

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

_____)	
NATIONAL CONSUMERS LEAGUE,)	
)	
Plaintiff,)	
)	
v.)	No. 2015 CA 007731 B
)	
WAL-MART STORES, INC., J.C. PENNEY)	
CORPORATION, INC., and THE CHILDREN'S)	Judge Thomas J. Motley
PLACE, INC.,)	
)	
Defendants.)	ANSWER OF WAL-MART
)	STORES, INC. TO SECOND
)	AMENDED COMPLAINT
)	
_____)	

This is Wal-Mart Stores, Inc.'s (Walmart's) Answer to Plaintiff's Second Amended Complaint. Plaintiff filed the Second Amended Complaint after the Court ruled, in its July 22, 2016 Order on Defendants' Joint Motion to Dismiss, that various allegations in the Amended Complaint are not actionable. The Court's ruling limits Plaintiff's claim to a violation of D.C. Code § 28-3904(e) for statements Walmart made on its website about the existence of a program to audit factories used by third-party suppliers. Plaintiff does not seek monetary relief on behalf of any person or entity other than itself. The parties worked cooperatively to identify and remove a number of allegations in the Amended Complaint that are not actionable based on the Court's ruling. By participating in the process, Walmart does not waive its arguments for dismissal of the entire Amended Complaint, nor does it concede that all of the allegations in the Second Amended Complaint are within the scope of the Court's Order. Walmart reserves the right to contest the appropriateness of remaining allegations. Plaintiff's allegations are repeated by paragraph below, followed by Walmart's answer to each. Walmart denies any allegation for which it states that it lacks sufficient knowledge or information.

INTRODUCTION

1. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 1, in part because it makes no such promises.

2. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 2, in part because it makes no such promises, except it admits that it uses advertising and the Internet to market and sell goods.

3. Walmart admits the allegations in paragraph 3, but only to the extent of acknowledging that Plaintiff quotes excerpts that appeared on one of its corporate web pages as of the date specified in the footnotes to paragraph 3. The full text of the relevant web page as of that date speaks for itself.

4. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 4, which relate to another Defendant.

5. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 5, which relate to another Defendant.

6. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 6 as to the other Defendants, and denies that it announces or describes its audit and policing systems to “ensure” compliance with standards.

7. Walmart denies the allegations in paragraph 7, except refers to the documents referenced in paragraph 7, which speak for themselves.

8. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 8, which relate to another Defendant.

9. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 9, which relate to another Defendant.

10. Walmart denies the allegations in paragraph 10, and lacks knowledge or information sufficient to admit or deny the allegations in paragraph 10 insofar as they pertain to other Defendants.

11. Walmart admits that the Rana Plaza building collapsed on April 24, 2013, but denies that Walmart had authorized any factory at Rana Plaza to produce goods for Walmart. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 11 insofar as they pertain to other Defendants.

12. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 12.

13. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 13, except to admit that those numbers for deaths and injuries resulting from the Rana Plaza collapse have been widely reported as true.

14. Walmart denies the allegations in the first sentence in paragraph 14. The remainder of paragraph 14 states conclusions of law to which no response is required. To the extent a response is required, Walmart lacks knowledge or information sufficient to admit or deny the allegations in the second sentence of paragraph 14, and denies the allegations in the third sentence of paragraph 14. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

JURISDICTION AND VENUE

15. Paragraph 15 states conclusions of law to which no response is required.

16. The first sentence of paragraph 16 states conclusions of law to which no response is required. Walmart lacks knowledge or information sufficient to admit or deny the allegations

in the second and third sentences of paragraph 16. Walmart denies the allegations in the fourth sentence of paragraph 16, except admits that it transacts business in Washington, D.C.

17. The first sentence of paragraph 17 states conclusions of law to which no response is required. Walmart lacks knowledge or information sufficient to admit or deny the allegations in the second sentence of paragraph 17, except admits that it sells (and thereby markets and distributes) products to consumers in the District of Columbia. Walmart denies the allegations in the third sentence of paragraph 17, except admits that it has transacted business in the District of Columbia, and lacks knowledge or information sufficient to admit or deny the allegations in the third sentence of paragraph 17 insofar as they pertain to other Defendants.

PARTIES

18. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 18.

19. Walmart admits that it is headquartered in Arkansas, that Walmart and its affiliated companies currently operate stores in 28 countries, that it is and has been accessible to residents of the District of Columbia through its website and—since late 2013—through stores at the two noted locations. The remaining allegations in paragraph 19 are denied.

20. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 20, which relate to another Defendant.

21. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 21, which relate to another Defendant.

THE INTERESTS OF NCL & THE GENERAL PUBLIC¹

22. Paragraph 22 states conclusions of law to which no response is required. To the extent a response is required, Walmart denies the allegations in paragraph 22. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

23. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 23.

24. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 24.

25. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 25.

26. Walmart denies the allegations in paragraph 26, except admits that it has marketed and sold products to District of Columbia residents through online and retail outlets, and lacks knowledge or information sufficient to admit or deny the allegations in paragraph 26 insofar as they pertain to other Defendants.

27. Walmart denies the allegations in paragraph 27, and lacks knowledge or information sufficient to admit or deny the allegations in paragraph 27 insofar as they pertain to other Defendants. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

¹ Walmart includes the headings and subheadings from the Second Amended Complaint solely for purposes of ease of reference. To the extent that any of the headings, subheadings, or footnotes from the Second Amended Complaint contain anything that can be construed as an allegation, Walmart denies all such allegations.

FACTUAL BACKGROUND

The Importance and Promotion of Corporate Social Responsibility

28. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 28.

29. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 29.

30. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 30.

31. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 31.

32. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 32.

33. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 33.

34. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 34.

35. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 35.

36. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 36.

37. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 37.

38. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 38, except to deny that Walmart makes any such promises.

39. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 39.

Walmart's CSR Representations

40. Walmart admits the allegations in paragraph 40, but only to the extent of acknowledging that Plaintiff quotes language from its Standards for Suppliers. The full text of that document speaks for itself.

41. Walmart admits the allegations in paragraph 41, but only to the extent that its Standards for Suppliers set forth Walmart's expectation that its suppliers and their manufacturing facilities, including all subcontracting and packaging facilities, ensure that working hours are consistent with local law and not excessive, that workers are compensated in a manner that meets or exceeds legal standards or collective agreements, whichever are higher, and that dining facilities, where provided, be safe, healthy, and sanitary.

42. Walmart admits the allegations in paragraph 42, but only to the extent of acknowledging that Plaintiff quotes language from its Standards for Suppliers. The full text of that document speaks for itself.

43. Walmart admits that the language quoted in paragraph 43 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

44. Walmart admits that the language quoted in paragraph 44 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

45. Walmart admits that the language quoted in paragraph 45 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

46. Walmart admits that some of the language stated in paragraph 46 previously appeared on a Walmart web page, but only to the extent of acknowledging that it referred to the work of independent third-party auditors. Walmart denies that the language in paragraph 46 currently appears on a Walmart web page. The previous version of the web page speaks for itself.

47. Walmart admits that the language quoted in paragraph 47 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

48. Walmart admits that the language quoted in paragraph 48 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

49. Walmart denies use of the word “promises,” and admits that the language quoted in paragraph 49 previously appeared on a Walmart web page, but denies that it currently does. The previous version of that web page speaks for itself.

JCPC's CSR Representations

50. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 50, which relate to another Defendant.

51. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 51, which relate to another Defendant.

52. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 52, which relate to another Defendant.

TCP's CSR Representations

53. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 53, which relate to another Defendant.

54. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 54, which relate to another Defendant.

55. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 55, which relate to another Defendant.

56. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 56, which relate to another Defendant.

57. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 57, which relate to another Defendant.

58. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 58, which relate to another Defendant.

The Fire at Rana Plaza

59. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 59.

60. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 60.

61. Walmart denies the allegations in paragraph 61. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 61 insofar as they pertain to other Defendants.

62. Walmart admits the allegations of paragraph 62, but only to the extent that five factories were located in Rana Plaza, in Savar, at the time of the collapse.

63. Walmart admits the first sentence of paragraph 63. Walmart lacks knowledge or information sufficient to admit or deny the second sentence of paragraph 63 insofar as it pertains to the other Defendants. Walmart denies the allegations in the second sentence of paragraph 63 to the extent they suggest that Rana Plaza factories manufactured apparel for sale to Walmart at the time of its collapse.

64. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 64 insofar as they pertain to the other Defendants. Walmart admits that after the Rana Plaza collapse it truthfully stated that “our investigation of the Rana Plaza building site after the collapse revealed no evidence of authorized or unauthorized production at the time of the tragedy.”

65. Walmart denies the allegations in paragraph 65 to the extent they pertain to Walmart. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 65 insofar as they pertain to other Defendants.

66. Walmart denies the allegations in paragraph 66. The Ether Tex factory referenced in paragraph 66 and the Ether Tex factory located in Rana Plaza were different factories with the same name. Walmart had not authorized any factory at Rana Plaza to produce merchandise for sale at Walmart.

67. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 67, which relate to another Defendant.

68. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 68, which relate to another Defendant.

69. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 69, which relate to another Defendant.

70. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 70.

71. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 71.

72. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 72.

73. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 73.

74. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 74.

75. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 75.

76. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 76, except admits that Rana Plaza collapsed on April 24, 2013 and that the numbers of deaths and injuries were widely reported.

77. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 77.

78. Walmart denies the allegations in paragraph 78. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 78 insofar as they pertain to other Defendants.

79. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 79.

80. Walmart denies the allegations in paragraph 80, except admits that fires, explosions and a collapse occurred at other Bangladesh garment factories in the thirteen years prior to the Rana Plaza collapse.

81. Walmart denies the allegations in paragraph 81. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 81 insofar as they pertain to other Defendants.

82. Walmart denies the allegations in paragraph 82. Walmart lacks knowledge or information sufficient to admit or deny the allegations in paragraph 82 insofar as they pertain to other Defendants.

COUNT I
(Violation of the District of Columbia Consumer Protection Procedures Act)
Against All Defendants

83. Paragraph 83 states conclusions of law to which no response is required.

84. Paragraph 84 states conclusions of law to which no response is required. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

85. Paragraph 85 states conclusions of law to which no response is required.

86. Walmart denies the allegations in paragraph 86, which also states a conclusion of law for which no response is required.

87. Walmart denies that Plaintiff is entitled to any of the relief requested. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

88. Walmart denies that Plaintiff is entitled to any of the relief requested. Plaintiff does not seek damages, restitution, or other monetary relief on behalf of the General Public or anyone other than Plaintiff.

PRAYER FOR RELIEF

The allegations set forth in Plaintiff's "Prayer for Relief" state conclusions of law to which no response is required. To the extent a response is required, Walmart denies the allegations in the "Prayer for Relief." Walmart denies that Plaintiff is entitled to any of the relief requested.

JURY TRIAL DEMANDED

Walmart demands a trial by jury on all issues so triable.

ADDITIONAL OR AFFIRMATIVE DEFENSES

Without assuming the burden to prove that which properly falls on Plaintiff, Walmart pleads the following separate and additional defenses.

FIRST SEPARATE AND ADDITIONAL DEFENSE

Walmart denies all allegations not expressly admitted and specifically reserves all affirmative or other defenses that it may have against Plaintiff and the General Public of the District of Columbia.

SECOND SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted because, *inter alia*: (a) Walmart's statements fully conformed with all applicable law; (b) Plaintiff was not deceived or harmed; (c) there is no causal link between any alleged misrepresentation and any resulting loss; and (d) no reasonable consumer would be misled by Walmart's statements.

THIRD SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's claims are barred in whole or in part by Walmart's free speech guarantees of the First Amendment to the United States Constitution.

FOURTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff lacks standing because it has not sustained any injury or damage as a result of any actions allegedly taken by Walmart. Plaintiff also may not pursue claims for injunctive relief to the extent that the challenged representations or omissions have not appeared or do not currently appear on Walmart's website.

FIFTH SEPARATE AND ADDITIONAL DEFENSE

Under the Court's July 22, 2016 Opinion on Defendants' Motion to Dismiss, Plaintiffs' allegations exceed the scope of an actionable claim because, among other things, they are not limited or relevant to whether Walmart made accurate, objectively verifiable statements that it had an audit process in place.

SIXTH SEPARATE AND ADDITIONAL DEFENSE

The claims in the Second Amended Complaint are barred, in whole or in part, by the applicable statutes of limitation and repose.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

The claims in the Second Amended Complaint are barred, in whole or in part, by the doctrines of estoppel and waiver.

NINTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's claims for equitable relief are barred to the extent there is, or Plaintiff asserts that there is, an adequate remedy at law.

TENTH SEPARATE AND ADDITIONAL DEFENSE

None of the statements Plaintiff challenges contain or contained any false or misleading statement or promises. As such, the statements are not, and were not, deceptive, false, misleading, fraudulent, unlawful, or unfair, and were not intended to mislead or deceive consumers. This action is barred, in whole or in part, because the statements at issue provided clear and appropriate descriptions of Walmart's standards and processes. Moreover, the statements at issue in the Second Amended Complaint accurately portrayed Walmart's standards and processes.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff and the General Public of the District of Columbia are precluded from recovery because the representations, actions or omissions alleged by Plaintiff were and are not material to Plaintiff's or any reasonable consumer's decisions to purchase products from Walmart.

TWELFTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff failed to mitigate its damages, if any, and any recovery should be reduced or denied accordingly.

THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE

The claims in the Second Amended Complaint are barred, in whole or in part, because Walmart acted in good faith at all times.

FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff has enjoyed the full benefit of its purchase of the products that are the subject of the Second Amended Complaint and is thereby barred from making the claims for relief set forth in the Second Amended Complaint.

FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff has not suffered any loss and Walmart has not been unjustly enriched as a result of any action or inaction by Walmart and Plaintiff therefore is not entitled to any restitution or disgorgement.

SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE

Enforcement of any purported rights Plaintiff may have against Walmart would be contrary to public policy, and therefore Plaintiff is barred from any recovery from Walmart.

SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE

To the extent that Plaintiff seeks punitive damages for an alleged act or omission of Walmart, any award of punitive damages is barred under Washington, D.C. law. An award of punitive damages would also, if granted, violate Walmart's constitutional rights.

EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE

As a matter of constitutional right and substantive due process, Walmart would be entitled to contest by jury trial its liability to any particular individual plaintiffs, even if the purported representative of the General Public of the District of Columbia prevails on its claims.

NINETEENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff has agreed to waive any relief of a monetary nature (whether legal or equitable) on behalf of any person or entity other than Plaintiff itself. Thus, the full extent of monetary relief available as to Walmart is \$1,500.

TWENTIETH SEPARATE AND ADDITIONAL DEFENSE

Walmart has insufficient knowledge or information upon which to form a basis as to whether it may have additional, as yet unstated, separate defenses available. Walmart has not knowingly or intentionally waived any applicable defenses and reserves the right to raise additional defenses as they become known to it through discovery in this matter. Walmart further reserves the right to amend its answer and/or defenses accordingly and/or to delete defenses that it determines are not applicable during the course of subsequent discovery.

PRAYER FOR RELIEF

WHEREFORE, Walmart prays for the following relief:

- A. That judgment on every claim against Walmart in the Second Amended Complaint be entered in favor of Walmart;
 - B. That this Court find that this suit cannot be maintained on behalf of the General Public of the District of Columbia;
 - C. That Plaintiff and the General Public of the District of Columbia take nothing by Plaintiff's Complaint;
 - D. That the request for equitable and injunctive relief be denied;
 - E. That Walmart be awarded its costs incurred, including reasonable attorneys' fees;
- and
- F. For such other and/or further relief as this Court may deem just and proper.

DATED: September 26, 2016

Gibson, Dunn & Crutcher LLP

/s/ David Debold

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Counsel for Defendant Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2016, I filed and served the foregoing on all counsel of record through the Court's CaseFileExpress system.

/s/ David Debold