

# EXHIBIT A



Plaintiffs and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

2. Plaintiffs bring this nationwide Class Action Complaint against Defendant Walmart, seeking damages and injunctive relief for Defendant's widespread Cuban national origin, race and ethnicity discrimination and related illegal conduct constituting violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* (hereinafter "Title VII"), and violations of The Civil Rights Act of 1866, 42 U.S.C. §1981. Plaintiffs, in their representative capacities, seek a permanent injunction against Walmart from discrimination based on Cuban national origin, race and ethnicity, whereby Defendant has intentionally and willfully subjected Plaintiffs and a class of current and former Cuban warehouse employees to disparate treatment in the terms and conditions of their employment, by paying them lower wages than similarly situated non-Cuban employees, based on their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

3. Plaintiffs allege, in the alternative, that Walmart's facially neutral compensation policy has a disparate impact on Plaintiffs and a nationwide class of Cuban warehouse employees, resulting in Plaintiffs and the putative class being paid a lower wage than similarly situated non-Cuban warehouse employees in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

4. Plaintiffs, in their individual capacities also bring claims that Walmart discriminated against them by subjecting them to different terms and conditions than similarly situated non-Cuban employees by subjecting them to variable schedules, denials of make-up days and other discriminatory terms and conditions based on their Cuban national origin, race

and ethnicity in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

5. Plaintiffs, in their individual capacities also bring claims that Walmart retaliated against them for engaging in the protected activity of reporting and opposing discrimination, by terminating their employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

6. Plaintiffs have been subjected to discrimination on the basis of their Cuban national origin, race and ethnicity.

7. Plaintiffs were outstanding warehouse employees of Defendant who made substantial contributions to Defendant's operations and during all relevant times performed their job responsibilities in a manner that met or exceeded Defendant's legitimate business expectations.

8. Plaintiffs have suffered extreme emotional distress, lost wages, disparate pay, lost benefits, and other significant damages as a direct and proximate result of Defendant's illegal conduct as alleged herein.

9. Plaintiffs bring a Title VII claim and a Civil Rights Act of 1866 claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of Defendant's intentional and willful national origin, race and ethnicity discrimination, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

10. In the alternative, Plaintiffs bring a Title VII claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of the disparate impact of Defendant's compensation policy.

11. All allegations and claims are pled in the alternative to the extent such an interpretation is necessitated by law, required for proper construction under the law, and permitted under federal law.

### **JURISDICTION AND VENUE**

12. The subject matter jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1332, 1343(3) and (4), 1658 and 2201 and 2202. This is a suit authorized and instituted pursuant to the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000 *et seq.*, as amended by the "Civil Rights Act of 1991," and the "Civil Rights Act of 1866," 42 U.S.C. § 1981 and 1981(a).

13. Upon information and belief, the amount in controversy in this action exceeds the sum or value (sic) of \$5,000,000.00, exclusive of interest and costs.

14. Upon information and belief, at least one member of the Rule 23 Class is a citizen of a different state than that of Defendant.

15. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because the Plaintiffs and Defendant either reside in this judicial district and/or because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

16. Plaintiffs, in their class-wide claims, request injunctive and declaratory relief and compensation for disparate pay, back pay, lost wages and punitive damages and/or any and all other damages permitted by applicable law, and attorneys' fees and costs.

**THE PARTIES**

**a. Plaintiffs**

17. Plaintiff, ROLANDO PADRON, is a resident of the City of West Chicago, in DuPage County, Illinois.

18. Plaintiff, BOBIRT R. MIRANDA, is a resident of the City of West Chicago, in DuPage County, Illinois.

19. Plaintiff, EUSEBIO R. CALZADA, is a resident of the City of West Chicago, in DuPage County, Illinois.

**b. Defendant**

20. Defendant, WAL-MART STORES, INC., d/b/a WALMART, is a Delaware corporation with offices and doing business throughout the State of Illinois and throughout the United States. At all relevant times, Defendant has continuously been a corporation doing business in Illinois.

21. At all relevant times Defendant has continuously had at least fifteen (15) employees and been engaged in an industry affecting commerce within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

**CLASS ALLEGATIONS**

22. Plaintiffs bring their claims under Title VII and the Civil Rights Act of 1866, individually, and as a class action pursuant to Federal Rules of Civil Procedure Rule 23. The Rule 23 Class is defined as:

“All current and former Cuban warehouse employees of Walmart who were paid a lower wage than similarly situated non-Cuban warehouse employees, from January 1, 2006, through the present”

23. Excluded from the Rule 23 Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Rule 23 Class period has had: a controlling interest in Walmart; the Judge to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit a timely and otherwise proper request for exclusion from the Rule 23 Class.

24. **Numerosity:** The persons in the Rule 23 Class identified above are geographically diverse and so numerous that joinder of all members is impracticable. The precise number of such persons is unknown, and the calculation of that number is presently within the sole control of Defendant.

25. **Commonality:** There are numerous questions of law and fact common to the Rule 23 Class that predominate over any questions affecting only individual members. The questions of law and fact common to this Rule 23 Class that predominate over any question solely affecting individual members of the Rule 23 Class include, but are not limited to, the following:

- (a) Whether Defendant paid Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees;
- (b) Whether Defendant's actions in paying Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees was intentional, willful and/or deliberate;
- (c) Whether Defendant's compensation policy has a disparate impact on Cuban warehouse employees, resulting in Cuban warehouse employees being paid a lower wage than similarly situated non-Cuban warehouse employees;

- (d) Whether the Defendant was an “employer” of Plaintiffs and the Rule 23 Class within the meaning of Title VII, and the Civil Rights Act of 1866;
- (e) Whether Defendant’s actions as alleged herein violate Title VII; and
- (f) Whether Defendant’s actions as alleged herein violate the Civil Rights Act of 1866.

26. **Typicality:** The claims of the Representative Plaintiffs are typical of the Rule 23 Class.

27. **Adequacy:** The Representative Plaintiffs will fairly and adequately represent the interests of the Rule 23 Class.

28. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage/back pay litigation, where individual class members lack the financial resources to vigorously prosecute separate lawsuits in Federal Court against large corporations like Defendant (the discriminatory behavior has adversely impacted the Rule 23 Classes ability to bring individual actions).

29. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of this litigation where no individual employee can justify the commitment of the large financial resources to vigorously prosecute a lawsuit in Federal Court against the corporate Defendant.

30. The Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.



### **PROCEDURAL HISTORY**

31. Plaintiffs, Rolando Padron, Bobirt R. Miranda and Eusebio R. Calzada, each filed their respective *pro se* “Charge of Discrimination” with the Equal Employment Opportunity Commission on November 30, 2006, alleging violations of Title VII of the Civil Rights Act of 1964. *See Plaintiffs’ Charges of Discrimination attached hereto as Group Exhibit “A”*

32. On or about April 12, 2010, the commission concluded its investigation and issued a determination that the ***“evidence obtained in the investigation establishes reasonable cause to believe that Respondent discriminated against Charging Party and a class of employees based on because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.”*** Following a conciliation failure, the commission issued Plaintiffs a “Notice of Right to Sue” letter dated July 20, 2010. *See Plaintiffs’ Notice of Right to Sue and Determination Letters attached hereto as Group Exhibit “B”.*

33. Plaintiffs timely filed this lawsuit within ninety (90) days from the date of receipt of the July 20, 2010, Notice of Right to Sue letters.

### **COMMON ALLEGATIONS**

34. During all relevant times herein, Defendant was and is an employer as defined by Title VII.

35. During all relevant times herein, Representative Plaintiff and the Rule 23 Class are/were employees of Defendant as defined by Title VII.

36. Plaintiffs are members of a racial minority. Plaintiffs are of Cuban national origin.

37. Plaintiffs have dark colored hair, eyes, and skin.

38. Plaintiff Padron worked as a warehouse employee for Defendant from August 2001 through November 12, 2006, when Plaintiff Padron was terminated after engaging in the

protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Padron worked as a warehouse employee, performing duties such as shipping and receiving.

39. Plaintiff Miranda worked as a warehouse employee for Defendant from July 2000 through November 20, 2006, when Plaintiff Miranda was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Miranda worked as a warehouse employee, performing duties such as shipping and receiving.

40. Plaintiff Calzada worked as a warehouse employee for Defendant from July 1998 through November 8, 2006, when Plaintiff Calzada was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Calzada worked as a warehouse employee, performing duties such as shipping and receiving.

41. Plaintiffs first reported what they believed to be national origin, race and ethnicity discrimination in 2005, to Store Manager (Brad Wilson). Nothing was done to redress or eliminate the national origin, race and ethnicity discrimination. Over the next year, and prior to filing their charges of discrimination, Plaintiffs reported the continuous and ongoing national

origin, race and ethnicity discrimination and retaliation against themselves and other Cuban coworkers, on at least five separate occasions, to Brad Wilson (store manager), “Skip” Turner (District Manager) and Angel Gomez (Human Resources). Walmart, despite knowledge of the national origin, race and ethnicity discrimination, continued to pay Cuban warehouse employees less than non-Cuban warehouse employees, continued to discriminate against, harass and retaliate against Plaintiffs in the terms and conditions of their employment, with regard to variable schedules (to which non-Cuban’s were not subjected) and denial of make-up days (to which non-Cuban’s were not subjected.).

42. Plaintiffs were qualified, competent and dedicated employees who were paid lesser wages than similarly situated non-Cuban warehouse employees on the basis of their Cuban national origin, race and ethnicity.

43. Defendant’s warehouse employees perform duties such as shipping and receiving.

44. Plaintiffs and putative class members have been subjected to discrimination as a result of Defendant’s implementation and enforcement of its “facially neutral” compensation policies and practices which have had a disparate impact on Cuban warehouse employees, namely, Cuban warehouse employees have been paid lower wages than similarly situated non-Cuban warehouse employees.

45. Plaintiffs and putative class members have also been intentionally discriminated against on the basis of their Cuban national origin, race and ethnicity, in that Walmart has intentionally paid Plaintiffs and putative class members lower wages than similarly situated non-Cuban warehouse employees.

46. At all relevant times herein, Plaintiffs were performing all of their job duties/responsibilities in an outstanding manner and there was no legitimate non-discriminatory

reason for paying Plaintiffs and other Cuban warehouse employees lower wages than similarly situated non-Cuban warehouse employees.

47. Plaintiffs have suffered severe damages as a direct and proximate result of Defendant's illegal conduct, as alleged herein.

48. All allegations herein are pled in the alternative to the extent necessitated for viable construction under applicable federal law.

### COUNT I

#### **(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.* – DISPARATE IMPACT)**

##### **(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)**

49. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein, except for those allegations alleging intentional discrimination.

50. All conditions precedent to Count I have been satisfied.

51. Plaintiffs and the Rule 23 Class are/were warehouse employees of Defendant.

52. Plaintiffs are former warehouse employees of Defendant.

53. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

54. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of their employer.

55. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

56. Defendant's facially neutral compensation policy has had a disparate impact on Plaintiffs, Cuban warehouse employees and the Rule 23 class, as alleged herein.

57. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiffs and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

58. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

59. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

60. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the disparate impact suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

## COUNT II

### **(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.* – DISPARATE TREATMENT)**

#### **(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)**

61. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

62. All conditions precedent to Count II have been satisfied.

63. Plaintiffs and the Rule 23 Class are/were warehouse employees of the Defendant.

64. Plaintiffs were warehouse employees of the Defendant as alleged herein.

65. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

66. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of Defendant.

67. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

68. Defendant intentionally and willfully failed and refused to pay Plaintiffs, Cuban warehouse employees and the Rule 23 class to equal wages as similarly situated non-Cuban employees based upon their Cuban national origin, race and ethnicity. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for federal law and for the rights of the Plaintiffs and the Rule 23 Class.

69. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

70. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

71. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

72. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the discriminatory, disparate treatment suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

### COUNT III

#### **(DISCRIMINATION ON THE BASIS OF RACE IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981 – DISPARATE TREATMENT)**

##### **(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein.

74. All conditions precedent to Count III have been satisfied.

75. Defendant has discriminated against Plaintiffs and the Rule 23 Class by paying them lower wages than similarly situated non-Cuban warehouse employees because of their Cuban national origin, race and ethnicity in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 and 1981(a).

76. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiffs and the Rule 23 Class.

77. By reason of Defendant's discriminatory employment practices based upon race, national origin, ethnicity or color, Plaintiffs and the Rule 23 Class have experienced extreme harm, including loss of compensation, wages, back and front pay, damages and other

employment benefits, and as such, are entitled to all legal and equitable remedies available under the Civil Rights Act of 1866.

78. There is a causal connection between the Plaintiff's and the Rule 23 Class' race, national origin, ethnicity or color and the discrimination and damages suffered by Plaintiffs at the hands of the Defendant.

#### COUNT IV

#### (NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)

#### (Plaintiff Padron individually v. Defendant)

79. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

80. All conditions precedent to Count IV have been satisfied.

81. At all times relevant herein, Plaintiff was an employee of the Defendant.

82. Plaintiff is of Cuban national origin.

83. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

84. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;



- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

85. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

86. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

87. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

88. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

89. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

90. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

91. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

92. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

93. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

94. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

## COUNT V

### **(RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)**

#### **(Plaintiff Padron v. Defendant)**

95. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

96. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

97. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in

November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

98. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

99. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

100. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

101. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

102. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

#### **COUNT VI**

#### **(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)**

#### **(Plaintiff Miranda individually v. Defendant)**

103. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

104. All conditions precedent to Count VI have been satisfied.

105. At all times relevant herein, Plaintiff was an employee of the Defendant.

106. Plaintiff is of Cuban national origin.

107. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

108. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

109. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

110. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise

adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000(e), *et seq.*

111. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

112. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

113. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

114. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

115. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

116. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

117. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

118. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

## COUNT VII

### (RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

#### (Plaintiff Miranda v. Defendant)

119. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

120. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

121. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

122. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

123. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

124. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

125. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

126. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

### **COUNT VIII**

#### **(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)**

#### **(Plaintiff Calzada individually v. Defendant)**

127. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

128. All conditions precedent to Count VIII have been satisfied.

129. At all times relevant herein, Plaintiff was an employee of the Defendant.

130. Plaintiff is of Cuban national origin.

131. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

132. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;

- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

133. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

134. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

135. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

136. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

137. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.



138. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

139. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

140. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

141. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

142. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

### **COUNT IX**

#### **(RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)**

#### **(Plaintiff Calzada v. Defendant)**

143. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

144. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

145. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

146. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

147. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

148. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

149. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

150. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- i. Acceptance of jurisdiction of this cause;

- ii. A declaratory judgment that the employment practices challenged herein are illegal and violative of the rights secured to Plaintiffs and the Class;
- iii. A preliminary and permanent injunction against the Defendant and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs, usages, and discrimination as set forth herein;
- iv. An Order requiring the Defendant to initiate and implement programs that: (1) provide equal employment opportunities for Cuban employees; (2) remedy the effects of the Defendant's past and present unlawful employment practices; and (3) eliminate the continuing effects of the discriminatory practices described herein above;
- v. Certification of this case as a class action pursuant to Rule 23 of Federal Rules of Civil Procedure;
- vi. Designation of the Plaintiff as representative of the Rule 23 Class, and counsel of record as Class Counsel;
- vii. Damages sufficient to compensate Plaintiff and the Rule 23 Class for their injuries;
- viii. Back Pay, inclusive of lost wages and any benefits;
- ix. Pre-judgment and post-judgment interest;
- x. Reasonable attorney's fees and costs of this action;
- xi. Punitive damages; and

- xii. Any and all other relief that this Honorable Court may deem just and equitable.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: October 15, 2010

Respectfully submitted,

**ROLANDO PADRON, BOBIRT R. MIRANDA  
and EUSEBIO R. CALZADA**

FOOTE, MEYERS, MIELKE & FLOWERS, LLC

/s/Robert M. Foote

Robert M. Foote, Esq. (#03124325)

Matthew J. Herman, Esq. (#06237297)

Michael D. Wong, Esq. (#6291089)

FOOTE, MEYERS, MIELKE & FLOWERS, LLC

3 North Second Street

Suite 300

Saint Charles, IL 60174

Telephone: (630) 232-6333

Facsimile: (630) 845-8982

Kathleen C. Chavez, Esq. (#6255735)

CHAVEZ LAW FIRM, P.C.

3 North Second Street

Suite 300

Saint Charles, IL 60174

Telephone: (630) 232-4480

Facsimile: (630) 845-8982

Peter L. Currie, Esq. (#06281711)

THE LAW FIRM OF PETER L. CURRIE, P.C.

536 Wing Lane

Saint Charles, Illinois 60174

Telephone: (630) 862-1130

***Attorneys for Plaintiffs***

# EXHIBIT A

### CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

440-2007-01452

### Illinois Department Of Human Rights

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

**Mr. Rolando Padron**

Home Phone (Incl. Area Code)

**(630) 234-1053**

Date of Birth

**08-14-1962**

Street Address

City, State and ZIP Code

**253 Joliet Street, West Chicago, IL 60185**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**WALMART**

No. Employees, Members

**500 or More**

Phone No. (Include Area Code)

**(630) 513-9559**

Street Address

City, State and ZIP Code

**150 Smith Road, Saint Charles, IL 60174**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE     COLOR     SEX     RELIGION     NATIONAL ORIGIN  
 RETALIATION     AGE     DISABILITY     OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest                      Latest  
**01-01-2006                      11-12-2006**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent in August 2001 and my last position was Receiving. Beginning on or about January 1, 2006 and continuing, I have been subjected to different terms and conditions than my non-Cuban co-workers such as a variable schedule, denial of make-up days, and lower wages. On various occasions, most recently in November 2006, I complained internally regarding national origin discrimination. On November 12, 2006, I was discharged.

I believe that I have been discriminated against because of my national origin, Cuban, and have been retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

NOV 30 2006

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

Nov 30 2006

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

### CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA

EEOC

440-2007-01458

### Illinois Department Of Human Rights

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

**Mr. Bobirt R. Miranda**

Home Phone (Incl. Area Code)

**(630) 567-2711**

Date of Birth

**09-30-1975**

Street Address

City, State and ZIP Code

**253 Joliet Street, West Chicago, IL 60185**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**WALMART**

No. Employees, Members

**500 or More**

Phone No. (Include Area Code)

**(630) 513-9559**

Street Address

City, State and ZIP Code

**150 Smith Road, Saint Charles, IL 60174**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

- RACE
- COLOR
- SEX
- RELIGION
- NATIONAL ORIGIN
- RETALIATION
- AGE
- DISABILITY
- OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
<b>01-01-2006</b>	<b>11-20-2006</b>

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent in July 2000 and my last position was Receiving. Beginning on or about January 1, 2006 and continuing, I have been subjected to different terms and conditions than my non-Cuban co-workers such as a variable schedule, denial of make-up days, and lower wages. On various occasions, most recently in November 2006, I complained internally regarding national origin discrimination. On November 20, 2006, I was discharged.

I believe that I have been discriminated against because of my national origin, Cuban, and have been retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

NOV 30 2006

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Nov 30 2006

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

**440-2007-01448**

**Illinois Department Of Human Rights**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.) <b>Mr. Eusebio R. Calzada</b>	Home Phone (Incl. Area Code) <b>(630) 562-2217</b>	Date of Birth <b>12-15-1964</b>
---	---	------------------------------------

Street Address City, State and ZIP Code  
**600 West Forest Avenue, Apartment 312, West Chicago, IL 60185**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name <b>WALMART</b>	No Employees, Members <b>500 or More</b>	Phone No. (Include Area Code) <b>(630) 513-9559</b>
------------------------	---	--

Street Address City, State and ZIP Code  
**150 Smith Road, Saint Charles, IL 60174**

Name	No Employees, Members	Phone No. (Include Area Code)

Street Address City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))	DATE(S) DISCRIMINATION TOOK PLACE
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)	Earliest                      Latest <b>01-01-2006                      11-08-2006</b>
	<input type="checkbox"/> CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent in July 1998 and my last position was Receiving. Beginning on or about January 1, 2006 and continuing, I have been subjected to different terms and conditions than my non-Cuban co-workers such as a variable schedule, denial of make-up days, and lower wages. On various occasions, most recently in November 2006, I complained internally regarding national origin discrimination. On November 08, 2006, I was discharged.

I believe that I have been discriminated against because of my national origin, Cuban, and have been retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

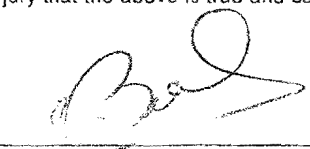
NOV 30 2006

I want this charge filed with both the EEOC and the State or local Agency, if any. I advise the agencies if I change my address or phone number and I will cooperate with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Nov 20 2006

Date



Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE



# EXHIBIT B

**NOTICE OF RIGHT TO SUE**  
*(CONCILIATION FAILURE)*

To: **Rolando Padron**  
253 Joliet Street  
West Chicago, IL 60185

From: **Chicago District Office**  
500 West Madison St  
Suite 2000  
Chicago, IL 60661

**CERTIFIED MAIL 7099 3400 0018 8816 4082**

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
<b>440-2007-01452</b>	<b>Michael J. Honkanen, Investigator</b>	<b>(312) 353-7312</b>

**TO THE PERSON AGGRIEVED:**

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

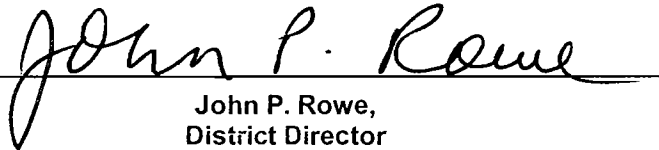
**- NOTICE OF SUIT RIGHTS -**  
*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

  
\_\_\_\_\_  
**John P. Rowe,**  
District Director

  
\_\_\_\_\_  
*(Date Mailed)*

Enclosures(s)

cc: **WALMART**

**NOTICE OF RIGHT TO SUE**  
**(CONCILIATION FAILURE)**

To: **Bobirt R. Miranda**  
660 Bell Rd, Apt 307  
Antioch, TN 37013

From: **Chicago District Office**  
500 West Madison St  
Suite 2000  
Chicago, IL 60661

CERTIFIED MAIL 7099 3400 0018 8816 4075

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
440-2007-01458	<b>Michael J. Honkanen,</b> Investigator	(312) 353-7312

**TO THE PERSON AGGRIEVED:**

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

**- NOTICE OF SUIT RIGHTS -**

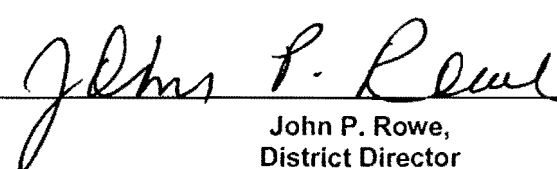
*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

  
\_\_\_\_\_  
**John P. Rowe,**  
District Director

  
\_\_\_\_\_  
(Date Mailed)

Enclosures(s)

cc: **WALMART**

**NOTICE OF RIGHT TO SUE**  
*(CONCILIATION FAILURE)*

To: **Eusebio R. Calzada**  
600 West Forest Avenue, Apt. 312  
West Chicago, IL 60185

From: **Chicago District Office**  
500 West Madison St  
Suite 2000  
Chicago, IL 60661

CERTIFIED MAIL 7099 3400 0018 8816 4099

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
440-2007-01448	<b>Michael J. Honkanen,</b> Investigator	(312) 353-7312

**TO THE PERSON AGGRIEVED:**

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

**- NOTICE OF SUIT RIGHTS -**

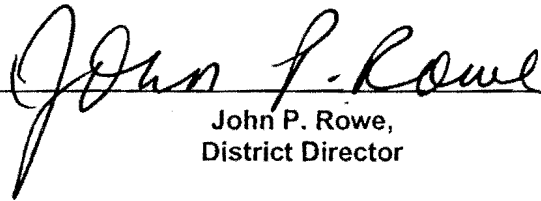
*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

  
\_\_\_\_\_  
John P. Rowe,  
District Director

  
\_\_\_\_\_  
(Date Mailed)

Enclosures(s)

cc: WALMART



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Chicago District Office

500 West Madison Street, Suite 2000  
Chicago, IL 60661  
(312) 353-2713  
TTY (312) 353-2421  
FAX (312) 353-4041

EEOC Charge Number: 440-2007-01452

Rolando Padron  
253 Joliet Street  
West Chicago, IL 60185

Charging Party

v.

Wal-Mart  
150 Smith Road  
Saint Charles, IL 60174

Respondent

**DETERMINATION**

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

Charging Party alleged that the Respondent discriminated against him, because of his national origin, Cuban, in that he was subjected to different terms and condition of employment than non-Cuban coworkers, such as a variable schedule, denial of make-up days, and lower wages, in violation of Title VII. Charging Party also alleged that he complained internally regarding national origin discrimination and was subsequently discharged, in violation of Title VII.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that the Respondent discriminated against Charging Party and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of

identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission,

4/12/10  
Date

John P. Rowe  
John P. Rowe  
District Director



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Chicago District Office

500 West Madison Street, Suite 2000  
Chicago, IL 60661  
(312) 353-2713  
TTY (312) 353-2421  
FAX (312) 353-4041

EEOC Charge Number: 440-2007-01458

Bobirt Miranda  
253 Joliet Street  
West Chicago, IL 60185

Charging Party

v.

Wal-Mart  
150 Smith Road  
Saint Charles, IL 60174

Respondent

**DETERMINATION**

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

Charging Party alleged that the Respondent discriminated against him, because of his national origin, Cuban, in that he was subjected to different terms and condition of employment than non-Cuban coworkers, such as a variable schedule, denial of make-up days, and lower wages, in violation of Title VII. Charging Party also alleged that he complained internally regarding national origin discrimination and was subsequently discharged, in violation of Title VII.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that the Respondent discriminated against Charging Party and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

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EEOC Charge No. 440-2007-01458

Page 2 of 2

identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission,

4/12/10  
Date

John P. Rowe  
John P. Rowe  
District Director





500 West Madison Street, Suite 2000  
Chicago, IL 60661  
(312) 353-2713  
TTY (312) 353-2421  
FAX (312) 353-4041

EEOC Charge Number: 440-2007-01448

Eusebio Calzada  
600 Forest Ave #312  
West Chicago, IL 60185

Charging Party

v.

Wal-Mart  
150 Smith Road  
Saint Charles, IL 60174

Respondent

### **DETERMINATION**

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

Charging Party alleged that the Respondent discriminated against him, because of his national origin, Cuban, in that he was subjected to different terms and condition of employment than non-Cuban coworkers, such as a variable schedule, denial of make-up days, and lower wages, in violation of Title VII. Charging Party also alleged that he complained internally regarding national origin discrimination and was subsequently discharged, in violation of Title VII.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that the Respondent discriminated against Charging Party and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of

identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission,

4/12/10  
Date

John P. Rowe  
John P. Rowe  
District Director

# EXHIBIT B

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SUBPOENA

TO: Chief Executive Officer  
Wal-Mart  
150 Smith Road  
Saint Charles, IL 60174

NO. CH-07-358

IN THE MATTER OF: Eusebio Calzada v. Wal-Mart

Charge No. 440-2007-01448

Having failed to comply with previous request(s) made by or on behalf of the undersigned Commission official, YOU ARE HEREBY REQUIRED AND DIRECTED TO:

Testify  Produce and bring \* or  Mail \* the documents described below to:

Produce access to the evidence described below for the purpose of examination or copying to:

Omayra Rodriguez, Investigator of the Equal Employment Opportunity Commission

at 500 W. Madison St. Suite 2800, Chicago, IL 60661 on June 1, 2007 at 10:00 a.m. o'clock

The evidence required is

1.) The Documents Requested in Exhibit B attached

See definition attached hereto as Exhibit A which state, describe, constitute, refer to, or relate in any way to the following (Exhibit B attached hereto and made a part hereof):

cc: Jeremy B. Lewin, Esq.  
Barnes & Thornburg, LLP.  
One North Wacker Drive, Suite 4400  
Chicago, IL 60606

This subpoena is issued pursuant to  (Title VII) 42 U.S.C. 2000e-9  (ADEA) 29 U.S.C. 626(a)  (EPA) 29 U.S.C. 209  
 (ADA) 42 U.S.C. 12117(a)

ISSUING OFFICIAL (Typed name, title and address)

ON BEHALF OF THE COMMISSION

John P. Rowe, District Director  
Equal Employment Opportunity Commission  
500 W. Madison St., Suite 2800  
Chicago, IL 60661

*John P. Rowe*

5/22/07  
Date



**SUBPOENA  
PROOF OF SERVICE**

I hereby certify that being over 18 years of age and not a party to or any way interested in these proceedings, I duly served a copy of the subpoena on the persons named in this subpoena.

- in person  
 by certified mail  
 by leaving a copy with a responsible person, at the principal office or place of business, to wit:

Name Tom Buxton

Position OAA

Address 500 W. Madison, suite 2800 Chicago, IL 60661

On 5.22.07  
(Mo, day & year)

D. Rodriguez  
(Signature of person making service)

Investigator  
(Official title, if any)

State IL

Parish/  
County COOK

**CERTIFICATION OF ATTENDANCE**

I certify that the person named herein was in attendance and satisfactorily produced the records requested or gave oral testimony at

On \_\_\_\_\_  
(Mo, day & year)

\_\_\_\_\_  
(Signature of person making service)

\_\_\_\_\_  
(Official title, if any)

## EXHIBIT A

"Documents" shall mean and include all written, printed, typed or graphic material, or other tangible mediums of reproduction or communication, of every kind and description, however produced or reproduced, including, but not limited to: correspondence, statements, memoranda, films, microfilms, microfiche, pictures, videotapes, recordings of any type, transcripts, notes, photographs, slides, drawings, sketches, diagrams, graphs, charts, forms, letters, lists, reports, medical reports, studies, working papers, financial statements, bills, checks, vouchers, telegrams, abstracts, news releases, periodicals, bulletins, circulars, diaries, calendars, desk calendars, rules, regulations, codes, contracts, agreements, notebooks, files, records, books, manuals, machine-readable documents from which any of the foregoing documents are or may be produced, documents which contain, include, and/or explain any and all codes appearing on said machine-readable documents, or material similar to any of the foregoing, however denominated, by whomever prepared, to whomever addresses, which are in the possession, custody or control of the person or entity to which this Subpoena is directed or to which such person or entity has, has had, or can obtain access. Further, the term "documents" includes any copies of documents which are not identical duplicates of the originals, including but not limited to, all drafts of whatever date, copies with typed or handwritten notations, and copies of documents the originals of which are not in the possession, custody, or control of the person or entity to which the Subpoena is directed.

EXHIBIT B  
Subpoena No. CH-07-358  
Eusebio Calzada v. Wal-Mart  
Charge Number: 440-2007-01448

- 1.) Charging Party's employment files, including but not limited to all discipline (s) issued.
- 2.) All employees employed by Respondent at any time during the period from January 1, 2005 through the present, their name, national origin/race, date of hire, position title, starting pay rate, resume, salary history, current employment status, reason and date of separation, if applicable, and last known home address and home telephone number.
- 3.) All Respondent employees issued discipline during the period from January 1, 2005 through the present, their name, national origin/race, date(s) of disciplinary action(s), reason for disciplinary action, type of disciplinary action and, name and position title of the individual who issued the disciplinary action (include a copy of each disciplinary action issued).
- 4.) Any and all investigative file(s) regarding any allegations and/or complaints of discrimination made against Brad Wilson at any time during his employment with Respondent.
- 5.) Any and all investigative file(s) regarding any allegations and /or complaints of discrimination made by Charging Party at any time during his employment.
- 6.) The video showing Charging Party's infraction(s) that led to his discharge.