

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ROLAND PADRON, BOBIRT R.MIRANDA	)	
and EUSEBIO R. CALZADA, individually and	)	
on behalf of all others similarly situated,	)	
	)	Case No. 10-CV-06656
Plaintiffs,	)	
v.	)	Judge Zagel
	)	Magistrate Judge Soat Brown
WAL-MART STORES, INC. d/b/a WALMART,	)	
	)	
Defendant.	)	

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO COUNTS IV-IX OF  
PLAINTIFFS’ CLASS ACTION COMPLAINT**

Defendant, Wal-Mart Stores, Inc., (“Defendant” or “Walmart”), by its attorneys, Drinker Biddle & Reath LLP, for its answer and affirmative defenses to Counts IV-IX of the Class Action Complaint (“Complaint”) of Plaintiffs Roland Padron (“Padron”), Bobirt R. Miranda (“Miranda”) and Eusebio R. Calzada (“Calzada”) (together, “Plaintiffs”), states as follows:<sup>1</sup>

**NATURE OF ACTION**

1. On April 12, 2010, the Chicago District Office of the EEOC issued a “Determination” that the evidence obtained in its investigation of the underlying charges of discrimination established reasonable cause to believe that Walmart discriminated against Plaintiffs and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

**ANSWER:** Defendant admits that the Chicago District Office of the EEOC issued a “Determination” dated April 12, 2010 on each Charge of Discrimination filed by Plaintiffs, copies of which Determinations are attached as Group Exhibit B to the Complaint and speak for themselves. Defendants deny the remaining allegations of Paragraph 1.

<sup>1</sup> Defendant has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs’ individual claims, pursuant to Fed. R. Civ. P. 12(b)(6). Defendant’s Motion seeks dismissal of Counts I, II and III in their entirety.

2. Plaintiffs bring this nationwide Class Action Complaint against Defendant Walmart, seeking damages and injunctive relief for Defendant's widespread Cuban national origin, race and ethnicity discrimination and related illegal conduct constituting violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq. (hereinafter "Title VII"), and violations of The Civil Rights Act of 1866, 42 U.S.C. §1981. Plaintiffs, in their representative capacities, seek a permanent injunction against Walmart from discrimination based on Cuban national origin, race and ethnicity, whereby Defendant has intentionally and willfully subjected Plaintiffs and a class of current and former Cuban warehouse employees to disparate treatment in the terms and conditions of their employment, by paying them lower wages than similarly situated non-Cuban employees, based on their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

**ANSWER:** Defendant admits that Plaintiffs purport to bring this action as a nationwide class action for the relief specified based upon the alleged discrimination specified in Paragraph 2. Defendant denies that this action may properly be maintained as a class action, denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs or the purported class are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 2. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

3. Plaintiffs allege, in the alternative, that Walmart's facially neutral compensation policy has a disparate impact on Plaintiffs and a nationwide class of Cuban warehouse employees, resulting in Plaintiffs and the putative class being paid a lower wage than similarly situated non-Cuban warehouse employees in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.

**ANSWER:** Defendant admits that Plaintiffs alternatively purport to bring this action as a nationwide class action based upon disparate treatment and the alleged discrimination specified in Paragraph 3. Defendant denies that this action may properly be maintained as a class action, denies that Defendant has a compensation policy that has a disparate impact on Plaintiffs and any purported class members, denies that Defendant committed any discrimination

or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs or the purported class are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 3. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

4. Plaintiffs, in their individual capacities also bring claims that Walmart discriminated against them by subjecting them to different terms and conditions than similarly situated non-Cuban employees by subjecting them to variable schedules, denials of make-up days and other discriminatory terms and conditions based on their Cuban national origin, race and ethnicity in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

**ANSWER:** Defendant admits that Plaintiffs, in their individual capacities, purport to bring this action based upon the alleged discrimination specified in Paragraph 4. Defendant denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs, denies that Plaintiffs are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 4.

5. Plaintiffs, in their individual capacities also bring claims that Walmart retaliated against them for engaging in the protected activity of reporting and opposing discrimination, by terminating their employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

**ANSWER:** Defendant admits that Plaintiffs, in their individual capacities, purport to bring this action based upon the alleged retaliation specified in Paragraph 5. Defendant denies that Defendant committed any retaliation or other unlawful conduct of any kind with respect to the Plaintiffs, deny that Plaintiffs are entitled to any damages or other relief whatsoever, and deny the remaining allegations of Paragraph 5.

6. Plaintiffs have been subjected to discrimination on the basis of their Cuban national origin, race and ethnicity.

**ANSWER:** Defendant denies the allegations of Paragraph 6.

7. Plaintiffs were outstanding warehouse employees of Defendant who made substantial contributions to Defendant's operations and during all relevant times performed their job responsibilities in a manner that met or exceeded Defendant's legitimate business expectations.

**ANSWER:** Defendant denies the allegations of Paragraph 7.

8. Plaintiffs have suffered extreme emotional distress, lost wages, disparate pay, lost benefits, and other significant damages as a direct and proximate result of Defendant's illegal conduct as alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 8.

9. Plaintiffs bring a Title VII claim and a Civil Rights Act of 1866 claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of Defendant's intentional and willful national origin, race and ethnicity discrimination, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**ANSWER:** Defendant admits that Plaintiffs purport to bring this action individually and as a nationwide class action based upon the alleged discrimination specified in Paragraph 9. Defendant denies that this action may properly be maintained as a class action, denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs or the purported class are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 9. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

10. In the alternative, Plaintiffs bring a Title VII claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of the disparate impact of Defendant's compensation policy.

**ANSWER:** Defendant admits that Plaintiffs alternatively purport to bring this action

individually and as a nationwide class action based upon disparate impact and the alleged discrimination specified in Paragraph 10. Defendant denies that this action may properly be maintained as a class action, denies that Defendant has a compensation policy that has a disparate impact on Plaintiffs and purported class members, denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs or the purported class are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 10. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

11. All allegations and claims are pled in the alternative to the extent such an interpretation is necessitated by law, required for proper construction under the law, and permitted under federal law.

**ANSWER:** Defendant admits that Plaintiffs purport to plead certain allegations and alleged claims in the alternative. Defendant denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs or the purported class are entitled to any damages or other relief whatsoever, and denies the remaining allegations of Paragraph 11.

## JURISDICTION AND VENUE

12. The subject matter jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1332, 1343(3) and (4), 1658 and 2201 and 2202. This is a suit authorized and instituted pursuant to the Act of Congress known as “The Civil Rights Act of 1964,” 42 U.S.C. § 2000 et seq., as amended by the “Civil Rights Act of 1991,” and the “Civil Rights Act of 1866,” 42 U.S.C. § 1981 and 1981(a).

**ANSWER:** Defendant states that the allegations of Paragraph 12 constitute legal conclusions for which no answer is required. Further answering, Defendant admits that this Court has subject matter jurisdiction over this action.

13. Upon information and belief, the amount in controversy in this action exceeds the sum or value (sic) of \$5,000,000.00, exclusive of interest and costs.

**ANSWER:** Defendant denies the allegations of Paragraph 13. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs’ individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

14. Upon information and belief, at least one member of the Rule 23 Class is a citizen of a different state than that of Defendant.

**ANSWER:** Defendant denies that this action may properly be maintained as a class action, and denies the remaining allegations of Paragraph 14. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs’ individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

15. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because the Plaintiffs and Defendant either reside in this judicial district and/or because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

**ANSWER:** Defendant states that the allegations of Paragraph 15 constitute legal conclusions for which no answer is required. Further answering, Defendant admits that venue is proper in this judicial district with respect to Plaintiffs’ individual claims, and denies the remaining allegations of Paragraph 15.

16. Plaintiffs, in their class-wide claims, request injunctive and declaratory relief and compensation for disparate pay, back pay, lost wages and punitive damages and/or any and all other damages permitted by applicable law, and attorneys' fees and costs.

**ANSWER:** Defendant admits that Plaintiffs seek in this action the damages and other relief specified in Paragraph 16. Defendant denies that this action may properly be maintained as a class action, denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any purported class members, denies that Plaintiffs are entitled to any damages or other relief whatsoever in this action, and denies the remaining allegations of Paragraph 16. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

## **THE PARTIES**

### **a. Plaintiffs**

17. Plaintiff, ROLANDO PADRON, is a resident of the City of West Chicago, in DuPage County, Illinois.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. Plaintiff, BOBIRT R. MIRANDA, is a resident of the City of West Chicago, in DuPage County, Illinois.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

19. Plaintiff, EUSEBIO R. CALZADA, is a resident of the City of West Chicago, in DuPage County, Illinois.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19.

**b. Defendant**

20. Defendant, WAL-MART STORES, INC., d/b/a WALMART, is a Delaware corporation with offices and doing business throughout the State of Illinois and throughout the United States. At all relevant times, Defendant has continuously been a corporation doing business in Illinois.

**ANSWER:** Defendant admits that it is a Delaware corporation and that it presently is, and at certain other times has, engaged in business in the United States, including in the State of Illinois. Defendant denies the remaining allegations of Paragraph 20.

21. At all relevant times Defendant has continuously had at least fifteen (15) employees and been engaged in an industry affecting commerce within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

**ANSWER:** Defendant admits that it presently has, and at certain other times has had, at least 15 employees. Defendant states that the remaining allegations of Paragraph 21 constitute legal conclusions for which no answer is required.

**CLASS ALLEGATIONS**

22. Plaintiffs bring their claims under Title VII and the Civil Rights Act of 1866, individually, and as a class action pursuant to Federal Rules of Civil Procedure Rule 23. The Rule 23 Class is defined as:

“All current and former Cuban warehouse employees of Walmart who were paid a lower wage than similarly situated non-Cuban warehouse employees, from January 1, 2006, through the present”

**ANSWER:** Defendant admits that Plaintiffs purport to bring their claims individually and on behalf of the proposed class specified and under the statutes referenced in Paragraph 22. Defendant denies that this action may be maintained as a class action, denies that Plaintiffs’ purported class definition is appropriate, denies that Defendant committed any discrimination or other unlawful conduct of any kind with respect to the Plaintiffs or any class of employees, and denies the remaining allegations of Paragraph 22. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the



Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

23. Excluded from the Rule 23 Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Rule 23 Class period has had: a controlling interest in Walmart; the Judge to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit a timely and otherwise proper request for exclusion from the Rule 23 Class.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

24. **Numerosity:** The persons in the Rule 23 Class identified above are geographically diverse and so numerous that joinder of all members is impracticable. The precise number of such persons is unknown, and the calculation of that number is presently within the sole control of Defendant.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 24.

25. **Commonality:** There are numerous questions of law and fact common to the Rule 23 Class that predominate over any questions affecting only individual members. The questions of law and fact common to this Rule 23 Class that predominate over any question solely affecting individual members of the Rule 23 Class include, but are not limited to, the following:

- (a) Whether Defendant paid Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees;
- (b) Whether Defendant's actions in paying Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees was intentional, willful and/or deliberate;
- (c) Whether Defendant's compensation policy has a disparate impact on Cuban warehouse employees, resulting in Cuban warehouse employees being paid a lower wage than similarly situated non-Cuban warehouse employees;
- (d) Whether the Defendant was an "employer" of Plaintiffs and the Rule 23

- Class within the meaning of Title VII, and the Civil Rights Act of 1866;
- (e) Whether Defendant's actions as alleged herein violate Title VII; and
  - (f) Whether Defendant's actions as alleged herein violate the Civil Rights Act of 1866.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 25 and each of its subparts.

26. **Typicality:** The claims of the Representative Plaintiffs are typical of the Rule 23 Class.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 26.

27. **Adequacy:** The Representative Plaintiffs will fairly and adequately represent the interests of the Rule 23 Class.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 27.

28. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy — particularly in the context of wage/back pay litigation, where individual class members lack the financial resources to vigorously prosecute separate lawsuits in Federal Court against large corporations like Defendant (the discriminatory behavior has adversely impacted the Rule 23 Classes ability to bring individual actions).

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 28.

29. A class action is superior to other available methods for the fair and efficient adjudication of the controversy — particularly in the context of this litigation where no individual employee can justify the commitment of the large financial resources to vigorously prosecute a lawsuit in Federal Court against the corporate Defendant.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 29.

30. The Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

**ANSWER:** Defendant denies that this action may be maintained as a class action.

Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6). Answering further, Defendant denies the allegations of Paragraph 30.

### **PROCEDURAL HISTORY**

31. Plaintiffs, Rolando Padron, Bobirt R. Miranda and Eusebio R. Calzada, each filed their respective pro se "Charge of Discrimination" with the Equal Employment Opportunity Commission on November 30, 2006, alleging violations of Title VII of the Civil Rights Act of 1964. *See Plaintiffs' Charges of Discrimination attached hereto as Group Exhibit "A"*

**ANSWER:** Defendant admits that Plaintiffs each filed a Charge of Discrimination

with the EEOC dated November 30, 2006, alleging certain violations of Title VII, which Charges are attached to the Complaint as Group Exhibit A and speak for themselves. Defendant further states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31.

32. On or about April 12, 2010, the commission concluded its investigation and issued a determination that the ***“evidence obtained in the investigation establishes reasonable cause to believe that Respondent discriminated against Charging Party and a class of employees based on because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.”*** Following a conciliation failure, the commission issued Plaintiffs a “Notice of Right to Sue” letter dated July 20, 2010. *See Plaintiffs’ Notice of Right to Sue and Determination Letters attached hereto as Group Exhibit “B”.*

**ANSWER:** Defendant admits that the EEOC issued a Determination dated April 12, 2010 on each Charge of Discrimination filed by Plaintiffs, which Determinations include the quoted language, and that the EEOC issued a Notice of Right to Sue dated July 20, 2010 on each of the Plaintiffs’ Charges, which Determinations and Notices of Right to Sue are attached to the Complaint as Group Exhibit B and speak for themselves. Defendant further states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 32.

33. Plaintiffs timely filed this lawsuit within ninety (90) days from the date of receipt of the July 20, 2010, Notice of Right to Sue letters.

**ANSWER:** Defendant admits that Plaintiffs filed this lawsuit within ninety (90) days of receipt of the July 20, 2010 Notice of Right to Sue letters, but denies that all of Plaintiffs’ purported claims in this action are timely. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs’ individual claims, including time-barred claims, pursuant to Fed. R. Civ. P. 12(b)(6).

## COMMON ALLEGATIONS

34. During all relevant times herein, Defendant was and is an employer as defined by Title VII.

**ANSWER:** Defendant admits that it currently is, and at certain other times has been, an employer covered by Title VII.

35. During all relevant times herein, Representative Plaintiff and the Rule 23 Class are/were employees of Defendant as defined by Title VII.

**ANSWER:** Defendant admits that at certain times Plaintiffs were employees of Defendant, and that at certain times purported class members were or are employees of Defendant, covered by Title VII, since the Complaint defines the putative class to include only “current and former Cuban warehouse employees of Wal-Mart.” Defendant denies that this action may properly be maintained as a class action, denies that Plaintiffs are proper class representatives for a proposed class of “warehouse employees” and denies the remaining allegations of Paragraph 35. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs’ individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

36. Plaintiffs are members of a racial minority. Plaintiffs are of Cuban national origin.

**ANSWER:** Defendant denies that Plaintiffs are members of a racial minority by virtue of their asserted Cuban national origin. Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36.

37. Plaintiffs have dark colored hair, eyes, and skin.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37.

38. Plaintiff Padron worked as a warehouse employee for Defendant from August

2001 through November 12, 2006, when Plaintiff Padron was terminated after engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Padron worked as a warehouse employee, performing duties such as shipping and receiving.

**ANSWER:** Defendant admits that Plaintiff Padron worked for Defendant as an Unloader, performing duties in Defendant's store on Smith Road in St. Charles, Illinois, from on or about August 31, 2001 through on or about November 17, 2006, when he was discharged for Gross Misconduct under Defendant's policies. Defendant denies the remaining allegations of Paragraph 38.

39. Plaintiff Miranda worked as a warehouse employee for Defendant from July 2000 through November 20, 2006, when Plaintiff Miranda was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Miranda worked as a warehouse employee, performing duties such as shipping and receiving.

**ANSWER:** Defendant admits that Plaintiff Miranda worked for Defendant as an Unloader, performing duties in Defendant's store on Smith Road in St. Charles, Illinois, from on or about July 20, 2000 through on or about November 21, 2006, when he was discharged from his position for Gross Misconduct under Defendant's policies. Defendant denies the remaining allegations of Paragraph 39.

40. Plaintiff Calzada worked as a warehouse employee for Defendant from July 1998 through November 8, 2006, when Plaintiff Calzada was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Calzada worked as a warehouse employee, performing duties such as shipping and receiving.

**ANSWER:** Defendant admits that Plaintiff Calzada worked for Defendant as an Unloader, performing duties in Defendant's store on Smith Road in St. Charles, Illinois, from on

or about July 8, 1998 through on or about November 21, 2006, when he was discharged from his position for Gross Misconduct under Defendant's policies. Defendant denies the remaining allegations of Paragraph 40.

41. Plaintiffs first reported what they believed to be national origin, race and ethnicity discrimination in 2005, to Store Manager (Brad Wilson). Nothing was done to redress or eliminate the national origin, race and ethnicity discrimination. Over the next year, and prior to filing their charges of discrimination, Plaintiffs reported the continuous and ongoing national origin, race and ethnicity discrimination and retaliation against themselves and other Cuban coworkers, on at least five separate occasions, to Brad Wilson (store manager), "Skip" Turner (District Manager) and Angel Gomez (Human Resources). Walmart, despite knowledge of the national origin, race and ethnicity discrimination, continued to pay Cuban warehouse employees less than non-Cuban warehouse employees, continued to discriminate against, harass and retaliate against Plaintiffs in the terms and conditions of their employment, with regard to variable schedules (to which non-Cuban's were not subjected) and denial of make-up days (to which non-Cuban's were not subjected.).

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 41.

42. Plaintiffs were qualified, competent and dedicated employees who were paid lesser wages than similarly situated non-Cuban warehouse employees on the basis of their Cuban national origin, race and ethnicity.

**ANSWER:** Defendant denies the allegations of Paragraph 42.

43. Defendant's warehouse employees perform duties such as shipping and receiving.

**ANSWER:** Defendant admits that some of its warehouse employees perform duties such as shipping and receiving, and further states that Plaintiffs were Unloaders who primarily performed receiving duties in one of Defendant's store.

44. Plaintiffs and putative class members have been subjected to discrimination as a result of Defendant's implementation and enforcement of its "facially neutral" compensation

policies and practices which have had a disparate impact on Cuban warehouse employees, namely, Cuban warehouse employees have been paid lower wages than similarly situated nonCuban warehouse employees.

**ANSWER:** Defendant denies the allegations of Paragraph 44. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

45. Plaintiffs and putative class members have also been intentionally discriminated against on the basis of their Cuban national origin, race and ethnicity, in that Walmart has intentionally paid Plaintiffs and putative class members lower wages than similarly situated nonCuban warehouse employees.

**ANSWER:** Defendant denies the allegations of Paragraph 45. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims pursuant to Fed. R. Civ. P. 12(b)(6).

46. At all relevant times herein, Plaintiffs were performing all of their job duties/responsibilities in an outstanding manner and there was no legitimate non-discriminatory reason for paying Plaintiffs and other Cuban warehouse employees lower wages than similarly situated non-Cuban warehouse employees.

**ANSWER:** Defendant denies the allegations of Paragraph 46.

47. Plaintiffs have suffered severe damages as a direct and proximate result of Defendant's illegal conduct, as alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 47.

48. All allegations herein are pled in the alternative to the extent necessitated for viable construction under applicable federal law.

**ANSWER:** Defendant admits that Plaintiffs purport to plead certain allegations in the Complaint in the alternative, and further states that the remaining allegations of Paragraph 48 constitute legal conclusions for which no answer is required.



**COUNT I**

**(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS  
ACT OF 1964, 42 U.S.C. §2000e, et seq. — DISPARATE IMPACT)**

**(Plaintiffs individually, and on behalf of a nationwide class  
of similarly situated Cuban warehouse employees)**

49. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein, except for those allegations alleging intentional discrimination.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

50. All conditions precedent to Count I have been satisfied.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

51. Plaintiffs and the Rule 23 Class are/were warehouse employees of Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

52. Plaintiffs are former warehouse employees of Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

53. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is

made herein.

54. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of their employer.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

55. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

56. Defendant's facially neutral compensation policy has had a disparate impact on Plaintiffs, Cuban warehouse employees and the Rule 23 class, as alleged herein.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

57. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiffs and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, et seq.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

58. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the

Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

59. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

60. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the disparate impact suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count I in its entirety, and therefore no answer to Count I is made herein.

## **COUNT II**

### **(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, et seq. — DISPARATE TREATMENT)**

#### **(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)**

61. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

62. All conditions precedent to Count II have been satisfied.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is

made herein.

63. Plaintiffs and the Rule 23 Class are/were warehouse employees of the Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

64. Plaintiffs were warehouse employees of the Defendant as alleged herein.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

65. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

66. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

67. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

68. Defendant intentionally and willfully failed and refused to pay Plaintiffs, Cuban warehouse employees and the Rule 23 class to equal wages as similarly situated non-Cuban

employees based upon their Cuban national origin, race and ethnicity. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for federal law and for the rights of the Plaintiffs and the Rule 23 Class.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

69. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, et seq.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

70. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

71. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

72. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the discriminatory, disparate treatment suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count II in its entirety, and therefore no answer to Count II is made herein.

### **COUNT III**

#### **(DISCRIMINATION ON THE BASIS OF RACE IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981— DISPARATE TREATMENT)**

##### **(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)**

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

74. All conditions precedent to Count III have been satisfied.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

75. Defendant has discriminated against Plaintiffs and the Rule 23 Class by paying them lower wages than similarly situated non-Cuban warehouse employees because of their Cuban national origin, race and ethnicity in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 and 1981(a).

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

76. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiffs and the Rule 23 Class.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the

Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

77. By reason of Defendant's discriminatory employment practices based upon race, national origin, ethnicity or color, Plaintiffs and the Rule 23 Class have experienced extreme harm, including loss of compensation, wages, back and front pay, damages and other employment benefits, and as such, are entitled to all legal and equitable remedies available under the Civil Rights Act of 1866.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

78. There is a causal connection between the Plaintiff's and the Rule 23 Class' race, national origin, ethnicity or color and the discrimination and damages suffered by Plaintiffs at the hands of the Defendant.

**ANSWER:** Defendant states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of Count III in its entirety, and therefore no answer to Count III is made herein.

#### **COUNT IV**

#### **(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, et seq.)**

#### **(Plaintiff Padron individually v. Defendant)**

79. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 79, as if fully set forth herein.

80. All conditions precedent to Count IV have been satisfied.

**ANSWER:** Defendant denies the allegations of Paragraph 80. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims, including those for

which all conditions precedent have not been satisfied by Plaintiffs, pursuant to Fed. R. Civ. P. 12(b)(6).

81. At all times relevant herein, Plaintiff was an employee of the Defendant.

**ANSWER:** Defendant admits that at certain times Plaintiff Padron was an employee of Defendant, and further states that Padron is no longer an employee of Defendant. Defendant denies the remaining allegations of Paragraph 81.

82. Plaintiff is of Cuban national origin.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 82.

83. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 83.

84. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

**ANSWER:** Defendant denies the allegations of Paragraph 84 and each of its subparts.

85. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 85.

86. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise



adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

**ANSWER:** Defendant denies the allegations of Paragraph 86.

87. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

**ANSWER:** Defendant admits that during the period of Plaintiff Padron's employment with Defendant, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff Padron based on his national origin. Defendant denies that it discriminated against Plaintiff Padron based on his national origin or on any other basis, and denies the remaining allegations of Paragraph 87.

88. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 88.

89. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 89.

90. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 90.

91. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless

indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 91.

92. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 92.

93. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

**ANSWER:** Defendant denies the allegations of Paragraph 93.

94. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 94.

#### COUNT V

**(RETALIATION FOR EXERCISE OF RIGHTS UNDER  
TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. — REPORTING  
NATIONAL ORIGIN DISCRIMINATION AND  
ENGAGING IN A PROTECTED ACTIVITY)**

**(Plaintiff Padron v. Defendant)**

95. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 95, as if fully set forth herein.

96. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined

that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 96.

97. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 97.

98. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 98.

99. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

**ANSWER:** Defendant denies the allegations of Paragraph 99.

100. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 100.

101. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 101.

102. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost

wages and benefits, future pecuniary losses, and other consequential damages.

**ANSWER:** Defendant denies the allegations of Paragraph 102.

## COUNT VI

### (NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, et seq.)

#### (Plaintiff Miranda individually v. Defendant)

103. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 103, as if fully set forth herein.

104. All conditions precedent to Count VI have been satisfied.

**ANSWER:** Defendant denies the allegations of Paragraph 104. Defendant further states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims, including those for which all conditions precedent have not been satisfied by Plaintiffs, pursuant to Fed. R. Civ. P. 12(b)(6).

105. At all times relevant herein, Plaintiff was an employee of the Defendant.

**ANSWER:** Defendant admits that at certain times Plaintiff Miranda was an employee of Defendant, and further states that Miranda is no longer an employee of Defendant. Defendant denies the remaining allegations of Paragraph 105.

106. Plaintiff is of Cuban national origin.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 106.

107. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 107.

108. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

**ANSWER:** Defendant denies the allegations of Paragraph 108 and each of its subparts.

109. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 109.

110. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000(e), *et seq.*

**ANSWER:** Defendant denies the allegations of Paragraph 110.

111. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

**ANSWER:** Defendant admits that during the period of Plaintiff Miranda's employment with Defendant, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff Miranda based on his national origin. Defendant denies that it discriminated against Plaintiff Miranda based on his national origin or on any other basis, and denies the remaining allegations of Paragraph 111.

112. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 112.

113. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 113.

114. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 114.

115. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 115.

116. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 116.

117. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

**ANSWER:** Defendant denies the allegations of Paragraph 117.

118. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 118.

## COUNT VII

### (RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. — REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

(Plaintiff Miranda v. Defendant)

119. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 119, as if fully set forth herein.

120. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 120.

121. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 96.

122. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 122.

123. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

**ANSWER:** Defendant denies the allegations of Paragraph 123.

124. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 124.

125. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 125.

126. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

**ANSWER:** Defendant denies the allegations of Paragraph 126.

## **COUNT VIII**

### **(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, et seq.)**

#### **(Plaintiff Calzada individually v. Defendant)**

127. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 127, as if fully set forth herein.

128. All conditions precedent to Count VIII have been satisfied.

**ANSWER:** Defendant denies the allegations of Paragraph 128. Defendant further



states that it has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims, including those for which all conditions precedent have not been satisfied by Plaintiffs, pursuant to Fed. R. Civ. P. 12(b)(6).

129. At all times relevant herein, Plaintiff was an employee of the Defendant.

**ANSWER:** Defendant admits that at certain times Plaintiff Calzada was an employee of Defendant, and further states that Calzada is no longer an employee of Defendant. Defendant denies the remaining allegations of Paragraph 129.

130. Plaintiff is of Cuban national origin.

**ANSWER:** Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 130.

131. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 131.

132. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

**ANSWER:** Defendant denies the allegations of Paragraph 132 and each of its subparts.

133. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 133.

134. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

**ANSWER:** Defendant denies the allegations of Paragraph 134.

135. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

**ANSWER:** Defendant admits that during the period of Plaintiff Calzada's employment with Defendant, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff Calzada based on his national origin. Defendant denies that it discriminated against Plaintiff Calzada based on his national origin or on any other basis, and denies the remaining allegations of Paragraph 135.

136. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 136.

137. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 137.

138. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

**ANSWER:** Defendant denies the allegations of Paragraph 138.

139. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 139.

140. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 140.

141. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

**ANSWER:** Defendant denies the allegations of Paragraph 141.

142. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 142.

## COUNT IX

### (RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. — REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

#### (Plaintiff Calzada v. Defendant)

143. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

**ANSWER:** Defendant realleges and incorporates by reference its answers to all preceding paragraphs as its answer to Paragraph 143, as if fully set forth herein.

144. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their

work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 144.

145. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

**ANSWER:** Defendant admits that in or about late September of 2006, one or more of the Plaintiffs spoke to Store Manager Brad Wilson and to human resources personnel about their work schedules as compared to the schedules of certain Unloaders who were Mexican, and further states that the scheduling issue was promptly addressed and resolved as it was determined that Plaintiffs themselves were responsible for any disparity in work schedules. Defendant denies the remaining allegations of Paragraph 145.

146. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 146.

147. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

**ANSWER:** Defendant denies the allegations of Paragraph 147.

148. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

**ANSWER:** Defendant denies the allegations of Paragraph 148.

149. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

**ANSWER:** Defendant denies the allegations of Paragraph 149.

150. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

**ANSWER:** Defendant denies the allegations of Paragraph 150.

**AFFIRMATIVE DEFENSES TO COUNTS IV-IX**

1. Defendant has filed a Motion for Partial Dismissal of the Complaint, seeking dismissal of all class allegations in the Complaint and certain of Plaintiffs' individual claims, pursuant to Fed. R. Civ. P. 12(b)(6), which Motion is incorporated by reference herein.

2. Plaintiffs' claims, in whole or in part, fail to state a claim upon which relief may be granted.

3. Plaintiffs' claims and their right to recovery are barred, in whole or in part, by the applicable statute(s) of limitations.

4. Plaintiffs' claims, in whole or in part, are barred by the doctrine of laches.

5. Plaintiffs' claims, in whole or in part, are barred by the equitable doctrines of estoppel, waiver and/or unclean hands.

6. Plaintiffs are barred from asserting any claims or recovering any damages under Title VII based on any claims or allegations that are beyond the scope of the Charges of Discrimination filed by Plaintiffs.

7. Plaintiffs' claims are barred to the extent that Plaintiffs failed to timely and properly exhaust all necessary administrative, statutory and/or jurisdictional prerequisites for the commencement of this action.

8. Plaintiffs are not entitled to punitive damages against Defendant because Defendant engaged in good faith efforts to comply with the law.

9. Plaintiffs' claims, in whole or in part, must be dismissed because even if Plaintiffs could demonstrate that any employment decisions concerning Plaintiffs were made by Defendant based on an illegal motive, Defendant would have made the same decisions absent the illegal motive.

10. Plaintiffs have failed to mitigate their damages, if any.

11. Plaintiffs' recovery in this action, if any, must be decreased by the amount of any earnings, compensation and benefits received by Plaintiffs during the relevant period.

WHEREFORE, Defendant Walmart respectfully prays that Plaintiffs take nothing by the Complaint, and request that the Court:

- (a) Enter judgment in favor of Defendant Walmart and against Plaintiffs;
- (b) Order Plaintiffs to pay Defendant Walmart's costs and reasonable attorneys' fees incurred in defending against this action; and
- (c) Grant such other and further relief to Defendant Walmart as the Court deems just and equitable under the circumstances.

Dated: December 30, 2010

**WAL-MART STORES, INC.**

By: s/ Alan S. King

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