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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

**BRIGETTE MABE, individually and on behalf
of all others similarly situated,**

Plaintiff,

-against-

WAL-MART ASSOCIATES, INC.

Defendant.

No: 1:20-CV-0591 (TJM/CFH)

**CLASS ACTION
COMPLAINT**

Brigette Mabe (“Plaintiff”), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to herself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover untimely wage compensation and other damages for Plaintiff and similar hourly cashiers, front end associates, stockers, receiving associates, sales associates, and other similar manual labor positions (collectively, “Manual Workers”) who work or have worked as manual workers for Wal-Mart Associates, Inc. (collectively, “Wal-Mart or “Defendant”) in New York State.

2. Headquartered in Bentonville, Arkansas, Wal-Mart sells grocery and retail items throughout their stores throughout New York.

3. Wal-Mart operates approximately 110 locations in New York and employs approximately 35,000 people in New York State, a majority of whom are Manual Workers.

4. At all relevant times, Defendant have compensated Plaintiff and all other Manual Workers on a bi-weekly basis.

5. Despite being manual workers, Defendant have failed to properly pay Plaintiff and other Manual Workers their wages within seven calendar days after the end of the week in which these wages were earned.

6. In this regard, Defendant have failed to provide timely wages to Plaintiff and all other similar Manual Workers.

7. Plaintiff brings this action on behalf of herself and all other similar Manual Workers in New York pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy violations of the New York Labor Law, Article 6, §§ 191, 195. (“NYLL”).

THE PARTIES

Plaintiff

Brigette Mabe

8. Brigette Mabe (“Mabe”) is an adult individual who is a resident of the State of New York.

9. Mabe has been employed by Walmart as a “Cashier” from on or about November 2019 to the present date.

10. Mabe is a covered employee within the meaning of the NYLL.

Defendant

Wal-Mart Associates, Inc.

11. Wal-Mart Associates, Inc. is a foreign business corporation organized and existing

under the laws of Delaware.

12. Wal-Mart Associates, Inc.'s principal executive office is located at 708 Southwest 8th Steer, Bentonville, Arkansas 72716.

13. Wal-Mart Associates, Inc. was and is a covered employer within the meaning of the NYLL, and at all times relevant, employed Plaintiff and similar employees.

14. Wal-Mart Associates, Inc. has maintained control, oversight, and direction over Plaintiff and similar employees, including timekeeping, payroll, and other employment practices that applied to them.

15. Wal-Mart Associates, Inc. applies the same employment policies, practices, and procedures to all Manual Workers in its operation, including policies, practices, and procedures with respect to payment of wages.

JURISDICTION AND VENUE

16. This Court has original jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1332(d), because the amount in controversy against the Defendant in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

17. The members of the proposed class are citizens of states different from that of Defendant.

18. There are over 100 members in the proposed class.

19. Defendant are subject to personal jurisdiction in New York.

20. Venue is proper in the Northern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendant conduct business in this District.

NEW YORK CLASS ACTION ALLEGATIONS

21. Plaintiff brings the First and Second Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as Manual Workers for Wal-Mart Associates, Inc. in New York between May 29, 2014 and the date of final judgment in this matter (the “New York Class”).

22. The members of the New York Class are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

23. There are more than one hundred members of the New York Class.

24. Plaintiff’s claims are typical of those claims that could be alleged by any member of the New York Class, and the relief sought is typical of the relief which would be sought by each member of the New York Class in separate actions.

25. Plaintiff and the New York Class have all been injured in that they have been compensated in an untimely manner due to Defendant’s common policies, practices, and patterns of conduct. Defendant’s corporate-wide policies and practices affected everyone in the New York Class similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each member of the New York Class.

26. Plaintiff is able to fairly and adequately protect the interests of the New York Class and has no interests antagonistic to the New York Class.

27. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiff and classes in wage and hour cases.

28. A class action is superior to other available methods for the fair and efficient

adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendant. Class action treatment will permit a large number of similar persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

29. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting Plaintiff and/or each member of the New York Class individually and include, but are not limited to, the following:

- (a) whether Defendant compensated Plaintiff and the New York Class on a timely basis;
- (b) whether Defendant failed to furnish Plaintiff and the New York Class with an accurate statement of wages, as required by the NYLL.

PLAINTIFF’S FACTUAL ALLEGATIONS

30. Consistent with their policies and patterns or practices as described herein, Defendant harmed Plaintiff, individually, as follows:

Brigette Mabe

31. Mabe has been employed by Wal-Mart as a “Cashier” from on or about November 19, 2019 to the present date.

32. During her employment, Mabe has worked for Defendant in their store located at 30 Catskill Commons, Catskill, NY 12414.

33. During her employment, over twenty-five percent of Mabe’s duties were physical tasks, including but not limited to: (1) lifting and carrying items purchased by customers; (2) placing items purchased by customers into bags; (3) sweeping floors; (4) wiping down her work station; (5) standing for long periods of times; (6) stocking shelves; and (7) arranging inventory.

34. Despite regularly spending more than twenty-five percent of her shift performing these physical tasks, Mabe has been compensated by Defendant on a bi-weekly basis.

35. For example, for the week beginning on November 23, 2019 and ending December 6, 2019, Mabe was paid her lawfully earned wages on December 12, 2019. *See Exhibit A*, Mabe Paystub.

36. In this regard, Defendant failed to pay Mabe her wages earned from November 23, 2019 through November 29, 2019 by December 6, 2019, as required by NYLL § 191(1)(a).

37. Throughout her employment, Defendant failed to provide Mabe with wage statements specifying the amount of hours she worked per week.

38. In this regard, Defendant failed to provide Mabe with accurate wage statements as required by the NYLL.

FIRST CAUSE OF ACTION

**New York Labor Law – Failure to Pay Timely Wages
(Brought on behalf of Plaintiff and the New York Class)**

39. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

40. The timely payment of wages provisions NYLL § 191 and its supporting regulations apply to Defendant and protect Plaintiff and the New York Class.

41. Defendant failed to pay Plaintiff and the New York Class on a timely basis as required by NYLL § 191(1)(a).

42. Due to Defendant's violations of the NYLL, Plaintiff and the New York Class are entitled to recover from Defendant the amount of their untimely paid wages as liquidated damages, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest as provided for by NYLL § 198.

SECOND CAUSE OF ACTION

**New York Labor Law – Failure to Provide Accurate Wage Statements
(Brought on behalf of Plaintiff and the New York Class)**

43. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

44. Defendant failed to supply Plaintiff and the New York Class with an accurate statement of wages with every payment of wages as required by NYLL, Article 6, § 195(3), listing: dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked per week, including overtime hours worked if applicable; deductions; and net wages.

45. Due to Defendant's violations of NYLL § 195(3), Plaintiff and the New York Class are entitled to statutory penalties of two hundred fifty dollars for each workday that Defendant failed to provide them with accurate wage statements, or a total of five thousand dollars each, as well as reasonable attorneys' fees and costs as provided for by NYLL, Article 6, § 198.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similar persons, respectfully request that this Court grant the following relief:

A. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Designation of Plaintiff as representative of the NY Rule 23 Class and counsel of record as Class Counsel;

- C. Liquidated damages permitted by law pursuant to the NYLL.
- D. Statutory penalties of two hundred fifty dollars for each workday that Defendant failed to provide Plaintiff and the NY Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article § 198;
- E. Prejudgment and post-judgment interest;
- F. Reasonable attorneys' fees and costs of the action; and
- G. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
May 29, 2020

Respectfully submitted,



Brian S. Schaffer

FITAPELLI & SCHAFFER, LLP

Brian S. Schaffer

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28 Liberty Street, 30th Floor

New York, NY 10005

Telephone: (212) 300-0375

*Attorneys for Plaintiff and
the Putative Class*

Case No.: 1:20-CV-0591 (TJM/CFH)

EXHIBIT A



BRIGETTE N MABE

Walmart Statement of Earnings and Deductions
Wal-Mart Associates, Inc.
702 S.W. 8th Street 2351
Bentonville AR 72716
479-273-4000

Pay Date 12/12/2019

Advice # [REDACTED]

Pay Period Start 11/23/2019

Pay Period End 12/06/2019

W-4 Fed Withholding [REDACTED]

Earnings Totals	Current	YTD
Gross Pay	\$885.33	\$1,022.76
Net Pay	\$753.31	\$880.02

Deduction Totals	Current	YTD
Taxes	\$132.02	\$142.74
Other Deductions	\$0.00	\$0.00

Earnings Detail	Rate	Hours	Current	YTD
REGULAR EARNINGS	\$13.50	65.58	\$885.33	\$1,022.76

Additional Tax Withholding

Fed \$0.00

Deductions Detail	Current	YTD
FEDERAL TAX	\$42.47	\$42.47
SOCIAL SECURITY	\$67.73	\$78.24
NEW YORK	\$20.47	\$20.47
NY STATE FLI	\$1.35	\$1.56
CHECK DEPOSIT	\$753.31	\$753.31

Exemptions

[REDACTED]

Other Information	Current	YTD
WRKDHRS		65.58

Distributions	Current
[REDACTED]	\$753.31

Employment Information

Work Location 2351

Messages
Employee Category :HOURLY

CIVIL COVER SHEET

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.)

(a) PLAINTIFFS
BRIGETTE MABE, individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Ulster
(c) Attorneys (Firm Name, Address, and Telephone Number)
Fitapelli & Schaffer, LLP Telephone: (212) 300-0375
28 Liberty Street, 30th Floor
New York, New York 10005

DEFENDANTS
WAL-MART ASSOCIATES, INC.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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
DEF DEF

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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 (specify)
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. § 1332(d)
Brief description of cause:
Failure to Pay Wages

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
DOCKET NUMBER

DATE 05/29/2020
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
BPNDC-5130484
RECEIPT # AMOUNT \$400.00
APPLYING IFP JUDGE TJM MAG. JUDGE CFH

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.