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10  
11 Attorneys for Defendants  
WALMART INC., WAL-MART ASSOCIATES, INC.,  
12 and WAL-MART STORES, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 DEARL POWELL, CHRISTINA  
16 GAST and ELIJHA GONZALEZ, as  
17 individuals and on behalf of all others  
similarly situated,

18 Plaintiff,

19 v.

20 WALMART INC., a Delaware  
corporation; WAL-MART  
21 ASSOCIATES, INC., a Delaware  
corporation; WAL-MART STORES,  
22 INC., a Delaware corporation; and  
DOES 1 through 50, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. TBD'20CV2412 BEN LL

**DEFENDANTS WALMART INC.,  
WAL-MART ASSOCIATES, INC.,  
AND WAL-MART STORES, INC.'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION TO UNITED STATES  
DISTRICT COURT**

*[Filed concurrently with Civil Cover  
Sheet; Certification of Interested Parties  
and Disclosure Statement; Notice of  
Related Cases; Declarations of Paloma  
Peracchio and Laura Kish in Support of  
Removal and Certificate of Service]*

Complaint Filed: September 29, 2020  
Trial Date: None Set  
District Judge: Not Yet Assigned  
Magistrate Judge: Not Yet Assigned

Case No. TBD

1 **TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN**  
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFFS DEARL POWELL,**  
3 **CHRISTINA GAST AND ELIJHA GONZALEZ AND THEIR ATTORNEYS**  
4 **OF RECORD:**

5 PLEASE TAKE NOTICE THAT defendants, WALMART INC., WAL-MART  
6 ASSOCIATES, INC., and WAL-MART STORES, INC. (“Walmart” or “Defendant”),  
7 by and through the undersigned counsel, hereby remove the above-entitled action from  
8 the Superior Court of the State of California for the County of San Diego to the United  
9 States District Court for the Southern District of California pursuant to 28 U.S.C.  
10 Sections 1332, 1441(a) and 1446. Removal is proper for the reasons explained below.

11 **TIMELINESS OF REMOVAL**

12 1. Plaintiffs Dearl Powell, Christina Gast, and Elijha Gonzales (together,  
13 “Plaintiffs”) filed a putative Class Action Complaint (“Complaint”) against Walmart  
14 on September 20, 2020. *See* Declaration of Paloma Peracchio (“Peracchio Decl.”),  
15 Exhibit A. The Complaint was deemed served on Walmart by execution of a Notice  
16 and Acknowledgement of Receipt by Walmart’s counsel of record on November 10,  
17 2020. (*Id.*) Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of any and all  
18 process, pleadings, and orders served upon Walmart are attached as Exhibit A to the  
19 Declaration of Paloma Peracchio, filed concurrently herewith. This notice of removal  
20 is timely pursuant to 28 U.S.C. § 1446(b) because Walmart has removed this action  
21 within 30 days of being served.

22 **GROUND FOR REMOVAL**

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

28 ///

1           **A. Plaintiffs Bring This Case as a Class Action Against Defendants**

2           3. Plaintiffs’ Complaint is titled “CLASS ACTION COMPLAINT.” (*See*  
3 Complaint, Caption.)

4           4. Plaintiffs’ Complaint alleges that “Plaintiffs seek class certification,  
5 pursuant to California Code of Civil Procedure §382,” and defines the putative class  
6 as follows “[a]ll non-exempt California employees whose employment ended, either  
7 voluntarily or involuntarily, at any time during the period of time from April 6, 2017,  
8 through the present, and who during their employment with Walmart, were paid sick  
9 pay during the same time period in which he/she earned non-discretionary incentive  
10 wages including, but not limited to, “MYSHARE INCT” (the “Sick Pay Class”).”  
11 (Complaint ¶ 16.)

12           5. Plaintiffs’ Complaint alleges that it “challenges systematic illegal  
13 employment practices resulting in violations of the California Labor Code against  
14 employees of Defendants.” (Complaint ¶ 2.)

15           6. Plaintiffs’ Complaint brings one cause of action<sup>1</sup> on behalf of the putative  
16 class for Violation of Labor Code §§ 201-203 (which require timely payment of wages  
17 to employees upon termination of their employment, and provide for an award of  
18 “waiting time” penalties for failure to do so). (*Id.* ¶¶ 27-31.)

19           7. Defendant denies any liability in this case, as to Plaintiffs’ individual and  
20 class claims, and will present compelling defenses to these claims on the merits.  
21 Defendant intends to oppose class certification. Defendant expressly reserves all  
22 rights in this regard. However, for purposes of the jurisdictional requirements for  
23 removal only, Defendant notes that, as set forth in more detail below, the allegations  
24 in Plaintiffs’ Complaint that they seek to represent a subcategory of all California  
25 citizens employed by Walmart as hourly-paid non-exempt retail store employees

26 \_\_\_\_\_  
27 <sup>1</sup> The caption of the Complaint refers to a second cause of action for Labor Code  
28 Section 226, however there is no reference to any such claim in the body of the  
Complaint.

1 (excluding Distribution Centers, Fulfillment Centers and Warehouses), puts in  
2 controversy an amount that exceeds \$5 million. See 28 U.S.C. § 1332(d)(6).

3 **B. There Are More than 100 Members in the Proposed Class**

4 8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) if, in  
5 addition to the other requirements of § 1332(d), the action involves a putative class of  
6 at least 100 persons. Plaintiffs allege that this action is brought on behalf of all  
7 California citizens employed by Walmart as all former hourly-paid non-exempt retail  
8 store employees who were terminated between April 6, 2017 and the present, and who  
9 were paid sick pay and non-discretionary wages in the same pay period. (Complaint  
10 ¶ 16.) Plaintiff Dearl Powell was employed by Walmart as an hourly associate from  
11 September 12, 2018 until January 15, 2020. (Declaration of Laura Kish [“Kish Decl.”],  
12 ¶ 4.) Plaintiff Christina Gast was employed by Walmart as an hourly associate from  
13 June 23, 1998 until January 2, 2020. (*Id.*, ¶ 5.) Plaintiff Elijha Gonzales was employed  
14 by Walmart as an hourly associate from March 11, 2017 until February 17, 2020. (*Id.*,  
15 ¶ 6.) During the time period of August 1, 2017 to November 10, 2020, there were  
16 116,651 hourly associates whose employment with Walmart ended in that period. (*Id.*,  
17 ¶ 9.) Of those associates, approximately 30,165 used Paid Sick Leave (PTO for “sick”  
18 or “family” reasons) during that period. (*Id.*) Of those terminated associates, 46,210  
19 (or 39.6%) received a quarterly “MyShare Incentive” bonus during that period. (*Id.*)  
20 Even very conservatively estimating (for purposes of removal only) that 20% of the  
21 associates who used paid sick leave during their employment did so in the same quarter  
22 in which they had been paid a “MyShare Incentive” bonus, this puts the number of  
23 members of Plaintiffs’ proposed class at 6,033 associates, which is well over 100  
24 members.

25 **C. Defendant is a Citizen of a Different State Than Plaintiffs**

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

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

5           11. Plaintiff Dearl Powell’s employment with Walmart ended on January 15,  
6 2020 – at which time he was working at the Walmart retail store in Oceanside,  
7 California. (Complaint, ¶ 5; Kish Decl., ¶ 4.) Plaintiff Powell’s last known address on  
8 file in Walmart’s personnel records is in Escondido, California. (*Id.*) As such, Plaintiff  
9 Powell is a citizen of California.

10           12. Plaintiff Christina Gast’s employment with Walmart ended on January 2,  
11 2020 – at which time she was working at the Walmart retail store in Glendora,  
12 California. (Kish Decl, ¶ 5.) Plaintiff Gast’s last known address on file in Walmart’s  
13 personnel records is in San Dimas, California. (*Id.*) As such, Plaintiff Gast is a citizen  
14 of California.

15           13. Plaintiff Elijha Gonzales’ employment with Walmart ended on February  
16 17, 2020 – at which time he was working at the Walmart retail store in Fresno,  
17 California. (Kish Decl., ¶ 6.) Plaintiff Gonzales’ last known address on file in  
18 Walmart’s personnel records is in Fresno, California. (*Id.*) As such, Plaintiff Gonzales  
19 is a citizen of California.

20           14. Additionally, the putative class is limited to “California employees[.]”  
21 (Complaint, ¶ 16.) The putative class members are California citizens.

22           15. A corporation is a citizen of its state of incorporation and the state of its  
23 principal place of business. 28 U.S.C. § 1332(c)(1). Defendant Wal-Mart Associates,  
24 Inc. is a wholly-owned subsidiary of Walmart Inc., which was formerly known as Wal-  
25 Mart Stores, Inc. (Kish Decl. ¶ 3.) Walmart Inc. and Wal-Mart Associates, Inc. are  
26 incorporated in the State of Delaware and both have their principal place of business  
27 in Bentonville, Arkansas. (*Id.* ¶ 3; Peracchio Decl. ¶¶ 5, 6.)

28           16. Defendant’s “principal place of business,” which the Supreme Court has

1 interpreted to mean “the place where a corporation’s officers direct, control, and  
 2 coordinate the corporation’s activities” (*Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192  
 3 (2010); 28 U.S.C. § 1332(c)(1)) is Bentonville, Arkansas. Thus, Defendant is a citizen  
 4 of Delaware and Arkansas – not California, and there is accordingly minimal  
 5 jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d)(2)(A); *Hertz*, 130 S. Ct. at 1192;  
 6 *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1230 n.2 (9th Cir. 2011).

7 **D. The Amount in Controversy Exceeds \$5 Million**

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

11 **(a) Waiting Time Penalties (Labor Code Section 203)**

12 18. Plaintiffs allege that “Labor Code §246(l)(2) requires that paid sick time  
 13 for nonexempt employees be calculated by dividing the employee’s total wages, not  
 14 including overtime premium pay, by the employee’s total hours worked in the full  
 15 pay periods of the prior 90 days of employment.” (Complaint, ¶ 29.) Plaintiffs allege  
 16 that “Defendants violated Labor Code § 246 by failing to pay sick pay at the regular  
 17 rate of pay. Plaintiffs and Class members routinely earned non-discretionary  
 18 incentive wages, such as MYSHARE INCT wages, which increased their regular rate  
 19 of pay. However, when sick pay was paid, it was paid at the base rate of pay for  
 20 Plaintiffs and Class Members, as opposed to the correct, higher rate of pay, as  
 21 required under Labor Code §246.” (Complaint, ¶ 30.) Plaintiffs allege that because  
 22 Defendants failed to pay Plaintiffs and class members their correct wages, “Plaintiffs  
 23 and Class Members whose employment has separated are entitled to waiting time  
 24 penalties pursuant to Labor Code §§201-203.” (Complaint, ¶ 31.)

25 19. Labor Code Section 201 states, in relevant part, that “[i]f an employer  
 26 discharges an employee, the wages earned and unpaid at the time of discharge are  
 27 due and payable immediately.” Labor Code Section 202 states, in relevant part, that  
 28 “[i]f an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours  
2 thereafter[.]”

3 20. Labor Code Section 203 provides for a “waiting time penalty” to the  
4 employee when the employer fails to timely pay the employee at termination or  
5 resignation of 30 days of pay to the employee. The statute of limitations for  
6 penalties under Section 203 is three years. *See* Cal. Code of Civ. Proc. § 338(a).

7 21. Defendant denies that any such violations occurred or that compensation  
8 is owed to Plaintiffs or putative class members. However, for purposes of this  
9 jurisdictional analysis *only*, Defendant relies on Plaintiffs’ allegation that violations  
10 occurred and compensation is owed. *See Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d  
11 395, 399 (9th Cir. 2010) (“In determining the amount [in controversy], we first look  
12 to the complaint.”); *Heejin Lim v. Helio, LLC*, No. CV 11-9183 PSG, 2012 WL  
13 359304, at \*2 (C.D. Cal. Feb. 2, 2012) (“The ultimate inquiry is, therefore, what  
14 amount is put ‘in controversy’ by the plaintiff’s complaint or other papers, not what  
15 the defendant will actually owe for the action number of violations that occurred, if  
16 any.”) (citations omitted).

17 22. The total number of associates who stopped working at a Walmart retail  
18 store between August 1, 2017 and November 10, 2020 is 116,651. (Kish Decl., ¶ 9.)  
19 Of those associates, 46,210 (or 39.6%) received a “MyShare Incentive” bonus during  
20 that time period. (*Id.*) MyShare Incentive bonuses are awarded to associates  
21 quarterly, based on store performance goals and various criteria specific to the  
22 associate. (*Id.*) Of the associates who stopped working at a Walmart retail store  
23 between August 1, 2017 and November 10, 2020, 30,165 used Paid Sick Leave hours  
24 during their employment (Paid Time Off allocated to “sick” or “family” reasons).  
25 (*Id.*) Based on these numbers, Walmart very conservatively estimates the number of  
26 putative class members (hourly employees who used Paid Sick Leave and who were  
27 paid a MyShare Incentive bonus in the 90 day period preceding the use of sick leave)  
28 as **6,033** (very conservatively assuming 20% of the associates who used Paid Sick

1 Leave did so at some point in the same quarter that they received a MyShare  
2 Incentive bonus).

3 23. Accordingly, based on the allegations in the Complaint, every putative  
4 class member is entitled to 30 days' continuation of wages as a penalty under Labor  
5 Code Section 203. *See Quintana v. Claire's Stores, Inc.*, 2013 WL 1736671, \*4-6  
6 (N.D. Cal. 2013) ("As to waiting time claims, the court finds that Defendants'  
7 calculations" of 30 days of waiting time penalties for each putative class member  
8 terminated during the statute of limitations "are supported by Plaintiff's allegations  
9 and are a reasonable estimate of the potential value of the claims.") However, for  
10 purposes of removal, Defendant will conservatively estimate that average shifts were  
11 only four hours long. Further, for purposes of removal, Walmart will conservatively  
12 assume that the average rate of pay is the lowest applicable minimum wage during  
13 the class period, *i.e.*, \$10.50 per hour.<sup>2</sup>

14 24. Thus, according to Plaintiffs' allegation that all hourly employees who  
15 were terminated in the class period and who received paid sick leave pay without  
16 their MyShare Incentive bonus used in calculating the rate of pay, Plaintiff contends  
17 that the putative class members are entitled to recover at least **\$7,601,580** (\$10.50  
18 minimum wage x 4-hour work day x 30 days waiting time penalty x 6,033 putative  
19 class members).

20 **(b) Attorneys' Fees**

21 25. Plaintiffs' Complaint requests attorneys' fees, pursuant to Labor Code  
22 Section 218.5 and Code of Civil Procedure Section 1021.5. (Complaint, ¶ 25; Prayer  
23 for Relief.)

24 26. Under Ninth Circuit precedent, 25% of the common fund is generally  
25 used as a benchmark for an award of attorney fees. *See Hanlon v. Chrysler Corp.*, 150  
26

27 <sup>2</sup> The minimum wage in the State of California in 2017 was \$10.50 per hour. See  
28 <https://www.dir.ca.gov/iwc/minimumwagehistory.htm>



1 F.3d 1011, 1029 (9th Cir. 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist.  
2 LEXIS 17119, at \*15 (S.D. Cal., Mar. 6, 2009) (“In wage and hour cases, ‘[t]wenty-  
3 five percent is considered a benchmark for attorneys’ fees in common fund cases.’”)  
4 (citations omitted). Here, Defendant has shown that the claimed amount in  
5 controversy is at least **\$7,601,580**, and Plaintiffs have not indicated that they will seek  
6 less than 25% of a common fund in attorneys’ fees. (*See generally* Complaint, Prayer  
7 for Relief.) Although Defendant has shown that the amount in controversy absent  
8 attorneys’ fees surpasses the jurisdictional threshold, this Court should nevertheless  
9 include the potential attorneys’ fees in evaluating jurisdiction. *Guglielmino v. McKee*  
10 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Giannini v. Nw. Mut. Life*  
11 *Ins. Co.*, 2012 WL 1535196, at \*4 (N.D. Cal. 2012) (holding that defendants’ inclusion  
12 of attorneys’ fees to satisfy amount in controversy was reasonable where defendants  
13 “base this amount by multiplying by twenty-five percent the sum of the amounts  
14 placed in controversy by the four claims” asserted by plaintiff.); *Jasso v. Money Mart*  
15 *Express, Inc.*, 2012 WL 699465, at \*6-7 (N.D. Cal. 2012) (holding that “it was not  
16 unreasonable for [Defendant] to rely on” an “assumption about the attorneys’ fees  
17 recovery as a percentage of the total amount in controversy” and noting that “it is well  
18 established that the Ninth Circuit ‘has established 25% of the common fund as a  
19 benchmark award for attorney fees.’”).

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

27 28. Using a 25% benchmark figure for attorneys’ fees for Plaintiffs’  
28 allegations results in estimated attorneys’ fees of **\$1,900,395**.



CIVIL COVER SHEET

JS 44 (Rev. 10/20)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEARL POWELL, CHRISTINA GAST, and ELIJHA GONZALEZ, as individuals and on behalf of all others simliarily situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Larry W. Lee, Mai Tulyathan, Diversity Law Group, P.C., 515 S. Figueroa St., Suite 1250, Los Angeles, CA 90071, (213) 488-6555

DEFENDANTS

WALMART INC., WAL-MART ASSOCIATES, INC. WAL-MART STORES, INC.

County of Residence of First Listed Defendant Out of State (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

20CV2412 BEN LL

Attorneys (If Known) Paloma P. Peracchio, Mitchell A. Wrosch, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 400 S. Hope St., Suite 1200, Los Angeles, CA 90071, (213) 239-9800

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sections 1332(d), 1453, and 1711. Brief description of cause: Putative class action brought on behalf of all hourly California employees for failure to pay all wages owed at termination.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE John A. Mendez DOCKET NUMBER 2:20-cv-00928

DATE December 10, 2020 FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD /s/ Paloma P. Peracchio

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/29/2020** at 03:15:20 PM  
Clerk of the Superior Court  
By Alma Rhodes, Deputy Clerk

**NOTICE TO DEFENDANT:**

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

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DEARL POWELL, CHRISTINA GAST, and ELIJHA GONZALEZ, as individuals and on behalf of all others similarly situated,

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):

CASE NUMBER 37-2020-00035007-CU-DE-CTL  
(Número del

Superior Court of California, County of San Diego  
330 W. Broadway, San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

Larry W. Lee/Mai Tulyathan, 515 S. Figueroa St., Ste. 1250, Los Angeles, CA 90071, 213-488-6555  
B. James Fitzpatrick/Laura Franklin, 555 S. Main St., Salinas, CA 93901, 831-755-1311  
Dennis S. Hyun, 515 S. Figueroa St., Ste. 1250, Los Angeles, CA 90071, 213-488-6555

DATE: 10/02/2020  
(Fecha)

Clerk, by A. Rhodes, Deputy  
(Secretario)

(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)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): Wal-Mart Stores, Inc., a Delaware corporation  
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):
4.  by personal delivery on (date):

1 Larry W. Lee (State Bar No. 228175)  
2 Mai Tulyathan (State Bar No. 316704)  
3 **DIVERSITY LAW GROUP, P.C.**  
4 515 S. Figueroa St., Suite 1250  
5 Los Angeles, California 90071  
6 (213) 488-6555  
7 (213) 488-6554 facsimile  
8 [lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
9 [ktulyathan@diversitylaw.com](mailto:ktulyathan@diversitylaw.com)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/29/2020** at 03:15:20 PM  
Clerk of the Superior Court  
By Alma Rhodes, Deputy Clerk

7 Attorneys for Plaintiffs and the Class  
(Additional Counsel on Next Page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO**

11 DEARL POWELL, CHRISTINA GAST,  
12 and ELIJHA GONZALEZ, as individuals  
13 and on behalf of all others similarly  
14 situated,

13 Plaintiffs,

15 v.

16 WALMART INC., a Delaware corporation;  
17 WAL-MART ASSOCIATES, INC., a  
18 Delaware corporation; WAL-MART  
19 STORES, INC., a Delaware corporation  
20 and DOES 1 through 50, inclusive,

18 Defendants.

CASE NO. 37-2020-00035007-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §  
201-203;**

**(2) VIOLATION OF CAL. LABOR CODE §  
226**

**DEMAND EXCEEDS \$25,000.00**

**ADDITIONAL COUNSEL FOR PLAINTIFF**

1  
2 B. James Fitzpatrick, Esq. (SBN: 129056)

3 bjfitzpatrick@fanslegal.com

4 Laura Franklin, Esq. (SBN: 282642)

5 lfranklin@fanslegal.com

**FITZPATRICK & SWANSTON**

555 S. Main Street

6 Salinas, CA 93901

Telephone: (831) 755-1311

7 Facsimile: (831) 755-1319

8 Dennis S. Hyun (State Bar No. 224240)

9 HYUN LEGAL, APC

515 S. Figueroa St., Suite 1250

10 Los Angeles, CA 90071

(213) 488-6555

11 (213) 488-6554 facsimile

1 Plaintiffs Dearl Powell (“Powell”), Christina Gast (“Gast”) and Elijha Gonzalez  
2 (“Gonzalez”) (collectively, “Plaintiffs”) hereby submit this Class Action Complaint  
3 (“Complaint”) against Defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores,  
4 Inc. (collectively, “Defendant,” or “Walmart”), and DOES 1-50 (hereinafter collectively referred  
5 to as “Defendants”), individually and on behalf of a Class of all other similarly situated current  
6 and former employees of Defendants for penalties for violations of the California Labor Code,  
7 including without limitation, failure to pay employees their sick pay at their regular rate of pay as  
8 follows:

### 9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§  
11 201-203, and 246, and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

12 2. This Complaint challenges systemic illegal employment practices resulting in  
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiffs are informed and believe and based thereon allege that Defendants jointly  
15 and severally have acted knowingly and intentionally by failing to provide accurate itemized wage  
16 statements identifying all required information, including without limitation, the correct overtime  
17 rate, and paying overtime at the correct rate of pay.

### 18 **JURISDICTION AND VENUE**

19 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-  
20 203, and 246.

21 5. Venue is proper in San Diego County because Defendants maintain business  
22 locations in this County and Plaintiff Dearl Powell worked at Defendants’ retail store located in  
23 this County.

### 24 **PARTIES**

25 6. All Plaintiffs worked for Walmart as non-exempt retail store employees. During  
26 Plaintiffs’ employment, they were all paid sick pay wages and additional non-discretionary  
27 remuneration covering the same pay period, including without limitation, “MYSHARE INCT.”

28 7. Walmart is a global retailer headquartered in Bentonville, Arkansas, with numerous



1 locations throughout the United States, including in San Diego County, California.

2 8. Plaintiffs were and are victim of the policies, practices, and customs of Defendants  
3 complained of in this action in ways that have deprived Plaintiffs of the rights guaranteed by  
4 California Labor Code §§ 201-203, and 246.

5 9. Plaintiffs are informed and believe and based thereon allege that at all times herein  
6 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and  
7 partnerships, licensed to do business and actually doing business in the State of California.

8 10. As such, and based upon all the facts and circumstances incident to Defendants'  
9 business in California, Defendants are subject to California Labor Code §§ 201-203, and 246.

10 11. Plaintiffs do not know the true names or capacities, whether individual, partner or  
11 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said  
12 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this  
13 complaint when the true names and capacities are known. Plaintiffs are informed and believe and  
14 based thereon allege that each of said fictitious Defendants was responsible in some way for the  
15 matters alleged herein and proximately caused Plaintiffs and members of the general public and  
16 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

17 12. At all times herein mentioned, each of said Defendants participated in the doing of  
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
19 Defendants, and each of them, were the agents, servants and employees of each of the other  
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting  
21 within the course and scope of said agency and employment.

22 13. Plaintiffs are informed and believe and based thereon allege that at all times  
23 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
24 joint venturer of, or working in concert with each of the other co- Defendants and was acting  
25 within the course and scope of such agency, employment, joint venture, or concerted activity. To  
26 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
27 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
28 Defendants.



1 Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past  
2 and currently have a number of wage-and-hour class actions pending in California courts.

3 19. Defendants uniformly administered a corporate policy, practice of failing to pay  
4 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203 and  
5 246.

6 20. **Common Question of Law and Fact:** There are predominant common questions  
7 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class  
8 concerning the Defendants failure to pay employees their sick pay at their regular rate of pay in  
9 violation of Labor Code §§ 201-203 and 246.

10 21. **Typicality:** Plaintiffs' claims are typical of the claims of all members of the Class  
11 in that Plaintiffs suffered the harm alleged in this Complaint in a similar and typical manner as the  
12 Class members. Defendants violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at  
13 the regular rate of pay. Specifically, Plaintiff and all members of the class routinely earned non-  
14 discretionary incentive wages such as MYSHARE INCT wages and, thus, increased their rates of  
15 pay. However, when sick pay was paid, it was paid at the base rate of pay for Plaintiffs and Class  
16 Members, as opposed to the correct, higher regular rate of pay. Thus, Plaintiffs qualify as Class  
17 Members and have suffered the alleged violations of California Labor Code §§ 201-203, and 246.

18 22. The California Labor Code is broadly remedial in nature and must be construed in  
19 favor of worker protection. These laws and labor standards serve an important public interest in  
20 establishing minimum working conditions and standards in California. These laws and labor  
21 standards protect the average working employee from exploitation by employers who may seek to  
22 take advantage of superior economic and bargaining power in setting onerous terms and conditions  
23 of employment.

24 23. The nature of this action and the format of laws available to Plaintiffs and Class  
25 Members identified herein make the class action format a particularly efficient and appropriate  
26 procedure to redress the wrongs alleged herein. If each employee were required to file an  
27 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage  
28 since it would be able to exploit and overwhelm the limited resources of the individual employees

1 with Defendants' vastly superior financial and legal resources. Requiring each class member to  
2 pursue an individual remedy would also discourage the assertion of lawful claims by employees  
3 who would be disinclined to file an action against their former and/or current employer for real and  
4 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

5 24. The prosecution of separate actions by the individual class members, even if  
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to  
7 individual class members against the Defendants and which would establish potentially  
8 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to  
9 individual Class members which would, as a practical matter, be dispositive of the interest of the  
10 other Class members not parties to the adjudications or which would substantially impair or  
11 impede the ability of the Class members to protect their interests. Further, the claims of the  
12 individual members of the Class are not sufficiently large to warrant vigorous individual  
13 prosecution considering all of the concomitant costs and expenses.

14 25. Such a pattern, practice and uniform administration of corporate policy regarding  
15 illegal employee compensation described herein is unlawful and creates an entitlement to recovery  
16 by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or  
17 damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor  
18 Code §§ 218.5, and Code of Civil Procedure § 1021.5.

19 26. Proof of a common business practice or factual pattern, which the named Plaintiffs  
20 experienced and are representative of, will establish the right of each of the members of the Class  
21 to recovery on the causes of action alleged herein.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE §§ 201-203**

24 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFFS AND THE SICK PAY**  
25 **CLASS)**

26 27. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26 as though  
27 fully set for herein.

28 28. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in the

1 same manner as the regular rate of pay for the workweek in which the employee uses paid sick  
2 time, whether or not the employee actually works overtime in that workweek.

3 29. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be  
4 calculated by dividing the employee's total wages, not including overtime premium pay, by the  
5 employee's total hours worked in the full pay periods of the prior 90 days of employment.

6 30. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular rate  
7 of pay. Plaintiffs and Class Members routinely earned non-discretionary incentive wages, such as  
8 MYSHARE INCT wages, which increased their regular rate of pay. However, when sick pay was  
9 paid, it was paid at the base rate of pay for Plaintiffs and Class Members, as opposed to the correct,  
10 higher regular rate of pay, as required under Labor Code §246.

11 31. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and other  
12 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to  
13 Labor Code § 203. Further, Plaintiffs are informed and believe and based thereon allege that such  
14 failure to pay sick pay at regular rate was willful, such that Plaintiffs and Class Members whose  
15 employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-  
16 203.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf  
19 this suit is brought against Defendants, jointly and severally, as follows:


- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiffs as Class Representatives of the Class as defined  
22 herein;
- 23 3. For an order appointing counsel for Plaintiffs as Class Counsel;
- 24 4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to  
25 California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code §§  
26 218.5;
- 27 5. On all causes of action, for attorneys' fees and costs as provided by California  
28 Labor Code §§ 218.5, and Code of Civil Procedure § 1021.5; and

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6. For such other and further relief as the Court may deem just and proper.

DATED: September 28, 2020

DIVERSITY LAW GROUP, P.C.

By:   
Larry W. Lee  
Attorneys for PLAINTIFF and the CLASS

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10  
11 Attorneys for Defendants  
WALMART INC., WAL-MART ASSOCIATES, INC.,  
12 and WAL-MART STORES, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 DEARL POWELL, CHRISTINA  
16 GAST and ELIJHA GONZALEZ, as  
individuals and on behalf of all others  
17 similarly situated,

18 Plaintiff,

19 v.

20 WALMART INC., a Delaware  
corporation; WAL-MART  
21 ASSOCIATES, INC., a Delaware  
corporation; WAL-MART STORES,  
22 INC., a Delaware corporation; and  
DOES 1 through 50, inclusive,

23 Defendants.  
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Case No. TBD **'20CV2412 BEN LL**

**DECLARATION OF LAURA KISH  
IN SUPPORT OF REMOVAL OF  
CIVIL ACTION TO UNITED  
STATES DISTRICT COURT**

*[Filed concurrently with Notice of  
Removal of Civil Action to United States  
District Court; Civil Cover Sheet;  
Certification of Interested Parties and  
Disclosure Statement; Notice of Related  
Cases; Declaration of Paloma Peracchio  
in Support of Removal; and Certificate of  
Service]*

Complaint Filed: September 29, 2020  
Trial Date: None Set  
District Judge: Not Yet Assigned  
Magistrate Judge: Not Yet Assigned

Case No. TBD

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**DECLARATION OF LAURA KISH**

I, Laura Kish, declare and state as follows:

1. I am a Regional Human Resources Director for Walmart. I have worked at Walmart for approximately 14 years. In my capacity as Regional Human Resources Director, I have information regarding Walmart’s corporate structure and access to information regarding Walmart’s personnel, including but not limited to personnel records, personnel policies, time records, and wage records.

2. This declaration is based on my personal knowledge. If called upon to testify as to the facts set forth in this declaration, I would competently testify to them. To the extent that this declaration is based upon business records, those records are kept in the regular course of business, entries are made on those records in a timely manner by people with knowledge of the information being entered, and it is the regular practice of Walmart to maintain such records.

3. Wal-Mart Associates, Inc. is a wholly owned subsidiary of Walmart Inc. Walmart Inc. was formerly known as Wal-Mart Stores, Inc. Walmart Inc. and Wal-Mart Associates, Inc. are incorporated in the State of Delaware, and both have their principal place of business in Bentonville, Arkansas.

4. Based on Walmart’s records, Plaintiff Dearl Powell was employed by Walmart as an hourly associate from September 12, 2018 until January 15, 2020. At the time of his termination, he was working at the Walmart retail store in Oceanside, California. His last known address on file in Walmart’s personnel records is in Escondido, California.

5. Based on Walmart’s records, Plaintiff Christina Gast was employed by Walmart as an hourly associate from June 23, 1998 until January 2, 2020. At the time of her termination, she was working at the Walmart retail store in Glendora, California. Her last known address on file in Walmart’s personnel records is in San Dimas, California.

6. Based on Walmart’s records, Plaintiff Elijha Gonzales was employed by



1 Walmart as an hourly associate from March 11, 2017 until February 17, 2020. At the  
2 time of his termination, he was working at the Walmart store in Fresno, California.  
3 His last known address on file in Walmart’s personnel records is in Fresno,  
4 California.

5 7. In California, Walmart provides its hourly associates with Paid Sick  
6 Leave as part of Walmart’s Paid Time Off program as Protected PTO. The Paid Sick  
7 Leave is provided in the form of Protected PTO, when the associate uses the  
8 Protected PTO for “Paid Sick Leave” reasons (e.g., by selecting “sick” or “family”  
9 as the reason for the absence).

10 8. Walmart has a “MyShare Incentive” plan, whereby it pays associates  
11 quarterly bonuses, based upon stores meeting certain performance goals, and the  
12 associate meeting various criteria that quarter.

13 9. Walmart’s records show that during the time period of August 1, 2017  
14 to November 10, 2020, there were 116,651 hourly associates whose employment  
15 with Walmart ended in that time period. Of those associates, according to Walmart’s  
16 records, approximately 30,165 used Protected PTO for “sick” or “family” reasons in  
17 that same time period. Of those terminated associates, 46,210 received a quarterly  
18 “MyShare Incentive” bonus during that same time period.

19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct, and that this declaration was executed  
21 on this 10<sup>th</sup> day of December, 2020, at IRVINE, California.

22  
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25 Laura Kish

22  
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28

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Facsimile: 714-754-1298

10  
11 Attorneys for Defendants  
WALMART INC., WAL-MART ASSOCIATES, INC.,  
12 and WAL-MART STORES, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA '20CV2412 BEN LL**

15 DEARL POWELL, CHRISTINA  
16 GAST and ELIJHA GONZALEZ, as  
individuals and on behalf of all others  
17 similarly situated,

18 Plaintiff,

19 v.

20 WALMART INC., a Delaware  
corporation; WAL-MART  
21 ASSOCIATES, INC., a Delaware  
corporation; WAL-MART STORES,  
22 INC., a Delaware corporation; and  
DOES 1 through 50, inclusive,

23 Defendants.  
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Case No. \_\_\_\_\_

**DECLARATION OF PALOMA  
PERACCHIO IN SUPPORT OF  
REMOVAL OF CIVIL ACTION TO  
UNITED STATES DISTRICT COURT**

*[Filed concurrently with Notice of  
Removal of Civil Action to United States  
District Court; Civil Cover Sheet;  
Certification of Interested Parties and  
Disclosure Statement; Notice of Related  
Cases; Declaration of Laura Kish in  
Support of Removal; and Certificate of  
Service]*

State Court Complaint Filed: 09/29/2020  
Trial Date: None  
District Judge: Not yet  
assigned  
Magistrate Judge: Not yet assigned

Case No. TBD

**DECLARATION OF PALOMA PERACCHIO**

I, Paloma Peracchio, declare and state as follows:

1. I am an attorney licensed to practice law in this Court and all courts of the State of California. I am an attorney at the law firm Ogletree, Deakins, Nash, Smoak and Stewart, P.C., counsel of record for defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores, Inc. (“Walmart”).

2. Other than matters stated on information and belief, I have personal knowledge of the matters stated below, and if called as a witness, I would testify truthfully about those matters. As to any statements made on information and belief, I believe them to be true to the best of my knowledge and would so testify.

3. On September 29, 2020, an action was commenced in the Superior Court of the State of California, County of San Diego, entitled *Dearl Powell, Christina Gast, Elijha Gonzalez v. Walmart Inc., Wal-Mart Associates, Inc., Wal-Mart Stores, Inc., a Delaware corporation, and DOES 1 through 50, inclusive*, and docketed as Case No. 37-2020-00036007-CU-OE-CTL. A true and correct copy of the Complaint in that matter is attached hereto as **Exhibit A**.

4. On November 10, 2020, I signed the Notice and Acknowledgement of Receipt sent to Walmart by Plaintiffs’ counsel, and my office emailed and mailed the Notice of Acknowledgement to Plaintiffs’ counsel, which caused the Complaint to be deemed served on Wal-Mart Stores. Inc. On November 11, 2020, I signed and returned to Plaintiffs’ counsel the Notice of Acknowledgement for the Complaints served on Wal-Mart Associates, Inc. and Walmart Inc. A true and correct copy of the Notices of Acknowledgement of Receipt that my office served on Plaintiffs’ counsel are attached hereto as **Exhibit B**.

5. Attached hereto as **Exhibit C** is a true and correct copy of the printout of the California Secretary of State online records evidencing that Walmart Inc. is incorporated in the State of Delaware with its principal place of business located in Bentonville, Arkansas.



# **EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/29/2020** at 03:15:20 PM  
Clerk of the Superior Court  
By Alma Rhodes, Deputy Clerk

**NOTICE TO DEFENDANT:**

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

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DEARL POWELL, CHRISTINA GAST, and ELIJHA GONZALEZ, as individuals and on behalf of all others similarly situated,

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):

CASE NUMBER 37-2020-00035007-CU-DE-CTL  
(Número del

Superior Court of California, County of San Diego  
330 W. Broadway, San Diego, CA 92101

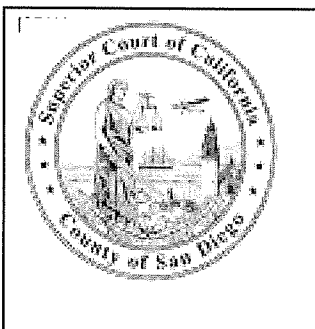
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

Larry W. Lee/Mai Tulyathan, 515 S. Figueroa St., Ste. 1250, Los Angeles, CA 90071, 213-488-6555  
B. James Fitzpatrick/Laura Franklin, 555 S. Main St., Salinas, CA 93901, 831-755-1311  
Dennis S. Hyun, 515 S. Figueroa St., Ste. 1250, Los Angeles, CA 90071, 213-488-6555

DATE: 10/02/2020  
(Fecha)

Clerk, by *A. Rhodes*, Deputy  
(Secretario) A. Rhodes (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)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): Wal-Mart Stores, Inc., a Delaware corporation  
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):
4.  by personal delivery on (date):

1 Larry W. Lee (State Bar No. 228175)  
2 Mai Tulyathan (State Bar No. 316704)  
3 **DIVERSITY LAW GROUP, P.C.**  
4 515 S. Figueroa St., Suite 1250  
5 Los Angeles, California 90071  
6 (213) 488-6555  
7 (213) 488-6554 facsimile  
8 [lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
9 [ktulyathan@diversitylaw.com](mailto:ktulyathan@diversitylaw.com)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/29/2020** at 03:15:20 PM  
Clerk of the Superior Court  
By Alma Rhodes, Deputy Clerk

10 Attorneys for Plaintiffs and the Class  
11 (Additional Counsel on Next Page)

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO**

14 DEARL POWELL, CHRISTINA GAST,  
15 and ELIJHA GONZALEZ, as individuals  
16 and on behalf of all others similarly  
17 situated,

18 Plaintiffs,

19 v.

20 WALMART INC., a Delaware corporation;  
21 WAL-MART ASSOCIATES, INC., a  
22 Delaware corporation; WAL-MART  
23 STORES, INC., a Delaware corporation  
24 and DOES 1 through 50, inclusive,

25 Defendants.

CASE NO. 37-2020-00035007-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE § 201-203;**

**(2) VIOLATION OF CAL. LABOR CODE § 226**

**DEMAND EXCEEDS \$25,000.00**

**ADDITIONAL COUNSEL FOR PLAINTIFF**

1  
2 B. James Fitzpatrick, Esq. (SBN: 129056)

3 bjfitzpatrick@fanslegal.com

4 Laura Franklin, Esq. (SBN: 282642)

5 lfranklin@fanslegal.com

**FITZPATRICK & SWANSTON**

555 S. Main Street

6 Salinas, CA 93901

Telephone: (831) 755-1311

7 Facsimile: (831) 755-1319

8 Dennis S. Hyun (State Bar No. 224240)

9 HYUN LEGAL, APC

515 S. Figueroa St., Suite 1250

10 Los Angeles, CA 90071

(213) 488-6555

11 (213) 488-6554 facsimile



1 Plaintiffs Dearl Powell (“Powell”), Christina Gast (“Gast”) and Elijha Gonzalez  
2 (“Gonzalez”) (collectively, “Plaintiffs”) hereby submit this Class Action Complaint  
3 (“Complaint”) against Defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores,  
4 Inc. (collectively, “Defendant,” or “Walmart”), and DOES 1-50 (hereinafter collectively referred  
5 to as “Defendants”), individually and on behalf of a Class of all other similarly situated current  
6 and former employees of Defendants for penalties for violations of the California Labor Code,  
7 including without limitation, failure to pay employees their sick pay at their regular rate of pay as  
8 follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§  
11 201-203, and 246, and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

12 2. This Complaint challenges systemic illegal employment practices resulting in  
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiffs are informed and believe and based thereon allege that Defendants jointly  
15 and severally have acted knowingly and intentionally by failing to provide accurate itemized wage  
16 statements identifying all required information, including without limitation, the correct overtime  
17 rate, and paying overtime at the correct rate of pay.

18 **JURISDICTION AND VENUE**

19 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-  
20 203, and 246.

21 5. Venue is proper in San Diego County because Defendants maintain business  
22 locations in this County and Plaintiff Dearl Powell worked at Defendants’ retail store located in  
23 this County.

24 **PARTIES**

25 6. All Plaintiffs worked for Walmart as non-exempt retail store employees. During  
26 Plaintiffs’ employment, they were all paid sick pay wages and additional non-discretionary  
27 remuneration covering the same pay period, including without limitation, “MYSHARE INCT.”

28 7. Walmart is a global retailer headquartered in Bentonville, Arkansas, with numerous

1 locations throughout the United States, including in San Diego County, California.

2 8. Plaintiffs were and are victim of the policies, practices, and customs of Defendants  
3 complained of in this action in ways that have deprived Plaintiffs of the rights guaranteed by  
4 California Labor Code §§ 201-203, and 246.

5 9. Plaintiffs are informed and believe and based thereon allege that at all times herein  
6 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and  
7 partnerships, licensed to do business and actually doing business in the State of California.

8 10. As such, and based upon all the facts and circumstances incident to Defendants'  
9 business in California, Defendants are subject to California Labor Code §§ 201-203, and 246.

10 11. Plaintiffs do not know the true names or capacities, whether individual, partner or  
11 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said  
12 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this  
13 complaint when the true names and capacities are known. Plaintiffs are informed and believe and  
14 based thereon allege that each of said fictitious Defendants was responsible in some way for the  
15 matters alleged herein and proximately caused Plaintiffs and members of the general public and  
16 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

17 12. At all times herein mentioned, each of said Defendants participated in the doing of  
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
19 Defendants, and each of them, were the agents, servants and employees of each of the other  
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting  
21 within the course and scope of said agency and employment.

22 13. Plaintiffs are informed and believe and based thereon allege that at all times  
23 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
24 joint venturer of, or working in concert with each of the other co- Defendants and was acting  
25 within the course and scope of such agency, employment, joint venture, or concerted activity. To  
26 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
27 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
28 Defendants.



1 Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past  
2 and currently have a number of wage-and-hour class actions pending in California courts.

3 19. Defendants uniformly administered a corporate policy, practice of failing to pay  
4 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203 and  
5 246.

6 20. **Common Question of Law and Fact:** There are predominant common questions  
7 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class  
8 concerning the Defendants failure to pay employees their sick pay at their regular rate of pay in  
9 violation of Labor Code §§ 201-203 and 246.

10 21. **Typicality:** Plaintiffs' claims are typical of the claims of all members of the Class  
11 in that Plaintiffs suffered the harm alleged in this Complaint in a similar and typical manner as the  
12 Class members. Defendants violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at  
13 the regular rate of pay. Specifically, Plaintiff and all members of the class routinely earned non-  
14 discretionary incentive wages such as MYSHARE INCT wages and, thus, increased their rates of  
15 pay. However, when sick pay was paid, it was paid at the base rate of pay for Plaintiffs and Class  
16 Members, as opposed to the correct, higher regular rate of pay. Thus, Plaintiffs qualify as Class  
17 Members and have suffered the alleged violations of California Labor Code §§ 201-203, and 246.

18 22. The California Labor Code is broadly remedial in nature and must be construed in  
19 favor of worker protection. These laws and labor standards serve an important public interest in  
20 establishing minimum working conditions and standards in California. These laws and labor  
21 standards protect the average working employee from exploitation by employers who may seek to  
22 take advantage of superior economic and bargaining power in setting onerous terms and conditions  
23 of employment.

24 23. The nature of this action and the format of laws available to Plaintiffs and Class  
25 Members identified herein make the class action format a particularly efficient and appropriate  
26 procedure to redress the wrongs alleged herein. If each employee were required to file an  
27 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage  
28 since it would be able to exploit and overwhelm the limited resources of the individual employees

1 with Defendants' vastly superior financial and legal resources. Requiring each class member to  
2 pursue an individual remedy would also discourage the assertion of lawful claims by employees  
3 who would be disinclined to file an action against their former and/or current employer for real and  
4 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

5 24. The prosecution of separate actions by the individual class members, even if  
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to  
7 individual class members against the Defendants and which would establish potentially  
8 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to  
9 individual Class members which would, as a practical matter, be dispositive of the interest of the  
10 other Class members not parties to the adjudications or which would substantially impair or  
11 impede the ability of the Class members to protect their interests. Further, the claims of the  
12 individual members of the Class are not sufficiently large to warrant vigorous individual  
13 prosecution considering all of the concomitant costs and expenses.

14 25. Such a pattern, practice and uniform administration of corporate policy regarding  
15 illegal employee compensation described herein is unlawful and creates an entitlement to recovery  
16 by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or  
17 damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor  
18 Code §§ 218.5, and Code of Civil Procedure § 1021.5.

19 26. Proof of a common business practice or factual pattern, which the named Plaintiffs  
20 experienced and are representative of, will establish the right of each of the members of the Class  
21 to recovery on the causes of action alleged herein.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE §§ 201-203**

24 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFFS AND THE SICK PAY**  
25 **CLASS)**

26 27. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26 as though  
27 fully set for herein.

28 28. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in the

1 same manner as the regular rate of pay for the workweek in which the employee uses paid sick  
2 time, whether or not the employee actually works overtime in that workweek.

3 29. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be  
4 calculated by dividing the employee's total wages, not including overtime premium pay, by the  
5 employee's total hours worked in the full pay periods of the prior 90 days of employment.

6 30. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular rate  
7 of pay. Plaintiffs and Class Members routinely earned non-discretionary incentive wages, such as  
8 MYSHARE INCT wages, which increased their regular rate of pay. However, when sick pay was  
9 paid, it was paid at the base rate of pay for Plaintiffs and Class Members, as opposed to the correct,  
10 higher regular rate of pay, as required under Labor Code §246.

11 31. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and other  
12 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to  
13 Labor Code § 203. Further, Plaintiffs are informed and believe and based thereon allege that such  
14 failure to pay sick pay at regular rate was willful, such that Plaintiffs and Class Members whose  
15 employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-  
16 203.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf  
19 this suit is brought against Defendants, jointly and severally, as follows:


- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiffs as Class Representatives of the Class as defined  
22 herein;
- 23 3. For an order appointing counsel for Plaintiffs as Class Counsel;
- 24 4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to  
25 California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code §§  
26 218.5;
- 27 5. On all causes of action, for attorneys' fees and costs as provided by California  
28 Labor Code §§ 218.5, and Code of Civil Procedure § 1021.5; and

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6. For such other and further relief as the Court may deem just and proper.

DATED: September 28, 2020

DIVERSITY LAW GROUP, P.C.

By:   
Larry W. Lee  
Attorneys for PLAINTIFF and the CLASS

# **EXHIBIT B**









# **EXHIBIT C**

Alex Padilla  
 California Secretary of State

## Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, December 8, 2020. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C1634374 WALMART INC.

<b>Registration Date:</b>	02/03/1989
<b>Jurisdiction:</b>	DELAWARE
<b>Entity Type:</b>	FOREIGN STOCK
<b>Status:</b>	ACTIVE
<b>Agent for Service of Process:</b>	<b><u>C T CORPORATION SYSTEM (C0168406)</u></b> To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.
<b>Entity Address:</b>	702 SW 8TH STREET BENTONVILLE AR 72716
<b>Entity Mailing Address:</b>	702 SW 8TH STREET BENTONVILLE AR 72716

 **Certificate of Status**

A Statement of Information is due EVERY year beginning five months before and through the end of February.

Document Type	↑↓ File Date	↓↑ PDF
SI-COMPLETE	09/28/2020	
FILING OFFICE STATEMENT	09/25/2020	
SI-COMPLETE	09/15/2020	
PUBLICLY TRADED DISCLOSURE	06/30/2020	
PUBLICLY TRADED DISCLOSURE	07/05/2019	
PUBLICLY TRADED DISCLOSURE	07/03/2018	

Document Type	File Date	PDF
AMENDED REGISTRATION	12/14/2017	
PUBLICLY TRADED DISCLOSURE	07/03/2017	
PUBLICLY TRADED DISCLOSURE	08/17/2016	
PUBLICLY TRADED DISCLOSURE	07/16/2015	
PUBLICLY TRADED DISCLOSURE	07/01/2013	
PUBLICLY TRADED DISCLOSURE	07/02/2012	
PUBLICLY TRADED DISCLOSURE	06/28/2011	
PUBLICLY TRADED DISCLOSURE	06/30/2010	
PUBLICLY TRADED DISCLOSURE	09/04/2009	
PUBLICLY TRADED DISCLOSURE	06/30/2008	
PUBLICLY TRADED DISCLOSURE	06/07/2007	
PUBLICLY TRADED DISCLOSURE	07/24/2006	
PUBLICLY TRADED DISCLOSURE	06/29/2005	
PUBLICLY TRADED DISCLOSURE	06/01/2004	
PUBLICLY TRADED DISCLOSURE	12/09/2003	Image unavailable. Please request paper copy.
REGISTRATION	02/03/1989	

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.

- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

[Modify Search](#)

[New Search](#)

[Back to Search Results](#)

# **EXHIBIT D**



Alex Padilla  
California Secretary of State

# Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, August 4, 2020. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

## C1990849 WAL-MART ASSOCIATES, INC.

**Registration Date:** 10/01/1996  
**Jurisdiction:** DELAWARE  
**Entity Type:** FOREIGN STOCK  
**Status:** ACTIVE  
**Agent for Service of Process:** **C T CORPORATION SYSTEM (C0168406)**  
 To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.

**Entity Address:** 708 SW 8TH STREET  
BENTONVILLE AR 72716  
**Entity Mailing Address:** 708 SW 8TH STREET  
BENTONVILLE AR 72716

 [Certificate of Status](#)

A Statement of Information is due EVERY year beginning five months before and through the end of October.

Document Type	↕	File Date	↕	PDF
SI-COMPLETE		10/30/2019		
SI-COMPLETE		09/06/2018		
REGISTRATION		10/01/1996		

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
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- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

[Modify Search](#) [New Search](#) [Back to Search Results](#)

1 PALOMA P. PERACCHIO, CA Bar No. 259034  
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mitchell.wrosch@ogletree.com  
6 OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
7 Park Tower, Fifteenth Floor  
8 695 Town Center Drive  
Costa Mesa, CA 92626  
9 Telephone: 714-800-7900  
Facsimile: 714-754-1298

10  
11 Attorneys for Defendants  
WALMART INC., WAL-MART ASSOCIATES, INC.,  
12 and WAL-MART STORES, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15  
16 DEARL POWELL, CHRISTINA  
GAST and ELIJHA GONZALEZ, as  
17 individuals and on behalf of all others  
similarly situated,

18 Plaintiff,

19 v.

20  
21 WALMART INC., a Delaware  
corporation; WAL-MART  
ASSOCIATES, INC., a Delaware  
22 corporation; WAL-MART STORES,  
INC., a Delaware corporation; and  
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. TBD '20CV2412 BEN LL

**CERTIFICATE OF SERVICE OF  
DEFENDANTS WALMART INC.,  
WAL-MART ASSOCIATES, INC., AND  
WAL-MART STORES, INC.'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION TO UNITED STATES  
DISTRICT COURT AND ALL  
PAPERS FILED IN SUPPORT  
THEREOF**

*[Filed concurrently with Civil Cover  
Sheet; Notice of Removal of Civil Action  
to United States District Court;  
Certification of Interested Parties  
and Disclosure Statement; Notice of  
Related Cases; and the Declarations of  
Paloma Peracchio and Laura Kish in  
Support of Removal]*

Complaint Filed: September 29, 2020  
Trial Date: None  
District Judge: Not Yet Assigned  
Magistrate Judge: Not Yet Assigned

Case No. TBD

CERTIFICATE OF SERVICE OF DEFENDANTS NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT AND ALL PAPERS FILED IN SUPPORT THEREOF

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**CERTIFICATE OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to this action. My business address is 695 Town Center Drive, Suite 1500, Costa Mesa, California 92626.

On December 10, 2020, I served the following document(s) described as:

(1) DEFENDANTS WALMART INC., WALMART ASSOCIATES, INC., AND WALMART STORES, INC.'S NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT

(2) STATE COURT SUMMONS AND COMPLAINT

(3) CIVIL COVER SHEET

(4) DECLARATION OF PALOMA PERACCHIO IN SUPPORT OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT;

(5) DECLARATION OF LAURA KISH IN SUPPORT OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT;

(6) NOTICE OF RELATED CASES PURSUANT TO LOCAL RULE 40.1(C);

(7) CORPORATE DISCLOSURE STATEMENT IN COMPLIANCE WITH FRCP 7.1 AND LOCAL CIVIL RULE 40.2;

on the persons below as follows:

Larry W. Lee, Esq.  
Mai Tulyathan, Esq.  
DIVERSITY LAW GROUP, P.C.  
515 S. Figueroa St., Suite 1250  
Los Angeles, CA 90071  
Telephone:(213) 488-6555  
Facsimile: (213) 488-6554  
Email: lwlee@diversitylaw.com  
ktulyathan@diversitylaw.com

Attorneys for Plaintiffs  
Dearl Powell; Christina Gast and Elijha Gonzalez

B. James Fitzpatrick, Esq.  
Laura Franklin, Esq.  
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555 S. Main Street  
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Attorneys for Plaintiffs  
Dearl Powell; Christina Gast and Elijha Gonzalez

1 Facsimile: (831) 755-1319  
2 Email: bjfitzpatrick@fandslegal.com  
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3 Dennis S. Hyun, Esq.  
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Attorneys for Plaintiffs  
Dearl Powell; Christina Gast and Elijha  
Gonzalez

9 I enclosed the documents in a sealed envelope or package addressed to the  
10 persons at the addresses as indicated above and:

- 11  deposited the sealed envelope or package with the United States Postal  
12 Service, with the postage fully prepaid.\*
- 13  placed the envelope or package for collection and mailing, following our  
14 ordinary business practices. I am readily familiar with this business's practice  
15 for collecting and processing correspondence for mailing. On the same day  
16 that correspondence is placed for collection and mailing, it is deposited in the  
17 ordinary course of business with the United States Postal Service, in a sealed  
18 envelope or package with postage fully prepaid.

19 I am employed in the county where the mailing occurred. The envelope or  
20 package was placed in the mail at Costa Mesa, California.

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

26 Executed on December 10, 2020, at Costa Mesa, California.

27  
28  
29 Lisa Sles



44835324.1

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10  
11 Attorneys for Defendants  
WALMART INC., WAL-MART ASSOCIATES, INC.,  
12 and WAL-MART STORES, INC.

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 DEARL POWELL, CHRISTINA  
16 GAST and ELIJHA GONZALEZ, as  
individuals and on behalf of all others  
17 similarly situated,

18 Plaintiff,

19 v.

20 WALMART INC., a Delaware  
corporation; WAL-MART  
21 ASSOCIATES, INC., a Delaware  
corporation; WAL-MART STORES,  
22 INC., a Delaware corporation; and  
DOES 1 through 50, inclusive,

23 Defendants.  
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Case No. TBD '20CV2412 BEN LL

**NOTICE OF RELATED CASES  
PURSUANT TO LOCAL RULE  
40.1(C)**

*[Filed concurrently with Notice of  
Removal of Civil Action to United States  
District Court; Civil Cover Sheet;  
Certification of Interested Parties and  
Disclosure Statement; Declarations of  
Paloma Peracchio and Laura Kish in  
Support of Removal; and Certificate of  
Service]*

State Court Complaint Filed: 9/29/2020  
Trial Date: None  
District Judge: Not Yet Assigned  
Magistrate Judge: Not Yet Assigned

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**  
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFFS DEARL POWELL,**  
3 **CHRISTINA GAST AND ELIJHA GONZALEZ AND THEIR ATTORNEYS**  
4 **OF RECORD:**

5 Pursuant to Southern District of California Local Rule 40.1(c), the  
6 undersigned counsel of record for defendant Defendants Walmart Inc., Wal-Mart  
7 Associates, Inc., and Wal-Mart Stores, Inc. (“Defendants”) hereby gives notice that  
8 the following matters involve all or a material part of the subject matter of this  
9 action:

10 1. The matter of *Martha Castro v. Walmart Inc.*, Case No. 2:20-CV-  
11 00928-JAM-KJN, is currently pending in the United States District Court in the  
12 Eastern District of California. Plaintiff Martha Castro is represented by the law firm  
13 of Bradley Grombacher, LLP, located at 31365 Oak Crest Drive, Suite 240,  
14 Westlake Village, California, with telephone number: 805-270-7100; and the Law  
15 Offices of Sahag Majarian II, located at 18250 Ventura Blvd, Tarzana California.  
16 The defendants in that matter are represented by undersigned counsel. In that matter,  
17 Castro brings claims against Defendant Walmart Inc. on behalf of herself and a  
18 putative class of hourly associates in California for failure to pay minimum wages,  
19 failure to pay wages at termination, and for civil penalties under the California  
20 Private Attorney Generals Act (“PAGA”). The putative class in the Castro matter is  
21 hourly associates in California who worked for Walmart at any time between March  
22 24, 2017 and the present. The instant action is asserted against Walmart Inc. on  
23 behalf of a putative class of Walmart associates who worked for Walmart between  
24 April 6, 2017 and the present, and asserts a claim for failure to pay wages at  
25 termination.

26 Other than the above-described matters, Defendant is not aware of any action  
27 currently pending in this or any other federal or state court that involves all or a  
28 ///

1 material part of the subject matter of this action.  
2

3 DATED: December 10, 2020

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

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6

By: /s/ Paloma P. Peracchio  
Paloma P. Peracchio  
Mitchell A. Wrosch

7

8

Attorneys for Defendants  
WALMART INC., WAL-MART  
ASSOCIATES, INC., and WAL-MART  
STORES, INC.

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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: [Walmart Shorted California Workers on Sick Time Pay, Class Action Claims](#)

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