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ENDORSED
 FILED
 ALAMEDA COUNTY

JUN 11 2009

CLERK OF THE SUPERIOR COURT
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 Deputy

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15 Attorneys for Plaintiffs

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF ALAMEDA

20 NISHA BROWN and KATHY
 WILLIAMSON, individually and on behalf of
 21 all others similarly situated,

22 Plaintiffs,

23 vs.

24 WAL-MART STORES, INC., and DOES 1-
 25 50, inclusive,

26 Defendants.

CASE NO. *AB* 09457009

CLASS ACTION COMPLAINT FOR
 VIOLATION OF THE LABOR CODE
 PRIVATE ATTORNEYS GENERAL ACT
 OF 2004 (CAL. LAB. CODE SECTION
 2698 ET SEQ.)

28

1 Plaintiffs Nisha Brown and Kathy Williamson, individually and on behalf of all others
2 similarly situated, alleges as follows:

3 INTRODUCTION

4 1. This is a class action and a representative action for recovery of penalties under the
5 California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code section
6 2698 et seq. PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of herself and
7 other current and former employees to address an employer's violations of the California Labor
8 Code. In this case, defendants violated California Labor Code section 1198 and Wage Order 7-
9 2001, section 14 by failing to provide suitable seats to plaintiffs and other current and former
10 employees. Plaintiffs seek penalties on behalf of themselves and other current and former
11 employees of defendants as provided herein.

12 2. Plaintiff Nisha Brown ("Brown") is an individual residing in the State of California.

13 3. Plaintiff Kathy Williamson ("Williamson") is an individual, formally employed by
14 Wal-Mart Stores, Inc. in California, and currently residing in the State of Illinois.

15 4. Defendant Wal-Mart Stores, Inc. is a Delaware corporation doing business in
16 Oakland, California.

17 5. Plaintiffs do not know the names of those defendants sued as DOES 1 through 50
18 but will amend this complaint when they learn those names. Plaintiffs allege on information and
19 belief that each of the defendants is the agent, representative, successor, affiliate, officer, director,
20 employee, co-conspirator, or alter ego of each of the other defendants and is in some manner
21 responsible for the wrongdoing alleged herein. For the purposes of this complaint, the defendants
22 are collectively referred to as "Wal-Mart."

23 6. Venue is proper in this judicial district because at least some of the alleged
24 wrongdoing occurred in this judicial district, and Wal-Mart has failed to designate a principal
25 business office in California.

26 7. At all relevant times, plaintiffs were employed as Cashiers at Wal-Mart in
27 California. In connection with their job as a Cashier, plaintiffs regularly operated a cash register.

28 ////

1 8. Wage Order 7-2001, which covers businesses in the "mercantile industry" such as
2 Wal-Mart, states: "All working employees shall be provided with suitable seats when the nature of
3 the work reasonably permits the use of seats." Id., section. 14(a). Wal-Mart failed to provide its
4 Cashiers, including plaintiffs, with seats, despite the fact that the nature of cashier work
5 reasonably permits the use of seats.

6 CLASS ALLEGATIONS

7 9. Class Definition: Plaintiffs bring this lawsuit on their own behalf and as a class
8 action under Cal. Code Civ. Proc. section 382 and Fed. R. Civ. P. 23. The class ("Class") that
9 plaintiffs seek to represent is defined as follows: "All persons who, during the applicable statute of
10 limitations, were employed by Wal-Mart in the State of California in the position of Cashier, or
11 similar position that regularly involves the operation of a cash register, and were not provided with
12 a seat."

13 10. Ascertainable Class: The Class is ascertainable in that its members may be
14 identified and located using information contained in Wal-Mart's personnel records.

15 11. Numerosity: The Class is so numerous that the individual joinder of all members is
16 impractical under the circumstances of this case. Plaintiffs are informed and believe that the Class
17 consists of well over 1,000 individuals.

18 12. Common Questions of Fact or Law: This lawsuit is suitable for class treatment
19 because common questions of fact and law predominate over individual issues. Common
20 questions include, but are not limited to, the following: (1) whether Wal-Mart is subject to the
21 requirements of Wage Order 7-2001, section 14; (2) whether the job of a Cashier at Wal-Mart
22 reasonably permits the use of a seat; (3) what type(s) of seat would be suitable; and (4) the amount
23 of penalties that should be awarded under PAGA.

24 13. Typicality: Plaintiffs' claims are typical of the claims of Class members. Plaintiffs
25 and the Class members were injured by Wal-Mart's common practice of failing to provide seats.

26 14. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class.
27 Plaintiffs have no interests that are adverse to the interests of the Class.

28 ////

1 15. Superiority. A class action is superior to other available means for the fair and
2 efficient adjudication of this controversy, since individual joinder of all members of the Class is
3 impractical. Class action treatment will permit a large number of similarly situated persons to
4 prosecute their common claims in a single forum simultaneously, efficiently, and without
5 unnecessary duplication of effort and expense. Furthermore, the expenses and burden of
6 individualized litigation would make it difficult or impossible for individual members of the Class
7 to redress the wrongs done to them, while an important public interest will be served by
8 addressing the matter as a class action. Individualized litigation would also present the potential
9 for inconsistent or contradictory judgments.

10

11 FIRST CAUSE OF ACTION
12 (Violation of PAGA)

12

13 16. Plaintiffs incorporate by reference the allegations set forth above.

14 17. California Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable wage order. By failing to provide
16 plaintiffs and the other Class members with seats, in violation of Wage Order 7-2001, section 14,
17 Wal-Mart violated Lab. Code section 1198.

18 18. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself
19 or herself and other current or former employees as a result of the employer's violations of certain
20 sections of the California Labor Code. Plaintiffs are aggrieved employees, in that plaintiffs were
21 employed by Wal-Mart and were not provided with a seat, in violation of Lab. Code section 1198
22 and Wage Order 7-2001, section 14. A violation of Lab. Code section 1198 gives rise to private
23 right of action under PAGA.

24 19. Plaintiffs have complied with the PAGA notice provision set forth in Cal. Lab.
25 Code section 2699.3(a)(1). The Labor and Workforce Development Agency has not provided
26 plaintiffs with notice that it intends to investigate this violation, although 33 calendar days have
27 elapsed since the postmark date of plaintiffs' notice. Accordingly, plaintiffs are entitled to
28 commence this action.

1 20. Plaintiffs request penalties against Wal-Mart as provided under Lab. Code section
2 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

3
4 PRAYER

5 WHEREFORE, plaintiffs request entry of judgment, on behalf of themselves and the other
6 Class members, against each defendant, jointly and severally, as follows:

- 7 1. For penalties according to proof;
- 8 2. For reasonable attorneys' fees and costs of suit; and
- 9 3. For such other relief that the Court deems proper.


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11 Dated: June 16, 2009

DOSTART CLAPP GORDON & COVENEY, LLP

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JAMES F. CLAPP
Attorneys for Plaintiffs

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James F. Clapp (145814) Marita Murphy Lauinger (199242) DOSTART CLAPP GORDON & COVENEY, LLP 4370 La Jolla Village Drive, Suite 970, San Diego, CA 92122 TELEPHONE NO.: (858) 623-4200 FAX NO.: (858) 623-4299		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JUN 11 2009 CLERK OF THE SUPERIOR COURT By <u>BARBARA LAMOTTE</u> Deputy
ATTORNEY FOR (Name): Plaintiffs Nisha Brown and Kathy Williamson		
SUPERIOR COURT OF CALIFORNIA, COUNTY of Alameda STREET ADDRESS: 1225 Fallon St MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		
CASE NAME: NISHA BROWN and KATHY WILLIAMSON v. WAL-MART STORES, INC.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 09457009 JUDGE: DEPT:
<input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PPD/W/D (23) Non-P/PPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PPD/W/D tort (36) Employment <input type="checkbox"/> Wrongful termination (35) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): One

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 10, 2009
 Marita Murphy Lauinger
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(If the case involves an uninsured motorist claim subject to arbitration, check this box instead of Auto)</i></p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (16)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i></p> <p>Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i></p> <p>Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (26) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)</p> <p>Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Cases</p> <p>Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i></p> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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Short Title: **Brown v. Wal-Mart** Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Oakland, Rene C. Davidson Alameda County Courthouse (446) Hayward Hall of Justice (447)
 Pleasanton, Gale-Schenone Hall of Justice (448)

Case Category **Civil Case Cover Sheet Case Type** **Alameda County Case Type (check only one)**

Auto Tort	Auto Tort (22)	<input type="checkbox"/>	34	Auto tort (G)	
		Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no			

Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/>	75	Asbestos (D)	
	Product liability (24)	<input type="checkbox"/>	89	Product liability (not asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	<input type="checkbox"/>	97	Medical malpractice (G)	
	Other PI/PD/WD tort (23)	<input type="checkbox"/>	33	Other PI/PD/WD tort (G)	

Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/>	79	Bus tort/ unfair bus. practice (G)	
	Civil rights (08)	<input type="checkbox"/>	80	Civil rights (G)	
	Defamation (13)	<input type="checkbox"/>	84	Defamation (G)	
	Fraud (15)	<input type="checkbox"/>	24	Fraud (G)	
	Intellectual property (19)	<input type="checkbox"/>	87	Intellectual property (G)	
	Professional negligence (25)	<input type="checkbox"/>	59	Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/>	03	Other non-PI/PD/WD tort (G)	

Employment	Wrongful termination (36)	<input type="checkbox"/>	36	Wrongful termination (G)	
	Other employment (15)	<input checked="" type="checkbox"/>	85	Other employment (G)	
		<input type="checkbox"/>	53	Labor comm award confirmation	
		<input type="checkbox"/>	54	Notice of appeal - L.C.A.	

Contract	Breach contract / W/rnty (06)	<input type="checkbox"/>	04	Breach contract / Wrnty (G)	
	Collections (09)	<input type="checkbox"/>	81	Collections (G)	
	Insurance coverage (18)	<input type="checkbox"/>	86	Ins. coverage - non-complex (G)	
	Other contract (37)	<input type="checkbox"/>	98	Other contract (G)	

Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/>	18	Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	<input type="checkbox"/>	17	Wrongful eviction (G)	
	Other real property (26)	<input type="checkbox"/>	36	Other real property (G)	

Unlawful Detainer	Commercial (31)	<input type="checkbox"/>	94	Unlawful Detainer - commercial	Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Residential (32)	<input type="checkbox"/>	47	Unlawful Detainer - residential	
	Drugs (38)	<input type="checkbox"/>	21	Unlawful Detainer - drugs	

Judicial Review	Asset forfeiture (05)	<input type="checkbox"/>	41	Asset forfeiture	
	Petition re: arbitration award (11)	<input type="checkbox"/>	62	Pet. re: arbitration award	
	Writ of Mandate (02)	<input type="checkbox"/>	49	Writ of mandate	
	Other judicial review (39)	<input type="checkbox"/>	64	Other judicial review	
		Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No			

Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/>	77	Antitrust / Trade regulation	
	Construction defect (10)	<input type="checkbox"/>	82	Construction defect	
	Claims involving mass tort (40)	<input type="checkbox"/>	78	Claims involving mass tort	
	Securities litigation (28)	<input type="checkbox"/>	91	Securities litigation	
	Toxic tort / Environmental (30)	<input type="checkbox"/>	93	Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	<input type="checkbox"/>	95	Ins covrg from complex case type	

Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/>	19	Enforcement of judgment	
		<input type="checkbox"/>	08	Confession of judgment	

Misc Complaint	RICO (27)	<input type="checkbox"/>	08	RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/>	08	Partnership / Corp. governance (G)	
	Other complaint (42)	<input type="checkbox"/>	08	All other complaints (G)	

Misc. Civil Petition	Other petition (43)	<input type="checkbox"/>	06	Change of name	
		<input type="checkbox"/>	69	Other petition	