

guidelines for class actions and Title VII employment discrimination cases, held that the national class could not be certified, based on the facts it outlined in its opinion. The Supreme Court did not rule on the merits of the action, but only ruled that the class as certified could not proceed. It did not preclude prosecution of a class that was consistent with its newly announced guidelines and standards.

3. Accordingly, this Complaint, brought by a Dukes class member and former plaintiff, alleges claims on behalf of a class of present and former female Wal-Mart retail store employees who have been subjected to gender discrimination as a result of specific policies and practices in Wal-Mart's regions located in whole or in part in Texas ("Texas Regions"). Plaintiffs allege gender discrimination as follows:

- a. Denial of equal opportunities for promotion to management track positions up to and including Co-Manager.

4. The class membership period commences on December 26, 1998, 300 days prior to the earliest class EEOC charge by a former class member. Based on evidence produced in discovery in this matter, interviews with class members and witnesses, and publicly available information, plaintiff alleges that the challenged practices, and therefore the class period, extends at least until June 2004, and, on information and belief, she alleges that members of the class have been denied equal opportunities for promotion through the present. With renewed discovery, plaintiff will plead more specific time periods for the claims.

5. Plaintiffs allege that defendant maintained a pattern or practice of gender discrimination in promotion and that its promotion policies and practices had a disparate impact not justified by business necessity on its female employees whose claims arise in Wal-Mart's regions that include stores located in Texas. As used in this Complaint, Wal-Mart's Texas

Regions and Texas Districts refer to those Wal-Mart and Sam's Club regions and districts that encompass, in whole or in part, Wal-Mart's Texas retail stores.

6. This action seeks an end to Wal-Mart's discriminatory policies and practices in the Texas Regions, make whole relief for the class, and punitive damages.

II. JURISDICTION AND VENUE

7. Plaintiff's claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 1331 and 1343(a)(4).

8. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1391(b) & (c). Named Plaintiff's claims arose in Texas. Many of the acts complained of occurred in this judicial district and gave rise to the claims alleged. Wal-Mart currently operates 451 Wal-Mart stores and Sam's Clubs in Texas where it employs more than 140,000 workers. It operates at least 34 stores in the Northern District of Texas, Dallas Division.

III. PARTIES

9. Plaintiff Stephanie Odle is a woman and a resident of Norman, Oklahoma. Stephanie Odle was hired by Wal-Mart on November 21, 1991, as an hourly associate to work at the Sam's Club in Lubbock, Texas. She was successively transferred to Sam's Clubs in Dallas, Texas; Yuba City, California; Vacaville, California; Sherman, Texas and Lubbock, Texas. She worked in Texas in Store No. 6530, in Sam's Club District 27, Sam's Club Region 2 in Sherman, Texas and Store No. 8272 in Sam's Club District 47, Region 1 in Lubbock, Texas.

10. Defendant Wal-Mart Stores, Inc. is a Delaware corporation with stores throughout Texas. Its corporate headquarters is located in Bentonville, Arkansas. Wal-Mart Stores, Inc.

operates retail stores doing business as Wal-Mart Discount Stores, Wal-Mart Supercenters, Wal-Mart Neighborhood Markets and Sam's Clubs Stores (collectively "Wal-Mart") in Texas.

IV. CLASS ALLEGATIONS

11. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of: a) all women who are currently employed or will be employed at any Wal-Mart retail store in a Texas Wal-Mart Region ("Injunctive Relief Class) and b) all women employed at any Wal-Mart retail store in a Texas Region at any time from December 26, 1998 ("Monetary Relief Class"), who have been or may be subject to the following policies and practices:

- i. Denial of promotion to management track positions up to and including Co-Manager.

The proposed classes do not include Store Managers or licensed Pharmacists.

12. Plaintiff is a member of the classes she seeks to represent.

13. The members of the classes are sufficiently numerous that joinder of all members is impracticable. Plaintiff is informed and believes that the Injunctive Relief Class and the Monetary Relief Class each exceed 45,000 women.

14. There are questions of law and fact common to the classes and these questions predominate over individual questions. Such questions include, without limitation, whether defendant, through its Texas Region managers with final authority to make the challenged decisions, has engaged in a pattern or practice of discrimination in management track promotions against its female employees in its Texas Regions, whether there are statistical patterns adverse to female employees in management track promotions in defendant's Texas Regions, whether defendant's policies in its Texas Regions have an adverse impact upon the classes and, if so,

whether this impact can be justified by business necessity; and whether injunctive relief and punitive damage relief for the classes are warranted.

15. The claims alleged by the plaintiff are typical of the claims of the classes. Plaintiff worked in Wal-Mart's Texas Regions and has been subjected to the discriminatory policies and practices alleged.

16. The named plaintiff will fairly and adequately represent and protect the interests of the classes.

17. The Injunctive Relief Class is properly maintainable under Federal Rule of Civil Procedure Rule 23(b)(2) because defendant has acted or refused to act on grounds generally applicable to this class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to this class as a whole.

18. Class-wide liability and punitive damages liability under the theories advanced in this action are properly certified under Rule 23(c)(4) for both classes because such claims present only common issues, the resolution of which would advance the interests of the parties in an efficient manner.

19. The Monetary Relief Class is properly certified under Rule 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.

V. ORGANIZATIONAL AND STORE STRUCTURE WITHIN TEXAS REGIONS

20. *Store Formats* – Within the Texas Regions, Wal-Mart has operated in four primary formats: Wal-Mart Discount Stores, Wal-Mart Neighborhood Markets, Wal-Mart

Supercenters and Sam's Clubs. The basic organizational structure for these stores has been the same across the Texas Regions.

21. *Common Hourly Jobs Within Stores* - All stores within the Texas Regions have used common job titles and job descriptions, and the same job hierarchies. Although the Wal-Mart Stores and Sam's Clubs use somewhat different nomenclature, their personnel and human resources policies, job titles and hierarchies, and compensation and promotion policies have been virtually identical.

22. *Most Common Positions* - While there are numerous job titles at Wal-Mart, the majority of hourly employees have worked as sales workers, cashiers, department managers and stockers. The most common management position is assistant manager.

23. *Common Department Structure* - Stores within the Texas Regions have been divided into numerous departments, which have been staffed by hourly paid employees. Some departments have been designated as specialty departments. The departmental structure is the same throughout the stores in the Texas Regions.

24. *Common Management Jobs* - With the exception of Support Manager, management positions within the Texas Regions are salaried. Each store has Assistant Managers. Larger stores have had one or more Co-Managers who supervise Assistant Managers and other staff. All stores have Store Managers who are in charge of the store. Specialty department managers, who report to Store Managers, also report to District and Regional Specialty Managers above the store level.

25. *District Organization* - Until 2006, stores within the Texas Regions were grouped into districts which were supervised by District Managers and typically included six to eight stores. Thereafter, districts have been expanded to include more stores.

26. *District Managers' Role* - District Managers within the Texas Regions have been responsible for ensuring store compliance with company policies and culture. District Managers have been based in their districts and spend their time visiting and monitoring the stores in their districts and reviewing all facets of the store operations. District Managers also have made or approved compensation and promotion decisions for the stores.

27. *Regional Organization* - Districts are grouped into regions, headed by a Regional Vice President. As of 2003, each region contained approximately 80 - 85 stores. As of 2003, there were 4 Wal-Mart regions and 2 Sam's Club region that encompassed stores within Texas. These regions together included, as of 2003, over 62 districts. Most of these districts were comprised entirely of Texas stores.

28. *Role of Regional Vice President* – The Regional Vice Presidents in Texas Regions monitor and implement corporate and regional policies regarding compensation and promotion. Regional Vice Presidents regularly meet with District Managers and receive weekly reports from District Managers about the activities in the Texas Region stores they supervise.

29. *Regional Personnel Managers' Role* – Each Texas Region has had a Regional Personnel Manager, who assists the Texas Regional Vice Presidents and District Managers in making pay and promotion decisions for employees working in the Texas Region stores.

30. *Changes to Texas Regions and Districts* – Since 2003, Wal-Mart may have adjusted the borders of these regions and districts.

31. *Divisional Organization* – The Regional Vice President reports to a Divisional Senior Vice President.

VI. PROMOTION DISCRIMINATION WITHIN TEXAS REGIONS

32. *Management Track Positions Below Assistant Manager Positions* - Within Texas

Regions, Support Managers are the highest level hourly supervisory positions and assume the duties of Assistant Managers in their absence. At Sam's Club, Salaried Area Managers serve similar functions. Employees in these positions are often groomed for further advancement. The vast majority of Support Manager and Area Manager vacancies have not been posted. There has been no formal application process for selection for these positions or job related criteria for making selections of those to be promoted.

33. *Promotion to Management Trainee* – Entry into the Management Trainee Program is a requirement for advancement into Assistant Manager and other salaried management positions. Prior to 2003, there was no application process or job posting for Management Trainee positions. Hourly employees in the Texas Regions were not provided any information regarding how to enter management, or what the requirements or qualifications were for entering management, or how to apply for the Management Trainee Program.

34. *Criteria for Promotion to Management Trainee* – District Managers, assisted by Regional Personnel Managers, select management trainees. Within Texas Regions, these managers have been provided uniform guidelines setting minimal eligibility criteria for promotion into the Management Trainee Program, including minimum tenure, age (18 years or older), absence of current “active” discipline, satisfactory recent performance evaluation and willingness to relocate, but no job related criteria have been provided for making selections among those who meet the minimum criteria. Employees selected into the Management Training program are required to transfer from their stores and often their districts as they enter training and Assistant Manager positions, subject to very limited exceptions which must be approved by the Regional Personnel Manager and Regional Vice President

35. *Promotion to Co-Manager* - Within Texas Regions, Regional Vice Presidents select

Co-Managers subject to approval by the Divisional Senior Vice President. The majority of Co-Manager promotions are transfers across district lines. Co-Manager openings have rarely been posted and there has been no formal application process for such positions. While there have been minimal eligibility requirements for promotion to co-manager such as satisfactory performance and willingness to relocate, there are no job related criteria for making selections among those who meet the minimum criteria or determining which store to assign to a co-manager.

36. In each of Texas's Regions and Districts management track promotional policies and practices have denied interested and qualified females equal access to promotional opportunities because promotion opportunities are not posted, there is not an open application system, and employees are not informed of the criteria for promotion. Moreover, Managers in Texas Regions do not require or use valid, job related factors in making the promotion selections within the Texas Regions. Nor does Wal-Mart specify the weight that should be accorded any requirements for promotion. As a consequence, qualified women were denied equal access to promotions because of their gender.

37. *Management Trainee Registration of Interest* - In January 2003, Wal-Mart instituted within the Texas Regions an online application process for entry into the Management Training Program. In order to be considered as an applicant, employees were required to agree to a set of conditions, many of which had the purpose and effect of discouraging women from seeking such positions. Potential applicants for entry level store management positions were required to accept the conditions that, as Assistant Managers, they would travel for up to six weeks in duration, be subject to a varied and not regular schedule, including work on scheduled days off, work during days, overnights, weekends and holidays, scheduled days off not consecutive and

rotated weekly, and scheduled hours changed or increased without notice. None of these requirements is justified by business necessity, and it is untrue that Assistant Managers must normally travel up to six weeks. Failure to accept all of these conditions precluded consideration as an applicant, which has resulted in the exclusion of interested and qualified women from the management training program.

38. *No Documentation of Promotion Decisions* - Managers have not documented, and Wal-Mart had not tracked, the reason for selecting a particular employee for a management promotion. Managers have not documented, and Wal-Mart has not tracked, which employees have been denied consideration for promotion because of their inability to comply with relocation, travel or scheduling requirements for promotion.

39. *External Statistics* - Wal-Mart has had a significantly lower percentage of female managers in its Texas Regions compared to its largest competitors.

40. *Internal Statistics on Promotion Rates* - Female employees in Texas Regions and Districts, including the regions and districts in which the named plaintiff worked, have been much less likely than their male counterparts to receive promotion to management track positions including Support and Area Managers, Management Trainee and Assistant Manager, and Co-Manager positions, despite the fact that they possess equal or better qualifications than their male counterparts.

41. *Internal Statistics on Time to Promotion* - Female employees must wait significantly longer to be promoted into management track positions than men with equal or lesser qualifications. This is true in each of Texas's Regions and Districts, including the Regions and Districts in which the named plaintiff worked.

42. *Management Knowledge of Promotion Discrimination* - Wal-Mart management has

long known about gender disparities in promotion in Texas and has failed to take any remedial action.

43. *Reporting by Gender* - Every store, district, and region in the Texas Regions regularly compiles and reports to corporate headquarters the gender composition of its hourly and managerial workforce, employee turnover, exceptions to promotion policies, job posting data, entry into management training programs and other data. District Managers, Regional Personnel Managers and Regional Vice Presidents for the Texas Regions receive these reports.

44. *People Division Reports* - Wal-Mart's People division regularly prepares reports for senior management summarizing promotion and incumbency rates for store management positions by gender, and reports are regularly made to the Board of Directors.

45. *Store Visits* – District Managers, Regional Personnel Managers and Regional Vice Presidents in the Texas Regions regularly visit stores and are aware of the gender composition of the workforce.

46. *Warnings About Discrimination* - Senior management officials, senior People division officials, and outside consultants have warned Wal-Mart that women are not sufficiently represented in management positions, that women are paid less than male employees in the same jobs, and that Wal-Mart lags behind its competitors in the promotion of women to management positions.

47. *Discriminatory Practices Identified* - These officials and consultants have also identified policies and practices at Wal-Mart that have an adverse impact on its female employees, including lack of consistent job posting, the requirement of relocation as a condition of entry into and promotion through management, reliance on stereotypes in making pay and promotion decisions, lack of objective criteria for making promotion decisions, and lack of

consistent and reliable scheduling for management level employees.

48. *Relocation Unnecessary* - Wal-Mart's founder, Sam Walton, conceded in 1992 that Wal-Mart's policies, particularly its relocation requirement, were an unnecessary barrier to female advancement, yet this policy remained in place thereafter.

49. *Changes Blocked* - Senior managers also blocked policy changes that would have reduced the impact of Wal-Mart's discriminatory policies including posting of managerial vacancies.

50. *Failure to Analyze* - Wal-Mart had never studied nor analyzed whether any of its practices were consistent with business necessity or whether less discriminatory alternatives to these policies and practices could be adopted.

51. *Adverse Impact of Promotion Policies* - Wal-Mart's promotion policies, including its failure to require managers to base promotion decisions for individual employees on job related criteria, have had a statistically significant adverse impact upon its female employees in the Texas Regions. Because reasons for promotion decisions are not documented, and Wal-Mart does not create or maintain records which identify the impact of separate components of its promotion policies and practices, its promotion decision-making process is not capable of separation for analysis.

VII. WAL-MART MANAGERS RELY ON DISCRIMINATORY STEREOTYPES

52. In the absence of job-related compensation and promotion criteria, Wal-Mart's managers rely on discriminatory stereotypes and biased views about women in making pay and promotion decisions in the Texas Regions and Districts.

53. A 1998 survey of Wal-Mart managers revealed that there was a "good ole boy philosophy" at Wal-Mart, that many managers were "close minded" about diversity in the

workplace, and that some District Managers “don’t seem personally comfortable with women in leadership roles.”

54. A committee of Wal-Mart’s few female executives, disbanded before this action was filed, noted that “stereotypes limit the opportunities offered to women.”

55. All Wal-Mart Store Managers, including Texas Store Managers, have been required to attend training programs at the company’s Walton Institute. These managers were advised at the Institute that the reason there are few senior female managers at Wal-Mart is because men were “more aggressive in achieving those levels of responsibility” than women. Managers were cautioned that efforts to promote women could lead to the selection of less qualified women over more qualified men.

56. On January 24, 2004, at a meeting of all Wal-Mart’s District Managers presided over by Wal-Mart Stores’ CEO Thomas Coughlin, the District Managers were told that they were the key to running the stores: “[y]ou are the culture.” The key to success was described as “single focus to get the job done. . . . women tend to be better at information processing. Men are better at focus single objective.” The District Managers were instructed to create a “culture of execution” and a “culture of results” as they picked “[f]uture leaders.”

57. In Sherman, Texas, the Director of Operations Mr. Anderson approved an idea submitted by Store Manager Bill Smithson identical to an idea Named Plaintiff Stephanie Odle had proposed to Mr. Anderson a few months earlier, which he had rejected. When Named Plaintiff Stephanie Odle asked Mr. Smithson how he had convinced Mr. Anderson to change his mind when he had only recently rejected the suggestion, Mr. Smithson responded that it was “a man thing.”

58. On another occasion, Mr. Smithson declared to Named Plaintiff Stephanie Odle that

as the General Manager, he could do whatever he wanted to do.

59. Store Manager of Store # 535 in Abilene, Texas, Tom Van Vraken justified the paying less to a female supervisor than a male employee on the ground that the male employee “had a family to support” and dismissed the female employees complaints by informing her that she should just be happy with the money she made.

60. In approximately late 2000 or early 2001, Store Manager Mark Antilley at Wal-Mart Supercenter #2862 informed one female employee seeking entry into the management training program that women have to be “bitches” to survive in Wal-Mart management.

61. At the Hulen, Texas store, Assistant Manager David White and Store Manager John Jurca justified directing a female employee who expressed interest in becoming salaried management towards a front end position because as a woman she was better suited for the front end.

62. When this same woman complained to Assistant Manager David White and Store Manager John Jurca about having to train her own supervisor, Mr. White told her that she should be happy with what she had, a Customer Service Manager position.

63. Store Manager Lorenzo Nava at store #2612 in El Paso, Texas justified the disparate treatment of a female Co-Manager by District Manager Rick Klein as something that was to be expected since the female Co-Manager was not part of the “good ‘ole boy” network, unlike her male counterparts.

64. Management at store #3452 in Houston, Texas justified paying women less than men on the ground that men needed to make more money because they had families to feed.

65. Management directed female employees to decorate the store on the ground that female employees were “crafty”.

66. At Store #5021 in Dallas, Texas, Store manager Keith Littlejohn informed a female back door receiving manger that it was a job for a man.

67. Other Texas managers justified denying promotions to women or paying them less than their male employees because of perceived family obligations of the women and male responsibility to support their families or because of their presumed inability to relocate.

VIII. WAL-MART'S INEFFECTIVE ANTI-DISCRIMINATION EFFORTS

68. Prior to the filing of this action, Wal-Mart had no meaningful policies or practices to hold managers accountable, financially or otherwise, to equal employment and diversity policies and goals

69. Starting in 2000, Wal-Mart asked District Managers to set diversity “goals” for advancement of women in management. The goals were based on each manager’s individual views on what was attainable and were not tied to any objective measures of availability or qualifications. Prior to 2004, failure to meet diversity goals had no financial or other consequence for managers.

70. As late as 2003, Wal-Mart Stores’ CEO Coughlin was not aware of any diversity goals or whether managers had met such goals. Many Store Managers were also unaware of the existence of any diversity goals.

71. Until at least 2003, there had never been any diversity goals set for individual stores, or for any compensation practices.

IX. ALLEGATIONS OF NAMED PLAINTIFF

STEPHANIE ODLE

72. Stephanie Odle was hired by Wal-Mart on November 21, 1991, as an hourly associate to work at the Sam’s Club in Lubbock, Texas. She was successively transferred to Sam’s Clubs

in Dallas, Texas; Yuba City, California; and Vacaville, California.

73. On September 3, 1994, while employed at the Vacaville, California, Sam's Club, Ms. Odle was promoted to Assistant Manager and was assigned to the Sam's Club in Roseville, California, as a Manager-in-Training. Ms. Odle was then assigned to the Sam's Club in Sacramento, California, where she worked as an Assistant Manager. Ms. Odle was subsequently transferred in succession to the Sam's Clubs in Riverside, California; Las Vegas, Nevada; and back to Sacramento, California.

74. In October 1998, Ms. Odle was transferred to the Sam's Club in Sherman, Texas. While at this Sam's Club, she was led to believe by the Regional Director of Operations, who was in charge of the Wal-Mart Region covering Texas and Oklahoma, that she would be promoted to the position of Co-Manager of the Sam's Club store in Tulsa, Oklahoma.

75. On May 14, 1999, to insure that Ms. Odle was not promoted to the Co- Manager position at the Tulsa, Oklahoma, Sam's Club, she was discriminated against by management at the Sherman, Texas, Sam's Club store by being wrongfully suspended for five days concerning a legitimate refund she had made to a customer. On or about May 19, 1999, Ms. Odle was informed by management at the Sherman, Texas, Sam's Club store that she would not be promoted to the position of Co-Manager of the Tulsa, Oklahoma, Sam's Club, and that said position was being given to a male manager from Florida.

76. On May 20, 1999, the management at the Sherman, Texas, Sam's Club store, gave Ms. Odle the most severe form of discipline at Sam's Club short of termination, even though management at the Sherman, Texas, Sam's Club store knew that she did not do anything to warrant such discipline, and management at the Sherman, Texas, Sam's Club store never disciplined male employees in this fashion.

77. Also on May 20, 1999, the male managers at the Sherman, Texas, Sam's Club store wrongfully denied Ms. Odle access to the Sherman, Texas, Sam's Club store or to the Sherman, Texas Sam's Club store's employees and ordered her against her will to transfer from the Sam's Club in Sherman, Texas, to the Sam's Club in Lubbock, Texas.

78. Ms. Odle followed the orders of the male managers in the Sherman, Texas, Sam's Club store and moved to Lubbock, Texas so that she could continue her employment as an assistant manager for Sam's Club in Lubbock, Texas. Thereafter, Ms. Odle performed her duties as an assistant manager at the Sam's Club store in Lubbock, Texas in an exemplary fashion and regularly informed her direct supervisor, the general manager of the Lubbock, Texas Sam's Club store that she wanted to be promoted to Co-Manager or Store Manager of a Sam's Club store as soon as there was an opening for such a position.

79. In early October, 1999 Ms. Odle learned that the three other assistant managers at the Sam's Club store in Lubbock, Texas, who were all male, were being given a skills assessment test which is a critical step in the Sam's Club promotion process for being considered for future promotions to either Co-Manager or Store Manager of a Sam's Club store.

80. After learning the male managers were being given the skills assessment test, Ms. Odle requested of her general manager at the Sam's Club Lubbock, Texas store that she be given the same opportunity to take the skills assessment test. Her Store Manager denied her request informing her that he only had three tests and they were being given to the three male assistant managers.

81. On or about October 6, 1999, Ms. Odle complained to management at the Sam's Club store in Lubbock, Texas that she was being denied an opportunity to take a skills

assessment test critical for future promotion that was being administered to three male managers because she was a female.

82. On October 16, 1999, Ms. Odle was training three hourly Sam's Club employees with respect to a new store procedure. During the training, a \$13.74 accounting adjustment occurred. Ms. Odle notified accounting and the acting general manager of the adjustment, and neither expressed any concern. Two days later, even though management at the Sam's Club store in Lubbock, Texas knew that the cash register discrepancy was a harmless training adjustment causing no loss to the company, management, in order to make available a managerial position for a male manager from Arizona, wrongfully suspended Ms. Odle and placed her on administrative leave.

83. On October 19, 1999, Ms. Odle was wrongfully terminated by the General Manager of the Sam's Club store in Lubbock, Texas, and by the Regional Director of Operations, who was in charge of the Region covering Texas and Oklahoma for Sam's Club.

84. On October 22, 1999, Ms. Odle's attorney filed a charge of discrimination against Sam's Club with the El Paso Area Office of the United States Equal Employment Opportunity Commission and tele-faxed a copy of this Charge of Discrimination to Sam's Club headquarters in Bentonville, Arkansas, regarding the gender discrimination perpetrated against her by Sam's Club. A copy of this charge is attached hereto as Exhibit A and incorporated by reference. Despite being briefly reinstated pending further "investigation" Ms. Odle was again wrongfully discharged on October 29, 1999, and was replaced by the male manager who was transferred to the Lubbock, Texas store from a Sam's Club in Arizona.

85. Ms. Odle filed amended EEOC charges on January 4, 2000, and April 3, 2000, copies of which are attached hereto as Exhibits B and C and incorporated by reference. On or

about May 31, 2001, the EEOC issued a notice of right to sue on these charges, attached hereto as Exhibit D and incorporated by reference, and an action was timely commenced thereafter.

86. Stephanie Odle was discriminated against because of her gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, when she was subjected to adverse terms and conditions of employment, denied training opportunities for promotions and denied a promotion.

87. Women employees of the stores operated by Wal-Mart in Texas are discriminated against because of their gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

88. Stephanie Odle brings this charge on behalf of herself and all other women who are similarly situated.

X. CLAIM FOR RELIEF (*Violation of Title VII*)

89. Plaintiff incorporates Paragraphs 1 through 88.

90. This claim is brought on behalf of the Named Plaintiff and the classes she seeks to represent.

91. On or about October 22, 1999, January 4, 2000 and April 3, 2000, Named Plaintiff Stephanie Odle filed charges of sex discrimination against Wal-Mart with the United States Equal Employment Opportunity Commission. Ms. Odle thereafter received a right to sue notice and commenced this action as a named plaintiff in a timely fashion. From the filing of her EEOC complaints through the initiation of this action, the class-wide nature of Ms. Odle's charges has been communicated to defendant.

92. In June 2004, the United States District Court for the Northern District of California certified this case as a national class action, a decision that was largely upheld by the Ninth

Circuit Court of Appeals en banc. On June 20, 2011, the Supreme Court reversed the Ninth Circuit decision. During the pendency of the former certified class, time periods for filing EEOC charges and subsequent litigation for all former class members were tolled. The District Court for the Northern District of California subsequently held that claims of class members would be tolled during the pendency of the national class action until the following dates: for former class members who had received an EEOC right to sue based on a claim encompassed by the former class: October 28, 2011; all other former class members in deferral states would have until May 25, 2012 to file EEOC charges based on conduct encompassed by the former class definition.

93. The foregoing conduct violates Title VII of the Civil Rights Act of 1964. Wal-Mart has engaged in a pattern or practice of discriminating against its female employees in making management track promotion decisions in its Texas Regions.

94. Wal-Mart has maintained a system for making decisions about promotions that has had an adverse impact on its female employees in its Texas Regions. Its management track promotion policies: the absence of an open application process and job posting its relocation and travel requirements for management positions, its scheduling requirements which deny managers a consistent schedule, and its failure to apply job-related objective criteria for making management selections have all individually and collectively caused this adverse impact on female employees in promotions.

95. Wal-Mart has failed in Texas to create or maintain the data that would allow analysis of the impact of each of these policies and practices individually. Nor does Wal-Mart specify the weight that should be according to each of the requirements for promotion. Wal-Mart's promotion policies and procedures are thus not capable of separation for analysis, and

accordingly the entire decision-making process for promotion decisions may each be analyzed as one employment practice. 42 U.S.C. 2000e-2(k)(1)(B)(i).

96. Wal-Mart's promotion policies are not job related or consistent with business necessity. Wal-Mart's own consultants and human resources staff have proposed job posting, elimination of relocation requirements, adoption of more consistent and reliable scheduling, and the use of more objective criteria for management promotions. Adopting these policies would have resulted in less discriminatory impact upon female employees while serving Wal-Mart's business needs more effectively than its current practices.

97. Wal-Mart's discriminatory practices described above have denied female employees promotional opportunities to which they are entitled, which has resulted in the loss of past and future wages and other job benefits.

98. Plaintiffs request relief as provided in the Prayer for Relief below.

XI. RELIEF ALLEGATIONS

1. Plaintiff and the Injunctive Relief Class she represents have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Injunctive Relief Class she represents are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and omissions.

2. The actions on the part of Defendant have caused and continue to cause Plaintiff and all Monetary Relief class members substantial losses in earnings, promotional opportunities and other employment benefits, in an amount to be determined according to proof.

3. Defendant acted or failed to act as herein alleged with malice or reckless indifference to the protected rights of Plaintiff and Monetary Relief class members. Plaintiff and class

members are thus entitled to recover punitive damages in an amount to be determined according to proof.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the proposed classes pray for relief as follows:

1) Certification of the Injunctive Relief and Monetary Relief Classes as class actions under Rule 23 (b)(2) and (3), and designation of the Named Plaintiff Stephanie Odle as representative of the Injunctive Relief class and as representatives of the Monetary Relief class and their counsel of record as Class Counsel for both classes;

2) All damages which the Named Plaintiff and the Monetary Relief Class have sustained as a result of Defendant's conduct, including back pay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the discriminatory practices of Defendant;

3) For Plaintiff and the Monetary Relief Class exemplary and punitive damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;

4) A preliminary and permanent injunction against Defendant and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein. Such relief at minimum should include professional designed job analyses of all job positions and identification of objective, nondiscriminatory criteria for promotion decisions, record keeping that requires documentation of promotion decisions, open application and job posting procedures for promotion, training and accountability measures to ensure consistent, nondiscriminatory decision-making, and affirmative action to provide lost promotion opportunities to Plaintiff and Injunctive Relief class members.

- 5) A declaratory judgment that the practices complained of in this Complaint are unlawful and violate 42 U.S.C. § 2000(e), et. seq., Title VII of the Civil Rights Act of 1964;
- 6) Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;
- 7) Pre-Judgment and Post-Judgment interest, as provided by law; and
- 8) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

XII. JURY DEMAND

Plaintiff hereby demands a jury trial on all issues, claims, actions, and defenses in this case .

Dated: October 28, 2011

Respectfully submitted,

By: /s/Hal K. Gillespie

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