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 MOTION FOR PARTIAL DISMISSAL OF COMPLAINT

Defendant, Wal-Mart Stores, Inc., ("Defendant" or "Walmart"), by its attorneys, Drinker

Biddle & Reath LLP, pursuant to Fed. R. Civ. P. 12(b)(6), hereby moves for partial dismissal of

the Class Action Complaint ("Complaint") of Plaintiffs Roland Padron ("Padron"), Bobirt R.

Miranda ("Miranda") and Eusebio R. Calzada ("Calzada") (together, "Plaintiffs"). In support of

its motion, Defendant states as follows:

1.   Plaintiffs are former employees of Defendant who worked in the same Walmart

store for varying lengths of time until their terminations from employment in November 2006.

(Compl. ¶¶ 38-40.) In Counts IV through IX of the Complaint, Plaintiffs, who allege to be of

Cuban national origin, bring individual Title VII claims alleging national origin discrimination

and retaliation arising from their terminations and certain other terms and conditions of

employment. Additionally, Plaintiffs bring the following pay discrimination claims on behalf of

themselves and a purported nationwide class of Defendant's current and former Cuban

"warehouse employees": (a) a disparate impact claim under Title VII in Count I; (b) a disparate

treatment claim under Title VII in Count II; and (c) a disparate treatment claim under 42 U.S.C.

§ 1981 in Count III.

2.   Plaintiffs' Complaint fails to state a claim upon which relief can be granted in several respects, and the following claims should be dismissed: (a) Plaintiffs' individual and class claims in Count I should be dismissed in their entirety; (b) Plaintiffs' individual and class claims in Count II should be dismissed in their entirety; (c) Plaintiffs' individual and class claims in Count III should be dismissed in their entirety; (d) to the extent Counts I, II and/or III are not dismissed in their entirety, those counts and Counts IV through IX should be dismissed to the extent they allege violations occurring outside of the relevant limitations periods; and (e) to the extent Counts I and/or II are not dismissed in their entirety, those counts should be dismissed to the extent they purport to state a claim of race discrimination, which was not alleged in the Plaintiffs' EEOC charges.

3.   In further support of its motion, Defendant has filed together herewith its Memorandum in Support of Defendant's Motion for Partial Dismissal of Complaint ("Defendant's Memorandum").

WHEREFORE, for all of the foregoing reasons and the additional reasons set forth in Defendant's Memorandum, Defendant Walmart respectfully submits that Counts I, II and III of the Complaint should be dismissed in their entirety. Alternatively, Counts I, II and III should be dismissed to the extent they allege violations occurring outside of the applicable limitations periods, and Counts I and II should be dismissed to the extent they purport to state a claim of race discrimination. Additionally, Counts IV through IX should be dismissed to the extent they allege violations occurring outside of the applicable limitations period.

Dated: December 30, 2010

Respectfully submitted,

WAL-MART STORES, INC.

By: **s/ Alan S. King**

    Alan S. King, Esq. (ARDC #: 06198223)
    Mark E. Furlane, Esq (ARDC #: 00897175)
    Noreen H. Cull, Esq. (ARDC #: 06229417)
    Elizabeth V. Lopez, Esq. (ARDC #: 6293255)
    Drinker Biddle & Reath LLP
    191 N. Wacker Drive, Suite 3700
    Chicago, IL 60606-1698
    Phone: (312) 569-1000
    Fax: (312) 569-3334
    E-mail : alan.king@dbr.com
    E-mail : mark.furlane@dbr.com
    E-mail : noreen.cull@dbr.com
    Email : elizabeth.lopez@dbr.com