

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

CITY OF PONTIAC GENERAL )  
EMPLOYEES' RETIREMENT )  
SYSTEM, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WAL-MART STORES, INC. and )  
MICHAEL T. DUKE, )  
 )  
Defendants. )

No. 5:12-cv-05162 SOH

**MOTION TO DISMISS PLAINTIFF'S AMENDED  
COMPLAINT WITH PREJUDICE**

Defendants Wal-Mart Stores, Inc. ("Wal-Mart") and Michael T. Duke, (collectively, "Defendants"), for their motion to dismiss the amended complaint with prejudice, state as follows:

1. The Amended Complaint attempts to assert claims under §10(b) and §20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.
2. Plaintiff's claims are subject to the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b) ("PSLRA").
3. As set forth more fully in the accompanying Memorandum of Law, the Amended Complaint fails to satisfy the pleading requirements of the PSLRA and fails to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).
4. Pursuant to Federal Rules of Evidence 201(b) and (c)(2), the moving Defendants respectfully request that this Court take judicial notice of the following

documents, all of which are referenced in the Amended Complaint. *See* Am. Compl. ¶¶ 26, 29, 33-34. These documents are not subject to reasonable dispute and can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned.

The specific documents as to which the moving Defendants request judicial notice are:

- Wal-Mart's Form 10-Q filed with the U. S. Securities and Exchange Commission ("SEC") on December 8, 2011 (available at <http://www.sec.gov/Archives/edgar/data/104169/000119312511335177/d233066d10q.htm>);

- Wal-Mart's Statement of Ethics (available at [http://az301759.vo.msecnd.net/statementofethics/pdf/U.S\\_SOE.pdf](http://az301759.vo.msecnd.net/statementofethics/pdf/U.S_SOE.pdf));

- Wal-Mart's Form 10-K filed with the SEC on March 27, 2012 (available at <http://www.sec.gov/Archives/edgar/data/104169/000119312512134679/d270972d10k.htm>); and

- Wal-Mart's 2012 Annual Report issued on March 27, 2012 (available at [http://www.walmartstores.com/sites/annual-report/2012/WalMart\\_AR.pdf](http://www.walmartstores.com/sites/annual-report/2012/WalMart_AR.pdf)).

5. Defendants attach these documents as Exhibits A-D to this Motion, and they are incorporated herein by reference.

6. This Motion is supported by an accompanying Memorandum of Law, which is incorporated herein by reference.

WHEREFORE, and for the reasons set forth in the accompanying Memorandum of Law, Defendants respectfully request that this Court dismiss Plaintiff's Amended Complaint with prejudice and grant the moving Defendants all other just and proper relief.

Respectfully submitted,

THEODORE J. BOUTROUS JR.  
JONATHAN C. DICKEY  
MARK A. PERRY  
GEORGE H. BROWN  
BRIAN M. LUTZ  
GIBSON DUNN & CRUTCHER LLP  
333 SOUTH GRAND AVENUE  
LOS ANGELES, CA 90071-3197  
TELEPHONE: (213) 229-7000  
FAX: (213) 229-7520

/s/ Jess Askew III  
JESS ASKEW III  
(Ark. Bar No. 86005)  
jaskew@williamsanderson.com  
TERESA WINELAND  
(Ark. Bar No. 81168)  
twineland@williamsanderson.com  
WILLIAMS & ANDERSON PLC  
111 CENTER STREET, STE. 2200  
LITTLE ROCK, AR 72201  
TELEPHONE: (501) 372-0800  
FAX: (501) 372-6453

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of March, 2013, I electronically filed the foregoing with the Clerk of Court using the Electronic Case Filing system, which will send notification of such filing to the following:

**BARRETT JOHNSTON, LLC**

George E. Barrett  
Douglas S. Johnston, Jr.  
Timothy K. Miles  
217 Second Avenue, North  
Nashville, TN 37201-1601  
Tel: 615-244-2202  
Fax: 615-252-3798

**ROBBINS GELLER RUDMAN & DOWD LLP**

Darren J. Robbins  
David C. Walton  
Jason A. Forge  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Tel: 619-231-1058  
Fax: 619-231-7423

**SULLIVAN, WARD, ASHER & PATTON, P.C.**

Cynthia J. Billings  
1000 Maccabees Center  
25800 Northwestern Highway  
Southfield, MI 48075-1000  
Tel: 248-746-0700  
Fax: 248-746-2760

**PATTON, TIDWELL & SCHROEDER, L.L.P.**

Nicholas H. Patton  
4605 Texas Boulevard  
P.O. Box 5398  
Texarkana, TX 75505-5398  
Tel: (903) 792-7080  
Fax: (903) 792-8233

*Counsel for Plaintiff*

/s/ Jess Askew III  
Jess Askew III