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STEPHANIE ODLE, KIMBERLY MILLER AND MICKI EARWOOD

UNITED STATES DISTRICT COURT

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JUN 20 2001

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ON POVERTY LAW

NORTHERN DISTRICT OF CALIFORNIA

BETTY DUKES, PATRICIA SURGESON,
SANDRA STEVENSON, STEPHANIE ODLE, KIMBERLY MILLER and MICKI EARWOOD on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

WAL-MART STORES, INC.

Defendant

No. C-01 -2252 MJJ

FIRST AMENDED COMPLAINT

[CLASS ACTION]

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Wal-Mart is the largest retailer in the world and the largest private employer in the United States. Through its Wal-Mart and Sam's Club divisions, it is the industry leader not only in size, but also in its failure to advance its female employees. There are two workforces at Wal-Mart. By far the largest workforce is female, which comprises over 72% of the hourly sales employees, yet only one-third of management positions. This workforce is predominantly assigned to the lowest paying positions with the least chance of advancement. The other workforce is male. This workforce is the reverse image of the female workforce—it comprises less than 28% of the hourly sales workers, yet holds two-thirds of all store management positions and over 90% of the top Store Manager positions. This disparate distribution of the genders is the result of purposeful discrimination and of practices that serve no reasonable business purpose yet have a disproportionate impact on women.

2. This class action is accordingly brought by present and former Wal-Mart employees on behalf of themselves and all other similarly situated women who have been subjected to Wal-Mart's continuing policies and practices of gender discrimination. Plaintiffs, and the class that they represent, charge that Wal-Mart discriminates against its female employees by advancing male employees more quickly than female employees, by denying female employees equal job assignments, promotions, training and compensation, and by retaliating against those who oppose its unlawful practices.

3. This action seeks an end to Wal-Mart's discriminatory practices, make whole relief for the class, and punitive damages.

JURISDICTION AND VENUE

4. Plaintiffs' claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e5(f), 28 U.S.C. §§ 1331 and 1343(a)(4). The Court has supplemental jurisdiction pursuant to 28 U.S.C. 1367 over claims under the California Fair Employment & Housing Act, Government Code § 12920, et. seq.

5. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C. § 1391 (b) & (c). Lead plaintiff's claims arose in the Northern District of California. Members of the plaintiffs' class reside throughout the United States, including the Northern District of California. Many of the acts complained of herein occurred in this District and gave rise to the claims alleged. Wal-Mart operates over 140 stores and Sam's Clubs in California where it employs more than 40,000 workers. It operates at least 18 stores in the Northern District of California.

PARTIES

6. Plaintiff, Betty Dukes, is an African American woman and a resident of Contra Costa County, California. She is currently employed by Wal-Mart Stores, Inc.

7. Plaintiff, Patricia Surgeson, is a woman and a resident of Solano County, California. She was employed by Wal-Mart Stores, Inc. from August 1997 to March 2001. Plaintiffs are informed and believe she is eligible for rehire.

8. Plaintiff, Sandra Stevenson, is a woman and a resident of Lake County, Illinois. She was employed by Wal-Mart Stores, Inc. from November 1996 to June 2000.

9. Plaintiff, Stephanie Odle, is a woman and a resident of Norman, Oklahoma. She was employed by Wal-Mart Stores, Inc. from November 1991 to October 1999.

10. Plaintiff, Kimberly Miller, is a woman and a resident of Marion County, Florida. She was employed by Wal-Mart Stores, Inc. from November 1991 to February 2000.

11. Plaintiff Micki Earwood is a woman and a resident of Springfield, Ohio. She was employed by Wal-Mart Stores, Inc. from 1989 until September 28, 2000.

12. Defendant Wal-Mart Stores Inc. is a Delaware corporation with stores throughout California. Its corporate headquarters are located in Arkansas. Wal-Mart Stores, Inc. operates retail stores doing business as Wal-Mart, Wal-Mart Supercenters and Sam's Club Stores.

CLASS ALLEGATIONS

13. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all past, present and future female employees of Wal-Mart's retail stores (including Wal-Mart discount, supercenter and neighborhood markets and Sam's Club stores, hereinafter collectively referred to as ¹Wal-Mart²) in the United States. Plaintiffs are members of the class they seek to represent.

14. The members of the class are sufficiently numerous that joinder of all members is impracticable. Plaintiffs are informed and believe that the class exceeds 700,000 present and former female employees of Wal-Mart.

15. There are questions of law and fact common to the class, and these questions predominate over individual questions. Such questions include, without limitation, whether defendant's common operating practices and procedures discriminate against its female employees; whether defendant's policies have an adverse impact upon the class and, if so, whether said impact can be justified by business necessity; whether defendant has a policy and practice of retaliating against class-members who object to or oppose unlawful employment practices; and whether injunctive and other equitable remedies and punitive damage relief for the class is warranted.

16. The claims alleged by the plaintiffs are typical of the claims of the class.

17. The named plaintiffs will fairly and adequately represent and protect the interests of the class.

18. This action is properly maintainable under both Fed. R. Civ. Proc. Rule 23(b)(2) and (3) because defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to the class as a whole; and because questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case. This action is also properly maintainable under Rule 23(c)(4)(A) for all class issues alleged herein.

WAL-MART'S OPERATION AND ITS

GENERAL PRACTICE OF DISCRIMINATION

19. Wal-Mart is the largest private employer in the United States and the world's largest retailer. Through its Wal-Mart and Sam's Club divisions, it operates over 3000 stores across the country, encompassing every state. There are so many Wal-Mart locations in the United States that, according to Wal-Mart, the average store is within 30 miles of the next Wal-Mart store. In the United States, Wal-Mart employs nearly one million ³associates,² Wal-Mart's term for its hourly employees. In its last fiscal year, it had sales exceeding \$191 billion. It claims that it has 100 million customers each week.

20. Wal-Mart employs uniform employment and personnel policies throughout the United States. All of its stores are linked by state-of-the-art electronic and video communications, through which all stores regularly report payroll, labor and other employment data. Regardless of division, there are uniform policies for employees, uniform ³orientation² procedures, uniform salary, assignment, pay, training, and promotion policies. All stores are regularly audited for compliance with these uniform, company-wide policies and procedures.

21. The vast majority of Wal-Mart store employees are hourly paid sales associates, who report to department heads. Each store has a number of assistant managers who have different functional responsibilities, one or more ³co-managers² and a store manager. District and regional managers supervise the stores.

22. Few objective requirements or qualifications for specific store assignments, promotions, or raises exist. Salaries are supposed to conform to general company guidelines, but store management has substantial discretion in setting salary levels within salary ranges for each employee. Salaries are also adjusted based on performance reviews, which are largely based on subjective judgments of performance. Plaintiffs are informed and believe that Wal-Mart policy prohibits employees from exchanging information about their salary levels.

23. The hourly sales workforce at Wal-Mart is predominantly female, representing over 72% of all hourly employees. Yet, male and female employees are not evenly distributed among the departments in the store. In some departments and positions, such as furniture, garden, electronics, hardware, sporting goods, guns, produce, and stocking, males are disproportionately assigned. In other departments, such as front-end cashier, customer service, health and beauty aids, cosmetics, house wares, stationary, toys, layaway, fabrics and clothes, women are disproportionately assigned. Plaintiffs are informed and believe that the male-dominated departments and jobs are better paid and offer greater opportunities for advancement than the female-dominated positions and departments.

24. Male employees are more likely than female employees to obtain ³cross-training² in other departments or to receive training and support to enter into departments that would aid their advancement.

25. Plaintiffs are informed and believe that female employees are paid less than male employees who perform substantially similar work, with similar or lesser skills and experience. Plaintiffs are further informed and believe that segregated assignment patterns exacerbate such unequal pay, because men are more likely to be assigned to departments that pay better than departments to which women are assigned.

26. Although women comprise the substantial majority of all hourly employees, the source from which most managers are drawn, their representation in management is the polar opposite. Women hold only about one-third of the positions that Wal-Mart identifies as management. However, even this figure overstates the proportion of female managers in true management positions. Thus the ³one third* of management positions held by women includes traditionally ³female² positions, such as assistant managers whose primary responsibility is supervising cashiers, and the lowest level of managers. Plaintiffs are informed and believe that women comprise less than 10% of all Store Managers and approximately 4% of all District Managers. There are few, if any female Regional Managers. There is only one woman among the 20 executive officers of the company. Plaintiffs are informed and believe that even when women are promoted, on average they are advanced later, and then more slowly, than similarly situated male employees.

27. The workforce profile of Wal-Mart does not reflect the industry or the profile of its largest competitors. In fact, although it is the largest

discount retailer in the country, it lags far behind its competitors in the promotion of women. Thus, while Wal-Mart's store management is only about one-third female, among its 20 top competitors women comprise over 56% of management, even though the proportion of hourly workers that are female at these companies is comparable to Wal-Mart. These differences are consistently found around the country. Moreover, these differences are longstanding. In fact, female representation among managers at Wal-Mart is at a substantially lower level today than the level of representation among Wal-Mart's competitors in 1975.

28. This pattern of unequal assignments, pay, training, and advancement opportunities is not the result of random or non-discriminatory factors. Rather, it is the result of an on-going and continuous pattern and practice of intentional sex discrimination in assignments, pay, training and promotions, and reliance on policies and practices that have an adverse impact on female employees that cannot be justified by business necessity, and for which alternative policies and practices with less discriminatory impact could be utilized that equally serve any asserted justification. Plaintiffs are informed and believe that such policies and practices include, without limitation:

- a. Failure to consistently post job and promotional openings to ensure that all employees have notice of and an opportunity to seek advancement or more desirable assignments and training.
- b. Reliance upon unweighted, arbitrary and subjective criteria utilized by a nearly all male managerial workforce in making assignments, training, pay, performance review and promotional decisions. Even where Wal-Mart policy states objective requirements, these requirements are often applied in an inconsistent manner and ignored at the discretion of management.
- c. Reliance on gender stereotypes in making employment decisions such as assignments, promotions, pay and training.
- d. Pre-selection and ³grooming² of male employees for advancement, favorable assignments and training.
- e. Maintenance of largely sex-segregated job categories and departments.
- f. Deterrence and discouragement of female employees from seeking advancement, training, and favorable assignments and pay.
- g. Paying female employees lower compensation than similarly situated men.
- h. Assigning women to lower paying positions, and positions with lesser advancement potential than those given to men, and advancing women more slowly than similarly situated male employees.
- i. Providing less training and support to female employees and managers than that given to male employees and managers.
- j. Harassing female employees interested in advancement and subjecting them to a hostile work environment.

k. Requiring, as a condition of promotion to management jobs, that employees be willing to relocate, often to significantly distant stores, and applying this policy to require frequent and substantial relocations of its managers without any reasonable business justification. Plaintiffs are further informed and believe that the relocation policy is applied disparately between male and female employees, to the disadvantage of female employees.

l. Retaliating against female employees who have complained either internally or externally about Wal-Mart's treatment of its female employees. Wal-Mart maintains a company-wide, toll free telephone number, which it encourages employees to use if they have a problem or complaint in their store or with store management. Plaintiffs are informed and believe that Wal-Mart retaliates against women who use this number to report discrimination, sexual harassment or other unfair working conditions.

ALLEGATIONS OF NAMED PLAINTIFFS

Betty Dukes

29. Betty Dukes is an African American woman currently employed in Wal-Mart store #1615, located in Pittsburg, California. She was hired as a part-time front-end cashier at the Pittsburg store in May 1994. Within one year after her hire date, Ms. Dukes received an excellent 90-day review, a promotion to full-time status and a merit pay raise. She was promoted to Customer Service Manager in June 1997, which also included an increase in salary.

30. In September 1997, Ms. Dukes began to experience harsh and discriminatory treatment from head Customer Service Manager Leilani (Lonnie) Barrett and male Store Manager Ken Cagle. In November 1997, she complained to male District Manager Chuck Salby about the discriminatory treatment.

31. After she complained, Ms. Dukes experienced retaliation from Wal-Mart store management, beginning with a disciplinary write-up on February 13, 1998, for returning late from her breaks, even though male and/or Caucasian employees returned late from their breaks or failed to clock out for breaks and were not disciplined. Ms. Dukes was also written up on March 31, 1998, for having a front-end cashier cover her lunch break, even though she had used this procedure many times before without incident and Caucasian employees used this procedure without being reprimanded. Ms. Dukes complained to male District Manager Jay King but he simply referred her back to the store manager.

32. On June 29, 1999, Ms. Dukes called in sick. Store Manager Cagle reacted in a highly negative and unprofessional way towards her request, even though she was entitled to use sick leave. Ms. Dukes called the district management office about Cagle and, ultimately, she spoke with the male Loss Prevention District Manager Charles Chibante. Only after she threatened to make a complaint to the Wal-Mart home office in Arkansas did she receive a reluctant apology from Store Manager Cagle. However, Cagle's apology only served to escalate the retaliation.

33. In July of 1999, Ms. Dukes expressed interest in becoming a department

manager by requesting of Ken Cagle that she receive training for that position, but she was never given the opportunity to be trained. Rather, shortly thereafter on August 14, 1999, Plaintiff was demoted from Customer Service Manager to cashier and falsely accused of violating company policy while performing a transaction that had been performed many times by Plaintiff and other employees without incident. The demotion was Wal-Mart's retaliation for Plaintiff's numerous complaints of discrimination.

34. On August 18, 1999, Ms. Dukes traveled to the Wal-Mart District Office in Livermore and made a complaint to male Wal-Mart District Manager John Scatlin about her demotion and her concerns about employment discrimination at the Pittsburg Wal-Mart store. Wal-Mart took no steps to address Dukes' concerns.

35. As a result of the demotion, Plaintiff became ineligible for several promotions to positions that she was qualified to perform from August 1999 to August 2000, the year following the demotion. For example, a support manager position was filled in July or August 2000 by Rosa Trevino (Hispanic female). Between July and September 2000, the position of Domestic Department Manager was open and filled by Joseph Topasna (Filipino male). As a result of the demotion, Ms. Dukes' hours and hourly wage were reduced.

36. After August 14, 2000, when Ms. Dukes once again became eligible for promotion, at least four department manager and/or support manager positions at the Pittsburg store were filled by men. None of these positions was posted. Between October and December 2000, Richard Morales (Hispanic male) was promoted from night receiving stocker to night support manager. In November 2000, Joseph Topasna (Filipino male) was promoted to support manager. Between October and December 2000 Robert (Aaron) Mendez (Hispanic male) was promoted to support manager. In December 2000 or January 2001, Will Mat-tines (Caucasian male) filled the position of Department Manager for Tire Lube Express (TLE).

37. After the demotion, Ms. Dukes was discouraged from seeking other positions because of the way she and other women had been treated by Wal-Mart. Dukes did not apply for three department manager positions open after August 14, 2000 (Hardware, Over The Counter Pharmacy and Stationery) because she was discouraged after the discriminatory treatment she and other women received from Wal-Mart managers.

38. Furthermore, Ms. Dukes' knowledge of Wal-Mart's discriminatory practices against other women at the Pittsburg store also discouraged her from seeking a promotion. In June of 2000, Brooke Terrell (African American female) was demoted from department manager to a sales floor position, although she continued to fulfill the responsibilities of a department manager until a replacement was found. The department manager position vacated by Terrell was filled by Kevin Sims (African American male). In 2000, Trina Wallace (African American female) was demoted from a department manager position to a sales floor position and later terminated. The department manager position vacated by Wallace was ultimately filled by Kendall Dimery (African American male). In 1999, Darla Harper (Caucasian woman) was denied a department manager job in which she had expressed an interest. Without posting this position, Wal-Mart selected Spencer Ostrom (Caucasian male) to fill this position.

39. On or about June 1, 2000, Dukes filed a charge of discrimination with

the California Department of Fair Employment & Housing (DFEH), a copy of which is attached hereto as Exhibit 1 and incorporated by reference. On June 15, 2000, she received a right to sue letter, and commenced this action in a timely manner.

40. On or about May 2, 2001, Dukes filed a charge of discrimination with the United States Equal Opportunity Commission (EEOC), a copy of which is attached as Exhibit 2 and incorporated by reference. She received a right to sue letter on or about May 22, 2001 and commenced this action in a timely manner.

Stephanie Odle

41. Stephanie Odle was hired by Wal-Mart on November 21, 1991, as an hourly associate to work at the Sam's Club in Lubbock, Texas. She was successively transferred to Sam's Clubs in Dallas, Texas; Yuba City, California; and Vacaville, California.

42. On September 3, 1994, while employed at the Vacaville, California, Sam's Club, Ms. Odle was promoted to Assistant Manager and was assigned to the Sam's Club in Roseville, California, as a Manager-in-Training. Ms. Odle was then assigned to the Sam's Club in Sacramento, California, where she worked as an Assistant Manager. Ms. Odle was subsequently transferred in succession to the Sam's Clubs in Riverside, California; Las Vegas, Nevada; and back to Sacramento, California.

43. In October 1998, Ms. Odle was transferred to the Sam's Club in Sherman, Texas. While at this Sam's Club, she was led to believe by the Regional Director of Operations that she would be promoted to the position of Co-Manager of the Sam's Club store in Tulsa, Oklahoma.

44. On May 14, 1999, to insure that Ms. Odle was not promoted to the Co-Manager position at the Tulsa, Oklahoma, Sam's Club, she was discriminated against by management by being wrongfully suspended for five days concerning a legitimate refund she had made to a customer. On or about May 19, 1999, Ms. Odle was informed by management that she would not be promoted to the position of Co-Manager of the Tulsa, Oklahoma, Sam's Club, and that said position was being given to a male manager from Florida.

45. On May 20, 1999, Ms. Odle was given the most severe form of discipline at Sam's Club short of termination, even though management knew that she did not do anything to warrant such discipline, and management never disciplined male employees in this fashion.

46. Also on May 20, 1999, the Store's male managers wrongfully denied Ms. Odle access to the Store or to the Store's employees and ordered her against her will to transfer from the Sam's Club in Sherman, Texas, to the Sam's Club in Lubbock, Texas.

47. On or about October 6, 1999, Ms. Odle complained to management that she was being denied an opportunity to take a skills assessment test critical for future promotion that was being administered to three male managers.

48. On October 16, 1999, Ms. Odle was training three hourly Sam's Club employees with respect to a new store procedure. During the training, a \$13.74 accounting adjustment occurred. Ms. Odle notified accounting and the

acting store manager of the adjustment, and neither expressed any concern. Two days later, even though management knew that the cash register discrepancy was a harmless training adjustment causing no loss to the company, management, in order to make available a managerial position for a male manager from Arizona, wrongfully suspended Ms. Odle and placed her on administrative leave.

49. On October 19, 1999, Ms. Odle was wrongfully terminated by the General Manager of the store, and by the Regional Director of Operations for Sam's Club.

50. On October 22, 1999, Ms. Odle's attorney filed a charge of discrimination against Sam's Club with the El Paso Area Office of the United States Equal Employment Opportunity Commission and tele-faxed a copy of this Charge of Discrimination to Sam's Club headquarters in Bentonville, Arkansas, regarding the gender discrimination perpetrated against her by Sam's Club. A copy of this charge is attached hereto as Exhibit 3 and incorporated by reference. Despite being briefly reinstated pending further investigation,² in retaliation for filing a Charge of Discrimination with the EEOC Ms. Odle was again wrongfully discharged on October 29, 1999, and was replaced by the male manager who was transferred to the Lubbock, Texas store from a Sam's Club in Arizona.

51. Ms. Odle filed amended EEOC charges on January 4, 2000, and April 4, 2000, copies of which are attached hereto as Exhibits 4 and 5 and incorporated by reference. On or about May 31, 2001, the EEOC issued a notice of right to sue on these charges and this action was timely commenced thereafter.

Sandra Stevenson

52. Sandra Stevenson began working at the Gurnee, Illinois Sam's Club in November, 1996 as a cashier. She later transferred to the night shift as a receiver, and then as a stocker. In December 1997, she was promoted to night supervisor. Ms. Stevenson understood that she had a better chance of being promoted to area manager if she worked as a team leader during the day shift. Accordingly, on numerous occasions throughout her employment, Ms. Stevenson informed her supervisors and managers that she wished to work as a supervisor during the day shift and that she wished to be promoted to a manager. In approximately 1999, Wal-Mart promoted Randy Walker, a male employee that Ms. Stevenson had supervised, to a team leader position during the day shift. Despite their knowledge that Ms. Stevenson was interested in being promoted, at no time did Wal-Mart inform Ms. Stevenson about this opening or give her the opportunity to apply for this team leader position.

53. In January 2000, after Ms. Stevenson threatened to quit her job, Wal-Mart made her a team leader of the produce department during the day shift. Todd Christian, the store General Manager informed her that this position would lead to her being promoted to Area Manager in Produce, which was an open position. Thereafter, Ms. Stevenson made numerous requests to various supervisors and managers to promote her to Area Manager of Produce. Each time she asked one of her supervisors about the promotion, she was informed that it was up to someone else to decide whether or not to promote her.

54. Throughout her employment, Ms. Stevenson worked extremely hard in an effort to be promoted to a manager. She often worked without pay to make up for the lack of support from management and lack of training that she received as a night supervisor and as a team leader. As a team leader in produce, she performed the work and had the responsibilities of an area manager, which was a vacant position, but was never compensated as a manager, given the proper training, or given the title of manager.

55. Despite her numerous requests and her hard work, Ms. Stevenson was never

promoted to Area Manager of Produce or any other areamanagement position. Wal-Mart alsofailed to offer her any training to become a manager, nor offer her anyopportunity to apply for a management position.

56. Moreover, Wal-Mart also discriminated against Ms.Stevenson on the basis of her sex, by denying her pay equal to that of a maleemployee, Kelly Walker, who held a similar position as Ms. Stevenson. Defendant also groomed Walker for managementand placed him in the Manager-in-Training program. Subsequently, in or about 1999, Wal-Mart promoted Kelly Walker toarea manager.

57. During the time that Stevenson was an employee,Wal-Mart promoted an atmosphere of a "Boy's Club" where men were treated betterthan female employees. Chester Roberts,a co-general manager at the Sam's Club in Gurnee, made derogatory commentsabout women including stating that women are not competent to be managers andare unable to drive forklifts as well as men. Defendant also did not post available manager positions or otherwisemake these opportunities known to the male and female employees on an equalbasis.

58. After being denied training to become a manager andpromotion to an area manager position, and having been subjected to unequaltreatment from management, Ms. Stevenson resigned in June 2000.

59. On or aboutMarch 15, 2001, Stevenson filed a charge of discrimination with the EEOC, a copy of which is attached hereto as Exhibit 6 and incorporated by reference. Onor about May 15, 2001, the EEOC issued a right to sue notice on thischarge. This action was timelycommenced thereafter.

Patricia Surgeson

60. Patricia Surgeson was hired by Wal-Mart in Vacaville,California in August 1997 as a sales associate. She was assigned to the Tire and Lube Express department and,within two weeks of her hire, was subjected to sexually harassing remarks andtouching by a co-worker. Afterreporting the harassment, she was transferred to the health and beauty aidsdepartment. She repeatedly applied totransfer to other positions but was denied.

61. In November 1998, Surgeson was assigned to theLay-Away Department. In approximatelyMay 1999, she was made the Lay-Away Department manager. Because she was assuming additionalresponsibilities, her Store Manager promised her a raise. Despite repeated requests, Surgeson wasnever given the promised raise.

62. In late 1999, the Store Manager decided that theLay-Away Department no longer needed a manager. Ms. Surgeson's department manager title was taken away but shewas expected to continue performing manager responsibilities. When she left the department, a maleemployee who was given the position and title of Lay-Away Department Managerreplaced her. He was paid more than Ms.Surgeson had been paid for working in the same position with the sameresponsibilities.

63. In June or July 2000, Ms. Surgeson was moved to aposition in the Cash Office. Althoughshe assumed greater responsibilities, she again did not receive a raise. She was expected to work overtime withoutlunches or breaks, locked in the cash office. In her position, she became aware that many male employees were beingpaid more than she was, although they had worked at Wal-Mart for less time andhad less responsibility.

64. In January 2001, she requested a merit increase. Her request was ignored for two months.

65. Ms. Surgeson was interested in attending the assistantmanager training program and in being promoted to assistant manager. She asked one of her managers forinformation about how to qualify for the program, as she had not seen anyinformation posted about such opportunities. The manager provided only a vague response.

66. As a result of the discriminatory pay and working conditions, Ms. Surgeson resigned in March 2001.

67. On or about May 14, 2001, Surgeson filed a charge of discrimination with the EEOC, a copy of which is attached hereto as Exhibit 7 and incorporated by reference. The EEOC issued a notice of right to sue on May 31, 2001, and this action was timely commenced thereafter.

Kimberly Miller