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5/2/19

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division

LISSA MEDEIROS, STEPHANIE CHAPMAN,  
MELVA ELDRIDGE, SHARON LANCASTER,  
JOYCE WILT, SHAWNA JACOBS,  
DENISE HORTON, & BEATRICE QUIRK,

*Plaintiffs,*

v.

WAL-MART, INC.,  
702 SW 8th Street  
Bentonville, AR 72716,

Serve Registered Agent:

CT Corporation,  
4701 Cox Road, Ste. 285  
Glen Allen, VA 23060,

*Defendant,*

Case No.: 5:19cv00037

**JURY DEMANDED**

**COMPLAINT FOR EQUITABLE AND  
MONETARY RELIEF AND DEMAND FOR JURY TRIAL**

1. Plaintiffs Lissa Medeiros, Stephanie Chapman, Melva Eldridge, Sharon Lancaster, Joyce Wilt, Denise Horton, Beatrice Quirk, and Shawna Jacobs are present and former employees of Defendant Wal-Mart, Inc. ("Wal-Mart"). Plaintiffs allege that Wal-Mart illegally discriminated against them on the basis of their gender by paying them less than similarly-qualified or less-qualified male employees and by promoting them less quickly and less frequently than similarly-qualified or less-qualified male employees.

2. Plaintiffs further allege that Wal-Mart discriminated against them individually based on their gender and/or that Wal-Mart's compensation and promotion policies and practices

have had a disparate impact not justified by business necessity on its female employees, including Plaintiffs.

3. Plaintiffs bring this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, *et seq.*, against Wal-Mart for its discriminatory practices against them based on their gender, as set forth herein.

### **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. § 2000e-5(f) and 28 U.S.C. §§ 1331, 1343(a)(4).

5. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1391(b) & (c). Plaintiffs' claims arose in Virginia, West Virginia, Maryland, and Delaware, and most of the acts complained of occurred in this judicial district and gave rise to the claims alleged.

### **BACKGROUND – CASE HISTORY AND EXHAUSTION OF REMEDIES**

6. This action springs from *Dukes v. Wal-Mart*, 564 U.S. 338 (2011), the national class action filed more than ten years ago. In *Dukes*, the United States District Court for the Northern District of California certified a national class of female Wal-Mart and Sam's Club employees challenging Wal-Mart's retail store pay and management promotion policies as discriminatory against women. On June 20, 2011, the United States Supreme Court reversed that class certification order.

7. Plaintiffs were members of the national class certified in *Dukes*. While that certification order was working its way through the appellate process, time periods for filing EEOC charges and subsequent litigation for all former class members were tolled.

8. Following the Supreme Court's decision in *Dukes*, the United States District Court for the Northern District of California subsequently held that claims of class members would be tolled during the pendency of the national class action until the following dates: (1) former class members who had received a Notice of Right to Sue from the EEOC based on a claim encompassed by the former class definition would have until October 28, 2011 to file suit; (2) all other former class members in *non-deferral* states would have until January 27, 2012 to file a charge of discrimination with the EEOC based on conduct encompassed by the former class definition; and (3) all other former class members in *deferral* states would have until May 25, 2012 to file a charge of discrimination with the EEOC based on conduct encompassed by the former class definition.

9. Plaintiffs timely filed charges of discrimination with the EEOC pursuant to the deadline set by the United States District Court for the Northern District of California's August 19, 2011 Order.

10. On or about April 25, 2012, Medeiros submitted a charge of discrimination to the EEOC. On May 2, 2019, Medeiros received her right to sue letter from the EEOC.

11. On or about April 1, 2012, Chapman submitted a charge of discrimination to the EEOC. On May 2, 2019, Chapman received her right to sue letter from the EEOC.

12. On or about March 22, 2012, Eldridge submitted a charge of discrimination to the EEOC. On May 2, 2019, Eldridge received her right to sue letter from the EEOC.

13. On or about April 14, 2012, Lancaster submitted a charge of discrimination to the EEOC. On May 2, 2019, Lancaster received her right to sue letter from the EEOC.

14. On or about April 25, 2012, Wilt submitted a charge of discrimination to the EEOC. On May 2, 2019, Wilt received her right to sue letter from the EEOC.

15. On or about May 8, 2012, Horton submitted a charge of discrimination to the EEOC. On May 2, 2019, Horton received her right to sue letter from the EEOC.

16. On or about May 22, 2012, Quirk submitted a charge of discrimination to the EEOC. On May 2, 2019, Quirk received her right to sue letter from the EEOC.

17. On or about May 22, 2012, Jacobs submitted a charge of discrimination to the EEOC. On May 2, 2019, Jacobs received her right to sue letter from the EEOC.

18. Plaintiffs have therefore exhausted their administrative remedies and complied with the statutory prerequisites of Title VII by timely filing EEOC charges of discrimination.

19. The relevant time period in this action for Plaintiffs' claims is based on the limitations period from *Dukes*. The limitations period starts on December 26, 1998, which is 300 days before the earliest charge filed with the EEOC by a former member of the *Dukes* class and runs through the date of trial.

### **PARTIES**

20. Medeiros is a woman and a resident of New Canton, Virginia. Medeiros is employed by Wal-Mart in Gordonsville, VA at Wal-Mart Store Number 4682, Region 13, and has worked there since October of 2011. From on or about October of 1999 to September of 2001, Medeiros worked at Wal-Mart in Seekonk, MA at Wal-Mart Store Number 2184. From on or about September 2001 to September 2010, Medeiros worked at the Wal-Mart Supercenter in Fredericksburg, VA, Store Number 1833, Region 13. From on or about September 2010 to October 2011, Medeiros worked at the Wal-Mart Supercenter in Charlottesville, VA Store Number 1780, Region 13.

21. Chapman is a woman and resident of Gerrardstown, WV. Chapman was employed by Wal-Mart in Martinsburg, WV, in Wal-Mart Store Number 1703, Region 13, for

approximately 6 years, from May 1991 to September 1997. She then transferred to another Wal-Mart located in Charles Town, WV, Store Number 2566, Region 13, and worked there from on or about September 1997 to January 2005. Chapman then transferred back to Wal-Mart Store Number 1703 in Martinsburg, WV and worked there for approximately three months, from on or about January 2005 to April 5, 2005.

22. Eldridge is a woman and resident of Palmdale, CA 93552 and was employed by Wal-Mart in New Castle, DE in Wal-Mart Store 2555, Region 13, for approximately 13 years, from on or about March 1999 to September of 2012.

23. Lancaster is a woman and resident of Randallstown, MD. Lancaster was employed by Wal-Mart in Rosedale, MD in Wal-Mart Store 5344, Region 13, for approximately one year, from 1996 to 1997, and then was employed by Wal-Mart in Towson, MD in Wal-Mart Store Number 5344, Region 13 from in or about 2003 to in or about 2007. Lancaster then transferred to Wal-Mart in Dundalk, MD at Wal-Mart Store Number 2435, Region 13 where she worked for approximately two years, from 2007 to 2009.

24. Wilt is a woman and resident of Piedmont, WV, and was employed by Wal-Mart in Keyser, WV, Store No. 2474, Region 13, from May 2, 2002 until her termination on or about June 9, 2010.

25. Horton is a woman and resident of Front Royal, VA, and was employed by Wal-Mart in Charles Town, WV, Store No. 2566, Region 13, from on or about September 16, 1997 until on or about January 27, 2001.

26. Quirk is a woman and resident of Colonial Beach, VA, and was employed by Wal-Mart in South Boston, VA, in Wal-Mart Store Number 1345, Region 13, for approximately one year, from the beginning of 1994 to the end of 1994. Quirk transferred to another Wal-Mart

in Fredericksburg, VA, Wal-Mart Store Number 1833, Region 13, where she was employed for approximately two years from 1995 to 1997. Quirk then transferred to Wal-Mart in Wareham, MA, Store Number unknown, where she worked for approximately three months in 1997. Quick then transferred to another Wal-Mart in Fredericksburg, VA, Store Number 2520, Region 13, where she worked for approximately three years, from 1997 to 2000.

27. Jacobs is a woman and resident of Frontenac, KS, and was employed by Wal-Mart in Culpeper, VA, in Wal-Mart Store Number 2136, Region 13, from in or about February or March 2010 until in or about April or May 2010.

28. Defendant Wal-Mart, Inc. is a Delaware corporation with retail stores throughout the United States, including several locations in the Western District of Virginia. Its corporate headquarters is located in Bentonville, Arkansas.

## **FACTUAL ALLEGATIONS**

### **Organizational Structure and Hierarchy**

29. In the time period relevant to this lawsuit, Wal-Mart retail operations were divided geographically into six Wal-Mart divisions, each consisting of approximately six regions. Region 13 is largely based in West Virginia, Delaware, Virginia and Maryland.

30. Each store in Region 13 had the same job categories, job descriptions and management hierarchy. At the bottom of the ladder, the primary entry-level hourly positions were Cashier, Sales Associate, and Stocker.

31. The first step above an entry-level job was an hourly supervisor position, including Department Manager and Support Manager. The next step up was Management Trainee (“MIT”), a four-to-five-month program that prepared employees to be Assistant

Managers, a salaried position. Each store had several Assistant Managers. The next level was Co-Manager, a position used only in larger stores, and then Store Manager.

32. From 1998-2004, Store Managers set pay for hourly employees following guidelines governing compensation. Each Store Manager reported to their District Manager, and in order to maintain a consistent administration of the pay guidelines, certain hourly pay decisions were reviewed by the District Manager for approval. Specifically, exceptions to the pay guidelines, as well as some actions within the Guidelines (such as setting starting pay more than 6% above the minimum rate) were reviewed by the District Manager, who had to decide whether or not to approve the Store Manager's pay decision. Thus, the Store Managers received regular feedback from the District Managers about their decisionmaking.

33. District Managers reported to the Regional Vice President ("RVP"). In addition to the formal feedback from District Managers to Store Managers through the hourly pay exception process, both the RVP and District Managers spent a large amount of time touring stores and talking with the Store Managers in those stores. Similarly, the RVP held regular in-person meetings and conference calls with all the District Managers. These regular meetings touched on many aspects of store operations, including people issues. Thus, there was a constant stream of communications with district and regional management that provided feedback to Store Managers about their hourly compensation decisions and guidance about how Wal-Mart regional management expected them to carry out their responsibilities.

34. The RVP also had overall responsibility for pay increases for Assistant Managers and had influence over promotions into MIT positions.



35. Region 13 also had one Regional Personnel Manager (“RPM”), who was responsible for promotion into the MIT program and starting pay for MIT and Assistant Managers.

36. Plaintiffs had the same RVP and RVM in Region 13, and their RVP and RVM were ultimately responsible for Plaintiffs’ promotion and pay in Wal-Mart’s Region 13.

### **PAY DISCRIMINATION**

37. *Common Compensation Policies* — Wal-Mart has set compensation of store-based employees using a common set of guidelines, which Wal-Mart’s managers have applied consistently throughout the stores where Plaintiffs have worked. The pay guidelines established basic standards for setting pay rates at hire and subsequent pay adjustments for hourly and salaried employees.

#### **Hourly Pay**

38. *1998-2004 Hourly Pay Structure* — From 1998 through June 2004, Wal-Mart assigned jobs to five classes, the top two of which were only used for a few specialty jobs. Jobs were assigned to the same class regardless of department. Each successive job class had a higher minimum starting pay rate.

39. The minimum pay levels at hire (“start rates”) for each job category were established for the stores where Plaintiffs have worked with the approval of the applicable District Managers and RVP. Thereafter, an employee’s pay level could be adjusted: (1) after an initial probationary period; (2) if the employee was promoted to a higher job class or into management; (3) on an annual basis, if the employee satisfied minimum performance standards; or (4) if the employee had been awarded a special “merit” raise.

40. The Store Manager had the initial responsibility to set pay rates for individual hourly employees within the pay guidelines, subject to constraints set by the District Manager and RVP. Where a Store Manager set a pay rate above or below the pay guidelines, the rate was called an “exception.”

41. The pay rate for a new employee could be set up to a maximum of \$2 per hour above the start rate, but if the new employee’s rate was more than 6% above the established start rate for that pay class, a computer program in the payroll system would prohibit payment at this rate unless and until the Store Manager manually entered the pay rate for that employee.

42. All hourly pay exceptions were automatically reported to the District Manager, who could approve or disapprove such exceptions. The RPM was also informed of all hourly pay exceptions and was required to ensure that hourly compensation was consistent among employees in the Region.

43. In the stores where Plaintiffs have worked, District Managers, the RPM, and the RVP regularly received reports of all employees whose hourly pay in a job category is more than 10% below or 5% above the average pay in that category. District Managers performed quarterly audits of each store’s compliance with company policies and Region-specific policies, including compensation policies, which were then reported to the RPM and RVP.

44. District Managers and the RVP had ultimate authority over whether, and by how much, to adjust the pay of hourly employees, including those employees listed on exception reports.

45. In the stores where Plaintiffs have worked, managers were not required to use job-related criteria, such as job performance or experience, in setting, adjusting, or approving compensation for individual employees. Managers did not document the reason for setting,

adjusting, or approving the compensation of individual employees. The RVP and District Managers did not hold the Store Managers in the stores where Plaintiffs worked accountable for the factors the Store Managers use in making pay decisions or in ensuring those factors comported with the law, nor did they require any documentation of the reasons for the compensation paid to individual employees. Nor did Wal-Mart managers specify the weight to be accorded any particular requirement in setting or adjusting compensation.

46. *Patterns in Compensation* — Women who held hourly positions in the stores where Plaintiffs worked have been regularly paid less than similarly-situated men, although, on average, those women have more seniority and higher performance ratings than their male counterparts. This gender pay difference adverse to women exists in each of the stores where Plaintiffs have worked, even when nondiscriminatory objective factors, such as seniority, performance, store location, and other factors are taken into account.

47. *Adverse Impact of Hourly Compensation Policies* — Wal-Mart's compensation policies, including its policy of using a set of prescribed factors to set starting pay for hourly associates at a pay rate above the minimum rate, as well as its policy of setting pay adjustments based on the associate's prior pay, have had an adverse impact upon its female employees in the stores where Plaintiffs have worked.

48. The RPM, RVP, and District Managers have received, and continue to receive, regular reports about compensation for hourly and salaried employees within the stores where Plaintiffs have worked, showing that female employees are paid less than men on average. These managers therefore had knowledge of the compensation discrimination present in the stores over which they had authority.

49. Because reasons for compensation decisions are not documented, elements of Wal-Mart's compensation decision-making are not capable of separation for analysis.

50. *Post-2004 Pay Restructuring* — In 2004 Wal-Mart introduced a new pay structure, in which many jobs which had previously been in one pay class were assigned to separate classes depending on department. Pay rates differed depending on the pay class in which an hourly employee worked, and therefore the department in which that hourly employee worked.

51. The proportion of women in Wal-Mart's departments varied greatly. Many jobs in departments in which women were over-represented were assigned to lower job classes, while those same job titles in departments over-represented by men were assigned to higher job classes. Wal-Mart's 2004 pay restructuring had an adverse impact on its female employees, including Plaintiffs.

52. In 2005, Wal-Mart started giving newly hired employees "credits" for prior work experience. Because each credit was worth more to employees in higher job classes, the application of this credit policy exacerbated the pay disparities and had an adverse impact on female employees, including Plaintiffs.

53. In 2006 Wal-Mart added a cap on the pay permitted for each job class, further impacting the pay of women relegated to the lower job classes, which had lower pay caps. This also had an adverse impact on female employees, including Plaintiffs.

#### **Management Pay**

54. As with hourly compensation, Wal-Mart issued written guidelines governing management compensation. These written guidelines applied consistently throughout Region 13 and did not vary by district or store.

55. In most circumstances these guidelines prescribed a formula for setting starting pay rates which, because it was largely based on prior pay rates, perpetuated disparities in pay adverse to women. However, exceptions could be sought, and external hires were not subject to the same formula, and in these instances a single decisionmaker—the RPM—decided pay.

56. *Management Trainee Pay* — Starting in 2002, the MIT pay rate for employees promoted internally was set based on their pay as hourly employees. Thus, for those promoted from hourly positions, where women on average had lower hourly pay rates, their pay rates in the MIT program were lower than similarly-situated men, perpetuating the prior pay disparities.

57. While the pay rates for MIT participants who had been hourly Wal-Mart employees was largely governed by formula, the RPM generally was responsible for setting starting pay rates for external hires for whom no formula controlled. Higher pay offered to external candidates as compared to internally-promoted MITs provided another opportunity to pay men more than women in the MIT program.

58. In addition, any discretion permitted in approving exceptions to managerial pay rates, both for internal and external candidates, was exercised by the RPM.

59. Because the MIT program was for just a few months, there were no pay changes during the MIT program itself, but only upon successful completion and promotion to Assistant Manager.

60. *Assistant Manager Pay* — When trainees successfully completed the MIT program and became Assistant Managers, their pay was set by formula, initially \$2,000 above MIT pay, which itself was directly tied to the hourly pay rate for internal promotes, as described above.

61. The pay for Assistant Managers who were external hires into the MIT program was also linked to their rate of pay while in the MIT program, but as described above, their MIT pay provided for higher compensation than for internal candidates. Any exceptions to these formulaic rules required approval of the RPM.

62. This formulaic use of prior pay rates to set starting Assistant Manager pay meant prior pay disparities adverse to women would be perpetuated. And the use of exceptions, all ruled on by a single individual RPM, provided the opportunity to create additional disparities adverse to women.

63. Assistant Managers also received performance evaluations and associated performance pay increases each year, all on the same date. These were prepared by the Store Manager and District Manager, which were then reviewed and approved by the RVP. These performance increases were computed as a percentage of the base pay rate, perpetuating prior disparities in pay. Performance ratings, all approved by the RVP, could incorporate bias and unfairly rate women Assistant Managers lower than their peers.

64. In addition to performance increases, Assistant Managers could receive merit increases from 2002 to 2006, which had to be approved by the District Manager and RPM. These merit increases were computed as a percentage of the base pay rate, perpetuating prior disparities in pay. And they provided an opportunity for these decisionmakers to exercise bias in choosing whom to favor with these discretionary pay increases.

65. *Co-Manager Pay* —Co-Manager compensation was comprised of a base salary and profit sharing tied to the profitability of the Co-Manager's store. The RVP determined base salary and assigned the stores at which Co-Managers worked, the profitability of which affects the profit-sharing component of the compensation they receive. Because some stores are more

profitable than others (i.e., better location, fewer nearby competitors), store assignment is a critical component in determining Store Manager Salary. Women, including Plaintiffs, have been assigned to stores that generate lower profits, and as a result were paid less than their male counterparts.

66. *Store Manager Pay* — A major part of a Store Manager's compensation is tied to store profitability. Performance evaluations are not a factor, nor is a Store Manager's ability to execute policies fairly. The RVP determined assigned the stores at which Store Managers worked. Because some stores are more profitable than others (i.e., better location, fewer nearby competitors), store assignment is a critical component in determining Store Manager Salary. Women, including Plaintiffs, have been assigned to stores that generate lower profits, and as a result were paid less than their male counterparts.

### **PROMOTION DISCRIMINATION**

67. *Management Track Positions Below Assistant Manager* — Support managers are the highest level hourly supervisory positions. Support managers assume the duties of Assistant Managers in an Assistant Manager's absence. Employees in these positions are often groomed for further advancement. The vast majority of support manager vacancies are not posted or otherwise communicated to hourly associates within the store. There has been no formal application process for selection for these positions, and no job-related criteria for selecting employees for promotion to support manager. Additionally, although it is not a true "management" position, department manager is often a necessary step for employees hoping to work their way into salaried management. Women applying for department manager positions

are often subjected to severe gender stereotyping, and are rejected out of hand for most openings in “masculine” departments such as sporting goods, hardware, etc.

68. *Promotion to Management Trainee* — Entry into the MIT Program is a requirement for advancement into Assistant Manager and other salaried management positions. Prior to 2003, there was no application process or job posting for MIT positions. Hourly employees were not provided any information regarding how to enter management, or what the requirements or qualifications were for entering management, or how to apply for the MIT Program.

69. Wal-Mart’s established criteria for the MIT program prior to 2003 included willingness to relocate. Willingness to relocate was a factor known to deter women from pursuing such positions and which Wal-Mart executives acknowledged was not justified by business necessity.

70. In January 2003 Wal-Mart instituted a posting system for entry into the MIT Program. This system was used through 2006, and positions were posted for one week, a few times per year. This posting system required candidates to agree to certain job conditions, including (1) assignment to a store up to a one-hour drive from home; (2) travel for up to six weeks; and (3) replacing the requirement that all candidates be willing to relocate with a statement that the greater geographic area an individual would move to, the more likely they would be promoted. All three factors would be more likely to discourage women than men, in a manner similar to the prior relocation requirement. Notably, travel assignments were filled on a voluntary basis, so stating that six weeks of travel would be required was not a fair representation of the actual job requirements.



71. Starting in 2007, Wal-Mart began using a new system for all management promotions, including MIT. This system permitted employees to register in advance for the positions and geographic areas in which they were interested. Every vacancy was expected to be posted with a “requisition” which automatically applied the minimum qualifications Wal-Mart required for the position to the group of those who had expressed interest in the position, within that geographic area, and presented the hiring manager with a set of candidates. It was particularly common for managers to post a position, see who the candidates were, and then close the posting without selecting anyone because the manager’s pre-chosen candidate was not included in the pool (“pre-selection”).

72. Both before and after Wal-Mart posted MIT positions, the selection process involved screening by District Managers and approval of selections by the RPM. In 2003, in addition to posting, Wal-Mart adopted standardized interview questions, which it used through 2009.

73. The District Managers and RPM were provided uniform guidelines setting minimum eligibility criteria for promotion into the MIT Program, including minimum tenure, age (18 years or older), absence of current “active” discipline, satisfactory recent performance evaluations, and willingness to relocate. Yet no job-related criteria have been provided for selecting individuals from the pool of employees who meet these minimum criteria. Employees selected into the MIT Program are required to transfer from their stores and often their districts as they enter training and Assistant Manager positions, subject to very limited exceptions that must be approved by the RPM and RVP.

74. Despite the changes to the MIT promotion process, two things remained consistent barriers to women: (a) a refusal to post or a system to circumvent the purpose of

posting to choose a preferred candidate identified prior to posting (“pre-selection”); and (b) requiring candidates to be willing to relocate, or to accept comparable conditions on travel and commuting distance. These policies caused a disparate impact on female candidates, including Plaintiffs.

75. Management-track promotional policies and practices have denied interested and qualified women equal access to promotional opportunities because such opportunities are not posted, there is not an open application system, and employees are not informed of the criteria for promotion. Moreover, managers do not require or use valid, job-related factors in making the promotion selections within the Region. Nor does Wal-Mart specify the weight that should be accorded any requirements for promotion. As a consequence, qualified women have been denied equal access to promotions because of their gender.

76. Managers have not documented, and Wal-Mart has not tracked, the reasons for selecting particular employees for promotion into management. Managers have not documented, and Wal-Mart has not tracked, which employees have been denied consideration for promotion because of their inability to comply with these relocation, travel, and scheduling requirements.

77. Wal-Mart’s policies, including its failure to require managers to base promotion decisions for individual employees on job-related criteria, its refusal to post job openings, and the conditions placed on applicants for the MIT program that they be willing to relocate, have had an adverse impact upon its female employees.

78. *Promotion to Co-Manager* — The RVP, with input from RPM and District Managers, selects Co-Managers. The majority of Co-Manager promotions are transfers across district lines. While there have been minimal eligibility requirements for promotion to Co-Manager, such as satisfactory performance and willingness to relocate, there are no job-related

criteria for making selections among those who meet the minimum criteria or for determining which store to assign to a Co-Manager.

79. *Promotion to Store Manager* — Wal-Mart posts openings for most Store Manager positions, but this was not an open posting system. Candidates were first required to obtain permission from their District Manager before they were allowed to apply, and District Managers may withhold permission for any reason. Starting in or about 2006, individuals could register interest in advance of any positions being posted, and without prior approval being required. However, they were required to take and pass an online assessment. The RVP selects the candidate based upon whatever criteria they choose to apply beyond the corporate minimum guidelines. This system of subjective decisionmaking allows managers to implement criteria that may include gender stereotypes.

80. Female employees in the Districts and Region where Plaintiffs have worked have also been far less likely than their male counterparts to receive promotion to management track positions, including support manager, MIT and Assistant Manager, Co-Manager, and Store Manager positions, despite the fact that they have had equal or better qualifications than male counterparts who have been promoted.

81. Female employees must also wait significantly longer to be promoted into management track positions than men with equal or lesser qualifications. This is true in each of the Districts and Region where Plaintiffs have worked.

82. Because reasons for promotion decisions are not documented, and Wal-Mart does not create or maintain records that identify the impact of separate components of its promotion policies and practices, its promotion decision-making process is not capable of separation for analysis.

83. Wal-Mart management has long known about gender disparities in promotion and has failed to take appropriate remedial action. Wal-Mart management thus had knowledge of the promotion discrimination present in the stores over which it had oversight.

84. Every store, District and Region where the Plaintiffs have worked regularly compiles and reports to corporate headquarters the gender composition of its hourly and managerial workforce, employee turnover, exceptions to promotion policies, job posting data, entry into MIT programs, and other data. District Managers, the RPM, and the RVP regularly receive these reports.

85. Wal-Mart's People Division regularly prepares reports for senior management summarizing promotion and incumbency rates for store management positions by gender, and reports are regularly made to the Board of Directors.

86. District Managers, the RPM, and the RVP in the stores where Plaintiffs have worked regularly visit stores and are aware of the gender composition of the workforce.

87. Senior management officials, senior People Division officials, and outside consultants have warned Wal-Mart that women are not sufficiently represented in management positions, that women are paid less than male employees in the same jobs, and that Wal-Mart lags behind its competitors in the promotion of women to management positions.

88. These officials and consultants have also identified policies and practices at Wal-Mart that have an adverse impact on its female employees, including lack of consistent job posting, the requirement of relocation as a condition of entry into, and promotion through, management, reliance on stereotypes in making pay and promotion decisions, lack of objective criteria for making promotion decisions, and lack of consistent and reliable scheduling for management level employees.

89. Wal-Mart's founder, Sam Walton, conceded in 1992 that Wal-Mart's policies, particularly its relocation requirement, were an unnecessary barrier to female advancement, yet this policy remained in place thereafter.

90. Senior Wal-Mart managers also blocked policy changes that would have reduced the impact of Wal-Mart's discriminatory policies, including posting of managerial vacancies.

91. Wal-Mart had never studied or analyzed whether any of its practices were consistent with business necessity or whether less discriminatory alternatives to these policies and practices could be adopted.

#### **WAL-MART MANAGERS RELY ON DISCRIMINATORY STEREOTYPES**

92. In the absence of job-related compensation and promotion criteria, Wal-Mart's managers in the stores where Plaintiffs have worked, and those supervising the stores where Plaintiffs have worked, rely on discriminatory stereotypes and biased views about women in making pay and promotion decisions.

93. A 1998 survey of Wal-Mart managers revealed that there was a "good ol' boy philosophy" at Wal-Mart, that many managers were "close minded" about diversity in the workplace, and that some District Managers "don't seem personally comfortable with women in leadership roles."

94. The findings of the 1998 survey echoed an earlier 1992 report by a group of female Wal-Mart management employees, who identified a number of concerns for women employees, including the following: "Stereotypes limit the opportunities offered to women," "[c]areer decisions are made for associates based on gender," "[a]ggressive women intimidate men," "men are interviewed as the replacements, women are viewed as support," and "[m]en's informal network overlooks women."

95. All Wal-Mart Store Managers have been required to attend training programs at the company's Walton Institute. These managers were advised at the Institute that the reason there are few senior female managers at Wal-Mart is because men were "more aggressive in achieving those levels of responsibility" than women. Managers were cautioned that efforts to promote women could lead to the selection of less-qualified women over more-qualified men.

96. On or about January 24, 2004, at a meeting of all Wal-Mart District Managers presided over by Wal-Mart's CEO Thomas Coughlin, the District Managers were told that they were the key to running the stores: "You are the culture." The key to success was described as "single focus to get the job done... Women tend to be better at information processing. Men are better at focus single objective. Results driven." The District Managers were instructed to create a "culture of execution" and a "culture of results" as they picked "[f]uture leaders."

97. In deciding which employees to promote as department managers — hourly positions which were often stepping stones into salaried management — Store Managers in the stores where Plaintiffs have worked would often consider women only for "female" departments, such as health and beauty, jewelry, softlines, and the service desk.

98. Managers in the stores where Plaintiffs have worked, and managers who supervised those stores, justified denying promotions to women or paying them less than their male employees because of perceived family obligations of the women and male responsibility to support their families or because of their presumed inability to relocate.

99. For example, Paul Kram, Store Manager for Wal-Mart in Dundalk, MD, Store Number 2435, informed Lancaster that she did not receive a pay raise because "this is a man's world." Kram additionally made comments that women did not belong in management and would constantly belittle female employees.

100. Brent Bryson, food merchandiser for Wal-Mart in Charles Town, WV, Store Number 1703, informed a female employee who questioned why a man was making more money when they had the same positions that, “men have families to support.”

101. In or about the winter of 1997 at the Charles Town store, Clyde (last name unknown), the meat manager, told Chapman that Marvin Riggs, the district food merchandiser, told Clyde that “he needed to get the women out of there because they didn’t know what they were doing.”

102. Riggs oversaw food merchandising for several stores and had the power to make personnel decisions at those stores.

103. Mike Cohen, a male Assistant Manager for Wal-Mart at Keyser, WV, Store Number 2474, stated words to the effect of: “Male and female employees understand that men are given raises because men provide for their families, whereas women only provide supplemental income.”

104. Carol Fox, a co-manager for Wal-Mart at Culpeper, VA, Store Number 2136, stated words to the effect of: “the men in this company get paid more money across the board” and that “all men in management make \$2,000 to \$4,000 more than women.”

#### **WAL-MART’S INEFFECTIVE ANTI-DISCRIMINATION EFFORTS**

105. For many years, Wal-Mart had no meaningful policies or practices to hold managers in, or managers supervising, the stores where Plaintiffs have worked accountable, financially or otherwise, to equal employment and diversity policies and goals.

106. Starting in 2000, Wal-Mart asked District Managers to set diversity “goals” for advancement of women in management. The goals were based on each manager’s individual views on what was attainable and were not tied to any objective measures of availability or

qualifications. Prior to 2004 failure to meet diversity goals had no financial or other consequence for managers in, or managers supervising, the stores where Plaintiffs have worked.

107. As late as 2003 Wal-Mart CEO Coughlin was not aware of any diversity goals or whether managers had met such goals. Many Store Managers were also unaware of the existence of any diversity goals.

108. Until at least 2003 there had never been any diversity goals set for individual stores, or for any compensation practices in the stores where Plaintiffs have worked.

### **PLAINTIFFS' FACTS**

109. Medeiros is a woman from New Canton, VA. Medeiros is employed by Wal-Mart in Gordonsville, VA at Wal-Mart Store 4682, Region 13. Medeiros has worked there for approximately eight years, beginning in October of 2011, and Medeiros is still employed by this Wal-Mart.

110. During Medeiros' tenure at Wal-Mart beginning in October of 1999 and continuing to the present, she worked at four different Wal-Mart store locations and her jobs and titles included stocker on the overnight shift, unloading supervisor, support manager and overnight support manager.

111. During Medeiros' tenure at Wal-Mart, men earned more than similarly experienced and tenured women.

112. During Medeiros' tenure at Wal-Mart, men also earned raises more easily, and more frequently, than women.

113. In or around 2005 or 2006 at the Wal-Mart in Fredericksburg, VA, Store Number 1833, a store manager hired an external male applicant named Charles Lloyd to be an overnight



support manager. Lloyd had never worked at a Wal-Mart and no other relevant experience.

Lloyd was paid more than \$17.00 an hour.

114. In or around 2005 or 2006, Medeiros worked as an overnight support manager at the Wal-Mart in Fredericksburg, VA, Store Number 1833. At that time, Medeiros had worked at Wal-Mart for six or seven years and received merit raises each year for good performance. Medeiros earned around \$15.00 an hour.

115. When Lloyd transferred to the day shift as a department manager where there was no overnight pay differential, he continued to earn more than Medeiros.

116. Medeiros became aware of the pay differential between herself and Lloyd because Medeiros' position responsibilities required her to have access to other employees' pay rates, and Lloyd repeatedly bragged about how much he earned per hour to Medeiros.

117. In or around 2011 at the Wal-Mart in Charlottesville, VA, Store Number 1780, a male co-manager named Rob (last name unknown) rated Medeiros as "exceeds" on her evaluation. For years proceeding this rating, Medeiros received a "role model" rating on her yearly evaluations.

118. A rating of "role model" earns a \$.60 per hour raise and a rating of "exceeds" earns a \$.50 per hour raise.

119. When Medeiros complained about the "exceeds" rating she received from Rob to Rosa Gibboney, a female co-manager who also supervises Medeiros who had more tenure than Rob, Gibboney informed Medeiros that Rob wrote the evaluation without input from Gibboney, and that Gibboney would have given Medeiros an "role model" rating. However, Medeiros' rating and pay were never changed.

120. In her time at Wal-Mart and in the four different stores where Medeiros has worked, she has witnessed men be routinely promoted for positions for which they are not qualified.

121. At Wal-Mart assistant manager trainings occur almost every February. The store managers, co-managers, or assistant managers pick certain Wal-Mart employees to participate in the training program. The store managers, co-managers, or assistant managers were almost always male, and would almost exclusively pick males for the trainings, regardless of qualifications. As a result, women are rarely given an opportunity to become store managers or co-managers.

122. Medeiros has worked for Wal-Mart since 1999, has received many “role model” ratings, and holds licensing for power equipment, but was never asked to participate in the assistant manager training program.

123. Female Wal-Mart employees are rarely trained or licensed on the power equipment in the four Wal-Mart where Medeiros worked.

124. Medeiros is usually the only female in a Wal-Mart store who is licensed on power equipment. Medeiros was trained on power equipment in 1999 because she had a female assistant manager who was willing to train Medeiros. Each employee who is trained on power equipment is listed in a book at each Wal-Mart store.

125. Licensing improves an employee’s odds of obtaining a promotion because the more experience and qualifications one has, the more qualified they are for other positions.

126. Chapman is a woman from Gerrardstown, WV. Chapman began working at Wal-Mart in Martinsburg, WV, in Wal-Mart Store Number 1703, Region 13, in May 1991 where she continued to work for approximately 6 years until September 1997.

127. Chapman then transferred to another Wal-Mart located in Charles Town, WV, Store Number 2566, Region 13, in September 1997 where she continued to work for approximately 8 years until January 2005. Chapman then transferred back to Wal-Mart Store Number 1703 in Martinsburg, WV, and worked there for approximately three months, from on or about January 2005 to April 5, 2005.

128. During Chapman's tenure at Wal-Mart, she worked as a department manager, general merchandise assistant manager, a deli manager, and an assistant bakery manager.

129. During Chapman's tenure at Wal-Mart, men earned more than similarly experienced and tenured women.

130. During Chapman's tenure at Wal-Mart, men also earned raises more easily, and more frequently, than women.

131. In or about the winter of 1997 at the Charles Town store, Clyde (last name unknown), the meat manager at the time, told Chapman that Marvin Riggs, the district food merchandiser, told Clyde that "he needed to get the women out of there because they didn't know what they were doing." Riggs oversaw food merchandising for several stores and had the power to make personnel decisions at those stores.

132. In 1998, Chapman applied for and received the deli manager manger position at the Charles Town Wal-Mart. She started out making \$27,500 a year, which was \$2,000 less than the starting salary for men doing the same work in similar positions.

133. Clint Miller, the store manager at Charles Town, informed Chapman that the general merchandise assistant managers had a starting salary of \$29,500.

134. Tony Canby, the meat manger at Charles Town, and John (last name unknown), the produce manager at Charles Town, informed Chapman that Canby and John both started out

making \$29,500 a year. The positions of deli manager, meat manager, and produce manager are similar positions, with similar duties and responsibilities.

135. In or around 2001, Theresa Watson, personnel manager at Charles Town, entered pay information into the computer system for Norma Jean Rockwell, a new hire for the position of bakery manager. Rockwell had a starting salary of \$27,500, and Rockwell was Chapman's second in charge in the bakery. Watson asked Bryson why Rockwell was starting at a lower salary than men hired for the same position, Bryson responded that "men have families to support".

136. Throughout Chapman's time at the Charles Town store, men received either four or four and a half percent yearly raises, while women received three or three and a half percent yearly raises for similar positions.

137. Kent (last name unknown), general merchandise manager for the Charles Town store, and John (last name unknown), produce manager for the Charles Town store, told Chapman that they regularly received four or four and a half percent yearly raises.

138. Rockwell, bakery manager at Charles Town store, Kim Hensen, assistant manager at the Charles Town store, and Chapman regularly received three or three and a half percent yearly raises.

139. In or around December 2001, Chapman applied for the position of general merchandise manager and was told by Miller that she was not eligible for the \$2,000 a year raise.

140. Miller did not give Chapman a reason why she did not earn a starting salary of \$29,500 for the general merchandise manager position, though that was the compensation that men in the same position earned.

141. In the Charles Town store, a couple named Jodi and Greg (last names unknown), began training for bakery positions at the same time. Jodi and Greg had the same culinary degree, started at the same time and in the same position in the bakery, and had the same experience and qualifications. However, Greg made \$2,000 more per year than Jodi. Greg's and Jodi's salaries were confirmed by Watson.

142. Eldridge is a woman from Palmdale, CA. At the time in question, Eldridge resided in New Castle, DE, and began working at Wal-Mart in New Castle, in Wal-Mart Store Number 2555, Region 13, in or around March 1999, where she continued to work for approximately 13 years until September of 2012. During her tenure at Wal-Mart she worked at one Wal-Mart store location and her titles included, department manager, jewelry coordinator, lead supervisor, and zone merchandiser manager.

143. During Eldridge's tenure at Wal-Mart, men earned more than similarly experienced and tenured women.

144. During Eldridge's tenure at Wal-Mart, men also earned raises more easily, and more frequently, than women.

145. In or around 2001, while Eldridge was a department manager, she learned that Edward Riley, also a department manager at the New Castle store, and Gerald Peterson, who was also a department manager at the New Castle Store, were making a more per hour than Eldridge.

146. In 2000, Eldridge made \$9.53 per hour, while Peterson made \$11.75.

147. In 2011 Eldridge made \$9.95 per hour, while Peterson made \$12.34.

148. In 2002, Eldridge made \$10.35 per hour, while Peterson made \$13.34.

149. In 2003, Eldridge made \$10.80 per hour, while Peterson made \$14.75.

150. Dan (last name unknown), a support manager at the New Castle store, informed Eldridge that he made two or three dollars more an hour than Eldridge, even though his job was marginally higher in the store's management hierarchy.

151. Diane (last name possibly Medford), personnel manager at the New Castle store who had access to payroll information, informed Eldridge that women at the New Castle store were paid less than men who did the same work and had similar duties.

152. Michelle Taylor, a woman training to be a personnel manager at the New Castle store, also informed Eldridge that Taylor observed in the payroll information that women in the New Castle store were paid less than men for the same positions.

153. In approximately 2000 or 2001, Eldridge began applying for the support manager position at the New Castle store. Eldridge applied for the position twice and never received the position.

154. David Rude, store manager at the New Castle store, was the selecting official in both instances. On the first occasion Eldridge applied for the support manager position, the position went to another employee.

155. The second time that Eldridge applied for the support manager position, Eldridge, Edward Riley, and Pearl Robinson were all three selected for the support manager position. Robinson and Eldridge never moved into the support manager position and were told by management that Wal-Mart was getting rid of the position. However, Riley was kept in the support manager position.

156. Eldridge had more experience than Riley. When Riley began at Wal-Mart, he started working under Eldridge as an associate in the household chemicals department.

157. Rude was later fired from Wal-Mart for falsely accusing Eldridge of stealing and having her strip searched.

158. In or around 2002 or 2003, Eldridge applied for the position of assistant store manager at the New Castle Store. Meral Cordray was the store manager at the New Castle store at the time Eldridge applied for the assistant store manager position.

159. The first time that Eldridge was not selected for the assistant store manager position, Cordray claimed that he never received Eldridge's application for the position.

160. The second time that Eldridge was not selected for the assistant store manager position, Cordray claimed that he lost Eldridge's application.

161. Eldridge was not given a reason for the third time that she not selected for the assistant store manager position.

162. From the time that she was hired in 1999 until 2012, the New Castle Wal-Mart had eight or nine different managers. In October of 2011, the New Castle Wal-Mart hired its first female manager since Eldridge began at the store.

163. Sharon Lancaster is a woman from Baltimore, MD. Lancaster was employed by Wal-Mart in Rosedale, MD at Wal-Mart Store 3489, Region 13. Lancaster worked there for approximately a year from 1996 to 1997. During Lancaster's tenure at Wal-Mart she worked at three different Wal-Mart store locations and her job title was assistant manager.

164. Lancaster was employed by Wal-Mart in Towson, MD at Store Number 5344, Region 13. Lancaster worked there for approximately four years from 2003 to 2007. In 2007, Lancaster transferred to the Wal-Mart in Dundalk, MD, Store Number 2435, Region 13 where she was employed for approximately two years until 2009.

165. During Lancaster's tenure at Wal-Mart, men earned more than similarly experienced and tenured women.

166. During Lancaster's tenure at Wal-Mart, men also earned raises more easily, and more frequently, than women.

167. Prior to working at Wal-Mart, Lancaster was a store manager for Ames Department Store for 23 years.

168. In or around 2007 when Lancaster was employed at the Dundalk, MD Wal-Mart as an assistant manager she earned \$39,000 annually. Lancaster had over 20 years of experience.

169. In or around 2007 a man named Brandon (last name unknown) was an assistant manager at the Dundalk, MD Wal-Mart. Brandon earned \$45,000 annually and had 10 years of experience.

170. In or around 2007 a man named James (last name unknown) was an assistant manager at the Dundalk, MD Wal-Mart was hired after Lancaster. James informed Lancaster that his salary was \$42,000 annually.

171. During the time that Lancaster worked at the Dundalk, MD Wal-Mart, a man named Paul Kram was the store manager.

172. Through information and belief, Kram gave raises to male employees, but not female employees.

173. Lancaster learned that male employees received raises when Damien (last name unknown), a colleague, informed Lancaster that he received a raise. Lancaster did not receive a raise.

174. Lancaster asked other employees at the Dundalk, MD Wal-Mart if they received a raise. All the male employees Lancaster spoke with received raises, while Lancaster and Carlene



(last name unknown), a female assistant manager, did not receive a raise. Lancaster spoke with Kram about the pay discrepancy and asked for a raise. Kram responded that Lancaster did not receive a raise because she had not deserved one and added “this is a man’s world.”

175. Moreover, Kram often made comments that women do not belong in management and constantly belittled female employees. Kram also sexually harassed female employees.

176. On one occasion Kram had an extramarital affair with a female subordinate and later terminated the woman.

177. Lancaster complained to Wal-Mart human resources in the District that oversaw the store in Dundalk, MD about Kram’s treatment of women. The male human resources employee who Lancaster reported Kram to accused Lancaster of exaggerating and dismissed her complaint without conducting an investigation.

178. During Lancaster’s tenure at Wal-Mart, men were promoted more than similarly experienced and tenured women.

179. When Lancaster began working at Wal-Mart in 2003, she indicated in interest on her evaluation in moving up to co-manager and store manager.

180. When Lancaster transferred to the Wal-Mart in Dundalk, MD, she again expressed her interested in the positions of co-manager and store manager to Kram.

181. Kram responded to Lancaster’s request by stating that women should not be in management. Kram further said that if Lancaster or Charlene, another female assistant manager at the Dundalk, MD store, wanted to be promoted, they would have to transfer out of Kram’s store.

182. Lancaster resigned in 2009, and Charlene left in 2010. As of 2010, there were no females in a position above assistant manager at the Wal-Mart in Dundalk, MD.

183. Wilt was employed by Wal-Mart in Keyser, West Virginia at Store Number 2474, Region 13. Wilt worked at the Keyser, West Virginia location from May 2, 2002, until her termination on or about June 9, 2010.

184. During her tenure at Wal-Mart, Wilt learned that women were paid less than male employees.

185. In or about 2003, Marc Combs, a stocker in grocery, and Jeff Will, a floor crew lead, regularly bragged about receiving pay merit increases. Will informed Wilt that he received annual raises of \$0.60 an hour based on his performance evaluation, whereas Wilt only received a \$0.20 pay increase per year.

186. Combs' and Will's merit raises placed them in a higher hourly rate than Wilt's hourly rate, despite the fact that Wilt's work performance and evaluations were better.

187. Wilt also learned from conversations with Keith Ellafritz and Rodney [last name unknown], who were male associates, that men were paid more than women. Ellafritz, who was hired two years after Wilt, bragged to Wilt about being paid thirteen dollars an hour. Wilt only made ten dollars an hour. On another occasion, Rodney similarly bragged to Wilt that he was being paid sixteen dollars an hour.

188. Assistant Manager Mike Cohen stated that male and female employees understood that the men were given raises due to management's expectation that men provided for their families, whereas women were viewed as only providing supplemental income.

189. In or around May 2003, Wilt transferred from the deli department to the floor crew on the night shift. Approximately six months after Wilt transferred to the floor crew, Wilt asked Cohen why she never received a merit pay increase.

190. Cohen responded that he would give Wilt a merit pay increase but ultimately failed to do so. After requesting a merit pay increase from a female manager, Wilt finally received a \$.38 per hour merit raise.

191. Wilt also learned that Wal-Mart reduced employees' work hours. Most men retained a forty-hour work schedule and overtime hours, whereas women were not provided with the same opportunities. Combs and Will were among two of the male employees who were given more hours than female employees.

192. From 2003 to 2010, Wilt complained to Assistant Managers about the difference in work hours, overtime opportunities, and pay between men and women.

193. In or about Spring 2010, Wilt complained about the pay disparity between men and women to Store Manager, Scott Corbin. During a staff meeting, Corbin asked if the associates would recommend working at the Keyser, WV location. Wilt responded that she would only recommend working at Wal-Mart to men because they got paid more for doing less work.

194. On or about June 9, 2010, Wal-Mart terminated Wilt for a minor time clock infraction shortly, after Wiltz complained about gender discrimination.

195. Horton was employed by Wal-Mart in Charles Town, WV at Store Number 2566, Region 13. Horton worked there for approximately three years from September 16, 1997, to January 27, 2001.

196. During Horton's employment with Wal-Mart, she was discriminated against because of her gender and was paid less than male employees who had equal or lesser qualifications and worked in the same or similar positions. Horton started working at Wal-Mart

full-time as a cashier on or about September 16, 1997, making approximately \$7.25 an hour. When Horton left on or about January 27, 2001, she was making approximately \$7.75 an hour.

197. Wal-Mart does yearly evaluations for their employees and Horton frequently earned a perfect score on her evaluations. Despite this, she would only receive a \$0.10 raise.

198. Horton spoke with the customer service manager lead, Donna Anderson, and Horton was told this was all the company would give; Anderson told Horton other female customer service managers were complaining about this too.

199. Other women customer service managers were getting paid around the same amount as Horton was while working at Wal-Mart. Their names were Angel Benjamin, Tammy (last name unknown), and Julie (last name unknown).

200. Horton learned Julie had a boyfriend who was hired to work at Wal-Mart as a cart-pusher and was making more than the customer service managers.

201. Horton started to do employee evaluations of employees working under her and saw that the male cart-pushers were getting paid more than she was in an amount ranging from \$.50 to \$1.00 per hour.

202. Horton also believes she was denied promotion and/or denied the opportunity to apply for promotion to a management position, due to her gender, in 1998 and 1999.

203. Horton applied at least twice for the assistant manager position. Horton had prior management experience as a shift manager at Wendy's.

204. In 1998, Horton applied for an assistant manager position and did not get it because a male got the position.

205. Horton applied a second time in or around 1999 but another male got this position. The store manager at the time was Clint Miller.

206. Quirk was employed by Wal-Mart in South Boston, VA at Store Number 1345, Region 13. Quirk worked there for approximately one year from 1994 to 1995. In 1995, Quirk transferred to the Wal-Mart in Fredericksburg, VA, Store Number 1833, Region 13, where she was employed for approximately two years from 1995 to 1997. In 1997, Quirk transferred to the Wal-Mart in Wareham, MA, Store Number unknown, where she was employed for about three months during 1997. Quirk then transferred to the Wal-Mart in Fredericksburg, VA, Store Number 2520, Region 13, where she was employed for approximately three years from 1997 to 2000. During Quirk's tenure at Wal-Mart her job titles included associate in housewares, cashier, customer service associate, and photo lab associate and technician.

207. During Quirk's tenure at Wal-Mart, men earned more than similarly experienced and tenured women.

208. During Quirk's tenure at Wal-Mart, men also earned raises more easily, and more frequently, than women.

209. During Quirk's tenure at Wal-Mart, men also earned promotions more easily, and more frequently, than women.

210. In early 2000 when Quirk worked for Wal-Mart in Fredericksburg, VA, Store Number 2520, Quirk was denied a promotion to the position of photo lab manager.

211. At that time, Quirk had five years of experience working at Wal-Mart and three years of experience working as a photo lab associate and technician.

212. Ray (last name unknown), district manager, hired a man named "Dee" (last name unknown) for the position of photo lab manager instead of Quirk.

213. Dee had two months of experience working at the Wal-Mart photo lab and was not employed by Wal-Mart at the time he was hired because Dee quit his previous Wal-Mart position.

214. As photo lab manager, Dee made unwanted sexual advances on a female Wal-Mart employee named Emily (last name unknown).

215. Dee repeatedly asked Emily out, telling Emily that she would not get a raise until she agreed to go out with him.

216. Emily continued to rebuff Dee's advances, until he cornered Emily in the back room at Wal-Mart and hit her in the face.

217. Emily reported the incident to Tim (last name unknown), store manager of the Fredericksburg, VA, Store Number 2520 Wal-Mart, but Dee was not reprimanded or punished. Emily was fired shortly after.

218. Jacobs was employed by Wal-Mart in Culpeper, Virginia at Store Number 2136, Region 13. Jacobs worked at the Culpeper, Virginia location from in or about February or March 2010 until in or about April or May 2010.

219. During her tenure at Wal-Mart, Jacobs was discriminated against because of her gender and was paid less than male employees who had equal or lesser qualifications, who worked in the same or similar positions.

220. During her tenure Jacobs frequently heard people talking in the break room about males getting paid more than females. For example, Jacobs overheard an employee, J.R. (last name unknown), and his mother, who both worked at Wal-Mart, talking about how their pay was not equal. After talking with J.R., he told Jacobs that he was getting paid \$0.60 more per hour than Jacobs.

221. J.R. had no prior retail experience before working at Wal-Mart as an associate, and he was hired only two months before Jacobs was. Jacobs had five years of retail experience before working at Wal-Mart as an associate.

222. Jacobs was also earning less than two men, named Alex (last name unknown) and John (last name unknown), who had the same job and responsibilities, except they were in general merchandise; they too were making more per hour than Jacobs was.

223. Jacobs spoke with her immediate manager about getting a raise and nothing was done. Jacobs then spoke with the co-manager, David (last name unknown), and he told Jacobs that he could get Jacobs into a cashier position because cashiers were paid more. However, David told Jacobs that there were not any cashier positions available. After speaking with David, Jacob spoke with the store manager, Richard O'Neil, and he told Jacobs that she was making what she was supposed to be making.

224. Jacobs spoke with the district manager about getting a raise and he said that he would look into it but never got back to Jacobs.

225. Jacobs then filed a complaint with the Equal Employment Opportunity Commission. After doing this, Jacobs felt like she was being harassed. After being off work due to a medical condition, Jacobs came back and was supposed to get a cashier position, but the co-manager, Alice (last name unknown), then said that they did not have any of those positions open. However, cashiers were hired after Jacobs was put back in an associate position.

226. Before leaving Wal-Mart, Jacobs spoke with Carol Fox, who was a co-manager. Fox tried to get Jacobs to stay, but Jacobs told Fox that Jacobs was tired of the males working at Wal-Mart getting paid more than Jacobs was. Fox told Jacobs that she "was not going to get a fair chance here."

227. Fox also told Jacobs that she could not blame Jacobs for wanting to leave because “the men in this company get paid more money across the board.” Fox said that, “all men in management make \$2,000 to \$4,000 more than women.”

228. Stanley, who was a team leader, also told Jacobs that he observed men getting treated better than women.

### **CAUSES OF ACTION**

#### **Count I – Violation of Title VII (Disparate Treatment)**

229. All prior paragraphs are incorporated as though fully set forth herein.

230. The foregoing conduct violated Title VII of the Civil Rights Act of 1964.

231. Wal-Mart violated Title VII by paying Plaintiffs less than similarly-qualified or less-qualified male employees and/or by promoting them less quickly and less frequently than similarly-qualified or less-qualified male employees.

232. Wal-Mart’s discriminatory practices described above have denied Plaintiffs and other female employees in the stores where Plaintiffs have worked promotional opportunities and compensation to which they are entitled, which has resulted in the loss of past and future wages and other job benefits.

#### **Count II – Violation of Title VII (disparate impact discrimination)**

233. All prior paragraphs are incorporated as though fully set forth herein.

234. Wal-Mart has maintained a system for making decisions about compensation and promotions that has had an adverse impact on its female employees in the stores where Plaintiffs have worked. Its compensation policies for setting and adjusting pay collectively and individually, including its failure to require or use job-related criteria for making compensation decisions, has had an adverse impact on women.



235. Wal-Mart's management track promotion policies — the absence of an open application process and job posting, relocation and travel requirements for management positions, scheduling requirements which deny managers a consistent schedule, and Wal-Mart's failure to apply job-related objective criteria for making management selections, etc. — have all individually and collectively caused this adverse impact on female employees in promotions.

236. Wal-Mart has failed in the stores where Plaintiffs have worked to create or maintain the data that would allow analysis of the impact of each of these policies and practices individually. Nor does Wal-Mart specify the weight that should be accorded to each of the requirements for pay and promotion. Wal-Mart's pay and promotion policies and procedures are thus not capable of separation for analysis, and accordingly the entire decision-making process for compensation and promotion decisions may each be analyzed as one employment practice. 42 U.S.C. 2000e-2(k)(1)(B)(i).

237. Wal-Mart's compensation and promotion policies are not job-related or consistent with business necessity. Wal-Mart's own consultants and human resources staff have proposed job posting, elimination of relocation requirements, adoption of more consistent and reliable scheduling, and the use of more objective criteria for management promotions. Adopting these policies would have resulted in less discriminatory impact upon female employees in the Region, while serving Wal-Mart's business needs more effectively than its current practices.

238. Wal-Mart's discriminatory practices described above have denied Plaintiffs and other female employees in the stores where Plaintiffs have worked promotional opportunities and compensation to which they are entitled, which has resulted in the loss of past and future wages and other job benefits.

239. Plaintiffs request relief as provided in the Prayer for Relief below.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

- I. All damages that Plaintiffs have sustained as a result of Wal-Mart's conduct, including back pay, front pay, compensatory damages, and general and special damages for lost compensation and job benefits that they would have received but for the discriminatory practices of Wal-Mart;
- II. Exemplary and punitive damages in an amount commensurate with Wal-Mart's ability to pay and to deter future conduct;
- III. A declaratory judgment that the practices complained of in this Complaint are unlawful and violate 42 U.S.C. §§ 2000(e), *et. seq.*, Title VII of the Civil Rights Act of 1964;
- IV. Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;
- V. Pre-Judgment and Post-Judgment interest, as provided by law; and
- VI. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

### **JURY TRIAL DEMANDED**

Plaintiffs demand a jury trial as to all claims so triable.

Respectfully submitted,

/s/ Nicholas Woodfield  
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