

1 BRAD SELIGMAN (SBN 083838)  
JOCELYN D. LARKIN (SBN 110817)  
2 THE IMPACT FUND  
125 University Avenue  
3 Berkeley, CA 94710  
Telephone: (510) 845-3473  
4 Facsimile: (510) 845-3654

5 SHEILA Y. THOMAS (SBN 161403)  
DORIS Y. NG (SBN 169544)  
6 EQUAL RIGHTS ADVOCATES  
1663 Mission Street, Suite 250  
7 San Francisco, CA 94103  
Telephone: (415) 621-0672  
8 Facsimile: (415) 621-6744

9 STEVE STEMERMAN (SBN 067690)  
ELIZABETH LAWRENCE (SBN 111781)  
10 DAVIS, COWELL & BOWE  
100 Van Ness Avenue, 20<sup>th</sup> Floor  
11 San Francisco, CA 94102  
Telephone: (415) 626-1880  
12 Facsimile: (415) 626-2860

13 SHAUNA MARSHALL (SBN 90641)  
HASTINGS COLLEGE OF THE LAW  
14 200 McAllister Street  
San Francisco, CA 94102  
15 Telephone: (415) 565-4685  
16 Facsimile: (415) 626-2860

17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 BETTY DUKES, PATRICIA SURGESON,  
CLEO PAGE, CHRISTINE KWAPNOSKI,  
21 DEBORAH GUNTER, KAREN  
WILLIAMSON AND EDITH ARANA, on  
22 behalf of themselves and all others similarly  
situated,

23 Plaintiffs,

24 vs.

25 WAL-MART STORES, INC.,

26 Defendant  
27

JOSEPH SELLERS  
CHRISTINE WEBBER  
COHEN, MILSTEIN, HAUSFELD & TOLL  
West Tower – Suite 500  
1100 New York Avenue  
Washington, D.C. 20005-3964  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699

STEPHEN TINKLER  
MERIT BENNETT  
TINKLER & BENNETT  
309 Johnson Street  
Santa Fe, New Mexico 87501  
Telephone: (505) 986-0269  
Facsimile: (505) 982-6698

DEBRA GARDNER  
PUBLIC JUSTICE CENTER  
500 East Lexington Street  
Baltimore, MD 21202  
Telephone: (410) 625-9409  
Facsimile: (410) 625-9423

Case No. C-01-2252 MJJ

**PLAINTIFFS' THIRD AMENDED  
COMPLAINT**

[CLASS ACTION]

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Wal-Mart is the largest retailer in the world and the largest private employer in the  
3 United States. Through its Wal-Mart and Sam’s Club divisions, it is the industry leader not only in  
4 size, but also in its failure to advance its female employees. There are two workforces at Wal-Mart.  
5 By far the largest workforce is female, which comprises over 72% of the hourly sales employees, yet  
6 only one-third of management positions. This workforce is predominantly assigned to the lowest  
7 paying positions with the least chance of advancement. The other workforce is male. This  
8 workforce is the reverse image of the female workforce - it comprises less than 28% of the hourly  
9 sales workers, yet holds two-thirds of all store management positions and over 90% of the top Store  
10 Manager positions. This disparate distribution of the genders is the result of purposeful  
11 discrimination and of practices that serve no reasonable business purpose yet have a disproportionate  
12 impact on women.

13 2. This class action is accordingly brought by present and former Wal-Mart employees  
14 on behalf of themselves and all other similarly situated women who have been subjected to Wal-  
15 Mart’s continuing policies and practices of gender discrimination. Plaintiffs, and the class that they  
16 represent, charge that Wal-Mart discriminates against its female employees by advancing male  
17 employees more quickly than female employees, by denying female employees equal job  
18 assignments, promotions, training and compensation, and by retaliating against those who oppose its  
19 unlawful practices.

20 3. This action seeks an end to Wal-Mart’s discriminatory practices, make whole relief  
21 for the class, and punitive damages.

22 **JURISDICTION AND VENUE**

23 4. Plaintiffs’ claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
24 §§ 2000e, et seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e5(f), 28  
25 U.S.C. §§ 1331 and 1343(a)(4). The Court has supplemental jurisdiction pursuant to 28 U.S.C. 1367  
26 over claims under the California Fair Employment & Housing Act, Government Code § 12920, et.  
27 seq.

1           5.       Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C. §  
2 1391(b) & (c). Named plaintiffs' claims arose in California. Members of the plaintiffs' class reside  
3 throughout the United States, including the Northern District of California. Many of the acts  
4 complained of herein occurred in this District and gave rise to the claims alleged. Wal-Mart  
5 operates over 140 stores and Sam's Clubs in California where it employs more than 40,000 workers.  
6 It operates at least 18 stores in the Northern District of California.

7  
8   **PARTIES**

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

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

14           8.       Plaintiff Cleo Page is an African American woman and a resident of Tulsa,  
15 Oklahoma. She was employed by Wal-Mart Stores, Inc. in Livermore, California from  
16 approximately December 1999 to November 2000. Plaintiffs are informed and believe she is  
17 eligible for rehire.

18           9.       Plaintiff Christine Kwapnoski is a woman and a resident of Concord, California. She  
19 has been employed by Wal-Mart Stores, Inc. since 1986, and has worked for a Sam's Club in  
20 Concord, California since 1994. She continues to work at that Sam's Club.

21           10.      Plaintiff Deborah Gunter is a woman and a resident of Riverside County, California.  
22 She was employed by Wal-Mart Stores, Inc. from April 1996 until August 1999. Plaintiffs are  
23 informed and believe she is eligible for rehire.

24           11.      Plaintiff Karen Williamson is a woman and a resident of Butte County, California.  
25 She was employed by Wal-Mart from 1995 to October 1999 at the Wal-Mart store in Pleasanton,  
26 California.

27           12.      Plaintiff Edith Arana is an African American woman and a resident of Los Angeles  
28 County. She was employed by Wal-Mart from 1995 until October 2001.

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

4 **CLASS ALLEGATIONS**

5 14. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure  
6 on behalf of a class of all past, present and future female employees of Wal-Mart's retail stores  
7 (including Wal-Mart discount, supercenter and neighborhood markets and Sam's Club stores,  
8 hereinafter collectively referred to as "Wal-Mart") in the United States. Plaintiffs are members of  
9 the class they seek to represent.

10 15. The members of the class are sufficiently numerous that joinder of all members is  
11 impracticable. Plaintiffs are informed and believe that the class exceeds 700,000 present and former  
12 female employees of Wal-Mart.

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

20 17. The claims alleged by the plaintiffs are typical of the claims of the class.

21 18. The named plaintiffs will fairly and adequately represent and protect the interests of  
22 the class.

23 19. This action is properly maintainable under both Federal Rule of Civil Procedure Rule  
24 23(b)(2) and (3) because defendant has acted or refused to act on grounds generally applicable to  
25 the class, thereby making appropriate final injunctive relief or corresponding declarative relief with  
26 respect to the class as a whole; and because questions of law and fact common to the class  
27 predominate over any questions affecting only individual members, and a class action is superior to

1 other available methods for the fair and efficient adjudication of this case. This action is also  
2 properly maintainable under Rule 23(c)(4)(A) for all class issues alleged herein.

3 **WAL-MART'S OPERATION AND ITS GENERAL PRACTICE OF DISCRIMINATION**

4 20. Wal-Mart is the largest private employer in the United States and the world's largest  
5 retailer. Through its Wal-Mart and Sam's Club divisions, it operates over 3000 stores across the  
6 country, encompassing every state. There are so many Wal-Mart locations in the United States that,  
7 according to Wal-Mart, the average store is within 30 miles of the next Wal-Mart store. In the  
8 United States, Wal-Mart employs nearly one million "associates," Wal-Mart's term for its hourly  
9 employees. In its last fiscal year, it had sales exceeding \$200 billion. It claims that it has 100  
10 million customers each week.

11 21. Wal-Mart employs uniform employment and personnel policies throughout the  
12 United States. All of its stores are linked by state-of-the-art electronic and video communications,  
13 through which all stores regularly report payroll, labor and other employment data. Regardless of  
14 division, there are uniform policies for employees, uniform "orientation" procedures, uniform salary,  
15 assignment, pay, training, and promotion policies. All stores are regularly audited for compliance  
16 with these uniform, company-wide policies and procedures.

17 22. The vast majority of Wal-Mart store employees are hourly paid sales associates, who  
18 report to department heads. Each store has a number of assistant managers who have different  
19 functional responsibilities, one or more co-managers and a store manager. District and regional  
20 managers supervise the stores.

21 23. Few objective requirements or qualifications for specific store assignments,  
22 promotions, or raises exist. Salaries are supposed to conform to general company guidelines, but  
23 store management has substantial discretion in setting salary levels within salary ranges for each  
24 employee. Salaries are also adjusted based on performance reviews, which are largely based on  
25 subjective judgments of performance. Plaintiffs are informed and believe that Wal-Mart policy  
26 prohibits employees from exchanging information about their salary levels.

1           24.     The hourly sales workforce at Wal-Mart is predominantly female, representing over  
2 72% of all hourly employees. Yet, male and female employees are not evenly distributed among the  
3 departments in the store. In some departments and positions, such as furniture, garden, electronics,  
4 hardware, sporting goods, guns, produce, paper goods and chemicals, and stocking, males are  
5 disproportionately assigned. In other departments and positions, such as cashier, customer service,  
6 health and beauty aids, cosmetics, house wares, stationery, toys, layaway, fabrics and clothes,  
7 women are disproportionately assigned. Plaintiffs are informed and believe that the male-dominated  
8 departments and jobs are better paid and offer greater opportunities for advancement than the  
9 female-dominated positions and departments.

10           25.     Male employees are more likely than female employees to obtain “cross-training” in  
11 other departments or to receive training and support to enter into departments that would aid their  
12 advancement.

13           26.     Plaintiffs are informed and believe that female employees are paid less than male  
14 employees who perform substantially similar work, with similar or lesser skills and experience.  
15 Plaintiffs are further informed and believe that segregated assignment patterns exacerbate such  
16 unequal pay, because men are more likely to be assigned to departments that pay better than  
17 departments to which women are assigned.

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

1 promoted, on average they are advanced later, and then more slowly, than similarly situated male  
2 employees.

3 28. The workforce profile of Wal-Mart does not reflect the industry or the profile of its  
4 largest competitors. In fact, although it is the largest discount retailer in the country, it lags far  
5 behind its competitors in the promotion of women. Thus, while Wal-Mart's store management is  
6 only about one-third female, among its 20 top competitors women comprise over 56% of  
7 management, even though the proportion of hourly workers that are female at these companies is  
8 comparable to Wal-Mart. These differences are consistently found around the country. Moreover,  
9 these differences are longstanding. In fact, female representation among managers at Wal-Mart is at  
10 a substantially lower level today than the level of representation among Wal-Mart's competitors in  
11 1975.

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

- 19 a. Failure to consistently post job and promotional openings to ensure that all  
20 employees have notice of and an opportunity to seek advancement or more  
21 desirable assignments and training.
- 22 b. Reliance upon unweighted, arbitrary and subjective criteria utilized by a  
23 nearly all male managerial workforce in making assignments, training, pay,  
24 performance review and promotional decisions. Even where Wal-Mart policy  
25 states objective requirements, these requirements are often applied in an  
26 inconsistent manner and ignored at the discretion of management.

- c. Reliance on gender stereotypes in making employment decisions such as assignments, promotions, pay and training.
- d. Pre-selection and “grooming” of male employees for advancement, favorable assignments and training.
- e. Maintenance of largely sex-segregated job categories and departments.
- f. Deterrence and discouragement of female employees from seeking advancement, training, and favorable assignments and pay.
- g. Paying female employees lower compensation than similarly situated men.
- h. Assigning women to lower paying positions, and positions with lesser advancement potential than those given to men, and advancing women more slowly than similarly situated male employees.
- i. Providing less training and support to female employees and managers than that given to male employees and managers.
- j. Harassing female employees interested in advancement and subjecting them to a hostile work environment.
- k. Requiring, as a condition of promotion to management jobs, that employees be willing to relocate, often to significantly distant stores, and applying this policy to require frequent and substantial relocations of its managers without any reasonable business justification. Plaintiffs are further informed and believe that the relocation policy is applied disparately between male and female employees, to the disadvantage of female employees.
- l. Retaliating against female employees who have complained either internally or externally about Wal-Mart’s treatment of its female employees. Wal-Mart maintains a company-wide, toll free telephone number, which it encourages employees to use if they have a problem or complaint in their store or with store management. Plaintiffs are informed and believe that Wal-Mart



1                   retaliates against women who use this number to report discrimination, sexual  
2                   harassment or other unfair working conditions.

3                   **ALLEGATIONS OF NAMED PLAINTIFFS**

4                   **BETTY DUKES**

5                   30.       Betty Dukes is an African American woman currently employed in Wal-Mart store  
6                   #1615, located in Pittsburg, California. She was hired as a part-time front-end cashier at the  
7                   Pittsburg store in May 1994. Within one year after her hire date, Ms. Dukes received an excellent  
8                   90-day review, a promotion to full-time status and a merit pay raise. She was promoted to  
9                   Customer Service Manager in June 1997, which also included an increase in salary.

10                  31.       In September 1997, Ms. Dukes began to experience harsh and discriminatory  
11                  treatment from head Customer Service Manager Leilani (Lonnie) Barrett and male Store Manager  
12                  Ken Cagle. In November 1997, she complained to male District Manager Chuck Salby about the  
13                  discriminatory treatment.

14                  32.       After she complained, Ms. Dukes experienced retaliation from Wal-Mart store  
15                  management, beginning with a disciplinary write-up on February 13, 1998, for returning late from  
16                  her breaks, even though male and/or Caucasian employees returned late from their breaks or failed  
17                  to clock out for breaks and were not disciplined. Ms. Dukes was also written up on March 31,  
18                  1998, for having a front-end cashier cover her lunch break, even though she had used this procedure  
19                  many times before without incident and Caucasian employees used this procedure without being  
20                  reprimanded. Ms. Dukes complained to male District Manager Jay King but he simply referred her  
21                  back to the store manager.

22                  33.       On June 29, 1999, Ms. Dukes called in sick. Store Manager Cagle reacted in a highly  
23                  negative and unprofessional way towards her request, even though she was entitled to use sick  
24                  leave. Ms. Dukes called the district management office about Cagle and, ultimately, she spoke with  
25                  the male Loss Prevention District Manager Charles Chibante. Only after she threatened to make a  
26

1 complaint to the Wal-Mart home office in Arkansas did she receive a reluctant apology from Store  
2 Manager Cagle. However, Cagle's apology only served to escalate the retaliation.

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

10 35. On August 18, 1999, Ms. Dukes traveled to the Wal-Mart District Office in  
11 Livermore and made a complaint to male Wal-Mart District Manager John Scatlin about her  
12 demotion and her concerns about employment discrimination at the Pittsburg Wal-Mart store. Wal-  
13 Mart took no steps to address Dukes' concerns.

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

20 37. After August 14, 2000, when Ms. Dukes once again became eligible for promotion, at  
21 least four department manager and/or support manager positions at the Pittsburg store were filled by  
22 men. None of these positions was posted. Between October and December 2000, Richard Morales  
23 (Hispanic male) was promoted from night receiving stocker to night support manager. In November  
24 2000, Joseph Topasna (Filipino male) was promoted to support manager. Between October and  
25 December 2000 Robert (Aaron) Mendez (Hispanic male) was promoted to support manager. In  
26 December 2000 or January 2001, Will Martines (Caucasian male) filled the position of Department  
27 Manager for Tire Lube Express (TLE).

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

6           39.     Furthermore, Ms. Dukes' knowledge of Wal-Mart's discriminatory practices against  
7 other women at the Pittsburg store also discouraged her from seeking a promotion. In June of 2000,  
8 Brooke Terrell (African American female) was demoted from department manager to a sales floor  
9 position, although she continued to fulfill the responsibilities of a department manager until a  
10 replacement was found. The department manager position vacated by Terrell was filled by Kevin  
11 Sims (African American male). In 2000, Trina Wallace (African American female) was demoted  
12 from a department manager position to a sales floor position and later terminated. The department  
13 manager position vacated by Wallace was ultimately filled by Kendall Dimery (African American  
14 male). In 1999, Darla Harper (Caucasian woman) was denied a department manager job in which  
15 she had expressed an interest. Without posting this position, Wal-Mart selected Spencer Ostrom  
16 (Caucasian male) to fill this position.

17           40.     On or about June 1, 2000, Dukes filed a charge of discrimination with the California  
18 Department of Fair Employment & Housing (DFEH), a copy of which is attached hereto as Exhibit  
19 1 and incorporated by reference. On June 15, 2000, she received a right to sue letter, and  
20 commenced this action in a timely manner.

21           41.     On or about May 2, 2001, Dukes submitted a charge of discrimination to the United  
22 States Equal Opportunity Commission (EEOC), a copy of which is attached as Exhibit 2 and  
23 incorporated by reference. She received a right to sue letter on or about May 22, 2001 and  
24 commenced this action in a timely manner.

25     **PATRICIA SURGESON**

26           42.     Patricia Surgeson was hired by Wal-Mart in Vacaville, California in August 1997 as a  
27 sales associate. She was assigned to the Tire and Lube Express department and, within two weeks of

1 her hire, was subjected to sexually harassing remarks and touching by a co-worker. After reporting  
2 the harassment, she was transferred to the health and beauty aids department. She repeatedly  
3 applied to transfer to other positions but was denied.

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

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

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

19 46. In January 2001, she requested a merit increase. Her request was ignored for two  
20 months.

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

25 48. As a result of the discriminatory pay and working conditions, Ms. Surgeson resigned  
26 in March 2001.

1           49.     On or about May 14, 2001, Surgeson filed a charge of discrimination with the EEOC,  
2 a copy of which is attached hereto as Exhibit 3 and incorporated by reference. The EEOC issued a  
3 notice of right to sue on May 31, 2001, and this action was timely commenced thereafter.

4     **CLEO PAGE**

5           50.     Cleo Page worked at the Wal-Mart store in Livermore, California from approximately  
6 October 1998 to late November 2000. Before joining the Livermore store, Page had worked as a  
7 cashier and Customer Service Manager at a Wal-Mart Supercenter store in Tulsa, Oklahoma and,  
8 briefly, as a sales associate in the Returns Department at a Wal-Mart store in Union City,  
9 California. Page had substantial retail experience before joining Wal-Mart.

10          51.     Page initially worked as an associate in the Returns Department at the Livermore  
11 store but, within weeks, was promoted to Customer Service Manager.

12          52.     In late December 1999, Page applied for a Department Manager position in the Men's  
13 Department. She was interviewed by an Assistant Manager. During the interview, the Assistant  
14 Manager stated to Page that it was a man's world and that men control managerial positions at Wal-  
15 Mart. Although Page was offered the Department Manager position, Wal-Mart later rescinded the  
16 offer and selected a Caucasian female.

17          53.     Page complained to her Store Manager that she was denied the Department Manager  
18 position. Page informed her Store Manager that she wanted to make Wal-Mart her career and that  
19 she wanted to be promoted to a management position. The Store Manager informed Page that she  
20 needed to obtain more training and promised to assist her in obtaining that training. Despite this  
21 promise, at no time during her employment at Wal-Mart did Page receive training to become a  
22 manager. Shortly thereafter, the Department Manager position for which Page was rejected  
23 reopened and Page was promoted into that position. Three weeks later, Page was transferred to  
24 Department Manager in the Boy's Department.

25          54.     In approximately June 2000, Page applied for a Support Manager position. Despite  
26 her previous retail experience, Page was not selected. Instead, Wal-Mart selected a Caucasian male  
27 for that position.

1           55.     In approximately August 2000, Page learned that there were two Support Manager  
2 positions that were open. Page informed her Store Manager that she had previously applied for the  
3 position and was interested in being considered again. Once again, Page was not selected for a  
4 Support Manager position. Instead, a Latina and a Caucasian female were selected. The Store  
5 Manager explained to Page that the reason she was not selected was because she needed training  
6 and experience working in a larger department. At no time did the Store Manager assist Page in  
7 obtaining training to become a manager.

8           56.     In approximately October 2000, Page asked for but did not receive assistance from  
9 other employees to complete a project that she was unable to complete on her own. When Page left  
10 work at the end of her shift without completing the project, a male Caucasian Assistant Manager  
11 threatened to terminate her. Another Caucasian male employee informed Page that he had done  
12 something similar for which he had never been reprimanded.

13           57.     In approximately November 2000, Page became aware that there was an opening for  
14 a Department Manager in Sporting Goods. Page was discouraged from applying for the position  
15 because the Store Manager told Page that she wanted a man in that position because customers felt  
16 more comfortable buying sporting goods from a man. A Caucasian male was selected as the new  
17 Department Manager in Sporting Goods.

18           58.     In approximately November 2000, Page learned that she was earning at least \$4 an  
19 hour less than the male Department Manager in Sporting Goods, despite the fact that Page had more  
20 seniority than he.

21           59.     Throughout her employment at Wal-Mart, Page expressed her interest in being  
22 promoted to management. Despite her interest and experience, she was never considered for an  
23 Assistant Manager position or given training to become a manager.

24           60.     During Page's employment at the Livermore Wal-Mart store, male employees,  
25 including an Assistant Manager, made derogatory remarks about women, such as complaining that  
26 men were "outnumbered by women" and that "women were taking over." In addition, male  
27

1 employees often asked other male employees whether they knew of men who would be interested  
2 in working at Wal-Mart.

3 61. On or about August 31, 2001, Ms. Page filed a charge of discrimination with the  
4 Equal Employment Opportunity Commission (EEOC) and with the California Department of Fair  
5 Employment and Housing (DFEH), a copy of which is attached hereto as Exhibit 4 and  
6 incorporated by reference. The DFEH issued a right to sue letter on or about September 12, 2001.  
7 She also received a right to sue letter from the EEOC on or about February 14, 2002..

8 **CHRIS KWAPNOSKI**

9 62. Chris Kwapnoski was hired by Wal-Mart in 1986, and was originally assigned to a  
10 Sam's Club in Missouri. Ms. Kwapnoski worked as a cashier in the cash office and in claims.

11 63. While at the Sam's Club in Missouri, Ms. Kwapnoski was sent to help open a new  
12 Sam's Club in Concord, California. Ms. Kwapnoski was encouraged to transfer permanently to the  
13 Concord store. Both her abilities and her work ethic were praised.

14 64. In 1994, Ms. Kwapnoski transferred to the Sam's Club in Concord, California. She  
15 worked in auditing, freezer departments, claims, and in receiving. She repeatedly made it known to  
16 the general managers at the Sam's Club and to the District Operations Manager that she sought a  
17 team leader position and an area manager position. These jobs were not posted to permit formal  
18 applications. Instead, these positions, as they became open, were repeatedly given to men who  
19 were less qualified than Ms. Kwapnoski. Ms. Kwapnoski was required to train several of these men  
20 in order for them to assume the responsibilities of the position. Ms. Kwapnoski also observed men  
21 receiving higher rates of pay and more frequent increases in their pay rates.

22 65. Ms. Kwapnoski was told by the store manager that she "needed to blow the cobwebs  
23 off" her make-up and "doll up". When Ms. Kwapnoski questioned why a male employee received  
24 a large raise, she was told it was because he had a family to support.

25 66. Ms. Kwapnoski has requested upon more than one occasion the opportunity to join  
26 the "Management-in-Training" program, but has been denied this opportunity. In 1999, she was  
27 finally made a team leader, an hourly position. In June 2001, Ms. Kwapnoski was made a receiving

1 area coach/manager. Since that date, she has continued to request an opportunity to assume greater  
2 managerial positions and receive managerial training, as well as attend management meetings.  
3 These requests had been denied.

4 67. Ms. Kwapnoski filed a Charge of Discrimination with the EEOC on or about  
5 February 15, 2002, a copy of which is attached hereto as exhibit 5 and incorporated by reference.  
6 She received a right to sue notice in March 2002.

7 **DEBORAH GUNTER**

8 68. Deborah Gunter was hired in April 1996 as a Photo Lab Clerk in Wal-Mart Store  
9 #2028 in Riverside, California. She had 30 years of prior retail experience.

10 69. While employed at Store #2028, Ms. Gunter applied several times for the position of  
11 Pets Department Manager between the time she began her employment in 1996 and approximately  
12 March 1998. Ms. Gunter was particularly interested in this position because of her extensive  
13 experience breeding and raising show dogs. She never received the promotion, although the store  
14 Night Manager recommended her for the position. The first time Ms. Gunter applied, a male  
15 employee with less experience was given the position. The second time she applied, a male  
16 employee with less experience was given the position.

17 70. In the fall of 1996, Ms. Gunter was transferred to the position of Night Stocker.  
18 While employed as a Night Stocker, Ms. Gunter learned that the male employees in the Receiving  
19 Department earned a higher wage than the female employees in the department.

20 71. In March 1998, Ms. Gunter transferred to a position as Service Clerk in the Tire Lube  
21 Express Department of Store #1747 in Perris, California after the Perris Store Manager requested  
22 that she transfer there.

23 72. While employed at the Perris store from March 1998 until March 1999, Ms. Gunter  
24 performed the duties of Support Manager to the Tire Lube Express Department without the title or  
25 salary for that position. On numerous occasions, she requested training from the Tire Lube Express  
26 Manager and from the District Manager. She never received the training. The Tire Lube Express  
27 Manager told her she did not have sufficient training to fill the position of Support Manager. She



1 again requested additional training and was denied it. Ms. Gunter requested a promotion and pay  
2 increase from the Tire Lube Express Manager, but did not receive the promotion.

3 73. Ms. Gunter trained two male employees in the job responsibilities of Support  
4 Manager for the Tire Lube Express Department. After training each male employee, the male  
5 employee was promoted to Support Manager. Beginning in the summer of 1998, Ms. Gunter was  
6 subjected to sexually harassing remarks by the Tire Lube Express Manager. She complained to the  
7 Store Manager in December 1998 and January 1999. However, corrective action was not taken and  
8 Ms. Gunter's complaints were ignored. Subsequently, her hours were reduced.

9 74. Ms. Gunter transferred to Store #2077 in Lake Elsinore, California in March 1999  
10 with the belief that she would get more hours. At the Lake Elsinore store, Ms. Gunter was  
11 employed as a Cashier/Clerk in the Tire Lube Express Department. As she had done in the Perris  
12 store, she trained a male employee in the job responsibilities of Support Manager for the Tire Lube  
13 Express Department. After she trained him, the male employee was promoted to Support Manager,  
14 whereas Ms. Gunter's hours were reduced yet again.

15 75. Ms. Gunter complained to the Tire Lube Express Manager after her hours were  
16 reduced. She also requested a meeting with the District Manager to complain about the  
17 discriminatory treatment. In August 1999, on the day that the meeting was scheduled, the Store  
18 Manager informed her that she had been terminated and handed Gunter her remaining wages and  
19 vacation pay.

20 76. On at least one occasion, Ms. Gunter called Wal-Mart headquarters to request  
21 assistance with the difficulties she was having on the job. She never received a reply.

22 **KAREN WILLIAMSON**

23 77. Karen Williamson was hired by Wal-Mart in 1995 to work at the Wal-Mart store in  
24 Pleasanton, California, where she remained employed until October 21, 1999. She was hired before  
25 the store was opened, and her original job assignment was to help prepare the store for opening. As  
26 a part of that assignment, Ms. Williamson was one of eight employees selected to review all  
27 merchandise as it arrived, and one of four employees selected to do a computerized scan and

1 inventory of the entire store. Accordingly, Ms. Williamson was one of the first of the hourly  
2 employees at the Pleasanton store to be trained on the handheld computer used for such operations  
3 and for departmental inventories, orders, and controls.

4 78. Upon the opening of the new store, Ms. Williamson was assigned to work in three  
5 departments: Infants, Boys, and Girls. She was trained to operate the cash register.

6 79. At her initial evaluation, Ms. Williamson was told she would receive training and  
7 become a department manager at some time in the future. During her employment at Wal-Mart, she  
8 was interested in obtaining departmental and higher management positions.

9 80. Ms. Williamson was assigned to several departments over the course of her tenure at  
10 Wal-Mart, including Electronics, Housewares and Small Appliances. She also worked in Health  
11 and Beauty Aids, Cosmetics, Seasonal Products, Foods, Paper Goods, Pets, and Household  
12 Chemicals, helping as needed. She occasionally worked on the cash register. The last department  
13 to which she was assigned was Stationery, Books/Greeting Cards and Party Supplies [hereinafter  
14 “Stationery”]. During the time in which Ms. Williamson was assigned to Stationery, there was  
15 more than one extended period of time in which there was no department manager, and Ms.  
16 Williamson was expected to and did perform all the tasks of the department manager.

17 81. Ms. Williamson made it known repeatedly throughout her employment at Wal-Mart  
18 that she sought the position of department manager. She expressed this orally and in writing to the  
19 Store Manager on several occasions. She applied through the Wal-Mart computerized procedure.  
20 Despite these repeated requests for promotion, Ms. Williamson never received a promotion.

21 82. Ms. Williamson was qualified to be a department manager. She was often called  
22 upon to train recently promoted department managers, and to help out wherever needed. She was  
23 recognized on the Wal-Mart “Honor Roll”. She had good performance evaluations. Ms. Williamson  
24 was never promoted and instead watched men with equal or lesser seniority and equal or lesser  
25 qualifications receive promotions. Ms. Williamson did not have the opportunity to apply for some  
26 of the promotions, which men received, because the positions were not posted.

1 **EDITH ARANA**

2 83. Edith Arana is an African-American woman who was hired by Wal-Mart Store #2401  
3 in Duarte, California, on September 5, 1995. During her employment, she held the positions of  
4 Personnel Manager, Closing Sales Associate, and Inventory Clerk. Prior to working at Wal-Mart,  
5 Ms. Arana had nine years of retail experience.

6 84. In December 1997, Ms. Arana told the Store Manager that she wanted to apply for the  
7 assistant manager-training program. He informed Ms. Arana that he would recommend her to the  
8 District Manager for the training program. However, he did not give Ms. Arana's name to the  
9 District Manager. The Store Manager then said he would recommend Ms. Arana the next time the  
10 District Manager asked for names for the training program. However, to her knowledge, he never  
11 submitted her name.

12 85. In October 1999, Ms. Arana applied for the position of Paper Goods and Chemicals  
13 Department Manager. Although Ms. Arana understood that Wal-Mart's policy is to interview every  
14 applicant, she was not interviewed. A male employee was selected to fill the position.

15 86. Ms. Arana applied a second time for the position of Paper Goods and Chemicals  
16 Department Manager between January and August 2000. She was not interviewed, and a male  
17 employee was selected to fill the position.

18 87. In approximately June 2000, Ms. Arana told the new Store Manager that she wanted  
19 to be promoted and that she was interested in the assistant manager-training program. The Store  
20 Manager gave only a vague response. On another occasion, the Store Manager told Ms. Arana that  
21 he did not want women in the assistant manager-training program. Ms. Arana is not aware of any  
22 woman recommended by that Store Manager for the assistant manager-training program.

23 88. During the months after Ms. Arana told the Store Manager that she wanted to apply  
24 for the assistant manager-training program, she also informed various Assistant Store Managers of  
25 her desire for a promotion Ms. Arana also complained to several Assistant Managers about the  
26 Store Manager's discriminatory treatment of her. Ms. Arana also wrote a letter to an Assistant  
27

1 Manager expressing her desire to join the assistant manager-training program. That Assistant  
2 Manager suggested to Ms. Arana that she write a letter directly to the District Manager.

3 89. In December 2000, Ms. Arana wrote a letter to the District Manager expressing her  
4 interest in the assistant manager-training program. The District Manager replied via letter that Ms.  
5 Arana's letter would be forwarded to the new District Manager. Despite her repeated expressions  
6 of interest in the assistant manager-training program, Ms. Arana was never considered for that  
7 program.

8 90. In January 2001, Ms. Arana called Wal-Mart's toll free number to complain about the  
9 Store Manager's discriminatory refusal to interview women who applied for department manager  
10 positions in certain departments. Ms. Arana was informed that her complaint would be forwarded  
11 to the Regional Manager. However, to Ms. Arana's knowledge, no steps were taken in response to  
12 her complaint.

13 91. After Ms. Arana complained about the Store Manager's discriminatory treatment, she  
14 was transferred in February 2001 to the less desirable position of inventory traveler. Ms. Arana  
15 repeatedly told the Store Manager and two Assistant Managers that she did not want to be an  
16 inventory traveler because it was not a desirable position.

17 92. On October 19, 2001, Ms. Arana was falsely accused of "stealing time" and  
18 terminated in retaliation for her complaints regarding Wal-Mart's discriminatory failure to promote  
19 women.

20 93. During her six years of employment at Wal-Mart, Ms. Arana observed that few  
21 women were promoted to management positions. Women were often put in traditionally "female"  
22 departments, whereas men were placed in departments such as Paper Goods and Chemicals,  
23 Garden, and Hardware that increased their advancement opportunities.

24 94. On or about December 11, 2001, Ms. Arana filed a charge of discrimination with the  
25 Equal Employment Opportunity Commission and the DFEH, a copy of which is attached hereto as  
26 Exhibit 6 and incorporated by reference. The DFEH issued a right to sue notice on these charges on  
27

1 or about December 28, 2001. Ms. Arana has requested a right to sue notice from the EEOC on  
2 these charges.

3  
4 **FIRST CLAIM FOR RELIEF**

5 *(Violation of Title VII)*

6 95. Plaintiffs incorporate Paragraphs 1 through 94.

7 96. This claim is brought on behalf of all Plaintiffs and the class they represent.

8 97. On or about October 22, 1999, January 4, 2000 and April 3, 2000, class member and  
9 former plaintiff Stephanie Odle filed charges of sex discrimination against Wal-Mart with the  
10 United States Equal Employment Opportunity Commission, copies of which are attached hereto as  
11 exhibits 7-9 and incorporated by reference. Ms. Odle thereafter received a right to sue notice and  
12 commenced this action as a named plaintiff in a timely fashion. From the filing of her EEOC  
13 complaints through the initiation of this action, the class-wide nature of Ms. Odle's charges has  
14 been communicated to defendant.

15 98. On or about November 13, 2000, class member and former plaintiff Kimberly Miller  
16 filed a charge of discrimination with the EEOC, a copy of which is attached hereto as exhibit 10  
17 and incorporated by reference. Ms. Miller thereafter received a right to sue notice and commenced  
18 this action as a named plaintiff in a timely fashion. From the filing of her EEOC complaints through  
19 the initiation of this action, the class-wide nature of Ms. Miller's charges has been communicated to  
20 defendant.

21 99. On or about March 15, 2001, class member and former plaintiff Sandra Stevenson  
22 filed a charge of discrimination with the EEOC, a copy of which is attached hereto as exhibit 11  
23 and incorporated by reference. Ms. Stevenson thereafter received a right to sue notice and  
24 commenced this action as a named plaintiff in a timely fashion. From the filing of her EEOC  
25 complaints through the initiation of this action, the class-wide nature of Ms. Stevenson's charges  
26 has been communicated to defendant.

1           100. On or about May 17, 2001 class member and former plaintiff Micki Earwood filed a  
2 charge of discrimination with the EEOC, a copy of which is attached hereto as exhibit 12 and  
3 incorporated by reference. Ms. Earwood thereafter received a right to sue notice and commenced  
4 this action as a named plaintiff in a timely fashion. From the filing of her EEOC complaints through  
5 the initiation of this action, the class-wide nature of Ms. Earwood's charges has been communicated  
6 to defendant.

7           101. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
8 §§ 2000(e), et. seq.

9           102. Wal-Mart has maintained a system for making decisions about promotions,  
10 assignments, transfers and compensation which is excessively subjective and which has had a  
11 disparate impact on female employees. This system is not and cannot be justified by business  
12 necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally  
13 serve any alleged necessity.

14           103. Wal-Mart has maintained a 'willingness to relocate' prerequisite for promotion to  
15 management which has had a disparate impact on plaintiffs and the class they represent. This  
16 requirement is not and cannot be justified by business necessity, but even if it could be so justified,  
17 less discriminatory alternatives exist which could equally serve any alleged necessity.

18           104. Wal-Mart has intentionally discriminated against the class and maintained a system  
19 for making decisions about promotions, transfers, assignments and compensation that is excessively  
20 subjective and through which Wal-Mart discriminates against female employees by denying them  
21 the same opportunities for job assignments, upward mobility and compensation afforded to similarly  
22 situated male employees.

23           105. Defendant's discriminatory practices described above have denied female employees  
24 promotional opportunities, transfers, assignments and compensation to which they are entitled,  
25 which has resulted in the loss of past and future wages and other job benefits.

26           106. Wal-Mart has systematically retaliated against women who have complained about  
27 discrimination and unfair treatment.

1 107. Defendant's retaliatory practices have resulted in the loss of past and future wages  
2 and other job benefits for class members.

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

4 **SECOND CLAIM FOR RELIEF**

5 *(Violation of Title VII)*

6 109. Paragraphs 1-108 are incorporated by reference. This claim is brought on behalf of  
7 the named plaintiffs individually for their non-class claims.

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

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

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

15 **THIRD CLAIM FOR RELIEF**

16 *(Violation of California Fair Employment and Housing Act -Race Discrimination)*

17 113. Plaintiffs incorporate by reference Paragraphs 30-41 and 50-61.

18 114. This claim for relief is brought on behalf of Plaintiffs Dukes and Page only.

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

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

25 117. Plaintiffs Dukes and Page request relief as provided in the Prayer for Relief below.

1 **RELIEF ALLEGATIONS**

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

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

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

13 **PRAYER FOR RELIEF**

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

15 1) Certification of the case as a class action on behalf of the proposed Plaintiff class and  
16 designation of Plaintiffs as representatives of the class and their counsel of record as Class Counsel;

17 2) All damages which individual Plaintiffs and the class have sustained as a result of  
18 Defendant’s conduct, including back pay, front pay, general and special damages for lost  
19 compensation and job benefits that they would have received but for the discriminatory practices of  
20 Defendant;

21 3) For Plaintiffs’ individual, non-class claims, all damages they have sustained as a  
22 result of defendant’s conduct, including back pay, front pay, general and specific damages for lost  
23 compensation and job benefits they would have received but for the discriminatory practices of  
24 defendant, damages for emotional distress, and punitive damages, according to proof;

25 4) Exemplary and punitive damages in an amount commensurate with Defendant’s  
26 ability to pay and to deter future conduct;



1           5)       A preliminary and permanent injunction against Defendant and its directors, officers,  
2 owners, agents, successors, employees and representatives, and any and all persons acting in concert  
3 with them, from engaging in each of the unlawful practices, policies, customs and usages set forth  
4 herein;

5           6)       A declaratory judgment that the practices complained of in this first amended  
6 complaint are unlawful and violate 42 U.S.C. § 2000(e), et. seq., Title VII of the Civil Rights Act of  
7 1964;

8           7)       An order restoring class members to their rightful positions at Wal-Mart;

9           8)       An assignment of Plaintiffs and the class to those jobs they would now be occupying  
10 but for Defendant's discriminatory practices;

11          9)       An adjustment of the wage rates and benefits for Plaintiffs and the class to that level  
12 which Plaintiffs and the class would be enjoying but for Defendant's discriminatory practices;

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

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

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

17 Dated: September 12, 2002

Respectfully submitted,

THE IMPACT FUND

19  
20  
21 By: \_\_\_\_\_  
          JOCELYN D. LARKIN

22 Attorneys for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

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

By: \_\_\_\_\_  
JOCELYN D. LARKIN