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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**IN RE: WAL-MART WAGE AND HOUR  
EMPLOYMENT PRACTICES  
LITIGATION**

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**THIS DOCUMENT RELATES TO ALL  
CASES EXCEPT KING v.  
WAL-MART STORES, INC., CASE  
NO. 07-1486-WY**

**MDL 1735**

**Docket No. 2:06-CV-00225-PMP-PAL  
(BASE FILE)**

**AMENDED  
CERTIFICATION ORDER**

This matter has come before the Court for Certification of certain Settlement Classes pursuant to the terms of a Settlement Agreement currently pending before this Court. Certification of the claims advanced by the Settlement Classes will achieve a definite and certain result for the benefit of the Settlement Classes and is preferable to continuing litigation in which the Settlement Classes would necessarily encounter substantial risk, uncertainty, delay, and cost. This Conditional Certification Order is entered exclusively for this Settlement purpose.

**I. Terms Pursuant to which this Conditional Certification Order for Settlement Purposes Is Entered**

Preliminarily, this Court finds that the following terms and conditions apply to this Conditional Certification Order:

1           1.       This Court's prior order regarding class certification is superseded to certify two  
2 Settlement Classes governed by separate Class Periods as set forth below, and to add certain  
3 claims, solely for the purpose of implementing the terms of this Settlement.

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5           2.       This Conditional Certification Order is a conditional certification for Settlement  
6 purposes only.

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8           3.       The Settlement Agreement pursuant to which this Conditional Certification Order  
9 is entered contains a claims process by which members of the Settlement Classes as certified  
10 under Section II(A) and II(B) below may submit claims under alternative claims form processes.

11           4.       If for any reason this Court does not grant final approval of the Settlement  
12 Agreement, or if the Settlement Effective Date as defined in the Settlement Agreement does not  
13 occur, this Conditional Certification Order of the Settlement Classes shall be deemed null and  
14 void without further action by this Court or any of the Parties. In such circumstances each Party  
15 shall retain all of their respective, currently existing rights to seek or to object to the certification  
16 of any class in this litigation under Fed. R. Civ. P. 23, or any other State or Federal Rule, statute,  
17 law, or provision, and to contest and appeal any grant or denial of certification in this litigation  
18 or in any other litigation on any other grounds.

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21           5.       This Conditional Certification Order for Settlement purposes is not intended to be  
22 an admission by Wal-Mart that class certification for any purpose other than settlement is proper  
23 in this litigation or in any other litigation against Wal-Mart. Except for the conditional  
24 certification pursuant to this Settlement, Wal-Mart continues to assert that this litigation fails to  
25 meet the prerequisites necessary for class treatment under applicable law. Plaintiffs disagree and  
26 continue to assert that claims for which class certification has been sought meet the prerequisites  
27 necessary for class treatment.  
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1           6. Other than to effectuate the Settlement of this litigation, the certification of the  
2 Settlement Classes for Settlement purposes and all documents related thereto, including the  
3 Settlement Agreement and all accompanying exhibits and all orders entered by the Court in  
4 connection with the Settlement Agreement, are not intended to be admissible as evidence in this  
5 Litigation or in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum  
6 or other proceeding, including any wage and hour or other litigation against Wal-Mart.  
7

8                           **II. Conditional Certification Order for Settlement Purposes**

9           **A. State Settlement Class**

10           1. In accordance with the foregoing terms, conditions and purpose set forth in  
11 Subsection I above, the State Settlement Class certified for purposes of Settlement and as used  
12 herein consists of:  
13

14                           All current and former hourly employees who work or worked at a Wal-Mart store,  
15 Supercenter, Neighborhood Market, Sam's Club or Distribution Center in each of the  
16 following states during the time periods set forth below:

17                           a.           Alabama (*Pritchett*): All current and former hourly employees of  
18 Wal-Mart in the State of Alabama at any time from February 17, 1999 up to  
19 February 27, 2009;

20                           b.           Alaska (*McFarlin*): All current and former hourly employees of  
21 Wal-Mart in the State of Alaska at any time from April 7, 1999 up to February  
22 27, 2009;

23                           c.           Arkansas (*Griffin*): All current and former hourly employees of  
24 Wal-Mart in the State of Arkansas at any time from May 18, 2000 up to  
25 February 27, 2009;

26                           d.           Connecticut (*Henderson*): All current and former hourly employees  
27 of Wal-Mart in the State of Connecticut at any time from December 6, 2000 up  
28 to February 27, 2009;

                          e.           Delaware (*Jackson (Dora)*): All current and former hourly  
employees of Wal-Mart in the State of Delaware at any time from April 4,  
2002 up to February 27, 2009;

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f. Georgia (*Parrish*): All current and former hourly employees of Wal-Mart in the State of Georgia at any time from February 5, 1999 up to February 27, 2009;

g. Hawaii (*Poha*): All current and former hourly employees of Wal-Mart in the State of Hawaii at any time from November 1, 1999 up to February 27, 2009;

h. Idaho (*Jackson (Reginald)*): All current and former hourly employees of Wal-Mart in the State of Idaho at any time from October 25, 2003 up to February 27, 2009;

i. Louisiana (*Penn*): All current and former hourly employees of Wal-Mart in the State of Louisiana at any time from September 15, 2003 up to February 27, 2009;

j. Maine (*Woods*): All current and former hourly employees of Wal-Mart in the State of Maine at any time from January 12, 2000 up to February 27, 2009

k. Maryland (*Whitacre*): All current and former hourly employees of Wal-Mart in the State of Maryland at any time from April 4, 2004 up to February 27, 2009;

l. Michigan (*Olinger*): All current and former hourly employees of Wal-Mart in the State of Michigan at any time from September 14, 2000 up to February 27, 2009;

m. Montana (*Cole*): All current and former hourly employees of Wal-Mart in the State of Montana at any time from January 13, 1998 up to February 27, 2009;

n. Nebraska (*Stafford*): All current and former hourly employees of Wal-Mart in the State of Nebraska at any time from December 8, 2000 up to February 27, 2009;

o. Nevada (*Hall*): All current and former hourly employees of Wal-Mart in the State of Nevada at any time from July 26, 1999 up to February 27, 2009;

p. New Hampshire (*Brogan (Tammy)*): All current and former hourly employees of Wal-Mart in the State of New Hampshire at any time from February 17, 2002 up to February 27, 2009;

q. North Carolina (*Williams (Travis)*): All current and former hourly employees of Wal-Mart in the State of North Carolina at any time from March 23, 2003 up to February 27, 2009;

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r. North Dakota (*Kraemer*): All current and former hourly employees of Wal-Mart in the State of North Dakota at any time from November 15, 2000 up to February 27, 2009;

s. Ohio (*Nolan*): All current and former hourly employees of Wal-Mart in the State of Ohio from at any time April 4, 1991 up to February 27, 2009;

t. Oregon (*Mathies*): All current and former hourly employees of Wal-Mart in the State of Oregon at any time from March 30, 2001 up to February 27, 2009;

u. Puerto Rico (*Cruzado*): All current and former hourly employees of Wal-Mart in the State of Puerto Rico at any time from January 6, 1994 up to February 27, 2009;

v. Rhode Island (*Campbell*): All current and former hourly employees of Wal-Mart in the State of Rhode Island at any time from September 20, 1986 up to February 27, 2009;

w. South Dakota (*Luce*): All current and former hourly employees of Wal-Mart in the State of South Dakota at any time from May 11, 1999 up to February 27, 2009;

x. Texas (*Hicks*): All current and former hourly employees of Wal-Mart in the State of Texas at any time from April 3, 2003 up to February 27, 2009;

y. Utah (*Williams (Norma Jean)*): All current and former hourly employees of Wal-Mart in the State of Utah at any time from January 20, 2000 up to February 27, 2009;

z. Virginia (*Deas*): All current and former hourly employees of Wal-Mart in the State of Virginia at any time from April 3, 2001 up to February 27, 2009;

aa. West Virginia (*Brogan (Pam)*): All current and former hourly employees of Wal-Mart in the State of West Virginia at any time from April 3, 1997 up to February 27, 2009;

bb. Wisconsin (*Smith*): All current and former hourly employees of Wal-Mart in the State of Wisconsin at any time from April 2, 2001 up to February 27, 2009;

cc. Wyoming (*Curless*): All current and former hourly employees of Wal-Mart in the State of Wyoming at any time from October 26, 1995 up to February 27, 2009.

1           2.       With respect to the State Settlement Class set forth above, the claims certified  
2 pursuant to this Conditional Certification Order consist of claims arising from the following  
3 conduct, irrespective of the particular common law, statutory or equitable doctrine or theory  
4 advanced in support of the claim or claims:

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- 6           (a)       off-the-clock work, including claims relating to the non-payment or late  
7 payment of wages because work was performed off the clock and any  
8 related record keeping violations;
- 9           (b)       meal periods that were not provided or meal periods that were interrupted;
- 10          (c)       rest breaks that were not provided or rest breaks that were interrupted;
- 11          (d)       calculation of hours worked for purposes of ensuring proper pay relating  
12 to rest breaks which were longer than 15 minutes in duration;
- 13          (e)       accurate creation, retention, and preservation of time records;
- 14          (f)       the alteration of time records and hours worked without proper  
15 authorization, which consist of claims relating to one and two-minute  
16 shifts, inserted breaks and time editing;
- 17          (g)       restriction of employees from leaving the premises after "clocking-out"  
18 referred to as "lock-in" claims;
- 19          (h)       improper termination pay and improper pay when payment was due;
- 20          (i)       claims that Wal-Mart failed to pay overtime hours or other wages,  
21 including claims related to how overtime is calculated, as a result of any of  
22 the conduct described in subparts (a) through (g); and
- 23          (j)       claims that Wal-Mart failed to comply with the minimum wage and  
24 overtime obligations imposed by the Fair Labor Standards Act, as a result  
25 of any of the conduct described in subparts (a) through (g).

26 **B.       California Settlement Class**

27           1.       In accordance with the foregoing terms, conditions and purpose set forth in  
28 Subsection I above, a California Settlement Class is certified for purposes of this  
Order, defined as:

All current and former hourly employees who worked at a Wal-Mart store, Supercenter, Neighborhood Market, Sam's Club or Distribution Center in the State of California at any time from March 19, 2003 up to February 27, 2009, whose records show a one or two-minute punch or an inserted meal period which deprived the employee of time worked for which the employee was not subsequently paid.

1           2.     With respect to the California Settlement Class, the claims certified pursuant to  
2                   this Conditional Certification Order consist of claims for violation of the  
3                   California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*)  
4                   arising from the following conduct, irrespective of the particular common law,  
5                   statutory or equitable doctrine or theory advanced in support of the claim or  
6                   claims:

- 7
- 8                   (a)     the alteration of time records and hours worked without proper  
9                   authorization, which consist of claims relating to one and two-minute  
10                  shifts, inserted breaks, and time editing;
  - 11                  (b)     improper termination pay, improper pay when payment was due, and  
12                  improper record keeping arising from any of the conduct described in  
13                  subpart (a); and
  - 14                  (c)     claims that Wal-Mart failed to pay overtime hours or other wages,  
15                  including claims related to how overtime is calculated as a result of any of  
16                  the conduct described in subpart (a).

17 **C.     Exclusions.**

18           Nothing in this Order shall be construed to certify claims: (a) arising in *Savaglio v. Wal-*  
19 *Mart Stores, Inc.*, (Superior Court of California, Alameda County, Case No. C-835687-7); (b)  
20 arising in the *Dukes v. Wal-Mart Stores, Inc.*, (N.D. Cal. C01-2252) gender discrimination class  
21 action, or any other gender discrimination claims brought by individual Wal-Mart associates; (c)  
22 arising in *Barry Smith, et. al v. Wal-Mart Stores, Inc.*, Case No. 06-06029 consolidated with  
23 *Danton Ballard, et. al v. Wal-Mart Stores, Inc.*, Case No. 06-3790 (N.D. Cal.); (d) arising in  
24 *Robbin Moore, et. al v. Wal-Mart Stores, Inc.*, (D. Or., Case No. 06-3790); (e) arising in *Jeff*  
25 *Klink v. Wal-Mart Stores, Inc.*, (D. Or., Case No. 09-0371); (f) any claims based on  
26 misclassification of employees as hourly rather than salaried employees under applicable state  
27 and federal law; or (g) claims for personal injury arising from facts or circumstances other than  
28 those which were alleged or could have been alleged in the Litigation.

**III. Class Counsel**

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The Court appoints counsel for the Settlement Classes in accordance with Section 1.13 of the Settlement Agreement and the terms of the Order Preliminarily Approving Settlement, submitted herewith.

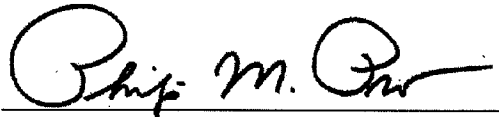
**IV. Satisfaction of the Requirements for Class and Collective Action Treatment**

The Settlement Classes as defined in Section II, Subsections A and B above, satisfy the requirements of Fed. R. Civ. P. 23(b)(3) as follows:

1. Members of each of the Settlement Classes are sufficiently numerous that joinder of all members would be impracticable.
2. The claims of the Class Representatives for each of the Settlement Classes are typical of the claims of the members of their Settlement Class.
3. The Class Representatives and Class Counsel for each of the Settlement Classes are all fair and adequate to represent the interests of the Settlement Classes.
4. For each of the Settlement Classes there exist questions of law and fact that are common to the claims of the Settlement Class members.
5. For each of the Settlement Classes the common questions of law or fact predominate over individualized issues.
6. For each of the Settlement Classes, a class action is superior to other methods available for resolving this controversy.

The members of the Settlement Classes are similarly situated for purposes of collective action treatment under the terms of the Fair Labor Standards Act.

IT IS SO ORDERED this \_\_\_ 28th day of May, 2009.

  
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 Philip M. Pro  
 United States District Judge

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