IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 04-16688 & 04-16720

BETTY DUKES, PATRICIA SURGESON, CLEO PAGE,
DEBORAH GUNTER, KAREN WILLIAMSON,
CHRISTINE KWAPNOSKI, and EDITH ARANA
***Plaintiffs/Appellees/Cross-Appellants*,**

v.

WAL-MART STORES, INC.
***Defendant/Appellant/Cross-Appellee*.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF *AMICI CURIAE* OF AARP AND THE CALIFORNIA WOMEN'S LAW CENTER (CWLC) IN SUPPORT OF APPELLEES AND CROSS-APPELLANTS SUPPORTING REVERSAL OF THAT PART OF THE DISTRICT COURT'S CLASS CERTIFICATION ORDER LIMITING BACK PAY RELIEF FOR PROMOTION CLAIMS

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CORPORATE DISCLOSURE STATEMENT

AARP is a non-partisan, non-profit membership organization, which is tax-exempt under section 501(c)(4) of the Internal Revenue Code, dedicated to addressing the needs and interests of older Americans. AARP neither has a parent corporation, nor has it issued shares or securities.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*[1/]

AARP is a nonprofit, nonpartisan membership organization of more than forty million people age 50 or older that is dedicated to addressing the needs and interests of older persons. One of AARP's primary objectives is to achieve dignity and equality in the work place through positive attitudes, practices, and policies regarding work and retirement. Through its research, publications, and training programs, AARP seeks to eliminate ageist stereotypes, encourage employers to hire and to retain older workers, and help older workers overcome the obstacles they encounter because of age. AARP supports the rights of older workers and the public policies designed to protect their rights and to preserve the legal means to enforce them.

More than half of AARP's members remain active in the work force and most are protected by federal laws prohibiting employment discrimination, such as Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA), which was modeled on Title VII. Consequently, the proper interpretation and application of these statutes, especially in the context of class or collective actions, are of paramount importance to the millions of workers,

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[1/] All parties have consented to the filing of this brief.

including older workers, who rely on them to root out, remedy, and deter invidious bias in the work place.

The California Women's Law Center (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. CWLC, established in 1989, works in the following priority areas: Sex Discrimination, Women’s Health, Race and Gender, Women’s Economic Security, Exploitation of Women and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on ensuring economic security for women and eradicating sex discrimination in employment. CWLC has authored numerous *amicus* briefs, articles, and legal education materials on these issues.

The availability of money damages in the form of a class-wide award of back pay is an important element in the congressional remedial and deterrent scheme embodied in Title VII and the ADEA. In this case, the district court’s ruling that an award of class-wide back pay is unavailable with respect to any unposted promotional opportunities threatens the protection afforded workers under Title VII, the ADEA and other federal civil rights laws. Such a ruling, if upheld, would serve to undermine the enforcement system designed by Congress to eliminate employment discrimination. AARP and CWLC file this brief *amici curiae* to urge this Court to adopt the panel decision reversing the decision of the

court below on the issue of the availability of class-wide damages relief because of the wide-ranging and dangerous implications of that decision for cases challenging the most entrenched forms of employment discrimination.[2/]

SUMMARY OF ARGUMENT

In limiting eligibility for back pay awards for promotion claims to only those members of the certified class "for whom objective applicant data exists," *Dukes, et al. v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 183 (U.S.D.C. N.D. Cal. 2004) the district court not only undermined the deterrent effect of class-wide damages relief, but also effectively precluded relief for those women who suffered most from Wal-Mart's pattern or practice of sex discrimination – those who were denied promotion by its tap-on-the-shoulder, word of mouth, excessively subjective system. In so doing the district court disregarded clear guidance both from the Congress and the courts. Further, the district court's ruling that an award of class-wide back pay is unavailable with respect to any unposted promotional opportunities because the determination of which class members are eligible to share in that award would be unmanageable, *id.*, is erroneous and, therefore, cannot justify denial of class-wide damages relief.

[2/] *Amici* support the remainder of the district court's class certification order and urge that it be affirmed.

I. BACK PAY AWARDS SHOULD BE DENIED ONLY IN EXTRAORDINARY CIRCUMSTANCES NOT APPLICABLE HERE.

The importance of back pay as a "remedy central to achieving the purposes" of Title VII cannot be overstated. *Franks v. Bowman*, 424 U.S. 747, 783 (1976) (Powell, J., concurring in part and dissenting in part); *see also Ablemarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975). One of those purposes is, of course, "to make persons whole for injuries suffered on account of unlawful employment discrimination" – something that cannot be done in any case involving the discriminatory denial of a job or promotion absent an award of back pay. *Ablemarle*, 422 U.S. at 418; *see also Allison v. Citgo Petroleum Co.*, 151 F.3d 402, 415 (5th Cir. 1998) (describing back pay as "an integral component of Title VII's 'make whole' remedial scheme").

As important as the make-whole objective is to the statutory scheme, however, the "the primary objective" of Title VII is the "prophylactic one" of "'achiev[ing] equality of employment opportunities and remov[ing] barriers that have operated in the past to favor an identifiable group of white [male] employees over other employees.'" *Ablemarle*, 422 U.S. at 417 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971)). As the Supreme Court has explained, "back pay has an obvious connection with that purpose." *Id.*, 422 U.S. at 417. "If employers faced only the prospect of an injunctive order, they would have little

incentive to shun practices of dubious legality. It is the reasonable certainty of a backpay award that 'provide[s] the spur or catalyst which causes employers ... to eliminate, so far as possible, discriminatory practices.'" *Id.* at 417-18; *see also Stewart v. General Motors Corp.*, 542 F.2d 445, 451 (7th Cir. 1976) (noting that absent availability of back pay, "there would be little incentive for employers to obey" Title VII, because "a recalcitrant employer could continue plainly discriminatory practices until compelled to stop by a federal court's injunction without suffering any penalty for his blatant disregard of the law").

Noting how vital the remedy of back pay is to achieving the purposes of Title VII, the Supreme Court has instructed that where a finding of unlawful discrimination is made, "backpay should be denied only for reasons which, if applied generally, would not frustrate" those purposes. *Ablemarle*, 422 U.S. at 421; *accord Bouman v. Block*, 940 F.2d 1211, 1234 (9th Cir. 1991). That mandate is no less applicable in the context of a class claim than of an individual one.

It is, therefore, "well settled that classwide back pay should be denied only in extraordinary circumstances." *Kirby v. Colony Furniture Co.*, 613 F.2d 696, 699 (8th Cir. 1980); *accord Pettway v. American Cast Iron Pipe Co.*, 494 F.2d 211, 254 (5th Cir. 1974). Those special circumstances have been "narrowly construed, and usually include only circumstances where state legislation is in conflict with

Title VII." *Stewart*, 542 F.2d at 451; *see also Pettway*, 494 F.2d at 254; *EEOC v. Andrew Corp.*, 1990 U.S. Dist. LEXIS 7760, at *2 (N.D. Ill. June 26, 1990).

Difficulties in determining which members of the class should receive back pay and the amounts they should receive do not constitute the kind of special factor that would justify the denial of any award. *See, e.g., Kirby*, 613 F.2d at 699; *Stewart*, 542 F.2d at 451. Such difficulties do not impact the aggregate amount that is owed to the class as a whole and have no bearing whatever on the extent to which a back pay award might advance Title VII's prophylactic purpose of eradicating discrimination from the workplace. Furthermore, Title VII's make-whole purpose is unquestionably better served by a class-wide back pay award than by disallowing back pay altogether – however imprecise the process of identifying eligibility for and amounts of awards. "Given a choice between no compensation for [female] employees who have been illegally denied promotions and an approximate measure of damages," it was incumbent upon the district court to "choose the latter." *Stewart*, 542 F.2d at 453. Unfortunately, the court below chose, instead, to deny compensation to those class members "where no objective applicant data exist." 222 F.R.D. at 182.

If permitted to stand, that choice not only will leave large employers with little incentive to shun discriminatory practices, it will affirmatively encourage

them to engage in practices that facilitate discriminatory conduct. The district court denied the remedy of back pay only with respect to those promotional opportunities that Wal-Mart allegedly chose to fill by tapping its preferred candidates on the shoulder, rather than through a formal posting and bidding process. The courts have repeatedly condemned such informal word-of-mouth hiring methods because of their tendency to foster and perpetuate unlawful discrimination.[3/] Yet the district court rewarded Wal-Mart for alleged suspect promotional practices – and encouraged other large employers to engage in similar practices – by holding that they make an award of back pay impractical. *See, e.g., Andrew Corp.*, 1990 U.S. Dist. LEXIS 7760, at *4 (noting that to deny a remedy where the employer's "discriminatory recruitment policy" successfully blocked applications from virtually everyone in the protected class would be to allow an

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[3/] *EEOC v. Metal Serv. Co.*, 892 F.2d 341, 350 (3d Cir. 1990) ("informal, secretive and subjective hiring practices are suspect because they tend to facilitate the consideration of impermissible criteria" and, when used "in conjunction with an all white workforce," such practices are themselves "strong circumstantial evidence of discrimination"); *Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1133 (11th Cir. 1984) (recognizing that word-of-mouth hiring methods "can lead to racial discrimination"); *Grant v. Ellis*, 635 F.2d 1007, 1016 (2d Cir. 1980) (noting that denial of relief to those who did not apply for positions owing to word-of-mouth promotion procedures could result in exclusion of "victims of the most entrenched forms of discrimination"); *Barnett v. W.T. Grant Co.*, 518 F.2d 543, 550 (4th Cir. 1975) (characterizing word-of-mouth hiring methods as "suspect because of their capacity for masking racial bias").

employer to "take advantage of an uncertainty caused by its own wrongdoing" and would "turn[] Title VII on its head").

II. IT IS INCUMBENT UPON THE DISTRICT COURT TO FASHION A WORKABLE MEANS OF DISTRIBUTING A BACK PAY AWARD AMONG HARMED CLASS MEMBERS.

In class cases involving allegations of systemic practices of employment discrimination such as this one, courts have traditionally employed two different approaches in determining how to calculate and distribute back pay to eligible members of the class. Under the approach exemplified by the Supreme Court's seminal decision in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), the action is divided into two phases. The first of these is a liability phase at which plaintiffs seek to establish that the employer has engaged in a pattern or practice of intentional discrimination, that is, whether "discrimination was the employer's standard operating procedure." *Id.* at 360. If plaintiffs succeed in doing so, liability is established and no "further evidence" is needed to obtain class-wide injunctive relief. *Id.* at 361.

The second phase of the *Teamsters* approach involves a series of individualized hearings at which class members are afforded an opportunity to establish their entitlement to back pay, front pay or other relief. During this remedial phase, each member need show only that he or she suffered an adverse

employment decision "and therefore was a potential victim of the proved [pattern or practice of] discrimination. *Id.* at 362. If such a showing is made, the class member is entitled to individual relief unless the defendant can establish that it had a legitimate non-discriminatory reason for the adverse employment decision. *Id.*

As desirable as it may be to calculate and distribute back pay and other forms of monetary relief on a case-by-case basis under the *Teamsters* model, courts recognize that in certain circumstances such an individualized approach may be impractical. For instance, where the class size is large, the promotion or hiring practices are ambiguous, or the illegal practices have continued over an extended period of time, any attempt to identify the class member who would have obtained each position absent discrimination would "'call[] forth [a] quagmire of hypothetical judgment'" and, hence, "'a classwide approach to the measure of back-pay is necessitated.'" *Domingo v. New England Fish Co.*, 727 F.2d 1429, 1444 (9th Cir. 1984) (quoting *Pettway*, 494 F.2d at 261); *see also Shipes v. Trinity Indus.*, 987 F.2d 311, 318 (5th Cir. 1993); *Pitre v. Western Elec. Co.*, 843 F.2d 1262, 1274 (10th Cir. 1988); *Catlett v. Missouri Highway and Transp. Comm'n*, 828 F.2d 1260, 1267 (8th Cir. 1987). The failure to post promotional opportunities constitutes one of those ambiguous promotional practices that make individualized hearings impractical by making it "virtually impossible to determine which class

members would have been promoted had there been no discrimination," thereby necessitating "a formula approach to back pay." *Pitre*, 843 F.2d at 1274-75; *see also Domingo*, 729 F.2d at 1444; *Chicago Miniature Lamp Works*, 640 F. Supp. at 1299. In such circumstances, courts dispense with individual *Teamsters* hearings and, instead, compute the aggregate amount of back pay that is owed to the class as a whole, which amount is, in turn, allocated among eligible members of the class on a *pro rata* basis. *See, e.g., EEOC v. O & G Spring and Wire Forms Specialty Co.*, 38 F.3d 872, 880 (7th Cir. 1994); *Segar v. Smith*, 738 F.2d 1249, 1289 (D.C. Cir. 1984); *Liberales v. County of Cook*, 709 F.2d 1122, 1136 (7th Cir. 1983) *Pettway*, 681 F.2d at 1266; *Long*, 761 F. Supp. at 1324; *Chicago Miniature Lamp Works,* 640 F. Supp. at 1298-1300.

Given the subjective nature of Wal-Mart's alleged promotion system and the size of the class both in absolute terms and in relation to the number of promotional vacancies at issue, the district court properly determined that "the traditional *Teamsters* mini-hearing approach is not feasible here" and that "this is precisely the kind of case in which 'a class-wide approach to the measure of back-pay is necessitated.'" 222 F.R.D. at 176 & 178 (quoting *Domingo*, 727 F.2d at 1444.) Accordingly, the district court held that back pay was available to all

members of the class who had applied for posted promotional opportunities.[4/] At the same time, however, the district court held that as to all unposted promotional opportunities a class-wide back pay award is unavailable because of the impracticality of determining which members of the class would be eligible to share in that award. 222 F.R.D. at 183.

To be sure, the district court would face a formidable task in determining how a class-wide back pay award could best be distributed if Wal-Mart is found to have engaged in a pattern or practice of unlawful discrimination at the liability stage. On the one hand, distributing an award among all qualified class members without seeking to identify which of them were interested in obtaining the promotions at issue would raise equity concerns by giving undeserving members a

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[4/] In the process of reaching this conclusion, the district court remarked that the availability of objective applicant data would enable it "to identify those class members who would be eligible to participate in a lump sum back pay award, and to fashion a formula to calculate such an award." 222 F.R.D. at 183. Given the district court's ruling rejecting the use of applicant flow data in this case, *amici* do not believe that the district court was suggesting that such data is in any way necessary to the calculation of a lump sum back pay award in this case. To the extent, however, that the district court's decision could be construed as making that suggestion, it is plainly wrong. *see, e.g., Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) ("the application process might itself not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory"); *EEOC v. Rath Packing Co.*, 787 F.2d 318, 337 (8th Cir. 1986) ("Although applicant flow data is often the best indicator of the extent of an employer's discrimination, this is not the case where persons have been deterred from applying because of the employer's discriminatory practices.").

share of the award at the expense of those who were actually injured by Wal-Mart's discriminatory practices. On the other hand, attempting to identify precisely those who suffered actual injury would create severe manageability issues.

Called upon to strike an appropriate balance between these competing concerns, the district court instead threw up its hands, concluding that back pay relief is simply unavailable to many members of the certified class. It was not at liberty to do so. When it enacted Title VII, "the Congress took care to arm the courts with full equitable powers" and, in so doing, imposed upon them the "duty to render a decree which [would] *so far as possible* eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Ablemarle*, 422 U.S. at 418 (emphasis added).

In the event of a finding of class-wide liability, the district court would determine the total amount that the class should receive in back pay for unposted positions.[5/] This award would further Title VII's prophylactic objective of deterring future discrimination, regardless of how it is distributed. Because Wal-

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[5/] *See, e.g., Pettway*, 494 F.2d at 257 ("Once class-wide discrimination has been demonstrated to result in disproportional earnings, a class-wide decision that back pay is appropriate can be discerned without deciding which members of the class are entitled to what amounts."); *Long v. Trans World Airlines, Inc.*, 761 F. Supp. 1320, 1324-26 (N.D. Ill. 1991); *EEOC v. Chicago Miniature Lamp Works,* 640 F. Supp. 1291, 1300 (N.D. Ill. 1986).

Mart would have no "significant, legitimate interest in which class members share in the formula award and which do not," 222 F.R.D. at 179, n.49; *see also Hilao v. Estate of Marcos*, 103 F.3d 767, 786 (9th Cir. 1996); *Long*, 761 F. Supp. at 1327; *Bell v. Farmers Ins. Exchange,* 115 Cal.App.4th 715, 759 (2004), the district court could use its broad equitable powers to distribute relief among class members as fairly as practicable under the circumstances. "[A]bsolute precision" would be neither feasible nor required. *Long*, 761 F. Supp. at 1323; *see also Shipes*, 987 F.2d at 317 ("unrealistic exactitude is not required"); *Stewart*, 542 F.2d at 452 (same); *Pettway*, 491 F.2d at 260-61 (same).

Instead of precluding relief for those class members who suffered most from Wal-Mart's discriminatory, word of mouth promotion system, the district court could balance the competing interests of equity and practicality in any of a number of ways without adopting either the extreme of *pro rata* payments to all class members or *Teamsters* hearings.[6/] First the court could have narrowed the group entitled to awards based on objective data, such as characteristics of successful promotees, general performance information tenure at Wal-Mart, job title, full-time

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[6/] If it had to choose between the extremes, the district court should have operated on the presumption that all members of the class were interested in promotions and distributed the lump sum award among them on a *pro rata* basis.

as opposed to part-time status, active as opposed to inactive status, and possibly other factors.

Even among this narrower group, it is not, as the district court stated, "self-evident here that every (or nearly every) class member in every feeder pool desired a promotion." 222 F.R.D. at 181. Instead of opting for its draconian solution, the district court could have refined the group of awardees further without conducting *Teamsters* hearings. As the Fifth Circuit made clear in *Pettway*, the "maximum burden" that should be placed upon a class member where circumstances necessitate a class-wide approach to back pay is merely to require a "statement" of the positions he claims to have been denied as a result of discrimination and "evidence" of his qualifications for those positions. 681 F.2d at 1267-68. Similarly, in order to establish their eligibility to share in a class-wide award in this case, class members could be required to offer some evidence in support of their qualifications and interest in the positions at issue. Indicia of interest in advancement could be based on any number of contemporaneous sources, such as statements in performance reviews, applications for lower level positions, and exit interviews, for example. For current employees, even an application at this time for a posted management position could be used to infer past interest in promotions.

Consistent with that requirement, the district court could have ordered that the award be distributed on a *pro rata* basis to any member of the class, as narrowed by any objective criteria, who filled out a proof-of-claim form swearing under penalty of perjury that she, in fact, did make efforts to obtain one or more of the promotions at issue, expressed her desire to obtain such promotions to her superiors or to third persons, sought other promotions at some time in the past, and/or held a "firm but unexpressed personal interest" in obtaining a promotion. *Myers v. Gilman Paper Co.*, 527 F. Supp. 647, 656 (S.D. Ga. 1981); *cf. Teamsters*, 431 U.S. at 371, n.58 (noting that the district court may find "even [an employee's] unexpressed desire credible and convincing" and, thus, sufficient to establish that an individual would have applied, but for the discriminatory system). While distributing an award on the basis of this type of evidence would necessarily "generate a windfall for some employees who would have never been promoted had vacancies been filled on a nonracial basis and undercompensate the genuine victims of discrimination by forcing them to share the award with their undeserving brethren," the district court should have employed that method if, in fact, it were "the best that can be done under the circumstances." *Stewart*, 542 F.2d at 453; *see also Segar*, 738 F.2d at 1291 (finding that a reading of Title VII which would require the denial of class-wide back pay "in order to account for the

risk that a small number of undeserving individuals might receive" a windfall "cannot be squared with what the Supreme Court has told us about the nature of a court's remedial authority under Title VII"). Such a result, however, is plainly preferable to one that would deny relief to a substantial portion of the class.

III. THE DISTRICT COURT'S MANAGEABILITY CONCERNS DO NOT JUSTIFY DENIAL OF AN AWARD OF CLASS-WIDE BACK PAY.

While the processing of individual claim forms in this case might be a very time-consuming endeavor, it would hardly create the kind of insurmountable manageability problem that would justify the district court's failure to certify the entire class as eligible for back pay relief. Indeed, the district court's conclusion that manageability concerns preclude a lost pay remedy for part of the class certified under Rule 23(b)(2) in this case is in direct conflict with *Elliot v. Weinberger*, 564 F.2d 1219 (9th Cir. 1977), *aff'd in part and rev'd in part on other grounds*, *Califano v. Yamasaki*, 442 U.S. 682 (1979), wherein this Court squarely held that "Rule 23 makes manageability an issue important only in determining the propriety of certifying an action as a (b)(3), not a (b)(2), class action." *Id.* at 1229.

Moreover, even if Rule 23(b)(3)'s manageability requirement were applicable in the case of a Rule 23(b)(2) class action, the district court's ruling with respect to that requirement reflects a fundamental misunderstanding of the law.

The issue in the Rule 23(b)(3) context is "not whether the class action will create significant management problems, but . . . whether it will create more management problems than any of the alternatives." *Klay v. Humana, Inc.*, 382 F.2d 1241, 1273 (11th Cir. 2004); *see also Pruitt v. Allied Chemical Corp.*, 85 F.R.D. 100, 115 (E.D. Va. 1980) ("The fact that the adjudication of a class action . . . would be burdensome . . . does not preclude (b)(3) class certification . . . unless the problems of manageability in a class action are found to be greater than, or the same as, those found in other available methods of adjudicating the proposed class claims.").

Instead of comparing a class action with available alternatives as the law required it to do, the district court analyzed the manageability issue in a vacuum, concluding that the task of determining which members of the class would be eligible to share in a class-wide award would be unmanageable for no other reason than there are so many of them. As Judge Posner recently observed, however, the argument that the class should not be certified because there are hundreds of thousands of members "is no argument at all. The more claimants there are, the more likely a class action is to yield substantial economies in litigation." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660-61 (7th Cir. 2004); *see also In re Thermagenics Corp. Sec. Litig.*, 205 F.R.D. 687, 697 (N.D. Ga. 2002) ("Certification cannot be denied because the number of potential class members

makes the proceeding complex or difficult.”). Moreover, to require the members of the class to seek relief in individual actions in this case would be to send them on a fool’s errand, for, as the district court itself found, establishing that they would have been hired absent discrimination by Wal-Mart would be “virtually impossible” in the circumstances of this case. 222 F.R.D. at 176-77. Accordingly, measured against the alternative of individual lawsuits, a class action is plainly the more manageable approach.

CONCLUSION

For the reasons set forth herein, the district court’s ruling limiting eligibility for back pay on plaintiffs’ promotion claims to only those members of the certified class for whom objective applicant data exits was erroneous. By precluding back pay for those who suffered most, *i.e.*, those employees who allegedly were deterred from seeking promotions or denied them by Wal-Mart’s word of mouth, tap-on-the-shoulder, excessively subjective system, the district court’s order undermines both the deterrent and remedial purposes of Title VII, the ADEA and other federal antidiscrimination laws. Neither do the district court’s manageability concerns justify denial of class-wide back pay. Therefore, this Court should affirm the panel decision reversing the district court’s order denying class-wide back pay relief. In all other respects the district court’s order should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 (a)(7)(B) and 9th Cir. R. 32, I hereby certify the brief of *Amici Curiae* in Support of Appellees and Cross-Appellants was prepared in a proportionally spaced, Times New Roman typeface, using WordPerfect 12 and a font size of 14 points, and contains 3900 words.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed an original and 25 copies of the brief *amici curiae* of AARP and California Women's Law Center in the case of *Betty Dukes, et al. v. Wal-Mart Stores, Inc*., U.S. Court of Appeals for the Ninth Circuit, Case Nos.04-16688 & 04-16720, and also served two copies of the brief by First-Class mail on the following:

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