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

FEDERAL TRADE COMMISSION, Plaintiff, v. WALMART INC., Defendant.	Case No. 1:22-cv-03372 Hon. Manish S. Shah

DEFENDANT WALMART INC.'S MOTION TO CERTIFY
THE COURT'S MARCH 27, 2023 ORDER FOR INTERLOCUTORY APPEAL

Pursuant to 28 U.S.C. § 1292(b), Defendant Walmart Inc. moves this Court to certify its Memorandum Opinion and Order dated March 27, 2023 (ECF No. 52) for interlocutory appeal. In support of this motion, Walmart states as follows:

1. Plaintiff Federal Trade Commission (FTC) filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief (ECF No. 1) on June 28, 2022. The complaint asserts claims under Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule (TSR), 16 C.F.R. § 310.3(b).

2. Walmart filed a motion to dismiss the complaint (ECF No. 23), and the parties briefed that motion (ECF Nos. 24, 43, 44).

3. On March 27, 2023, this Court issued the order ruling on Walmart's motion to dismiss. ECF No. 52. The Court granted the motion in part, dismissing the TSR claim. *Id.* at 19-31. The Court denied the motion as to the Section 5 claim. *Id.* at 31-62.

4. The Court should certify the March 27, 2023 order for interlocutory appeal under 28 U.S.C. § 1292(b), as the order involves controlling questions of law as to which there is

substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation. The grounds for this motion are set forth in the memorandum of law filed concurrently with this motion.

5. Counsel for the FTC has indicated that the FTC opposes this motion and requests an opportunity to file a response. If the Court permits the FTC to file a response, Walmart requests an opportunity to file a reply.

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WHEREFORE, Walmart respectfully requests that the Court certify its Memorandum Opinion and Order dated March 27, 2023 (ECF No. 52) for interlocutory appeal.

Dated: April 12, 2023

Respectfully submitted,

/s/ Sean M. Berkowitz

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Counsel for Defendant Walmart Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, I filed the foregoing document with the Court through the Court's electronic filing system. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system.

/s/ Sean M. Berkowitz
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