

2005 WL 3171688 (D.N.J.) (Trial Pleading)
United States District Court, D. New Jersey.

Victor ZAVALA, Eunice Gomez, Antonio Flores, Octavio Denisio, Hipolito Palacios, Carlos Alberto Tello, Maximiliano Mendez, Arturo Zavala, Felipe Condado, Luis Gutierrez, Daniel Antonio Cruz, Petr Zednek, Teresa Jaros, Jiri Pfauser, Hana Pfauserova, Pavel Kunc and Martin MaCak, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

WAL-MART STORES, INC., Defendant.

Civil Action No.: 03-5309 (JAG).

October 18, 2005.

Answer of Wal-Mart Stores, Inc. to Plaintiffs' Revised First Amended Class Action Complaint and Jury Demand

Defendant Wal-Mart Stores, Inc. ("Wal-Mart"), a Delaware corporation that maintains its corporate headquarters in Bentonville, Arkansas, by its undersigned counsel, respectfully states and prays as follows in response to the Revised First Amended Class Action Complaint and Jury Demand ("Amended Complaint") filed by Plaintiffs on or about October 28, 2004.

Wal-Mart denies all allegations set forth in the Amended Complaint that are not expressly admitted herein. The headings of the Amended Complaint require no response, but, to the extent a response is necessary, the headings are denied and are used herein only for the convenience of the Court and the parties.

INTRODUCTION

1. Paragraph 1 attempts to categorize the Amended Complaint. Wal-Mart denies these allegations and refers to the Amended Complaint for its content. To the extent Paragraph 1 alleges any facts or claims, Wal-Mart denies these allegations.
2. Paragraph 2 attempts to characterize a government investigation and law enforcement action. Wal-Mart denies these allegations and refers to the government's public filings for their content. To the extent Paragraph 2 alleges any facts or claims, Wal-Mart denies these allegations for lack of knowledge or information sufficient to form a belief as to their truth.
3. Paragraph 3 attempts to characterize purported state and federal law enforcement actions. Wal-Mart denies these allegations for lack of knowledge or information sufficient to form a belief as to their truth. To the extent Paragraph 3 alleges any facts or claims, Wal-Mart denies these allegations.

JURISDICTION AND VENUE

4. Paragraph 4 states legal conclusions. Wal-Mart neither admits nor denies such statements.
5. Paragraph 5 states legal conclusions. Wal-Mart neither admits nor denies such statements.

THE PARTIES

Plaintiffs

The Class Representatives

6. Wal-Mart denies the allegations in Paragraph 6 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

7. Wal-Mart denies the allegations in Paragraph 7 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

8. Wal-Mart denies the allegations in Paragraph 8 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

9. Wal-Mart denies the allegations in Paragraph 9 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

10. Wal-Mart denies the allegations in Paragraph 10 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

11. Wal-Mart denies the allegations in Paragraph 11 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

12. Wal-Mart denies the allegations in Paragraph 12 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

13. Wal-Mart denies the allegations in Paragraph 13 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

14. Wal-Mart denies the allegations in Paragraph 14 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

15. Wal-Mart denies the allegations in Paragraph 15 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

16. Wal-Mart denies the allegations in Paragraph 16 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

17. Wal-Mart denies the allegations in Paragraph 17 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

18. Wal-Mart denies the allegations in Paragraph 18 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

19. Wal-Mart denies the allegations in Paragraph 19 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

20. Wal-Mart denies the allegations in Paragraph 20 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

21. Wal-Mart denies the allegations in Paragraph 21 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

22. Wal-Mart denies the allegations in Paragraph 22 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

23. Wal-Mart denies the allegations in Paragraph 23 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

24. Wal-Mart denies the allegations in Paragraph 24 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

25. Wal-Mart denies the allegations in Paragraph 25 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

26. Wal-Mart denies the allegations in Paragraph 26 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

27. Wal-Mart denies the allegations in Paragraph 27 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

Defendant

28. Wal-Mart admits the allegations in Paragraph 28 that it is a Delaware corporation that maintains its corporate headquarters in Bentonville, Arkansas. Wal-Mart denies all remaining allegations.

CLASS ACTION ALLEGATIONS

29. Wal-Mart denies the allegations in Paragraph 29 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

30. Paragraph 30 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 30 alleges facts or claims, Wal-Mart denies these allegations.

31. Paragraph 31 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 31 alleges facts or claims, Wal-Mart denies these allegations.

32. Paragraph 32 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 32 alleges facts or claims, Wal-Mart denies these allegations.

33. Paragraph 33 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 33 alleges facts or claims, Wal-Mart denies these allegations.

34. Paragraph 34 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 34 alleges facts or claims, Wal-Mart denies these allegations.

35. Paragraph 35 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 35 alleges facts or claims, Wal-Mart denies these allegations.

ADDITIONAL FACTUAL BASIS FOR CLAIMS

The Wal-Mart Enterprise

36. Paragraph 36 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 36

alleges facts or claims, Wal-Mart denies these allegations.

37. Paragraph 37 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 37 alleges facts or claims, Wal-Mart denies these allegations.

38. Paragraph 38 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 38 alleges facts or claims, Wal-Mart denies these allegations.

39. Wal-Mart denies all allegations in Paragraph 39.

40. Paragraph 40 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 40 alleges any facts or claims, Wal-Mart denies these allegations.

41. Wal-Mart denies all allegations in Paragraph 41.

42. Paragraph 42 attempts to characterize a law enforcement investigation. Wal-Mart denies the allegations in Paragraph 42 and refers to the public filings in *United States v. Express Corporate Svcs., Inc., et al.*, No. 3 CV 02-982 (M.D. Pa.) for their content. To the extent Paragraph 42 alleges any facts or claims, Wal-Mart denies these allegations.

43. Wal-Mart denies the allegations in Sentences 1-2 and 4 of Paragraph 43 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. With regard to Sentence 3, Wal-Mart refers to the statement in the Virginia-Pilot of Norfolk for its content. Wal-Mart denies the allegations in Sentence 5.

44. Wal-Mart denies the allegations in Sentences 1-5 of Paragraph 44 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. Wal-Mart denies the allegations in Sentence 6. Sentences 7-8 state legal conclusions. Wal-Mart neither admits nor denies such statements.. To the extent these sentences allege facts or claims, Wal-Mart denies these allegations.

Forced Labor and False Imprisonment

45. Sentence 1 of Paragraph 45 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent this sentence alleges any facts or claims, Wal-Mart denies these allegations. Wal-Mart denies the allegations in Sentence 2 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. Wal-Mart denies the allegations in Sentences 3-5.

46. Wal-Mart denies all allegations in Paragraph 46.

47. Wal-Mart denies the allegations in Sentences 1-2 and 4-6 of Paragraph 47 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. Sentences 3 and 7 state legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent these sentences allege facts or claims, Wal-Mart denies these allegations.

48. Wal-Mart denies the allegations in Paragraph 48 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

49. Wal-Mart denies the allegations in Sentence 3 of Paragraph 49. Wal-Mart denies all remaining allegations for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

50. Wal-Mart denies all allegations in Paragraph 50.

51. Paragraph 51 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 51 alleges any facts or claims, Wal-Mart denies these allegations.

Wal-Mart's Role as Employer

52. Wal-Mart denies all allegations in Paragraph 52.

53. Paragraph 53 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 53 alleges any facts or claims, Wal-Mart denies these allegations.

Wal-Mart's Retail Operations

54. Wal-Mart denies the allegations in Sentence 1 of Paragraph 54. Sentences 2-3 attempt to characterize purported federal law enforcement actions. To the extent these sentences allege any facts or claims, Wal-Mart denies these allegations for lack of knowledge or information sufficient to form a belief as to their truth. Wal-Mart denies the allegations in Sentences 4-5.

55. Wal-Mart denies all allegations in Paragraph 55.

56. Wal-Mart denies the allegations in Paragraph 56.

Use of Multiple Contractors As a Shield

57. Wal-Mart denies the allegations in Sentences 1-2 of Paragraph 57. Wal-Mart denies the remaining allegations for lack of knowledge or information sufficient to form a belief as to their truth. To the extent paragraph 57 alleges facts or claims against Wal-Mart, Wal-Mart denies those allegations.

58. Paragraph 58 attempts to characterize a law enforcement investigation. Wal-Mart denies the allegations in Paragraph 58 and refers to the public filings in the *Forfeiture Action* for their content. To the extent Paragraph 58 alleges any facts or claims, Wal-Mart denies these allegations.

59. Wal-Mart denies the allegations in Sentences 1-2 of Paragraph 59 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. Sentence 3 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent these sentences allege any facts or claims, Wal-Mart denies these allegations. Wal-Mart denies the allegations in Sentences 4-5 for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

60. To the extent Paragraph 60 alleges facts or claims against Wal-Mart, Wal-Mart denies these allegations. Paragraph 60 also makes allegations against third parties that are not parties to this case. Such allegations do not require a response. To the extent a response to these allegations is necessary, Wal-Mart denies these allegations for lack of knowledge or information sufficient to form a belief as to their truth.

COUNT ONE

RICO

61. Wal-Mart repeats and realleges each and every admission and denial contained in Paragraphs 1-60 of this Answer as if set forth fully herein.

62. The allegations in Paragraph 62 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

63. The allegations in Paragraph 63 were dismissed by the Court's October 11, 2005 decision. No response is required. To

the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

64. The allegations in Paragraph 64 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

65. The allegations in Paragraph 65 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

66. The allegations in Paragraph 66 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

67. The allegations in Paragraph 67 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

68. The allegations in Paragraph 68 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

69. The allegations in Paragraph 69 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

70. The allegations in Paragraph 70 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

71. The allegations in Paragraph 71 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

COUNT TWO

RICO CONSPIRACY

72. Wal-Mart repeats and realleges each and every admission and denial contained in Paragraphs 1-71 of this Answer as if set forth fully herein.

73. The allegations in Paragraph 73 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

74. The allegations in Paragraph 74 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

75. The allegations in Paragraph 75 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

76. The allegations in Paragraph 76 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

77. The allegations in Paragraph 77 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

78. The allegations in Paragraph 78 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

79. The allegations in Paragraph 79 were dismissed by the Court's October 11, 2005 decision. No response is required. To

the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

80. The allegations in Paragraph 80 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

81. The allegations in Paragraph 81 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

82. The allegations in Paragraph 82 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

COUNT THREE

CONSPIRACY TO VIOLATE CIVIL RIGHTS UNDER 42 U.S.C. § 1985(3)

83. Wal-Mart repeats and realleges each and every admission and denial contained in Paragraphs 1-82 of this Answer as if set forth fully herein.

84. The allegations in Paragraph 84 were dismissed by the Court's October 11, 2005 decision. No response is required. To the extent a response is necessary, Wal-Mart denies all allegations in this Paragraph.

COUNT FOUR

FAIR LABOR STANDARDS ACT

85. Wal-Mart repeats and realleges each and every admission and denial contained in Paragraphs 1-84 of this Answer as if set forth fully herein.

86. Paragraph 86 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 86 alleges any facts or claims, Wal-Mart denies these allegations.

87. Paragraph 87 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 87 alleges any facts or claims, Wal-Mart denies these allegations.

88. Paragraph 88 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 88 alleges any facts or claims, Wal-Mart denies these allegations.

89. Paragraph 89 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 89 alleges any facts or claims, Wal-Mart denies these allegations.

90. Paragraph 90 states legal conclusions. Wal-Mart neither admits nor denies such statements. To the extent Paragraph 90 alleges any facts or claims, Wal-Mart denies these allegations.

COUNT FIVE

FALSE IMPRISONMENT

91. Wal-Mart repeats and realleges each and every admission and denial contained in Paragraphs 1-90 of this Answer as if set forth fully herein.

92. Wal-Mart denies the allegations in Paragraph 92.

93. Wal-Mart denies the allegations in Paragraph 93.

DEMAND FOR JURY TRIAL

Plaintiffs' demand for a jury trial does not require a response.

PRAYER FOR RELIEF

Plaintiffs' prayer for relief does not require a response. To the extent a response is necessary, Wal-Mart denies that any relief is warranted.

GENERAL DENIAL

Wal-Mart denies each and every allegation of the Complaint that has not been admitted or denied for lack of sufficient knowledge or information.

AFFIRMATIVE DEFENSES

Wal-Mart sets forth the following affirmative defenses. By asserting these defenses, Wal-Mart does not assume the burden of establishing or refuting any fact, element, or proposition as to which Plaintiffs bear the burden or proof. Wal-Mart reserves the right to raise additional Affirmative Defenses (1) as the facts and discovery in this case warrant; (2) in response to any new or amended claims or allegations asserted by Plaintiffs; and (3) upon a determination of which state's law, or states' laws, apply to Plaintiffs' claims.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to join indispensable parties under Fed. R. Civ. P. 19.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue their claims.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have not suffered injuries to their persons, business, or property caused by any action or omission of Wal-Mart.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have not suffered damages caused, in whole or in part, by any action or omission of Wal-Mart.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' injuries and damages, if any, were caused, in whole or in part, by the conduct of independent floor-cleaning contractors and third parties not affiliated with Wal-Mart.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' injuries and damages, if any, were caused, in whole or in part, by Plaintiffs' own conduct.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged injuries and damages, if any, were not proximately caused by any action or omission of Wal-Mart.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by laches.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Plaintiffs are *in pari delicto*.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of collateral estoppel and *res judicata*.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in part by the Court's October 11, 2005, decision in this case, which granted in part and denied in part Wal-Mart's Motion to Dismiss.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred as against public policy under *Hoffinan Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137 (2002) and its progeny.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' minimum wage and overtime claims are not appropriate collective action claims and may not be certified to proceed as a collective action pursuant to 29 U.S.C. § 216.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' minimum wage and overtime claims are barred because, by their own admission, Plaintiffs received lawful compensation for all work allegedly performed.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' minimum wage and overtime claims against Wal-Mart fail because Wal-Mart was not Plaintiffs' employer or joint employer under the Fair Labor Standards Act.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs cannot recover liquidated damages under the Fair Labor Standards Act because, in accordance with 29 U.S.C. § 260, Wal-Mart at all times acted in good faith and believed that its conduct was not in violation of the Fair Labor Standards Act.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent Plaintiffs establish that Wal-Mart is liable for minimum wages or overtime under the Fair Labor Standards Act, Plaintiffs' recovery must be limited because Wal-Mart did not act willfully.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' false imprisonment claims are not appropriate class action claims and may not be certified to proceed as a class action pursuant to Fed. R. Civ. P. 23.

TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent Wal-Mart is deemed an employer or joint employer of any Plaintiff, Plaintiffs' false imprisonment claims and recovery are barred by applicable state workers compensation schemes.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs cannot recover any damages for false imprisonment because Wal-Mart did not act intentionally, knowingly, willfully, recklessly, wantonly, or in bad faith.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' false imprisonment claims are barred because Plaintiffs knowingly and voluntarily assumed all risks associated with their conduct.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' false imprisonment claims are barred by the doctrines of contributory negligence and comparative fault.

WHEREFORE, Wal-Mart respectfully requests that the Amended Complaint against Wal-Mart be dismissed with prejudice and that the Court grant such other relief that it deems just and proper.
