

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JULIE ANN ROEHM,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

CASE NO. 2:07-cv-10168

Judge Lawrence P. Zatkoff
Mag. Judge R. Steven Whalen

THE LAW FIRM OF JOHN F. SCHAEFER
JOHN F. SCHAEFER, (P-19948)
ANDREW RIFKIN, (P-46147)
Attorneys for Plaintiff
380 North Old Woodward, Suite 320
Birmingham, Michigan 48009
(248) 642-6665

SOMMERS SCHWARTZ, P.C.
SAM G. MORGAN, (P-36694)
KEVIN J. STOOPS, (P-64371)
Co-Counsel for Plaintiff
2000 Town Center, Suite 900
Southfield, Michigan 48075
(248) 355-0300

DYKEMA GOSSETT PLLC
DEBRA M. MCCULLOCH (P-31995)
JOSEPH A. RITOK, JR. (P-25472)
Attorneys for Defendant
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0785

GIBSON, DUNN & CRUTCHER LLP
EUGENE SCALIA
KARL G. NELSON
DAVID J. DEBOLD (P-39278)
Of Counsel for Defendant
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-9500

**SUPPLEMENTAL BRIEF IN RESPONSE
TO PLAINTIFF'S MOTION TO REMAND**

Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) respectfully submits this Supplemental Brief in response to Plaintiff’s Motion to Remand pursuant to the parties’ Stipulated Order submitted May 23, 2007.

On May 17, 2007, Defendant filed its Brief in Response to Plaintiff’s Motion to Remand. That same day, Defendant received Plaintiff’s Responses to Defendant’s Second Request for Production (“Responses”). Among the documents produced by Plaintiff with her Responses were certain telephone records pertaining to Plaintiff’s cellular telephone service that are relevant to the Court’s analysis of Plaintiff’s domicile (copies attached as Exhibit A hereto). By stipulation, the parties agreed that Defendant should be allowed to supplement its Brief in Response to call the Court’s attention to the facts reflected in Plaintiff’s telephone records.

The records produced by Plaintiff demonstrate that she has retained her Michigan cellular phone number and account throughout her employment with Defendant and during the more than five months since her employment ended. (Exhibit A.) These records indicate that Plaintiff’s cellular phone number is (248) 346-0602, which reflects an area code in the Detroit area of southeastern Michigan (including Plaintiff’s home in Rochester Hills, Michigan).¹ The records also reflect that Plaintiff changed her calling plan effective January 26, 2006 – nearly two weeks after she had accepted employment in Arkansas with Defendant – but she *did not change her*

¹ See Exhibit B for a map displaying Michigan area codes. In addition, the Court may take judicial notice of readily ascertainable facts, such as the geographic location of telephone area codes. *See City of Monroe Emples. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 655 n.1 (6th Cir. 2005) (citing *Fed. R. Evid. 201*, which provides that a court may take judicial notice of a fact that is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”).

telephone number at that time to reflect her relocation to Arkansas. (Exhibit A at 19.) Moreover, the records reflect that Plaintiff has retained her Michigan telephone number through at least May 19, 2007 – more than five months after her employment with Defendant ended and well over a year after Plaintiff contends she established a domicile in Arkansas. (Exhibit A at 1.) Finally, the records reflect that Plaintiff has continued to pay Michigan state taxes and surcharges for her cellular telephone service. (*Id.*)

Several courts have recognized that the location of a party's cellular phone number is indicative of domicile. *See Toro v. Martinez*, 2006 U.S. Dist. LEXIS 90226, *9 (D.P.R. 2006) (finding that the defendant was domiciled in New Jersey, in part because her "cellular phone number is (856) 308-4680," which is located in an area code in southwestern New Jersey); *Slate v. Shell Oil Co.*, 444 F. Supp. 2d 1210, 1218 (S.D. Ala. 2006) (referring to the continued use of "an Alabama cell phone number" as one of several "objective indicia of domicile").

Accordingly, Plaintiff's retention of her Michigan cellular phone number is yet another objective factor indicating that Plaintiff never intended to remain in Arkansas indefinitely and thus retained her domicile in Michigan, despite her admittedly temporary relocation to Arkansas.

Respectfully submitted,

DYKEMA GOSSETT PLLC

s/Debra M. McCulloch
 Debra M. McCulloch (P-31995)
 Attorneys for Defendant
 39577 Woodward Avenue, Suite 300
 Bloomfield Hills, MI 48304
 (248) 203-0786
dmcculloch@dykema.com

GIBSON, DUNN & CRUTCHER LLP

s/with consent of Karl G. Nelson
Eugene Scalia
Karl G. Nelson
David J. Debold (P-39278)
Of Counsel for Defendant
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-9500
EScalia@gibsondunn.com

DATE: May 24, 2007

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2007, I electronically filed a true and correct copy of the foregoing **SUPPLEMENTAL BRIEF IN RESPONSE TO PLAINTIFF'S MOTION TO REMAND** with the Clerk of the Court using the ECF system which will send notification of such filing to the following: John F. Schaefer (P19948) at bar@lfjfs.com and B. Andrew Rifkin (P46147) at bar@lfjfs.com, Eugene Scalia at EScalia@gibsondunn.com and to Sam Morgan (P36694) smorgan@sommerspc.com.

s/Debra M. McCulloch
Dykema Gossett PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304-5086
(248) 203-0785
E-mail: dmcculloch@dykema.com
P31995

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