

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WAL-MART STORES, INC.**

**and**

**Case 28-CA-167277**

**RYAN COOK, an Individual**

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S  
PLEADINGS IN SUPPORT OF ITS MOTION TO DISMISS**

**I. Introduction**

In its Motion to Dismiss for Lack of Jurisdiction (the Motion) and its subsequent pleadings in support of that Motion, Respondent Wal-Mart Stores, Inc. (Respondent) attempts to dodge an examination of the lawfulness of its conduct toward individual Charging Party Ryan Cook (Mr. Cook) and its other employees by urging the Administrative Law Judge (the ALJ) to issue an Order dismissing the Complaint and Notice of Hearing in this matter (the Complaint) on the grounds that the conduct alleged in the Complaint is not encompassed by the charge filed by Mr. Cook. Counsel for the General Counsel (CGC) respectfully urges the ALJ to reject Respondent's attempt to secure dismissal of the Complaint on these procedural grounds, as the issuance of the Complaint and the ultimate issuance of an Order against Respondent based on the Complaint fall well within the duties and authority of the Regional Director and of the National Labor Relations Board (the Board), based on the application of long-standing precedent, grounded in the Supreme Court's decisions in *National Licorice Co. v. N.L.R.B.*, 309 U.S. 350 (1940), and *N.L.R.B. v. Fant Milling Co.*, 360 U.S. 301 (1959).

## II. Procedural History

Mr. Cook filed the underlying charge in this matter on January 7, 2016.<sup>1</sup> (GC Ex 1(a))<sup>2</sup> Based on that charge, the Regional Director issued the Complaint on June 7 alleging, in essence, that Respondent has violated Section 8(a)(1) of the Act by denying Mr. Cook's requests to have a witness present during interviews he had reasonable cause to believe would result in disciplinary action being taken against him. (GC Ex 1(c)) After Respondent's filing of a Motion to Reschedule the Hearing, a hearing concerning the allegations of the Complaint was scheduled to commence on August 9. (GC Ex 1(f)) The Complaint was amended on July 5 to add an allegation that Respondent has violated Section 8(a)(1) of the Act by maintaining a policy prohibiting its employees from having witnesses present during interviews they have reasonable cause to believe will result in disciplinary action at all of its stores nationwide. (GC Ex 1(j)) On August 3, just 6 days before the scheduled hearing date, Respondent filed the instant Motion. (GC Ex. 1(p)) CGC filed an Opposition to the Motion on August 4. (GC Ex 1(q)) Respondent subsequently filed two additional unauthorized pleadings in support of the Motion.<sup>3</sup> (GC Exs 1(w); 1(y)) With leave from the ALJ, CGC files this Opposition to Respondent's Pleadings in Support of Its Motion to Dismiss. The ALJ has granted Respondent leave to file one reply to this Opposition, in the event that it believes such an additional reply is necessary despite its multiple other filings.

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<sup>1</sup> Hereinafter, all dates are in 2016 unless otherwise noted.

<sup>2</sup> References to the General Counsel exhibits are identified as GC Ex \_\_ and GC Exs \_\_.

<sup>3</sup> Respondent's additional pleadings consist of a Reply in Support of its Motion to Dismiss for Lack of Jurisdiction, dated August 6 (GC Ex 1(w)), and a Notice to Counsel for the General Counsel of Additional Authority for §102.35(a)(8) Motion to Dismiss (to the Administrative Law Judge) for Lack of Jurisdiction, dated August 8. (GC Ex 1(y))

### **III. Mr. Cook's Charge Encompasses the Allegations at Issue, and Respondent Has Long Been on Notice of Those Allegations**

The charge filed by Mr. Cook alleges that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act (the Act) through the following conduct:

During the last 6 months, the above-named Employer by its officers, agents, and supervisors has discriminated against its employees by, among other things, discharging its employee Ryan Cook because he engaged in protected concerted activities.

By the above and other acts the Employer has interfered with, restrained, and coerced employees in the exercise of their Section 7 rights under the National Labor Relations Act.

(GC 1(a))

On January 25, the Board Agent assigned to investigate Mr. Cook's charge sent Respondent's Counsel a letter requesting Respondent's evidence and specifically notifying Respondent of the following:

The Charging Party has presented evidence that during the past six months, the Employer, by its officers, supervisors, and agents may have discriminated against its employees and interfered with, restrained, or coerced its employees in the exercise of their Section 7 rights by, including, but not limited to:

- About December 22, 2015, discharging its employee Ryan Cook (Cook) because he engaged in protected concerted activities, including by discussing with his coworkers and raising complaints at team meetings and with individual supervisors, issues relating to poor supervision, safety equipment, time requirements for services, work area conduct/maintenance, and other terms and conditions of employment; and
- About late September 2015 and/or early December 2015, **prohibiting its employees, including Cook, from having a coworker present as a witness and/or representative during**

**interview/meeting** (*sic*) relating to a possible on the job accident involving employee Danya (LNU).

(GC Ex 1(p) at Tab 2, p. 1) (emphasis added) Notably, the Board agent also requested to interview and obtain sworn affidavits from Assistant Manager Randall Lara (Lara), Bay Supervisor Jacob Pelletier, and Asset Protection Manager Tara Chapman (Chapman), all identified as supervisors and agents of Respondent in paragraph 3 of the Complaint. (GC Exs 1(c); 1(p) at Tab 2, p. 2)

The Board agent also requested documents squarely relevant to the Complaint allegations concerning Respondent's denial of employee requests to have witnesses present during interviews. (GC Exs 1(c); 1(p) at Tab 2, p. 3) Specifically, the Board agent sought documents related to the following: all investigations since September 2015 relating to a possible on the job accident involving employee Danya (last name unknown); a December 22, 2015 meeting between Mr. Cook, Lara, and Chapman, in which Mr. Cook was discharged; and Respondent's "rules, regulations, guidelines, policies and procedures relating to whether employees are permitted to have a coworker present during an investigatory interview and/or potential disciplinary meeting," including documents relied upon "in denying employees, including Cook, the opportunity to have a coworker present during potential investigatory/disciplinary meetings in September and/or December 2015." (GC Ex 1(p) at Tab 2, p. 3)

On February 16, Respondent provided a position statement to the Board agent "to respond to Ryan Cook's January 7 Charge as supplemented by [the Board agent's] January 25 correspondence." (GC Ex 2, p. 1) In that position statement, Respondent explicitly acknowledged that:

The Region's January 25 correspondence further adds an allegation that Walmart unlawfully refused to allow a coworker to serve as a witness or representative

during an interview with employees, including Cook, relating to a possible on-the-job accident in late September and/or early December 2015.

(GC Ex 2, p. 1) Although Respondent, in its position statement, raised the same argument it now raises in the instant Motion, Respondent also provided specific evidence and argument regarding its denial of employee requests for witnesses during the two specific interviews that are the subject of Complaint paragraphs Complaint at 4(a) through 4(f). (GC Exs 1(c), p. 2-3; 2, p. 3, 5, 8-9)

After Respondent presented its evidence, on June 2, Mr. Cook withdrew the portion of his charge alleging that he was unlawfully discharged. (GC Ex 1(p) at Tab 3) However, all other portions of Mr. Cook's charge, including the portions of his charge alleging that Respondent violated Section 8(a)(1) of the Act, discriminated against its employees, and interfered with, restrained, and coerced employees in the exercise of their Section 7 rights under the Act, remained, and still remain, pending. (GC Exs 1(c); 1(j); 1(p) at Tab 3)

**IV. The Duty and Authority of the Regional Director to Issue the Complaint, and of the Board to Issue an Order against Respondent Based on the Complaint, Is Grounded in Supreme Court Precedent**

Respondent is requesting that the ALJ order dismissal of the Complaint on the grounds that Mr. Cook failed to include in his charge specific allegations that Respondent denied his requests to have a witness present during interviews that he had reasonable cause to believe would result in his discipline and that it maintains a nationwide practice of denying such requests. (GC Ex 1(p)) To attribute so tightly restricted a function to a Board complaint as Respondent seeks in its Motion is, as the Supreme Court held in *National Licorice Co.*, 309 U.S. 350, 357 (1940), not consonant with the basic scheme of the Act. One of the issues in that case was substantially identical to the issue presented here—"whether the jurisdiction of the Board is

limited to such unfair labor practices as are set up in the charge presented to the Board so as to preclude its determination that (certain actions on the part of the employer) involved unfair labor practices, since both occurred after the charge was lodged with the Board.” *Id.* The Supreme Court’s resolution of the issue was unambiguous:

It is unnecessary for us to consider now how far the statutory requirement of a charge as a condition precedent to a complaint excludes from the subsequent proceedings matters existing when the charge was filed, but not included in it. Whatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings by the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. The violations alleged in the complaint and found by the Board were but a prolongation of the attempt to form the company union and to secure the contracts alleged in the charge. All are of the same class of violations as those set up in the charge and were continuations of them in pursuance of the same objects. The Board's jurisdiction having been invoked to deal with the first steps, it had authority to deal with those which followed as a consequence of those already taken. We think the court below correctly held that ‘the Board was within its power in treating the whole sequence as one.’

*Id.* at 369, cited by *Fant Milling Co.*, 360 U.S. at 306-07.

Here, as in *National Licorice Co.*, the allegations raised by Mr. Cook were “of the same class of violations as those set up in the charge.” 309 U.S. at 369. The allegations that Respondent denied Mr. Cook’s requests to have a witness present during two interviews closely preceding his discharge are encompassed by the broad language of Mr. Cook’s charge and are closely related to the allegation related to his discharge. In fact, the second of the two interviews was an interview that immediately culminated in Mr. Cook’s discharge. Thus, the allegations of the Complaint unquestionably “[grew] out of [the unfair labor practices alleged in the charge] while the proceeding [was] pending before the Board,” and, thus, the Board must not be “preclude[d] from dealing adequately with” those allegations. *Id.*

The Supreme Court explained the compelling reasons for not precluding litigation of allegations growing out of allegations specifically raised in an unfair labor practice charge in

*Fant Milling Co.:*

A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U.S. 9, 18, 63 S.Ct. 394, 400, 87 L.Ed. 579. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest in eliminating obstructions to interstate commerce, as this Court has recognized from the beginning. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893.

Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge.

360 U.S. at 307-08.

In sum, once Mr. Cook invoked the Board's jurisdiction by filing his charge, the Board was tasked with examining the issues raised by the charge and growing out of the charge in order to ensure that the public rights of employees under the Act are vindicated.

**V. The Duty and Authority of the Regional Director to Issue the Complaint, and of the Board to Issue an Order against Respondent Based on the Complaint, Is Supported by Board Precedent**

In *Nickles Bakery of Indiana*, 296 NLRB 927, 927-928 (1989), the Board held that a "closely related" standard should be applied when assessing whether allegations not specifically included in a charge could be included in a complaint. Under the "closely related" standard, allegations are "closely related" if: (1) they "are of the same class as the violations alleged" in

the charge, “mean[ing] that the allegations must all involve the same legal theory and usually the same section of the Act (e.g., 8(a)(3) reprisals against union activity);” (2) they “arise from the same factual situation or sequence of events” as the violations alleged in the charge, “mean[ing] that the allegations must involve similar conduct, usually during the same time period with a similar object (e.g., terminations during the same few months directed at stopping the same union organizing campaign);” and (3) they would call for the respondent to “raise the same or similar defenses” as the violations alleged in the charge. *Redd-I, Inc.*, 290 NLRB 1115, 1115-16 (1988).

The second prong of the *Redd-I* test is satisfied where “two sets of allegations demonstrate similar conduct, usually during the same time period with a similar object, or there is a causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity.” *The Carney Hospital*, 350 NLRB 627, 630 (2007) (internal citations omitted). In *The Carney Hospital*, the Board found that “chronological coincidence during a union's campaign does not warrant the implication that all challenged employer actions are related to one another as part of a planned response to that campaign.” *Id.* However, the Board agreed that “a sufficient factual relationship can be established by showing that the timely and untimely alleged employer actions are ‘part of an overall employer plan to undermine the union activity.’” *Id.* Finally, if allegations are demonstrably part of an employer’s organized plan to resist union organization, then they are closely related. *Id.* (internal citations omitted).

Likewise, by extension, a sufficient factual relationship may be established here, to show that the withdrawn allegation that Respondent discharged Cook “because he engaged in protected concerted activities” and the remaining Complaint allegations that Respondent

“interfered with, restrained, and coerced employees in the exercise of their Section 7 rights” relate to an overall plan by Respondent to undermine its employees’ Section 7 activity. (GC Ex 1(a)) It is hardly a stretch to find a sufficient factual relationship between Respondent denying Mr. Cook’s requests for a witness in two investigatory interviews, in late September and on December 21, 2015, as alleged in the Complaint, and the withdrawn allegation involving Mr. Cook’s discharge *during* the second of those two interviews. (GC Ex 1(c)) Mr. Cook’s “protected concerted activities” included not only requesting a witness to be present during *his* two investigatory interviews held by Respondent as alleged in the Complaint, but also repeatedly encouraging his coworkers to do the same during *their* investigatory interviews with Respondent. (GC Ex 1(c))

Respondent’s denials of the requests of Mr. Cook, its other Gilbert, Arizona employees, and, in fact, *all* of its employees nationwide, reveals an overall plan by Respondent to undermine its employees’ Section 7 activity by isolating Mr. Cook, and its other employees nationwide, from each other at times when they believe their livelihoods are in peril and they need to reach out to each other for support. (GC Exs 1(c); 1(j)) In other words, just as some employers might devise an “overall plan” to thwart a union organizing campaign, Respondent has devised an “overall plan” to thwart its employees’ attempts to secure witnesses in their investigatory interviews, and that overall plan was employed against Mr. Cook’s campaign to secure witnesses for his interviews and to encourage his coworkers to do the same.

Respondent’s overall plan is best manifested by its nationwide policy denying its employees’ requests to have witnesses present in investigatory interviews. (GC Ex 1(j)) It is of no consequence that Mr. Cook’s initial charge only identified Respondent’s Gilbert, Arizona facility. (GC Ex 1(a)) The Board has held that when an employer maintains unlawful policies at

all of its facilities nationwide, it requires notice posting by the employer at all of its facilities to remedy these violations and to notify all employees subject to the policies that they have been rescinded and will no longer be enforced. *See, e.g., Mastec Advanced Technologies*, 357 NLRB 103, 109, 125 at fn 2 (2011). Mr. Cook’s charge specifying one Respondent facility is thus sufficient to warrant a nationwide remedy at all of Respondent’s facilities. (GC Exs 1(c); 1(j))

## **VI. The Board Cases Cited by Respondent Provide No Support for Its Motion**

In its unauthorized “Notice to Counsel for the General Counsel of Additional Authority for §102.35(a)(8) Motion to Dismiss (to the Administrative Law Judge) for Lack of Jurisdiction” filed on August 8 (Respondent’s Notice), Respondent cites two cases that warrant discussion. (GC Ex 1(y))

First, Respondent cites *Desert Springs Hospital*, 363 NLRB No. 85 (2016), and asserts that, in that case, “the Board affirmed (without comment) the ALJ’s dismissal of complaint supported only by ‘boilerplate’ charge language.” (GC Ex 1(y), p. 2) Contrary to Respondent’s suggestion, however, the analysis set forth in the administrative law judge’s decision in *Desert Springs Hospital* actually supports the CGC’s argument that the allegations regarding Respondent’s denial of its employees’ requests for witnesses during investigatory interviews here are “closely related” to the withdrawn allegation related to Mr. Cook’s discharge for engaging in protected, concerted activities. The administrative law judge in *Desert Springs Hospital*, in finding violations of Section 8(a)(1) of the Act not specifically included in the charge explained:

The additional 8(a)(1) allegations concerning Fabiye regarded statements that he made during his meetings with Van Leer on March 28 and April 8, at which the Respondent allegedly suspended and disciplined her in violation of Section 8(a)(3). Moreover, some of the interrogation alleged in the charge related to Fabiye’s statements at the March 28 meeting. Accordingly, I conclude that these

allegations arose from the same factual circumstances or sequence of events as the allegations contained in the charge and that the General Counsel has met the “closely related” test.

*Id.* at slip op at 5.

Thus, in *Desert Springs Hospital*, the administrative law judge found it was appropriate for the Regional Director to seek, and for the Board to order, a remedy for allegations of interrogation not specifically included in the charge but arising from the investigation of allegations of the charge related the affected employee’s discipline and suspension. Similarly, here, it is appropriate for the Regional Director to seek, and for the Board to order, a remedy for Respondent’s denial of Mr. Cook’s requests for a witness and its nationwide policies denying such requests during its investigatory interviews, since Mr. Cook’s requests themselves, and his encouragement of employees to make similar requests, were some of the protected, concerted activities he alleged to have resulted in his discharge, and the interviews of Mr. Cook, outside the presence of his requested witness, formed part of a sequence of events that culminated in his discharge. Further, Respondent’s underlying nationwide policies and practices that gave rise to its conduct against Mr. Cook are closely intertwined with that conduct. Thus, just like the interrogation allegations in *Desert Springs Hospital*, the allegations related to the denial of Mr. Cook’s requests for a witness and to the underlying nationwide policies and practices “arose from the same factual circumstances or sequence of events” as the charge allegations, thus meeting the “closely related” test. *Id.*

Further, in *Desert Springs Hospital*, with respect to the allegations dismissed by the administrative law judge on the grounds that they were not covered by the charge, the administrative law judge specifically noted that “there is *no evidence* that the Respondent was provided with *any specifics* of the unpled allegations against them.” *Id.* at slip op. at 6 (emphasis

added). In this case, it is undisputed that Respondent was provided specifics of the allegations related to its denial of Mr. Cook's requests for a witness. In fact, as previously discussed, Respondent was specifically provided the opportunity to provide evidence and argument about these allegations, and actually availed itself of that opportunity. (GC Exs 1(p) at Tab 2; 2) Accordingly, the rationales applied by the administrative law judge in *Desert Springs Hospital* support CGC's argument in support of denial of the Motion.

Second, in Respondent's Notice, it cites *KLB Industries, Inc.*, 357 NLRB 127, 162-163 (2011), *enfd.* 700 F.3d 551 (D.C. Cir. 2012), in which the Board affirmed (without comment) the administrative law judge's finding that the General Counsel's motion to amend the complaint was barred by *Nickles Bakery of Indiana*, 296 NLRB 927. (GC Ex 1(y), p. 2-3) However, as Respondent admits, *KLB Industries* is distinguishable on its facts. The charge in that case specifically alleged a refusal to bargain, a unilateral change, and an unlawful lockout. *Id.* at 162. During the hearing, *at the close of her case*, Counsel for the General Counsel sought to amend "away from the table" conduct to support the bargaining allegations, and in his decision, the administrative law judge found that such "away from the table" evidence of bargaining violations lacked probative value and was essentially unrelated to the alleged bargaining violations. *Id.* at 162-163. Here, unlike in *KLB Industries*, not only are Mr. Cook's allegations related to denial of his requests for witnesses encompassed by the charge and closely related to his withdrawn discharge allegation for the reasons discussed herein, but also, those allegations are expressly included in the Complaint. (GC Ex 1(c))

Further, the administrative law judge in *KLB Industries* found "no evidence" that the "8(a)(1) allegation that the employer "restrained and coerced" employees in the exercise of their Section 7 rights" was "intended to allege any of the allegations the General Counsel seeks to

amend to add to the complaint by amendment.” *Id.* at 162-163. Conversely, in this case, there is evidence that Mr. Cook intended to allege that Respondent unlawfully denied his requests for a witness. This is clearly evidenced by the Board agent’s letter soliciting Respondent’s position and evidence, in which the Board agent specifically notified Respondent that Mr. Cook was alleging that Respondent’s denial of his requests for a witness was unlawful. (GC Exs 1(c); 1(p) at Tab 2)

#### **VII. The ALJ is Bound to Follow Current Board Precedent and Deny the Motion**

The Board has rejected the same argument Respondent is making here, finding that a charge alleging a violation of Section 8(a)(1) in general terms is sufficient to support a complaint alleging a particularized violation of Section 8(a)(1). *Embassy Suites Resort*, 309 NLRB 1313 (1992), *enf. denied* 32 F.3d 588 (D.C. Cir. 1994), citing *Brookville Glove Co.*, 116 NLRB 1282 (1956); *Columbia University*, 250 NLRB 1220 fn. 2 (1980). In *Embassy Suites Resort*, the charge stated, in substance, essentially the same as the charge here: that the Employer, within the last 6 months, had discriminated against employees, and had interfered with, restrained, and coerced employees in the exercise of their Section 7 rights. *Id.* at 1313. A complaint was issued and alleged that the Respondent violated Section 8(a)(1) of the Act by implying that the Union was preventing it from granting a wage increase; (2) creating an impression of surveillance; (3) threatening to reduce employee amenities if the Union won an election; and (4) impliedly promised a wage increase if the Union lost the election. *Id.* at 1313-1314. The Board, with Member Stephens dissenting, rejected the Respondent's argument that the complaint was barred by Section 10(b) and held that the charge, which was timely filed, was sufficient to support the allegations of the complaint:

[W]e find that the generalized statutory language used in the charge filed in this case was sufficient to initiate an investigation of unfair labor practices by the General Counsel, and that the charge is legally sufficient to support the 8(a)(1) complaint allegations regarding the Respondent's threats to withhold wage increases. The charge broadly alleged 8(a)(1) violations. The complaint specifically alleged 8(a)(1) violations. Thus, the complaint allegations were "of the same class of violations as those set forth in the charge."

*Id.* at 1315.

Respondent is correct that the D.C. Circuit reversed the Board, finding that the Board was without authority to initiate an investigation and issue a complaint in that case based upon an unfair labor practice charge containing only a boilerplate allegation that the Employer violated Section 8(a)(1). *Embassy Suites Resort v. NLRB*, 32 F.3d 588, 592 (D.C. Cir. 1994). The D.C. Circuit's view is, however, not the Board's view, and the ALJ is bound to follow current Board and Supreme Court precedent. *In Re Reg'l Const. Corp.*, 333 NLRB 313, 316 (2001).

Further, the Board has distinguished the D.C. Circuit's decision in *Embassy Suites Resorts v. NLRB* from cases like this, that involve more than just boilerplate Section 8(a)(1) allegations. *Id.* at 320 at fn 1. Here, Mr. Cook supplied specificity in his charge, by alleging that Respondent discriminated against its employees because he engaged in protected concerted activities, and, by the above and other acts, Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights. *Id.* (GC Ex 1(a)) Moreover, Respondent knew precisely what Mr. Cook was alleging in his charge when the Board agent sought its evidence and argument about his *Weingarten* allegations, and Respondent obliged by providing its position regarding these same *Weingarten* allegations later pled in the Complaint. *Id.* (GC Exs 1(c); 1(p) at Tab 2; 2) Accordingly, the charge, as framed and understood, apprised the Region and Respondent of the conduct being alleged as unlawful. *Id.*

## VIII. CONCLUSION

The public interest in righting unfair labor practices demands that the Regional Director include in complaints all allegations growing out of the specific allegations of a charge and that the Board order appropriate remedies for such allegations. The allegations related to Respondent's denials of Mr. Cook's request for a witness during interviews he feared would result in his discipline and its nationwide policies and practices underlying those denials clearly grew out of the Regional Director's inquiry into Mr. Cook's discharge, and, moreover, are encompassed by the broad language of the charge. Thus, those allegations must be included in the Complaint, and the Board must address them on their merits. Accordingly, CGC respectfully requests that the ALJ deny Respondent's Motion and promptly resume this hearing, which has been unnecessarily delayed by Respondent's belated filing of the Motion.

Dated at Phoenix, Arizona, this 19th day of August 2016.

*/s/ Lisa J. Dunn*

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S PLEADINGS IN SUPPORT OF ITS MOTION TO DISMISS in Wal-Mart Stores, Inc., Case 28-CA-167277, was served by E-Gov, and E-Filing, E-Mail, or Regular U.S. Mail on this 19<sup>th</sup> day of August 2016, on the following:

**Via E-Gov & E-Filing:**

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*/s/ Stephanie Blackburn-Jorgensen*

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