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STEVENSON, STEPHANIE ODLE,
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EARWOOD

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 BETTY DUKES, PATRICIA SURGESON,)
20 SANDRA STEVENSON, STEPHANIE ODLE,)
21 KIMBERLY MILLER and MICKI EARWOOD)
22 on behalf of themselves and all others similarly)
23 situated,)

24 Plaintiffs,)

25 v.)

26 WAL-MART STORES, INC.)

27 Defendant)
28

No. C-01-2252 MJJ

FIRST AMENDED COMPLAINT

[CLASS ACTION]

DEMAND FOR JURY TRIAL

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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

1 over claims under the California Fair Employment & Housing Act, Government Code § 12920, et.
2 seq.

3 5. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C. §
4 1391(b) & (c). Lead plaintiff's claims arose in the Northern District of California. Members of the
5 plaintiffs' class reside throughout the United States, including the Northern District of California.
6 Many of the acts complained of herein occurred in this District and gave rise to the claims alleged.
7 Wal-Mart operates over 140 stores and Sam's Clubs in California where it employs more than
8 40,000 workers. It operates at least 18 stores in the Northern District of California.

9 **PARTIES**

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

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

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

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

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

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

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

26 **CLASS ALLEGATIONS**

27 13. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on
28 behalf of a class of all past, present and future female employees of Wal-Mart's retail stores

1 (including Wal-Mart discount, supercenter and neighborhood markets and Sam's Club stores,
2 hereinafter collectively referred to as "Wal-Mart") in the United States. Plaintiffs are members of the
3 class they seek to represent.

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

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

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

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

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

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**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 "associates," 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 "orientation" 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 "co-managers" 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

1 other departments, such as front-end cashier, customer service, health and beauty aids, cosmetics,
2 house wares, stationary, toys, layaway, fabrics and clothes, women are disproportionately assigned.
3 Plaintiffs are informed and believe that the male-dominated departments and jobs are better paid and
4 offer greater opportunities for advancement than the female-dominated positions and departments.

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

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

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

24 27. The workforce profile of Wal-Mart does not reflect the industry or the profile of its
25 largest competitors. In fact, although it is the largest discount retailer in the country, it lags far
26 behind its competitors in the promotion of women. Thus, while Wal-Mart’s store management is
27 only about one-third female, among its 20 top competitors women comprise over 56% of
28 management, even though the proportion of hourly workers that are female at these companies is

1 comparable to Wal-Mart. These differences are consistently found around the country. Moreover,
2 these differences are longstanding. In fact, female representation among managers at Wal-Mart is at
3 a substantially lower level today than the level of representation among Wal-Mart's competitors in
4 1975.

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

- 12 a. Failure to consistently post job and promotional openings to ensure that all
13 employees have notice of and an opportunity to seek advancement or more
14 desirable assignments and training.
- 15 b. Reliance upon unweighted, arbitrary and subjective criteria utilized by a nearly all
16 male managerial workforce in making assignments, training, pay, performance
17 review and promotional decisions. Even where Wal-Mart policy states objective
18 requirements, these requirements are often applied in an inconsistent manner and
19 ignored at the discretion of management.
- 20 c. Reliance on gender stereotypes in making employment decisions such as
21 assignments, promotions, pay and training.
- 22 d. Pre-selection and "grooming" of male employees for advancement, favorable
23 assignments and training.
- 24 e. Maintenance of largely sex-segregated job categories and departments.
- 25 f. Deterrence and discouragement of female employees from seeking advancement,
26 training, and favorable assignments and pay.
- 27 g. Paying female employees lower compensation than similarly situated men.

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- 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.

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ALLEGATIONS OF NAMED PLAINTIFFS

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Betty Dukes

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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.

1
2 30. In September 1997, Ms. Dukes began to experience harsh and discriminatory treatment
3 from head Customer Service Manager Leilani (Lonnie) Barrett and male Store Manager Ken Cagle.
4 In November 1997, she complained to male District Manager Chuck Salby about the discriminatory
5 treatment.

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

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

20 33. In July of 1999, Ms. Dukes expressed interest in becoming a department manager by
21 requesting of Ken Cagle that she receive training for that position, but she was never given the
22 opportunity to be trained. Rather, shortly thereafter on August 14, 1999, Plaintiff was demoted from
23 Customer Service Manager to cashier and falsely accused of violating company policy while
24 performing a transaction that had been performed many times by Plaintiff and other employees
25 without incident. The demotion was Wal-Mart's retaliation for Plaintiff's numerous complaints of
26 discrimination.

27 34. On August 18, 1999, Ms. Dukes traveled to the Wal-Mart District Office in Livermore
28 and made a complaint to male Wal-Mart District Manager John Scatlin about her demotion and her

1 concerns about employment discrimination at the Pittsburg Wal-Mart store. Wal-Mart took no steps
2 to address Dukes' concerns.

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

9 36. After August 14, 2000, when Ms. Dukes once again became eligible for promotion, at
10 least four department manager and/or support manager positions at the Pittsburg store were filled by
11 men. None of these positions was posted. Between October and December 2000, Richard Morales
12 (Hispanic male) was promoted from night receiving stocker to night support manager. In November
13 2000, Joseph Topasna (Filipino male) was promoted to support manager. Between October and
14 December 2000 Robert (Aaron) Mendez (Hispanic male) was promoted to support manager. In
15 December 2000 or January 2001, Will Martines (Caucasian male) filled the position of Department
16 Manager for Tire Lube Express (TLE).

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

22 38. Furthermore, Ms. Dukes' knowledge of Wal-Mart's discriminatory practices against
23 other women at the Pittsburg store also discouraged her from seeking a promotion. In June of 2000,
24 Brooke Terrell (African American female) was demoted from department manager to a sales floor
25 position, although she continued to fulfill the responsibilities of a department manager until a
26 replacement was found. The department manager position vacated by Terrell was filled by Kevin
27 Sims (African American male). In 2000, Trina Wallace (African American female) was demoted
28 from a department manager position to a sales floor position and later terminated. The department

1 manager position vacated by Wallace was ultimately filled by Kendall Dimery (African American
2 male). In 1999, Darla Harper (Caucasian woman) was denied a department manager job in which
3 she had expressed an interest. Without posting this position, Wal-Mart selected Spencer Ostrom
4 (Caucasian male) to fill this position.

5 39. On or about June 1, 2000, Dukes filed a charge of discrimination with the California
6 Department of Fair Employment & Housing (DFEH), a copy of which is attached hereto as Exhibit 1
7 and incorporated by reference. On June 15, 2000, she received a right to sue letter, and commenced
8 this action in a timely manner.

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

13 Stephanie Odle

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

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

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

26 44. On May 14, 1999, to insure that Ms. Odle was not promoted to the Co- Manager position
27 at the Tulsa, Oklahoma, Sam's Club, she was discriminated against by management by being
28 wrongfully suspended for five days concerning a legitimate refund she had made to a customer. On

1 or about May 19, 1999, Ms. Odle was informed by management that she would not be promoted to
2 the position of Co-Manager of the Tulsa, Oklahoma, Sam's Club, and that said position was being
3 given to a male manager from Florida.

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

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

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

13 48. On October 16, 1999, Ms. Odle was training three hourly Sam's Club employees with
14 respect to a new store procedure. During the training, a \$13.74 accounting adjustment occurred.
15 Ms. Odle notified accounting and the acting store manager of the adjustment, and neither expressed
16 any concern. Two days later, even though management knew that the cash register discrepancy was
17 a harmless training adjustment causing no loss to the company, management, in order to make
18 available a managerial position for a male manager from Arizona, wrongfully suspended Ms. Odle
19 and placed her on administrative leave.

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

22 50. On October 22, 1999, Ms. Odle's attorney filed a charge of discrimination against Sam's
23 Club with the El Paso Area Office of the United States Equal Employment Opportunity Commission
24 and tele-faxed a copy of this Charge of Discrimination to Sam's Club headquarters in Bentonville,
25 Arkansas, regarding the gender discrimination perpetrated against her by Sam's Club. A copy of this
26 charge is attached hereto as Exhibit 3 and incorporated by reference. Despite being briefly reinstated
27 pending further "investigation," in retaliation for filing a Charge of Discrimination with the EEOC
28

1 Ms. Odle was again wrongfully discharged on October 29, 1999, and was replaced by the male
2 manager who was transferred to the Lubbock, Texas store from a Sam's Club in Arizona.

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

7 Sandra Stevenson

8 52. Sandra Stevenson began working at the Gurnee, Illinois Sam's Club in November, 1996
9 as a cashier. She later transferred to the night shift as a receiver, and then as a stocker. In December
10 1997, she was promoted to night supervisor. Ms. Stevenson understood that she had a better chance
11 of being promoted to area manager if she worked as a team leader during the day shift. Accordingly,
12 on numerous occasions throughout her employment, Ms. Stevenson informed her supervisors and
13 managers that she wished to work as a supervisor during the day shift and that she wished to be
14 promoted to a manager. In approximately 1999, Wal-Mart promoted Randy Walker, a male
15 employee that Ms. Stevenson had supervised, to a team leader position during the day shift. Despite
16 their knowledge that Ms. Stevenson was interested in being promoted, at no time did Wal-Mart
17 inform Ms. Stevenson about this opening or give her the opportunity to apply for this team leader
18 position.

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

26 54. Throughout her employment, Ms. Stevenson worked extremely hard in an effort to be
27 promoted to a manager. She often worked without pay to make up for the lack of support from
28 management and lack of training that she received as a night supervisor and as a team leader. As a

1 team leader in produce, she performed the work and had the responsibilities of an area manager,
2 which was a vacant position, but was never compensated as a manager, given the proper training, or
3 given the title of manager.

4 55. Despite her numerous requests and her hard work, Ms. Stevenson was never promoted to
5 Area Manager of Produce or any other area management position. Wal-Mart also failed to offer her
6 any training to become a manager, nor offer her any opportunity to apply for a management position.

7 56. Moreover, Wal-Mart also discriminated against Ms. Stevenson on the basis of her sex, by
8 denying her pay equal to that of a male employee, Kelly Walker, who held a similar position as Ms.
9 Stevenson. Defendant also groomed Walker for management and placed him in the Manager-in-
10 Training program. Subsequently, in or about 1999, Wal-Mart promoted Kelly Walker to area
11 manager.

12 57. During the time that Stevenson was an employee, Wal-Mart promoted an atmosphere of a
13 “Boy’s Club” where men were treated better than female employees. Chester Roberts, a co-general
14 manager at the Sam’s Club in Gurnee, made derogatory comments about women including stating
15 that women are not competent to be managers and are unable to drive forklifts as well as men.
16 Defendant also did not post available manager positions or otherwise make these opportunities
17 known to the male and female employees on an equal basis.

18 58. After being denied training to become a manager and promotion to an area manager
19 position, and having been subjected to unequal treatment from management, Ms. Stevenson resigned
20 in June 2000.

21 59. On or about March 15, 2001, Stevenson filed a charge of discrimination with the EEOC,
22 a copy of which is attached hereto as Exhibit 6 and incorporated by reference. On or about May 15,
23 2001, the EEOC issued a right to sue notice on this charge. This action was timely commenced
24 thereafter.

25 Patricia Surgeson

26 60. Patricia Surgeson was hired by Wal-Mart in Vacaville, California in August 1997 as a
27 sales associate. She was assigned to the Tire and Lube Express department and, within two weeks of
28 her hire, was subjected to sexually harassing remarks and touching by a co-worker. After reporting

1 the harassment, she was transferred to the health and beauty aids department. She repeatedly
2 applied to transfer to other positions but was denied.

3 61. In November 1998, Surgeson was assigned to the Lay-Away Department. In
4 approximately May 1999, she was made the Lay-Away Department manager. Because she was
5 assuming additional responsibilities, her Store Manager promised her a raise. Despite repeated
6 requests, Surgeson was never given the promised raise.

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

12 63. In June or July 2000, Ms. Surgeson was moved to a position in the Cash Office.
13 Although she assumed greater responsibilities, she again did not receive a raise. She was expected
14 to work overtime without lunches or breaks, locked in the cash office. In her position, she became
15 aware that many male employees were being paid more than she was, although they had worked at
16 Wal-Mart for less time and had less responsibility.

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

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

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

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

28 Kimberly Miller

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2 68. Plaintiff Kimberly Miller was employed by Defendant Wal-Mart Stores, Inc. from
3 November 1991 until February 2000 as an hourly associate at a Sam's Club located in Ocala,
4 Florida, except for a brief period in 1998 when she was assigned to Wal-Mart's Ocoee, Florida store.

5 69. During her tenure at Wal-Mart, Ms. Miller worked in a wide variety of areas of the store,
6 gaining valuable exposure to the full range of activities in which the store was engaged.

7 70. Ms. Miller began her employment at Wal-Mart as a cashier. Shortly after her
8 employment began, Wal-Mart was sufficiently impressed with Ms. Miller to assign her to the
9 Accounting Office where she was entrusted with responsibility for handling cash and opening the
10 jewelry department.

11 71. In April 1993, Ms. Miller was assigned to the Membership Desk where she again handled
12 cash and sensitive company documents such as membership and sales reports. In April 1994, Ms.
13 Miller became assigned to the MPU Desk where her duties again included handling cash as well as
14 refunds and film. About one year later, in April 1995, Ms. Miller was assigned to the Cigarette area
15 where she again handled cash and responding to cigarette orders. Later that year, Ms. Miller was
16 assigned to the Information Desk where she responded to member requests and inquiries and
17 preparing reports for all areas of the store.

18 72. Still later in 1995, Ms. Miller was assigned to the Tire Mounting Area ("TMA") where,
19 except for several brief assignments to other departments, she remained until she resigned in
20 February 2000. In the TMA area, Ms. Miller filled work orders, handled cash and responded to the
21 full range of member inquiries.

22 73. Throughout her tenure at Wal-Mart, Ms. Miller received performance evaluations that
23 were well above average. She also received many letters of commendation submitted by customers
24 who received outstanding service from Ms. Miller.

25 74. Notwithstanding the breadth of Ms. Miller's experience and her distinguished
26 performance, she failed to receive any promotions during her nearly nine years of service at Wal-
27 Mart.

28 75. For most of Ms. Miller's tenure at Wal-Mart, the company failed to publicize vacancies
for supervisory and managerial positions. In order to express her interest in advancement to Team

1 Leader and other supervisory positions, therefore, Ms. Miller regularly informed her immediate
2 supervisor as well as the Assistant Manager with responsibility for her work area and the General
3 Manager of the store of her interest in, and ample qualifications for, supervisory positions.

4 76. Ms. Miller was never granted an interview, much less selected, for several vacant
5 supervisory positions for which she was qualified. Instead, male employees were selected who
6 lacked the breadth of experience and distinguished performance that Ms. Miller possessed.

7 77. Ms. Miller was compensated at levels lower than those paid to men with comparable
8 experience and records of performance.

9 78. Initially, the positions to which Ms. Miller was assigned were in Departments or Areas in
10 which the overwhelming majority of employees were women. Those areas included the
11 Membership, Cashier, Refunds and Accounting Areas and Departments. The employees in the Tire
12 Mounting Area to which Ms. Miller was assigned for the most part from 1995 until her departure in
13 2000 were all men except for her.

14 79. During her tenure in the Tire Mounting Area, Ms. Miller was exposed to sexual taunts and
15 statements disparaging of women, undermining her authority in the workplace and subjecting her to
16 a working environment hostile to women. Ms. Miller was regularly called "Bitch" by her male
17 supervisors, including her Assistant Manager. In front of her co-workers, Ms. Miller's male Team
18 Leader offered to make her pregnant when she was encountering difficulties in conceiving a child. In
19 1999, Ms. Miller entered the waiting area of the Tire Mounting Area and encountered her co-
20 workers watching a pornographic video during working hours. Ms. Miller's co-workers made other
21 sexual comments about female customers and Ms. Miller on nearly a daily basis.

22 80. Ms. Miller complained on more than a dozen occasions to supervisors at all levels of the
23 Wal-Mart hierarchy about the sexually polluted working environment in which she worked and
24 about the repeated denial of promotions.

25 81. Ms. Miller complained to the male General Manager of the store about sexual comments
26 directed at her by her male Assistant Manager. There was no promise that the conditions would
27 improve and no improvement occurred.

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2 82. At one point, Ms. Miller even complained to the male District Manager, who supervised
3 the General Manager of her store, about the sexual comments made in the workplace and about the
4 denial of promotions. His response was to attribute her concerns to a difference in personality styles
5 and to offer Ms. Miller a story about baseball.

6 83. On or about November 13, 2000, Miller filed a charge of discrimination with the EEOC,
7 a copy of which is attached hereto as exhibit 8 and incorporated by reference. On or about March 29,
8 2001, the EEOC issued a notice of right to sue on this charge, and this action was timely commenced
9 thereafter.

10 Micki Earwood

11 84. Ms. Earwood was hired by Wal-Mart on January 12, 1989, at the Urbana, Ohio, store as
12 an unloader in the receiving department. In 1991, she became a sales clerk and later in 1991 became
13 a department supervisor. In 1993, she transferred to the Wal-Mart store in Mentor, Ohio, where she
14 was a department supervisor. In 1994, she was transferred to the Bellefontaine, Ohio Wal-Mart store
15 where she was a department supervisor. In 1995, she was transferred back to the Urbana, Ohio,
16 Wal-Mart as a support supervisor and, in August of 1999, was assigned the position of personnel
17 manager/training coordinator. All of Ms. Earwood's employment with Wal-Mart was as an hourly
18 employee.

19 85. In 1998, Ms. Earwood applied for promotion to the position of assistant manager but was
20 told by Wal-Mart management that she could not be the assistant manager unless she was willing to
21 move to New York State, which condition was not imposed on male applicants for the position of
22 assistant manager. At the time of her application, Ms. Earwood was a single mother with a four-
23 year-old daughter, and it would have been impossible for her to afford to transfer to New York State.
24 Subsequent to management's constructive denial of her application for promotion to assistant
25 manager in 1998, through approximately July of 2000, Ms. Earwood became aware of other assistant
26 manager positions coming open, yet she was deterred from applying for them because she knew that
27 management would require her to transfer and because she knew that Mr. Jim Phelps, the Urbana,
28 Ohio, Wal-Mart Store Manager, had blocked the promotion of other women to assistant manager
throughout this period.

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2 86. While performing her job as personnel manager at the Urbana Wal-Mart, Ms. Earwood
3 had access to the promotion and pay records of the store. While reviewing these records during the
4 normal course of her regular job duties, it became apparent to her that the male employees were
5 given many more opportunities for promotion and better pay than the female employees. On one
6 occasion, Mr. Phelps told Ms. Earwood that no one could be promoted to support manager, which
7 required evening and weekend work, if “they had kids”, which essentially eliminated working
8 mothers from consideration for the position.

9 87. When hiring and authorizing increases in pay for employees of the Urbana Wal-Mart,
10 Wal-Mart authorized more pay for male employees than for female employees hired for the same or
11 similar positions.

12 88. In approximately September of 2000, Ms. Miller complained to Mr. Fetrow, Wal-Mart’s
13 District Manager and Mr. Phelps’ supervisor, about, among other things, the disparate treatment of
14 women in the Urbana Wal-Mart store.

15 89. Within two weeks of Ms. Earwood’s complaint to Mr. Fetrow about the disparate
16 treatment of women, Ms. Earwood was suspended for allegedly having a tape recorder in her office
17 and taping private conversations with Mr. Fetrow and Mr. Phelps, which allegations were untrue and
18 fabricated by management as a pretext for retaliating against Ms. Earwood for complaining to Mr.
19 Fetrow about the disparate treatment of women.

20 90. On September 28, 2000, Ms. Earwood was wrongfully terminated from her employment
21 at Wal-Mart because Ms. Earwood was a female and because she had made complaints to
22 management about gender discrimination in the workplace. No similarly situated male employees
23 were ever mistreated by Wal-Mart management in a like manner.

24 91. After Ms. Earwood was terminated, she received a threatening letter, dated October 24,
25 2000, from the senior corporate counsel of Wal-Mart, making false and slanderous allegations
26 against Ms. Earwood, telling her that she could no longer shop at Wal-Mart and threatening her with
27 legal action, in direct retaliation for Ms. Earwood’s protected activity and because she is female.
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2 101. Defendant's retaliatory practices have resulted in the loss of past and future wages
and other job benefits for class members.

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

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5 **SECOND CLAIM FOR RELIEF**
Violation of Title VII

6 103. Paragraphs 1-92 are incorporated by reference. This claim is brought on behalf of the
7 named plaintiffs individually for their non-class claims.

8 104. Defendant discriminated against named plaintiffs on the basis of their gender by
9 demoting, terminating, and/or by retaliating against them and by subjecting them to a hostile work
10 environment.

11 105. Defendant's discriminatory and retaliatory practices have resulted in the loss of past
12 and future wages and other job benefits, and have caused plaintiffs to suffer humiliation,
13 embarrassment and emotional distress.

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

15 **THIRD CLAIM FOR RELIEF**
16 *Violation of California Fair Employment and Housing Act -Race Discrimination*

17 107. Plaintiffs incorporate by reference Paragraphs 29 through 39.

18 108. This claim for relief is brought on behalf of Plaintiff Dukes only.

19 109. Defendant discriminated against plaintiff Dukes on the basis of her race, African
20 American. The foregoing conduct violates the California Fair Employment and Housing Act,
Government Code §§ 12940, et. seq.

21 110. Defendant's discriminatory and retaliatory practices have resulted in the loss of past
22 and future wages and other job benefits, and have caused plaintiff to suffer humiliation,
23 embarrassment and emotional distress.

24 111. Plaintiff Dukes requests relief as provided in the Prayer for Relief below.

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RELIEF ALLEGATIONS

112. Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and omissions.

113. The actions on the part of Defendant have caused and continue to cause Plaintiffs and all class members substantial losses in earnings, promotional opportunities and other employment benefits, in an amount to be determined according to proof.

114. Defendant acted or failed to act as herein alleged with malice or reckless indifference to the protected rights of Plaintiffs' and class members. Plaintiffs and class members are thus entitled to recover punitive damages in an amount to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class pray for relief as follows:

- 1) Certification of the case as a class action on behalf of the proposed Plaintiff class and designation of Plaintiffs as representatives of the class and their counsel of record as Class Counsel;
- 2) All damages which individual Plaintiffs and the class have sustained as a result of Defendant's conduct, including back pay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the discriminatory practices of Defendant;
- 3) For Plaintiffs' individual, non-class claims, all damages they have sustained as a result of defendant's conduct, including back pay, front pay, general and specific damages for lost compensation and job benefits they would have received but for the discriminatory practices of defendant, damages for emotional distress, and punitive damages, according to proof;
- 4) Exemplary and punitive damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;

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- 5) A preliminary and permanent injunction against Defendant and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;
 - 6) A declaratory judgment that the practices complained of in this first amended complaint are unlawful and violate 42 U.S.C. § 2000(e), et. seq., Title VII of the Civil Rights Act of 1964;
 - 7) An order restoring class members to their rightful positions at Wal-Mart;
 - 8) An assignment of Plaintiffs and the class to those jobs they would now be occupying but for Defendant's discriminatory practices;
 - 9) An adjustment of the wage rates and benefits for Plaintiffs and the class to that level which Plaintiffs and the class would be enjoying but for Defendant's discriminatory practices;
 - 10) Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;
 - 11) Pre-Judgment and Post-Judgment interest, as provided by law; and
 - 12) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

19 DATED: June 19, 2001

Respectfully submitted,

20
21 By: _____
Brad Seligman

22 THE IMPACT FUND

23 SHEILA THOMAS
24 DORIS NG
EQUAL RIGHTS ADVOCATES

25 STEVE STEMERMAN
26 ELIZABETH LAWRENCE
DAVIS, COWELL & BOWE

27 JOSEPH SELLERS
28 DEBORAH VAGINS

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COHEN, MILSTEIN, HAUSFELD & TOLL

STEPHEN TINKLER
MERIT BENNETT
TINKLER & BENNETT

JONATHAN SMITH
DEBRA GARDNER
PUBLIC JUSTICE CENTER

Attorneys for Plaintiffs BETTY DUKES, PATRICIA
SURGESON, SANDRA STEVENSON, STEPHANIE ODLE,
KIMBERLY MILLER and MICKI EARWOOD

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil
Procedure.

By _____
Brad Seligman