



2. In 2004, the United States District Court for the Northern District of California certified a national class of female employees challenging retail store pay and management promotion policies and practices under Fed. R. Civ. Pro 23(b)(2). The United States Supreme Court reversed that class certification order on June 20, 2011. The high court, issuing new guidelines for class actions and Title VII employment discrimination cases, held that the national class could not be certified, based on the facts it outlined in its opinion. The Supreme Court did not rule on the merits of the action, but only ruled that the class as certified could not proceed. It did not preclude prosecution of a class that was consistent with its newly announced guidelines and standards.

3. Accordingly, this Complaint, brought by a Dukes class member and former plaintiff and other Dukes class members and former and current Wal-Mart employees, alleges claims on behalf of a class of present and former female Wal-Mart retail store employees who have been subjected to gender discrimination as a result of specific policies and practices in Wal-Mart's regions located in whole or in part in Texas ("Texas Regions"). Plaintiffs allege gender discrimination as follows:

- a. Denial of equal opportunities for promotion to management track positions up to and including Co-Manager;
- b. Denial of equal pay for hourly retail store positions; and
- c. Denial of equal pay for salaried management positions up to and including Co-Manager.

4. The class membership period commences on December 26, 1998, 300 days prior to the earliest class EEOC charge by a former class member. Based on evidence produced in discovery in this matter, interviews with class members and witnesses, and publicly available

information, plaintiffs allege that the challenged practices, and therefore the class period, extends at least until June 2004, and, on information and belief, they allege that members of the class have been denied equal opportunities for promotion and equal pay through the present. With renewed discovery, plaintiffs will plead more specific time periods for the claims.

5. Plaintiffs allege that defendant maintained a pattern or practice of gender discrimination in compensation and promotion and that its compensation and promotion policies and practices had a disparate impact not justified by business necessity on its female employees whose claims arise in Wal-Mart's regions that include stores located in Texas. As used in this Complaint, Wal-Mart's Texas Regions and Texas Districts refer to those Wal-Mart and Sam's Club regions and districts that encompass, in whole or in part, Wal-Mart's Texas retail stores.

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

## **II. JURISDICTION AND VENUE**

7. Plaintiffs' claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 1331 and 1343(a)(4).

8. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1391(b) & (c). Named Plaintiffs' claims arose in Texas. Many of the acts complained of occurred in this judicial district and gave rise to the claims alleged. Wal-Mart currently operates 451 Wal-Mart stores and Sam's Clubs in Texas where it employs more than 140,000 workers. It operates at least 34 stores in the Northern District of Texas, Dallas Division.

## **III. PARTIES**

9. Plaintiff Stephanie Odle is a woman and a resident of Norman, Oklahoma.

Stephanie Odle was hired by Wal-Mart on November 21, 1991, as an hourly associate to work at the Sam's Club in Lubbock, Texas and was employed from 1991 until 1999. She was successively transferred to Sam's Clubs in Dallas, Texas; Yuba City, California; Vacaville, California; Sherman, Texas and Lubbock, Texas. She worked in Texas in Store No. 6530, in Sam's Club District 27, Sam's Club Region 2 in Sherman, Texas and Store No. 8272 in Sam's Club District 47, Region 1 in Lubbock, Texas.

10. Plaintiff Alesia Thurston is a woman and a resident of Houston, Texas. Alesia Thurston was hired by Wal-Mart on July 25, 2001, as a Customer Service Manager in the Houston, Texas store #3452 and was employed from 2001 until she resigned in 2008. She worked in Store #3452, in Wal-Mart District 113, Region 20 in Houston, Texas.

11. Plaintiff Celia Diane Trevino is a woman and a resident of Floresville, Texas. Celia Diane Trevino was hired by Wal-Mart in 1985, as a cashier in the Floresville, Texas store #465 and worked from 1985 until she resigned in 2004. She worked in Store #465, in Wal-Mart District 87, Region 20 in Floresville, Texas and Store #757, in Wal-Mart District 87, Region 20 in Pleasanton, Texas.

12. Plaintiff Elise Dominguez is a woman and a resident of El Paso, Texas. Elise Dominguez was hired by Wal-Mart in 1997 to work as an hourly associate at store # 851 in Ruidoso, New Mexico and worked from 1997 until she resigned in 2007. She worked in Store #500, in Wal-Mart District 72, Region 44 in El Paso, Texas and Store #1015, in Wal-Mart District 72, Region 44 in El Paso, Texas.

13. Plaintiff Luana Roach is a woman and a resident of Sachse, Texas. Luana Roach was hired by Wal-Mart in November 2003, as a cashier in the Garland, Texas store #1055 and worked from 2003 until June, 2009. She worked in Store No. 1055, Wal-Mart District 53,

Region 9 in Garland, Texas, in Store No. 3530, Wal-Mart Region 9 in Rockwall, Texas, in Store No. 259, Wal-Mart District 400, Region 9 in Rockwall, Texas and in Store No. 1800, Wal-Mart District 400, Region 9 in Garland, Texas.

14. Plaintiff Pamela Collins is a woman and a resident of Ennis, Texas. Pamela Collins was hired at Wal-Mart in 2008 to be a floor associate in the Ennis, Texas store #0286. She worked in Store #0286, in Wal-Mart District 410, Region 9 in Ennis, Texas. She has been employed continuously since that date, but is currently on an approved medical leave of absence.

15. Plaintiff Desiree Melchor is a woman and a resident of Richmond, Texas. Desiree Melchor worked at Wal-Mart from 1998 through 2009. Desiree Melchor was hired in 1998 to work for Wal-Mart in Richmond, Texas (store # 772). She was successively transferred to Missouri City, Texas (store # 2505) and Houston, Texas (store # 2427). She worked in Store # 772, in Wal-Mart District 134, Region 20 in Houston, Texas; Store #2505, in Wal-Mart District 408, Region 20 in Missouri City, Texas and Store #2427, in Wal-Mart District 3296, Region 20 in Houston, Texas.

16. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with stores throughout Texas. Its corporate headquarters is located in Bentonville, Arkansas. Wal-Mart Stores, Inc. operates retail stores doing business as Wal-Mart Discount Stores, Wal-Mart Supercenters, Wal-Mart Neighborhood Markets and Sam's Clubs Stores (collectively "Wal-Mart") in Texas.

#### **IV. CLASS ALLEGATIONS**

17. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of: a) all women who are currently employed or will be employed at any Wal-Mart retail store in a Texas Wal-Mart Region ("Injunctive Relief Class) and b) all women employed at any Wal-Mart retail store in a Texas Region at any time from December 26,

1998 (“Monetary Relief Class”), who have been or may be subject to the following policies and practices:

- i. Denial of promotion to management track positions up to and including Co-Manager.
- ii. Denial of equal pay for hourly retail store positions; and
- iii. Denial of equal pay for salaried management positions up to and including Co-Manager.

The proposed classes do not include Store Managers or licensed Pharmacists.

18. Plaintiffs are members of the classes they seek to represent.

19. The members of the classes are sufficiently numerous that joinder of all members is impracticable. Plaintiffs are informed and believe that the Injunctive Relief Class and the Monetary Relief Class each exceed 50,000 women.

20. There are questions of law and fact common to the classes and these questions predominate over individual questions. Such questions include, without limitation, whether defendant, through its Texas Region managers with final authority to make the challenged decisions, has engaged in a general policy of discrimination evidenced by a pattern or practice of discrimination in pay and in management track promotions against its female employees in its Texas Regions, whether there are statistical patterns adverse to female employees in pay and in management track promotions in defendant’s Texas Regions, whether defendant’s policies in its Texas Regions have an adverse impact upon the classes and, if so, whether this impact can be justified by business necessity; and whether injunctive relief and punitive damage relief for the classes are warranted.

21. The claims alleged by the named plaintiffs are typical of the claims of the classes. Plaintiffs worked in Wal-Mart's Texas Regions and have been subjected to the discriminatory policies and practices alleged.

22. The named plaintiffs will fairly and adequately represent and protect the interests of the classes.

23. The Injunctive Relief Class is properly maintainable under Federal Rule of Civil Procedure Rule 23(b)(2) because defendant has acted or refused to act on grounds generally applicable to this class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to this class as a whole.

24. Class-wide liability and punitive damages liability under the theories advanced in this action are properly certified under Rule 23(c)(4) for both classes because such claims present only common issues, the resolution of which would advance the interests of the parties in an efficient manner.

25. The Monetary Relief Class is properly certified under Rule 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.

#### **V. ORGANIZATIONAL AND STORE STRUCTURE WITHIN TEXAS REGIONS**

26. *Store Formats* – Within the Texas Regions, Wal-Mart has operated in four primary formats: Wal-Mart Discount Stores, Wal-Mart Neighborhood Markets, Wal-Mart Supercenters and Sam's Clubs. The basic organizational structure for these stores has been the same across the Texas Regions.

27. *Common Hourly Jobs Within Stores* - All stores within the Texas Regions have used common job titles and job descriptions, and the same job hierarchies. Although the Wal-Mart Stores and Sam's Clubs use somewhat different nomenclature, their personnel and human resources policies, job titles and hierarchies, and compensation and promotion policies have been virtually identical.

28. *Most Common Positions* - While there are numerous job titles at Wal-Mart, the majority of hourly employees have worked as sales workers, cashiers, department managers and stockers. The most common management position is assistant manager.

29. *Common Department Structure* - Stores within the Texas Regions have been divided into numerous departments, which have been staffed by hourly paid employees. Some departments have been designated as specialty departments. The departmental structure is the same throughout the stores in the Texas Regions.

30. *Common Management Jobs* - With the exception of Support Manager, management positions within the Texas Regions are salaried. Each store has Assistant Managers. Larger stores have had one or more Co-Managers who supervise Assistant Managers and other staff. All stores have Store Managers who are in charge of the store. Specialty department managers, who report to Store Managers, also report to District and Regional Specialty Managers above the store level.

31. *District Organization* - Until 2006, stores within the Texas Regions were grouped into districts which were supervised by District Managers and typically included six to eight stores. Thereafter, districts have been expanded to include more stores.

32. *District Managers' Role* - District Managers within the Texas Regions have been responsible for ensuring store compliance with company policies and culture. District Managers

have been based in their districts and spend their time visiting and monitoring the stores in their districts and reviewing all facets of the store operations. District Managers also have made or approved compensation and promotion decisions for the stores.

33. *Regional Organization* - Districts are grouped into regions, headed by a Regional Vice President. As of 2003, each region contained approximately 80 - 85 stores. As of 2003, there were 4 Wal-Mart regions and 2 Sam's Club regions that encompassed stores within Texas. These regions together included, as of 2003, over 62 districts. Most of these districts were comprised entirely of Texas stores.

34. *Role of Regional Vice President* – The Regional Vice Presidents in Texas Regions monitor and implement corporate and regional policies regarding compensation and promotion. Regional Vice Presidents regularly meet with District Managers and receive weekly reports from District Managers about the activities in the Texas Region stores they supervise.

35. *Regional Personnel Managers' Role* – Each Texas Region has had a Regional Personnel Manager, who assists the Texas Regional Vice Presidents and District Managers in making pay and promotion decisions for employees working in the Texas Region stores.

36. *Changes to Texas Regions and Districts* – Since 2003, Wal-Mart may have adjusted the borders of these regions and districts.

37. *Divisional Organization* – The Regional Vice President reports to a Divisional Senior Vice President.

## **VI. COMPENSATION DISCRIMINATION WITHIN TEXAS REGIONS**

38. *Common Compensation Policies* – Compensation of store-based employees has been set based upon a common set of guidelines applied consistently throughout the Texas

Regions and which establish basic standards for setting pay rates at hire and subsequent pay adjustments of hourly and salaried employees, hereby referred to as Pay Guidelines.

39. *Hourly Job Categories* - All hourly positions have been grouped into various job categories, which have been uniform across the various stores in the Texas Regions. All employees with the same job title, such as sales associates, are placed in the same job category regardless of the department they work in.

40. *Job Category Pay Rates* - The minimum pay levels at hire (“start rates”) for each job category have been established for each store in Texas Regions with the approval of the District Managers and Regional Vice Presidents. Thereafter, an employee’s pay level may be adjusted: 1) after an initial probationary period, 2) if the employee is promoted to a higher job class or into management, 3) on an annual basis if the employee satisfies minimum performance standards or 4) if the employee has been awarded a special “merit” raise.

41. *Process for Setting Hourly Pay* - The Store Manager has had the initial responsibility to set pay rates for individual hourly employees within the pay guidelines, subject to a number of constraints set by the Texas District and Regional Managers. Where a Store Manager has set a pay rate above or below the guidelines, the rate is called an “exception.”

42. *Hourly Pay Exceptions* - The pay rate for a new employee may be set up to a maximum of \$2 per hour above the start rate, but if the new employee’s rate is more than 6% above the established start rate for that pay class, a computer program in the payroll system prohibited payment at this rate unless and until the Store Manager manually enters the pay rate for that employee. A significant proportion of employees have been paid 6% or more above the start rate in virtually every Wal-Mart store in the Texas Regions.

43. *Approval of Exceptions* - All hourly pay exceptions have been automatically reported to the District Manager who may approve or disapprove such exceptions. Regional Personnel Managers have also been informed of all hourly pay exceptions and required to ensure that hourly compensation is consistent among employees in the Texas Regions.

44. *Hourly Pay Reports and Audits* – Texas District Managers, Regional Personnel Managers and Regional Vice Presidents regularly receive reports of all employees whose hourly pay in a job category is more than 10% below or 5 % above the average pay in that class. Texas District Managers perform quarterly audits of each store’s compliance with company policies, including compensation policies, which are reported to Regional Personnel Managers and Regional Vice Presidents.

45. Texas District Managers and Regional Vice Presidents have the ultimate authority whether, and by how much, to adjust the pay of all hourly employees, including those who are listed on exception reports

46. *Salaried Pay Guidelines* - Within Texas Regions, salaried employee compensation is required to be made in accordance with pay guidelines for each salaried position. These guidelines set broad pay ranges for each position.

47. *Assistant Manager Salary* – Texas District Managers, with the concurrence of the Regional Vice Presidents and Regional Personnel Managers, set the compensation for Assistant Managers in the Texas Regions.

48. *Co-Manager Compensation* – Within the Texas Regions, Co-Manager compensation is comprised of a base salary and profit sharing tied to the profitability of the Co-Manager’s store. Regional Vice Presidents determine base salary and assign the stores at which

Co-Managers work, the profitability of which affects the profit-sharing component of the compensation they receive.

49. *Pay Decisions Not Job Related Or Documented.* In each of Texas' Regions and Districts, Managers in Texas Regions are not required to use job related criteria such as job performance or experience in setting, adjusting, or approving compensation for individual employees. Texas managers do not document the reason for setting, adjusting or approving the compensation of individual employees. The Texas Regional Vice Presidents and District Managers do not hold the managers in the Texas Regions accountable for the factors they use in making pay decisions or in ensuring those factors comport with the law, nor do they require any documentation of the reasons for the compensation paid to individual employees. Nor do Wal-Mart Managers specify the weight that should be accorded any requirement for setting or adjusting compensation.

50. *Patterns in Compensation* - Women who hold salaried and hourly positions in the Texas Regions have been regularly paid less on average than similarly-situated men, although on average the women have more seniority and higher performance ratings than the men. This gender pay difference adverse to women exists in each of the Texas Regions and Districts and in the vast majority of the stores in the Texas Regions, even when nondiscriminatory objective factors, such as seniority, performance, store location and other factors are taken into account.

51. *Management Knowledge of Compensation Discrimination* - Texas Regional Personnel Managers, Regional Vice Presidents and District Managers received regular reports about compensation for hourly and salaried employees within the Texas regions showing that female employees were paid less than men on average.

52. *Adverse Impact of Compensation System* - Wal-Mart's compensation policies, including its failure to require managers to base pay decisions for individual employees on job related criteria such as experience or documented performance, have had an adverse impact upon its female employees in the Texas Regions. Because reasons for compensation decisions are not documented, elements of Wal-Mart's compensation decisionmaking are not capable of separation for analysis.

## **VII. PROMOTION DISCRIMINATION WITHIN TEXAS REGIONS**

53. *Management Track Positions Below Assistant Manager Positions* - Within Texas Regions, Support Managers are the highest level hourly supervisory positions and assume the duties of Assistant Managers in their absence. At Sam's Club, Salaried Area Managers serve similar functions. Employees in these positions are often groomed for further advancement. The vast majority of Support Manager and Area Manager vacancies have not been posted. There has been no formal application process for selection for these positions or job related criteria for making selections of those to be promoted.

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

55. *Criteria for Promotion to Management Trainee* - District Managers, assisted by Regional Personnel Managers, select management trainees. Within Texas Regions, these managers have been provided uniform guidelines setting minimal eligibility criteria for

promotion into the Management Trainee Program, including minimum tenure, age (18 years or older), absence of current “active” discipline, satisfactory recent performance evaluation and willingness to relocate, but no job related criteria have been provided for making selections among those who meet the minimum criteria. Employees selected into the Management Training program are required to transfer from their stores and often their districts as they enter training and Assistant Manager positions, subject to very limited exceptions which must be approved by the Regional Personnel Manager and Regional Vice President

56. *Promotion to Co-Manager* - Within Texas Regions, Regional Vice Presidents select Co-Managers subject to approval by the Divisional Senior Vice President. The majority of Co-Manager promotions are transfers across district lines. Co-Manager openings have rarely been posted and there has been no formal application process for such positions. While there have been minimal eligibility requirements for promotion to co-manager such as satisfactory performance and willingness to relocate, there are no job related criteria for making selections among those who meet the minimum criteria or determining which store to assign to a co-manager.

57. In each of Texas’s Regions and Districts management track promotional policies and practices have denied interested and qualified females equal access to promotional opportunities because promotion opportunities are not posted, there is not an open application system, and employees are not informed of the criteria for promotion. Moreover, Managers in Texas Regions do not require or use valid, job related factors in making the promotion selections within the Texas Regions. Nor does Wal-Mart specify the weight that should be accorded any requirements for promotion. As a consequence, qualified women were denied equal access to promotions because of their gender.

58. *Management Trainee Registration of Interest* - In January 2003, Wal-Mart instituted within the Texas Regions an online application process for entry into the Management Training Program. In order to be considered as an applicant, employees were required to agree to a set of conditions, many of which had the purpose and effect of discouraging women from seeking such positions. Potential applicants for entry level store management positions were required to accept the conditions that, as Assistant Managers, they would travel for up to six weeks in duration, be subject to a varied and not regular schedule, including work on scheduled days off, work during days, overnights, weekends and holidays, scheduled days off not consecutive and rotated weekly, and scheduled hours changed or increased without notice. None of these requirements is justified by business necessity, and it is untrue that Assistant Managers must normally travel up to six weeks. Failure to accept all of these conditions precluded consideration as an applicant, which has resulted in the exclusion of interested and qualified women from the management training program.

59. *No Documentation of Promotion Decisions* - Managers have not documented, and Wal-Mart had not tracked, the reason for selecting a particular employee for a management promotion. Managers have not documented, and Wal-Mart has not tracked, which employees have been denied consideration for promotion because of their inability to comply with relocation, travel or scheduling requirements for promotion.

60. *External Statistics* – Plaintiffs are informed and believe that Wal-Mart has had a significantly lower percentage of female managers in its Texas Regions compared to its largest competitors.

61. *Internal Statistics on Promotion Rates* - Female employees in Texas Regions and Districts, including the regions and districts in which the named plaintiffs worked, have been

much less likely than their male counterparts to receive promotion to management track positions including Support and Area Managers, Management Trainee and Assistant Manager, and Co-Manager positions, despite the fact that they possess equal or better qualifications than their male counterparts.

62. *Internal Statistics on Time to Promotion* – Plaintiffs are informed and believe that female employees must wait significantly longer to be promoted into management track positions than men with equal or lesser qualifications. This is true in each of Texas’s Regions and Districts, including the Regions and Districts in which the named plaintiffs worked.

63. *Management Knowledge of Promotion Discrimination* - Wal-Mart management has long known about gender disparities in promotion in the Texas Regions and has failed to take any remedial action.

64. *Reporting by Gender* - Every store, district, and region in the Texas Regions regularly compiles and reports to corporate headquarters the gender composition of its hourly and managerial workforce, employee turnover, exceptions to promotion policies, job posting data, entry into management training programs and other data. District Managers, Regional Personnel Managers and Regional Vice Presidents for the Texas Regions receive these reports.

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

66. *Store Visits* – District Managers, Regional Personnel Managers and Regional Vice Presidents in the Texas Regions regularly visit stores and are aware of the gender composition of the workforce.

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

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

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

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

71. *Failure to Analyze* - Wal-Mart had never studied nor analyzed whether any of its practices were consistent with business necessity or whether less discriminatory alternatives to these policies and practices could be adopted.

72. *Adverse Impact of Promotion Policies* - Wal-Mart's promotion policies, including its failure to require managers to base promotion decisions for individual employees on job related criteria, have had a statistically significant adverse impact upon its female employees in

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

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

73. In the absence of job-related compensation and promotion criteria, Wal-Mart's managers rely on discriminatory stereotypes and biased views about women in making pay and promotion decisions in the Texas Regions and Districts.

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

75. A committee of Wal-Mart's few female executives, disbanded before this action was filed, noted that "stereotypes limit the opportunities offered to women."

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

77. On January 24, 2004, at a meeting of all Wal-Mart's District Managers presided over by Wal-Mart Stores' CEO Thomas Coughlin, the District Managers were told that they were the key to running the stores: "[y]ou are the culture." The key to success was described as

“single focus to get the job done. . . . women tend to be better at information processing. Men are better at focus single objective.” The District Managers were instructed to create a “culture of execution” and a “culture of results” as they picked “[f]uture leaders.”

78. In Sherman, Texas, the Director of Operations Mr. Anderson approved an idea submitted by Store Manager Bill Smithson identical to an idea Named Plaintiff Stephanie Odle had proposed to Mr. Anderson a few months earlier, which he had rejected. When Named Plaintiff Stephanie Odle asked Mr. Smithson how he had convinced Mr. Anderson to change his mind when he had only recently rejected the suggestion, Mr. Smithson responded that it was “a man thing.”

79. On another occasion, Mr. Smithson declared to Named Plaintiff Stephanie Odle that as the General Manager, he could do whatever he wanted to do.

80. Store Manager of Store # 535 in Abilene, Texas, Tom Van Vracken justified paying less to a female supervisor than a male employee on the ground that the male employee “had a family to support” and dismissed the female employee’s complaints by informing her that she should just be happy with the money she made.

81. In approximately late 2000 or early 2001, Store Manager Mark Antilley at Wal-Mart Supercenter #2862 informed one female employee seeking entry into the management training program that women have to be “bitches” to survive in Wal-Mart management.

82. At the Hulen, Texas store, Assistant Manager David White and Store Manager John Jurca justified directing a female employee who expressed interest in becoming salaried management towards a front end position because as a woman she was better suited for the front end.

83. When this same woman complained to Assistant Manager David White and Store Manager John Jurca about having to train her own supervisor, Mr. White told her that she should be happy with what she had, a Customer Service Manager position.

84. Store Manager Lorenzo Nava at store #2612 in El Paso, Texas justified the disparate treatment of a female Co-Manager by District Manager Rick Klein as something that was to be expected since the female Co-Manager was not part of the “good ‘ole boy” network, unlike her male counterparts.

85. Management at store #3452 in Houston, Texas justified paying women less than men on the ground that men needed to make more money because they had families to feed.

86. Management directed female employees to decorate the store on the ground that female employees were “crafty”.

87. At Store #5021 in Dallas, Texas, Store manager Keith Littlejohn informed a female back door receiving manger that it was a job for a man.

88. Other Texas managers justified denying promotions to women or paying them less than their male employees because of perceived family obligations of the women and male responsibility to support their families or because of their presumed inability to relocate.

89. The District Manager, Aaron Carter, told Named Plaintiff Luana Roach that there were already enough female Assistant Managers so she would just be made deli lead.

90. District Manager Ron Acostas told a female employee when she complained that her ex-husband who had less experience with Wal-Mart was paid a higher salary than she was, “That is the way it is. Men always get paid more”.

**IX. WAL-MART'S INEFFECTIVE ANTI-DISCRIMINATION EFFORTS**

91. Prior to the filing of the *Dukes* class action, Wal-Mart had no meaningful policies or practices to hold managers accountable, financially or otherwise, to equal employment and diversity policies and goals.

92. Starting in 2000, Wal-Mart asked District Managers to set diversity “goals” for advancement of women in management. The goals were based on each manager’s individual views on what was attainable and were not tied to any objective measures of availability or qualifications. Prior to 2004, failure to meet diversity goals had no financial or other consequence for managers.

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

94. Until at least 2003, there had never been any diversity goals set for individual stores, or for any compensation practices.

**X. GENERAL POLICY OF DISCRIMINATION**

95. At all relevant times, herein and to the best of the knowledge of plaintiffs, continuing to date, the Wal-Mart Texas Regions engaged in a general policy of discrimination, evidenced by its de facto policy of denying women equal pay and equal opportunities as to promotions into management track positions up to and including co-manager positions by:

- a. making pay and promotion decisions on the basis of gender;
- b. failing to change pay and promotion policies and practices with an adverse impact on its female employees where said policies and practices are not consistent with business necessity and less discriminatory alternatives could be utilized;

- c. failing to establish and institute effective practices and procedures to insure that its workplace would be free of invidious and illegal gender discrimination;
- d. engaging in reckless indifference to the rights of plaintiffs and the class despite systemic gender discrimination in the equal pay and promotion of its female employees; and
- e. failing to take adequate steps to correct known discriminatory disparities.

**XI. ALLEGATIONS OF NAMED PLAINTIFFS STEPHANIE ODLE**

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

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

98. In October 1998, Ms. Odle was transferred to the Sam's Club in Sherman, Texas. While at this Sam's Club, she was led to believe by the Regional Director of Operations, who was in charge of the Wal-Mart Region covering Texas and Oklahoma, that she would be promoted to the position of Co-Manager of the Sam's Club store in Tulsa, Oklahoma. On May 14, 1999, to insure that Ms. Odle was not promoted to the Co- Manager position at the Tulsa, Oklahoma, Sam's Club, she was discriminated against by management at the Sherman, Texas, Sam's Club store by being wrongfully suspended for five days concerning a legitimate refund she had made to a customer. On or about May 19, 1999, Ms. Odle was informed by management

at the Sherman, Texas, Sam's Club store that she would not be promoted to the position of Co-Manager of the Tulsa, Oklahoma, Sam's Club, and that said position was being given to a male manager from Florida.

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

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

101. Ms. Odle followed the orders of the male managers in the Sherman, Texas, Sam's Club store and moved to Lubbock, Texas so that she could continue her employment as an assistant manager for Sam's Club in Lubbock, Texas. Thereafter, Ms. Odle performed her duties as an assistant manager at the Sam's Club store in Lubbock, Texas in an exemplary fashion and regularly informed her direct supervisor, the general manager of the Lubbock, Texas Sam's Club store that she wanted to be promoted to Co-Manager or Store Manager of a Sam's Club store as soon as there was an opening for such a position.

102. In early October, 1999 Ms. Odle learned that the three other assistant managers at the Sam's Club store in Lubbock, Texas, who were all male, were being given a skills assessment test which is a critical step in the Sam's Club promotion process for being considered for future promotions to either Co-Manager or Store Manager of a Sam's Club store.

103. After learning the male managers were being given the skills assessment test, Ms. Odle requested of her general manager at the Sam's Club Lubbock, Texas store that she be given the same opportunity to take the skills assessment test. Her Store Manager denied her request informing her that he only had three tests and they were being given to the three male assistant managers.

104. On or about October 6, 1999, Ms. Odle complained to management at the Sam's Club store in Lubbock, Texas that she was being denied an opportunity to take a skills assessment test critical for future promotion that was being administered to three male managers because she was a female.

105. On October 16, 1999, Ms. Odle was training three hourly Sam's Club employees with respect to a new store procedure. During the training, a \$13.74 accounting adjustment occurred. Ms. Odle notified accounting and the acting general manager of the adjustment, and neither expressed any concern. Two days later, even though management at the Sam's Club store in Lubbock, Texas knew that the cash register discrepancy was a harmless training adjustment causing no loss to the company, management, in order to make available an assistant managerial position for a male manager it had already transferred from Arizona to replace Ms. Odle, wrongfully suspended Ms. Odle and placed her on administrative leave.

106. On October 19, 1999, Ms. Odle was wrongfully terminated by the General Manager of the Sam's Club store in Lubbock, Texas, and by the Regional Director of Operations, who was in charge of the Region covering Texas and Oklahoma for Sam's Club.

107. On October 22, 1999, Ms. Odle's attorney filed a charge of discrimination against Sam's Club with the El Paso Area Office of the United States Equal Employment Opportunity Commission and tele-faxed a copy of this Charge of Discrimination to Sam's Club headquarters

in Bentonville, Arkansas, regarding the gender discrimination perpetrated against her by Sam's Club. A copy of this charge is attached hereto as Exhibit A and incorporated by reference. Despite being briefly reinstated pending further "investigation" Ms. Odle was again wrongfully discharged on October 29, 1999, and was replaced by the male manager who was transferred to the Lubbock, Texas store from a Sam's Club in Arizona.

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

109. Stephanie Odle was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, denied training opportunities for promotions and denied a promotion.

110. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

111. Stephanie Odle brings this charge on behalf of herself and all other women who are similarly situated.

**ALESIA THURSTON**

112. Alesia Thurston was hired at Wal-Mart in 2001 as a Customer Service Manager in the Houston, Texas store #345. Soon after, Ms. Thurston became a lead in the dry grocery department. Ms. Thurston should have received a raise with this change in position but was told by Assistant Manager Ali that she had to learn to use a hand-held inventory device before she

would receive a pay increase. Men who were hired to do the same job received a raise without learning how to use the device.

113. A man who was a lead in another department at store # 345, who was similarly experienced or less experienced at Wal-Mart, took a leave of absence and when he returned, he was given a raise to \$11.00 per hour, at least one dollar more per hour than what Ms. Thurston was making.

114. In approximately 2002-2003, Ms. Thurston asked Dan, last name unknown, the Store Manager, why the men were being paid more than the women, but he dismissed Ms. Thurston's inquiries and refused to give her an explanation.

115. Ms. Thurston knew of only one other woman who was a department lead in store # 345, all of the rest were males, during the entire time that she worked at Wal-Mart. Assistant Manager Ali gave Ms. Thurston and the other woman a list of tasks that they needed to complete in order to receive a merit raise. None of the men were given such lists.

116. Ms. Thurston resigned in 2008 because she believed she was not being given equal pay at Wal-Mart.

117. On or about December 1, 2011, Ms. Thurston filed a charge of discrimination against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity Commission. A copy of this charge is attached hereto as Exhibit E and incorporated by reference.

118. Ms. Thurston has requested a right to sue on her EEOC charge.

119. Alesia Thurston was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, and denied equal pay because of her gender,

female.

120. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

121. Alesia Thurston brings these claims on behalf of herself and similarly situated women.

**CELIA DIANE TREVINO**

122. Celia Diane Trevino was hired at Wal-Mart in 1985 to be a cashier in the Floresville, Texas store #465. After a few months, Ms. Trevino was promoted to department manager at the Floresville, Texas store.

123. In 1988, Ms. Trevino transferred to the Pleasanton, Texas store #757 and was promoted at that store to Assistant Manager, a position she held for almost 16 years.

124. In 2000, Ms. Trevino transferred back to Floresville, Texas store #465 where she applied for a job as a Store Manager. Ms. Trevino was never interviewed for the Store Manager position, which was given to a less-qualified male applicant.

125. Ms. Trevino was told by her superiors that she could improve her chances of advancement if she agreed to take on a training project for new hires in a Wal-Mart supercenter in San Antonio, Texas at store #1347.

126. To pursue this promised opportunity for advancement, Ms. Trevino agreed to a transfer to San Antonio in 2002. While working at store #1347 in San Antonio, Texas, Ms. Trevino applied for Co-Manager twice between 2002 and 2004 but, again, she was never interviewed for the position and the jobs were given to men with less experience.

127. Ms. Trevino worked as an Assistant Manager for Wal-Mart for 15 years and did

everything she was asked to do in order to be promoted to either a Co-Manager or a Store Manager.

128. The District Manager for both the Floresville store and the San Antonio store was Robert Bush. Mr. Bush encouraged Ms. Trevino to apply for promotions, but then refused to interview her when she applied.

129. Throughout her employment with Wal-Mart, Ms. Trevino received the highest performance evaluations and she continuously expressed her interest in getting her own store on her evaluations. Further, Ms. Trevino also orally expressed her desire to her supervisors to either co-manage or manage a store throughout her employment with Wal-Mart.

130. Ms. Trevino was trained at the Wal-Mart home office in Bentonville, Arkansas to train other managers. Ms. Trevino often trained male Assistant Managers who would end up being store managers while she was passed over, despite the fact that she had more experience and had worked at Wal-Mart longer.

131. As an Assistant Manager trainer, Ms. Trevino saw the pay rates of the male department managers and saw that female department managers were paid less than male department managers for the stores in her area.

132. Ms. Trevino was paid less than male assistant managers despite the fact that she had been at Wal-Mart longer and had more experience.

133. Ms. Trevino resigned in 2004 because she believed she was not given equal pay or was not permitted to advance at Wal-Mart. She is currently a store manager at another retailer.

134. On or about December 1, 2011, Ms. Trevino filed a charge of discrimination against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity Commission. A copy of this charge is attached hereto as Exhibit F and incorporated by

reference.

135. Ms. Trevino has requested a right to sue on her EEOC charge.

136. Celia Diane Trevino was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, denied promotions and equal pay because of her gender, female.

137. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

138. Ms. Trevino brings these claims on behalf of herself and similarly situated women.

**ELISE DOMINGUEZ**

139. Elise Dominguez was hired by Wal-Mart in 1997 to work as an hourly associate at a store # 851 in Ruidoso, New Mexico. In 2003, Ms. Dominguez transferred to El Paso, Texas because she was told by Wal-Mart at the time that her opportunities for advancement would be greater in Texas.

140. When Ms. Dominguez transferred to El Paso store #1015, her managers at that store reduced her pay to \$9.00 an hour from the \$10.00 she was making in New Mexico rather than offering her promotion opportunities.

141. When the prior department manager (male) left the El Paso store #1015, Ms. Dominguez was made department manager by Wal-Mart managers and was given a \$1.00 per hour pay raise, bringing her hourly rate to \$10.00 per hour, which was what she was making in New Mexico before she transferred to Texas.

142. Ms. Dominguez learned that the previous male department manager she replaced had been paid \$20.00 per hour. When Ms. Dominguez complained about the pay disparity, Regional Manager Judy Jones told her that she should count herself as lucky that she was even transferred.

143. After she transferred to the El Paso store in 2003, Wal-Mart started posting openings for Assistant Manager and Ms. Dominguez applied numerous times for the Assistant Manager position between 2003 and 2006.

144. Even though Wal-Mart was posting openings for the position of Assistant Manager, Wal-Mart did not follow any procedure for interviewing applicants and consistently selected only men as Assistant Managers.

145. After having applied numerous times for an Assistant Manager position and never receiving an interview, Ms. Dominguez used Wal-Mart's open door policy all the way to Wal-Mart CEO Lee Scott, who finally promoted her to Assistant Manager in 2006.

146. Following this promotion, Ms. Dominguez continued to apply for promotions to other management positions, such as Co-Manager and Store Manager, and only received one interview which was for a loss prevention management position (which is comparable to a co-manager position).

147. For the loss prevention management position, Ms. Dominguez was given a 3 minute interview and was not considered for the promotion.

148. Ms. Dominguez resigned in 2007 to become a store manager at another retailer because she believed she would not be permitted to advance at Wal-Mart.

149. On or about December 1, 2011, Ms. Dominguez filed a charge of discrimination against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity

Commission. A copy of this charge is attached hereto as Exhibit G and incorporated by reference.

150. Ms. Dominguez has requested a right to sue on her EEOC charge.

151. Ms. Dominguez was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, denied promotions and equal pay because of her gender, female.

152. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

153. Ms. Dominguez brings these claims on behalf of herself and similarly situated women.

### **LUANA ROACH**

154. Luana Roach was hired at Wal-Mart in 2003 to be a cashier in the Garland, Texas store #1055. Ms. Roach told the Store Manager, Allen Blakeborough, that she wanted to become an Assistant Manager. While Ms. Roach was at this store, she interviewed with Celso, last name unknown who was an assistant manager in produce. She asked what were the steps she needed to take to be considered for the assistant manager program and he told her “it is hard for a woman to be an assistant manager at Wal-Mart, even in produce it’s hard for a woman to do the work we do here”. He told her that she would be better off getting a position on the front end.

155. In 2004, Ms. Roach transferred to the Rockwall, Texas store #3530 where she again expressed interest in becoming an Assistant Manager. Craig Andrew was the store manager and told her there were steps that had to be taken to be an assistant manager and he

would see what he could do, but nothing happened.

156. Roach had been told she would be transferred to the Rockwall store as a full time deli associate, but after she got there, she saw she was listed as part-time on the schedule and a relative of an assistant manager named Rul, last name unknown, who started after her was made full time. She raised this with Craig Andrew but he didn't address it so she went to the district manager, Aaron Carter with a copy of the schedule to show that she wasn't full time so she wasn't getting benefits. He expressed irritation that she had copied the schedule but she told him she didn't have any other way to show she was incorrectly listed as part-time. He said he would take care of it but told her to never copy the schedule again. After this Ms. Roach was transferred to the meat department and then shortly thereafter transferred to Garland, store #2975.

157. While she was still at #3530 in Rockwall, Ms. Roach learned that one of her male co-workers, Cory Jones, received merit increases on two separate occasions from Store Manager, Craig Andrew. Cory told her he got the merit increases, and briefly actually showed her his pay check. Ms. Roach was upset because they were in the same classification, in the same department and she was working much harder than he. At the time she was making approximately \$8.00 an hour and he was making close to \$11.00. He was fooling around, flirting with other employees and mostly messing around and not working. The management team knew this was the case.

158. Ms. Roach went to Craig Andrew to ask for a merit increase and he told her the company doesn't do that and if it does happen then there has to be justification as to why. She told him she knew Cory had received merit increases and she wanted to know why because Cory was not helping the team. Craig Andrew told Ms. Roach "we don't discuss our pay here and if

you want to be considered for the management team, you need to understand that. I know you want to be promoted but you are going about the wrong way.”

159. In 2005 Ms. Roach was transferred to Garland, store # 2975 which was a neighborhood market, She was told they wanted her to start training for a lead position in the deli. At the time the Store Manager was Doris King. Later, Doris King was terminated and Jay Blackman became the Store Manager. Ms. Roach expressed her interest in becoming an assistant manager to both Ms. King and Mr. Blackmon. Mr. Blackmon told Ms. Roach that promotions to Assistant Manager were not in his hands and that he could only make her a support manager.

160. Jay Blackmon did promote Ms. Roach to a support manager position which is an overnight position, and not really what she wanted. But Ms. Roach had seen men promoted directly into an assistant manager position, without having to be a support manager.

161. From her initial hire and throughout this time period, Ms. Roach repeatedly sought information from management as to what the criteria was for promotion to assistant manager and how to go about being considered. Before Mr. Blackmon, no one really gave her information as to how it really worked. Blackmon told Ms. Roach that in order to become an assistant manager, she would need to be recommended for promotion by her manager and then interviewed by phone and then have a face to face interview. At this time, Ms. Roach was not interviewed for an assistant manager position.

162. Later when she finally was in the program, she learned this information should have been posted by the time clock and in the break room but it was not. Later, while Ms. Roach was still at Store #2975 Mr. Blackmon was terminated and the new store manager was Chris, last name unknown. Ms. Roach approached Chris about being promoted to assistant manager again.

This time she was recommended, given a phone interview and a face to face interview and finally given an opportunity to go into the program to be an assistant manager. This was at the same time she had made a complaint that was investigated by human resources about harassment by a male fellow support manager.

163. In 2006, Ms. Roach entered the manager in training program at Wal-Mart Supercenter store #259 in Rockwall, Texas.

164. In 2007, Ms. Roach transferred to the Garland, Texas Supercenter store #1800 as an Assistant Manager. While Ms. Roach was at this store, the district manager, Rudy Eckerman commented to Darryl Scroggins, store manager, in Ms. Roach's presence that he (Ackerman) had not recommended her for promotion.

165. While at Garland Store # 1800, Ms. Roach applied twice in 2008 for Co-Manager positions. Ms. Roach was never interviewed for the position of Co-Manager and each time she applied the position was given to a less-qualified man. Victor Elderidge and Ronnie Anderson were the two men who got the Co-Manager positions at that store. She spoke to Darryl Scroggins, store manager about her interest in the positions and he told her she would not be considered and should focus on her current job and being a mother to her children. Ms. Roach always expressed her interest in advancing into management on her evaluations.

166. While she was at store #1800, Ms. Roach saw the paycheck of another Assistant Manager and saw that he (Les Henry) was being paid more than she was. Ms. Roach asked the Store Manager, Daryl Scroggins, about the pay disparity and he told her that pay structures were not to be discussed and it was none of her business. He did tell her that since Les Henry was not able to complete all the tasks properly, for his half of the store, she needed to do all the performance evaluations (90 day and yearly) and the weekly schedules for the entire overnight

crew. Previously Les Henry was to do half the store and Luanna Roach was supposed to do the other half. So this meant Ms. Roach was doing more work than Les Henry but was getting paid less.

167. Ms. Roach was paid less than male Assistant Managers despite the fact that she had been at Wal-Mart longer and had more experience.

168. Ms. Roach was unfairly terminated in June 2009. Ms. Roach was told that she was terminated for leaving the store early without permission when, in fact, she had already worked past the time her shift was scheduled to end. Later, when Ms. Roach applied for unemployment benefits, Wal-Mart gave a different reason for her termination, alleging that she had failed to have someone working in produce on a particular night, a duty which was outside the realm of her responsibilities.

169. On or about December 1, 2011, Ms. Roach filed a charge of discrimination against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity Commission. A copy of this charge is attached hereto as Exhibit H and incorporated by reference.

170. Ms. Roach has requested a right to sue on her EEOC charge.

171. Luana Roach was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, denied promotions and equal pay because of her gender, female.

172. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

173. Ms. Roach brings these claims on behalf of herself and similarly situated women.

**PAMELA COLLINS**

174. Pamela Collins was hired at Wal-Mart in 2008 to be a floor associate in the Ennis, Texas store #0286. Ms. Collins had 18 years previous retail experience when she was hired at Wal-Mart.

175. Approximately 6 months after she was hired, Ms. Collins applied to be Assistant Manager. She did not receive an interview.

176. She applied for Assistant Manager again in 2009, 2010 and 2011. She never received an interview. Her 2008 and 2009 evaluations were “meets expectations” and her 2010 evaluation was “exceeds expectations”.

177. Ms. Collins is currently employed by Wal-Mart and is on leave of absence for an injury with Wal-Mart’s permission. Ms. Collins has been assured by Wal-Mart that she will have a job and continue to be employed by Wal-Mart when she returns from leave.

178. After being denied promotion to assistant manager three times, Ms. Collins concluded that she would not be permitted to advance into salaried management at Wal-Mart. So, in 2011 she applied for support manager. The support manager position was given to a man in his 20’s with almost no experience.

179. Throughout her employment with Wal-Mart, Ms. Collins has repeatedly informed Wal-Mart management that she wanted to advance into management.

180. Throughout her employment with Wal-Mart, Ms. Collins has repeatedly called the Regional Manager Rudy and District Manager John Murray about her interest in promoting into management, but they never returned her calls.

181. On or about December 1, 2011, Ms. Collins filed a charge of discrimination

against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity Commission. A copy of this charge is attached hereto as Exhibit I and incorporated by reference.

182. Ms. Collins has requested a right to sue on her EEOC charge.

183. Pamela Collins was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, and denied promotions because of her gender, female.

184. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

185. Ms. Collins brings these claims on behalf of herself and similarly situated women.

**DESIREE MELCHOR**

186. Desiree Melchor was hired at Wal-Mart in 1998 as an Assistant Manager in Houston, Texas (store # 772). Ms. Melchor was recruited to be an assistant manager at Wal-Mart by William Landry. Ms. Melchor had 12 years of experience as a store manager for another retailer before she was hired to work at Wal-Mart.

187. From 1998 to the time she left Wal-Mart in 2009, Ms. Melchor worked in Wal-Mart stores in Houston, Texas (store # 772), Missouri City, Texas (store # 2505), and Houston, Texas (store # 3296).

188. After Ms. Melchor had been working as an assistant manager for a little over a year, she began to inquire about possibilities for promotion into the Co-Manager position. Over the course of the next several years, although Ms. Melchor brought up this promotion repeatedly and although she helped to open several new Supercenters, Ms. Melchor was consistently passed

over for the position of Co-Manager. The promotion to Co-Manager was consistently given to less-qualified males.

189. Every time Ms. Melchor had the chance to speak to the district manager, she brought up her interest in being promoted to a Co-Manager.

190. Danny Olds – who had quit several times and then come back – was promoted to Co-Manager and Michael Longoria was also given a promotion to Co-Manager even though he would sleep on the job when he worked the overnight shift.

191. In 2002, Ms. Melchor was working as an Assistant Manager in Missouri City, Texas (store # 2505) to help expand the store into a Supercenter. Ms. Melchor again asked to be promoted to the Co-Manager position, and was told that they don't promote within stores. Ms. Melchor knew that this was not true.

192. After Ms. Melchor complained to the District Manager, she was finally offered the next Co-Manager position that was available at store #3296 in Houston, Texas.

193. Ms. Melchor's evaluations as a co-manager were always above-standard.

194. Once the electronic system for promotions became available, Ms. Melchor applied to be a Store Manager many times through that system. Ms. Melchor was always passed up for promotions that were given to less-qualified males, many of whom had less favorable evaluations than Ms. Melchor had.

195. Ms. Melchor was finally promoted to Store Manager in 2005, after two and a half years of consistently being passed over promotions that were given to less-qualified male candidates. Ms. Melchor believes that she was given this store manager position only because she was the only person who applied to that particular position.

196. During her employment at Wal-Mart Ms. Melchor was often the only female

salaried manager in the entire store.

197. Ms. Melchor was unfairly terminated in 2009 by Market Manager Brad Coonfield – eight days after she lodged a complaint of sexual harassment against him and Market Technical Support Roderick Toston. Ms. Melchor had a good work history over her 12 years with Wal-Mart and was never coached. Nevertheless, Ms. Melchor was escorted out of the building eight days after she complained about the harassing conduct, ostensibly because one of the 400 associates in the store had been assigned the wrong job code.

198. On or about January 17, 2012, Ms. Mechor filed a charge of discrimination against Wal-Mart Stores, Inc. with the United States Equal Employment Opportunity Commission. A copy of this charge is attached hereto as Exhibit J and incorporated by reference.

199. Ms. Melchor has requested a right to sue on her EEOC charges..

200. Desiree Melchor was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, and denied promotions because of her gender, female.

201. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

202. Ms. Melchor brings these claims on behalf of herself and similarly situated women.

#### **XI. CLAIM FOR RELIEF (Violation of Title VII)**

203. Plaintiffs incorporate Paragraphs 1 through 202.

204. This claim is brought on behalf of the Named Plaintiffs and the classes they seek to represent.

205. On or about October 22, 1999, January 4, 2000 and April 3, 2000, Named Plaintiff Stephanie Odle filed charges of sex discrimination against Wal-Mart with the United States Equal Employment Opportunity Commission. Ms. Odle thereafter received a right to sue notice and commenced this action as a named plaintiff in a timely fashion. From the filing of her EEOC complaints through the initiation of this action, the class-wide nature of Ms. Odle's charges has been communicated to defendant.

206. In June 2004, the United States District Court for the Northern District of California certified this case as a national class action, a decision that was largely upheld by the Ninth Circuit Court of Appeals en banc. On June 20, 2011, the Supreme Court reversed the Ninth Circuit decision. During the pendency of the former certified class, time periods for filing EEOC charges and subsequent litigation for all former class members were tolled. On August 19, 2011 the United States District Court for the Northern District of California, to which the *Dukes v. Wal-Mart* case had been returned by the Supreme Court, issued an order establishing common dates for all members of the former class certified in the *Dukes v. Wal-Mart* for when the limitations period for their claims would resume running. The District Court ruled the claims would be tolled as follows: 1). former class members who had received a right to sue letter from the EEOC for claims of sex discrimination in pay or promotion must file suit by October 28, 2011; 2). those in states without a state fair employment agency worksharing agreement who would normally have 180 days to file charges must file by January 27, 2012; and 3). those in states with a worksharing agreement who would normally have 300 days to file charges, must file a charge by May 25, 2012.

207. The foregoing conduct violates Title VII of the Civil Rights Act of 1964. Wal-Mart has engaged in a pattern or practice of discriminating against its female employees in making compensation and management track promotion decisions in its Texas Regions.

208. Wal-Mart has maintained a system for making decisions about promotions and compensation that has had an adverse impact on its female employees in its Texas Regions. Its compensation policies for setting and adjusting pay collectively and individually, including its failure to require or use job related criteria for making compensation decisions, has had an adverse impact on women. Its management track promotion policies: its failure to provide for an open application process and job posting, its relocation and travel requirements for management positions, its scheduling requirements which deny managers a consistent schedule, and its failure to apply job-related criteria for making management selections have all individually and collectively caused this adverse impact on female employees in promotions.

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

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

Wal-Mart's business needs more effectively than its current practices.

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

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

### **XIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the proposed classes pray for relief as follows:

1) Certification of the Injunctive Relief and Monetary Relief Classes as class actions under Rule 23 (b)(2) and (3), and designation of the Named Plaintiffs Stephanie Odle, Stephanie Odle, Alesia Thurston, Celia Dian Trevino, Elise Dominguez, Luana Roach, Pamela Collins and Desiree Melchor as representatives of the Injunctive Relief class and as representatives of the Monetary Relief class and their counsel of record as Class Counsel for both classes;

2) All damages which the Named Plaintiffs and the Monetary Relief 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 and the Monetary Relief Class exemplary and punitive damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;

4) 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. Such relief at minimum should include professional designed job

analyses of all job positions and identification of objective, nondiscriminatory criteria for promotion decisions, record keeping that requires documentation of promotion decisions, open application and job posting procedures for promotion, training and accountability measures to ensure consistent, nondiscriminatory decision-making, and affirmative action to provide lost promotion opportunities to Plaintiffs and Injunctive Relief class members.

5) A declaratory judgment that the practices complained of in this Complaint are unlawful and violate 42 U.S.C. § 2000(e), et. seq., Title VII of the Civil Rights Act of 1964;

6) Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;

7) Pre-Judgment and Post-Judgment interest, as provided by law; and

8) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

#### **XIV. JURY DEMAND**

Plaintiffs hereby demand a jury trial on all issues, claims, actions, and defenses in this case .

Dated: January 19<sup>th</sup>, 2012

Respectfully submitted,

By: /s/Hal K. Gillespie

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