.03
PROT PTO USED			\$0.00	\$223.00	CO STK CONT	\$10.50	\$168.00
PTO PAY			\$0.00	\$2,479.50	STOCK PURCH	\$70.00	\$1,120.00
CO STK CONT			\$10.50	\$168.00	INS VIS *	\$2.76	\$60.71
REIMB NONTXBL			\$0.00	\$1,192.24	<b>Total</b>	<b>\$237.44</b>	<b>\$5,172.95</b>
WHSE INCENTIVE			\$0.00	\$1,500.87			
WRKDHRS	81.35						
<b>Total</b>			<b>\$1,835.56</b>	<b>\$40,837.91</b>			

TAXES	CURRENT	YEAR TO DATE
FEDERAL TAX	\$177.04	\$3,964.63
SOCIAL SECURITY	\$111.24	\$2,401.86
MEDICARE	\$26.02	\$561.73
<b>Total</b>	<b>\$314.30</b>	<b>\$6,928.22</b>

NET PAY	CURRENT	YEAR TO DATE
	<b>\$1,283.82</b>	<b>\$28,736.74</b>



<b>PTO</b>	<b>HRS</b>
PTO AVAILABLE	72.87
SICK AVAILABLE	69.58
PROPTOUSEDYTD	10.00
PROTECTED PTO	76.52

<b>CATEGORY</b>	
Pay Category	Hourly

<b>FEDERAL TAX WITHHOLDING</b>	
Tax Method	Single
Exemptions	0
Additional Withholding	\$0.00

<b>STATE TAX WITHHOLDING</b>	
Tax Method	Single
Exemptions	0
Additional Withholding	\$0.00



Statement of Earnings and Deductions.

Wal-Mart Associates, Inc., 702 S.W. 8th St., Bentonville, Arkansas 72716. ☎ 479-273-4000

Pay Period: 06/20/2020 - 07/03/2020

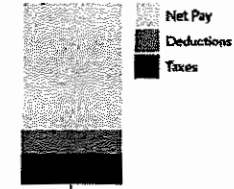
PAID TO <b>CHRISTOPHER R NELSON</b>  [REDACTED] RENO, NV [REDACTED]  Wells Fargo THIS IS NOT A REAL CHECK	Deposit Date: 07-09-2020 Advice # 530671732  <b>\$1,289.08</b>   CHECK DEPOSIT xxxxxx [REDACTED] \$1,289.08
--	--

EARNINGS	HOURS	RATE	CURRENT	YEAR TO DATE	DEDUCTIONS	CURRENT	YEAR TO DATE
REGULAR EARNING	79.88	\$22.6000	\$1,805.29	\$21,244.38	INS MEDICAL *	\$29.20	\$407.69
OVERTIME EARN	0.80	\$33.9000	\$27.12	\$27.12	INS DENTAL *	\$8.30	\$116.19
LUMP SUM HRLY			\$0.00	\$600.00	INS AD&D *	\$0.97	\$13.57
PROT PTO USED			\$0.00	\$223.00	INS STD	\$6.23	\$82.78
PTO PAY			\$0.00	\$1,353.00	401K *	\$109.94	\$1,461.09
CO STK CONT			\$10.50	\$84.00	CO STK CONT	\$10.50	\$84.00
REIMB NONTXBL			\$0.00	\$1,192.24	STOCK PURCH	\$70.00	\$560.00
WHSE INCENTIVE			\$0.00	\$904.33	INS VIS *	\$2.76	\$38.63
WRKDHRS	80.68				<b>Total</b>	<b>\$237.90</b>	<b>\$3,243.95</b>
<b>Total</b>			<b>\$1,842.91</b>	<b>\$25,688.07</b>			

TAXES	CURRENT	YEAR TO DATE
FEDERAL TAX	\$178.10	\$2,415.02
SOCIAL SECURITY	\$111.70	\$1,483.02
MEDICARE	\$26.13	\$346.84
<b>Total</b>	<b>\$315.93</b>	<b>\$4,244.88</b>

	CURRENT	YEAR TO DATE
<b>NET PAY</b>	<b>\$1,289.08</b>	<b>\$18,199.24</b>

CURRENT PAY OVERVIEW



06/20 - 07/03

PTO	HRS
PTO AVAILABLE	59.97
SICK AVAILABLE	85.58
PROPTOUSEDYTD	10.00
PROTECTED PTO	55.51
PERS HRS AVAIL	0.01

CATEGORY	
Pay Category	Hourly

FEDERAL TAX WITHHOLDING	
Tax Method	Single
Exemptions	0
Additional Withholding	\$0.00

STATE TAX WITHHOLDING	
Tax Method	Single
Exemptions	0
Additional Withholding	\$0.00



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Walmart Warehouse Workers Owed Wages for Pre-Shift Work Activities](#)

---