

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH STARLING individually and on
behalf of his minor children M.J.A and M.E.S,

Plaintiffs,

v.

WALMART INC., a Delaware Corporation,

Defendant.

NO. 2:21-cv-01156 – RSM-MLP

~~[PROPOSED]~~ PRETRIAL ORDER

I. JURISDICTION

Jurisdiction is vested in this court by virtue of: 28 U.S.C. § 1332. Plaintiffs originally filed suit in the Superior Court of Washington in and for the County of King; however, insofar as there is diversity among and between all parties, and the amount in controversy exceeds \$75,000 exclusive of interest and costs, Walmart removed this case to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 on August 26, 2021.

II. CLAIMS AND DEFENSES

A. Plaintiffs will pursue at trial the following claims:

1. False Imprisonment
2. Tort of Outrage
3. Negligence

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(USDC Case No. 2:21-cv-01156-RSM-MLP)
7749318.1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 B. Defendant will pursue the following affirmative defenses¹:

2 No. 2 - Plaintiffs' damages, if any, were proximately caused by the negligence of
3 Plaintiffs in failing to exercise reasonable care.

4 No. 3 - Plaintiffs were comparatively negligent.

5 No. 4 - The risk of injury or damage to Plaintiffs was not foreseeable to Walmart.

6 No. 5 - Plaintiffs' claimed injuries and damages were due to actions of third parties.

7 No. 6 - Plaintiffs' claims are barred by some or all of the following: waiver, estoppel,
8 laches, ratification, acquiescence, accord and satisfaction, and/or consent.

9 No. 7 - Walmart took precautions and affirmative actions that were consistent with the
10 state of its knowledge at the time.

11 No. 8 - Walmart acted reasonably and/or did not breach any duty to Plaintiffs.

12 No. 11 - Walmart's allegedly tortious conduct was privileged as a matter of law.

13 No. 13 - The alleged conduct is not "outrageous" as defined by Washington law.

14 No. 15 - Walmart did not intend, or act with intent, to cause emotional distress or to
15 injure Plaintiffs.

16 III. ADMITTED FACTS

17 The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of
18 admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

19 1. Mr. Starling's children, MJS and MES are African American. **Defendant**
20 **objects on the basis of relevance (FRE 401-403), and subject to the Court's ruling on**
21 **Def.'s MIL #5.**

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24 ¹ These defenses are numbered in accordance with their original-designated number in Walmart's Answer to
25 Plaintiffs' Complaint. Walmart is tentatively withdrawing other affirmative defenses because Walmart does not
intend to pursue those affirmative defenses based on the claims Plaintiffs are no longer pursuing, either
voluntarily, or because those claims have been dismissed; however, Walmart reserves the right to reassert
originally pled affirmative defenses, and maintains all of the other reservations in its Answer, depending on the
nature of the proof offered by Plaintiffs at trial and the evidence that is ultimately admitted by the Court at trial.

1 2. MJS and MES walked to Walmart on the date of the incident, March 12, 2018,
2 alone.

3 3. MJS and MES entered Walmart alone on the date of the incident.

4 4. The Walmart in question is in Federal Way, Washington.

5 5. The Starling family lives nearby (approximately a five-minute walk).

6 6. Mr. Starling gave MJS and MES money to purchase items at Walmart.

7 **Defendant objects on the basis of relevance (FRE 401-403).**

8 7. MJS and MES were six- and ten-years-old on the date of the incident.

9 8. On the date in question, Walmart Asset Protection Manager Debra Utu observed
10 the Starling children alone in the store.

11 9. Utu approached the Starling children and asked them questions.

12 10. After Utu asked the Starling children questions, they followed her to the loss
13 prevention room.

14 11. Utu did not touch the children during the walk to the loss prevention office.

15 12. Utu called Joseph Starling while in the loss prevention office with the Starling
16 children.

17 13. Joseph Starling and Utu spoke briefly on the phone while Utu was in the loss
18 prevention office with the Starling children.

19 14. Starling became bothered and highly upset on the phone.

20 15. Following the phone call between Starling and Utu, Utu called Federal Way
21 Police.

22 16. Utu placed the call to Federal Way police at 19:30:41 PM (7:30 PM).

23 17. It was after dark at the time Utu made the call to Federal Way Police.

24 18. Immediately following the phone call from Walmart, Starling went to the
25 Federal Way Walmart to retrieve his children.

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VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(As to each witness, expert or others, indicate “will testify,” or “possible witness only.” Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

(a) On behalf of Plaintiff:

1. Joseph Starling
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

Joseph Starling is the Plaintiff and father of minor children M.J.A. and M.E.S. and who has knowledge of the facts of his claims and his children’s claims against the Defendant. Mr. Starling will testify.

2. Minor Plaintiff M.J.S.
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

M.J.A is a Plaintiff, and who knowledge of the facts of her claims and her brother’s and father’s claims against the Defendant. M.J.A. will testify.

3. Minor Plaintiff M.E.S
c/o James Bible Law Group
14205 SE 36th Street Suite 100
Bellevue, WA 98006
(425) 519-3675

M.E.S is a Plaintiff, and who knowledge of the facts of his claims and his sister’s and father’s claims against the Defendant. M.E.S. may testify.

1 (b) On behalf of Defendant: (follow same format).

- 2 1. Debra Utu
3 c/o Williams Kastner
4 601 Union St., Suite 4100
5 Seattle, WA 98101

6 Debra Utu will testify as to her knowledge of the facts and circumstances surrounding
7 the alleged incident, as well as to her understanding of Walmart policies, procedures, customs
8 and practices. Debra Utu will also testify regarding her background and experience as an asset
9 protection associate at the Federal Way Walmart.

- 10 2. Responding Officer (Seth Hanson, Ret.)
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12 Officer Seth Hanson will testify as to his knowledge of the facts and circumstances
13 surrounding the alleged incident, and regarding the police response and investigation into the
14 events in question. Officer Hanson will also testify regarding his background and experience
15 in responding to incidents similar to the one in question.

- 16 3. Federal Way Police Department Records Custodian
17 33325 8th Ave. S. – Suite 101
18 Federal Way, WA 98003

19 An authorized custodian of records for the Federal Way Police Department will testify
20 as to the Department's standard policies and practices surrounding creation and retention of
21 records documenting emergency response incidents, including but not limited to production
22 and retention of computer-aided dispatch or "CAD" logs.

- 23 4. Corporate Representative/FRCP 30(b)(6) Representative of Walmart
24 c/o Williams Kastner
25 601 Union St., Suite 4100
Seattle, WA 98101

1 An authorized corporate representative will testify on behalf of Walmart, consistent
 2 with the provisions of FRCP 30(b)(6), as to Walmart policies and procedures that relate to the
 3 events in question, and regarding the reasonableness and appropriateness of Walmart’s
 4 response considering the totality of the circumstances at issue.

5 5. Manny Archuleta
 6 c/o Williams Kastner
 7 601 Union St., Suite 4100
 8 Seattle, WA 98101

9 Manny Archuleta is the current store manager of the Federal Way Walmart. Walmart
 10 may call Mr. Archuleta to testify regarding current store operations and/or regarding the facts
 11 and circumstances surrounding the alleged incident.

12 Plaintiff has filed a renewed Motion in Limine that will be heard by the Judge on the
 13 first day of trial regarding newly undisclosed evidence and undisclosed witnesses.

14 **VII. EXHIBITS**

15 Identify each exhibit with a number, which becomes the number for the exhibit at the trial and
 16 appears on the exhibit tag with the following information in table format:

Plaintiffs’ Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Walmart’s Answer to the Plaintiffs Complaint	Stipulated	Disputed	Relevance (FRE 401-403); MIL Nos. 5, 8. Some or all of Walmart’s Answer and affirmative defenses relate(s) to issues that are	

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				no longer in dispute, including Plaintiffs' discrimination cause of action. Thus, introducing Walmart's Answer to those and other claims would be confusing, misleading, and prejudicial under FRE 403. More simply, nothing in the Answer is relevant as defined in FRE 401; Walmart's Answer is not evidence that makes any of Plaintiffs claims more or less probable.	
2	Walmart's Responses to Plaintiffs First Set of Interrogatories and Requestion for Production and Exhibits	Stipulated	Disputed	Relevance (FRE 401-403); MIL Nos. 5, 8. Consistent with the immediate-above objection, introducing all of Walmart's Responses without redaction, limitation, or context would violate FRE	

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				401-403 and the Court's Order on Walmart's Motions in Limine. To the extent Plaintiffs wish to introduce particular responses that are relevant to claims still being pled, the Court could make determinations as to those specific offers on an item-by-item basis; however, an undifferentiated offer of Walmart's discovery responses as evidence is an invitation to the jury to consider claims that are no longer in dispute, and worse, to decide this case on bases beyond facts and law relevant to the claims that remain at issue.	
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3	Walmart's Supplemental Investigation and Detention Guide Policy AP-09			Relevance (FRE 401-403); MIL No. 8.	
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Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
A1	CAD Log			Objection FRE 106, 401-403, 602, 802, 904	
A2	7 photos of Federal Way Walmart			Objection. Photos were requested during discovery and Defendants failed to provide this discovery FRE 401-403, 602, 802	

The Parties' Objection Code:

MIL	Subject of a Motion in Limine
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VIII. ACTION BY THE COURT

- 1
- 2 (a) This case is scheduled for trial before a jury on May 22, 2023, at 9:00 a.m.
- 3
- 4 (b) Trial briefs shall be submitted to the court on or before May 17
- 5 (c) (Insert any other ruling made by the court at or before pretrial conference.) Per the
- 6 Court's 4/28/2023 Minute Entry filed in this matter, trial day will run from 9:00 a.m. to Noon,
- 7 and then from 1:00 p.m. to 4:15 p.m.—but possibly slightly longer depending on the needs of
- 8 the parties and the discretion of the Court. Trial is expected to last 4-5 days. Each side will
- 9 have 25-30 minutes for voir dire following the Court's general questions, with three (3)
- 10 peremptory challenges per side (simultaneous). A jury of 8 (or 9) will be empaneled. The
- 11 parties are allotted 30 minutes for opening statements and closing arguments. Parties are
- 12 ordered to submit a neutral statement of the case by May 17, 2023.

13 This order has been approved by the parties as evidenced by the signatures of their counsel.

14 This order shall control the subsequent court of the action unless modified by a subsequent

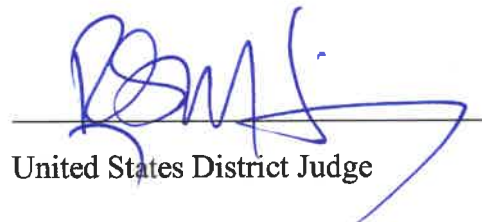
15 order. This order shall not be amended except by order of the court pursuant to agreement of

16 the parties or to prevent manifest injustice.

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18 DATED this 22 day of May 2023

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22 United States District Judge

1 FORM APPROVED:

2 /s/ Jesse Valdex, WSBA #35378

James Bible, WSBA #33985

3 Jesse Valdex, WSBA #35378

Errin Loyal, WSBA #56672

4 JAMES BIBLE LAW GROUP

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7 jesse@valdezlehman.com; and Errin@loyallawgroup.com

8 ***Counsel for Plaintiffs Starling***

9 -AND-

10
11 /s/ Eddy Silverman, WSBA #53494

Rodney L. Umberger, WSBA #24948

12 Eddy Silverman, WSBA #53494

Ashley M. Langley, WSBA #54032

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17 ***Counsel for Defendant Walmart Inc.***

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