

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

KIMBERLY A. WEST,

Plaintiff,

vs.

CASE NO. 5:10-cv-324/RS-EMT

**WAL-MART STORES EAST, L.P.,
a Limited Partnership,**

Defendant.

ORDER

Before me is Defendant's Motion for Summary Judgment on Count II of the Amended Complaint (Doc. 13) and Plaintiff's Memorandum in Opposition (Doc. 16).

Count II of the Amended Complaint is entitled "Negligent Construction and Accessibility as Required by the Florida Americans with Disabilities Accessibility Implementation Act (Doc. 3, p. 19)." Plaintiff acknowledges that "Count II of the Amended Complaint does not bring an action under the Florida ADA or the Federal ADA. What it does is request that the duty imposed by Section[s] 553.501-553.513, Florida Statutes, be used as the standard of care in assessing Wal-Mart's negligence (Doc. 16, p.1)."

From Plaintiff's representation, it appears that the parties agree that Count II is not a separate cause of action. Rather, "Plaintiff is merely offering compliance with the ADA as one measure of the standard of care [for a state law negligence claim] (Doc. 16, p.1)"

The appropriateness of using the ADA as a standard of care can be addressed by subsequent motion.

Defendant's Motion for Summary Judgment on Count II of the Amended Complaint (Doc. 13) is **GRANTED**. Count II is dismissed with prejudice.

ORDERED on April 1, 2011.

/S/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE