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 DISMISS AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Walmart Inc. hereby moves this Court for an order dismissing with prejudice the claims in Plaintiff Federal Trade Commission's (FTC) Amended Complaint for Permanent Injunction, Monetary Relief, Civil Penalties, and Other Relief (ECF No. 62). In support of this motion, Walmart states as follows:

1. The FTC filed this action on June 28, 2022. The original complaint asserted claims under Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b). In an opinion and order dated March 27, 2023 (ECF No. 52), this Court dismissed the FTC's TSR claim but declined to dismiss the FTC's Section 5 claim.

2. The FTC filed its amended complaint on June 30, 2023. The amended complaint asserts claims under Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b).

3. The FTC's claims should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Alternatively, to the extent the Court adheres to its prior decision to permit the FTC to proceed on its Section 5 claim, the Court should certify its order for

interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The grounds for this motion are set forth in the memorandum of law filed concurrently with this motion.

4. Walmart's memorandum of law complies with the briefing deadline and 40-page limit contained in the Court's order dated July 10, 2023 (ECF No. 65). The remaining briefing deadlines and page limits contained in that order are as follows: The FTC's response to this motion is due on September 15, 2023, and may be up to 40 pages; and Walmart's reply in support of this motion is due on October 9, 2023, and may be up to 20 pages.

WHEREFORE, Walmart respectfully requests that the Court enter an order dismissing the claims in the FTC's amended complaint with prejudice and granting such other relief as the Court deems appropriate.

Dated: August 11, 2023

Respectfully submitted,

/s/ Sean M. Berkowitz

Sean M. Berkowitz (ARDC No. 6209701)
Johanna M. Spellman (ARDC No. 6293851)
LATHAM & WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
(312) 876-7700
sean.berkowitz@lw.com
johanna.spellman@lw.com

Roman Martinez (*pro hac vice*)
Drew R. Wisniewski (ARDC No. 1016351)
Jessica L. Saba (*pro hac vice*)
Blake E. Stafford (*pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200
roman.martinez@lw.com
drew.wisniewski@lw.com
jessica.saba@lw.com
blake.stafford@lw.com

Hashim M. Mooppan (*pro hac vice*)
Krista Perry Heckmann (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939
hmmooppan@jonesday.com
kperryheckmann@jonesday.com

Counsel for Defendant Walmart Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 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
Sean M. Berkowitz