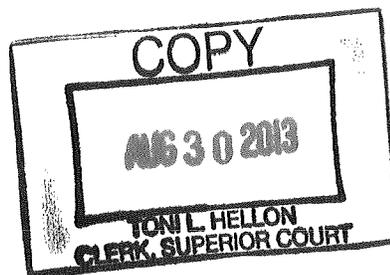


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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11
12 IN AND FOR THE COUNTY OF PIMA

13 THE STATE OF ARIZONA *ex rel.* THOMAS C.
14 HORNE, the Attorney General; and THE CIVIL
15 RIGHTS DIVISION OF THE ARIZONA
16 DEPARTMENT OF LAW,

17 Plaintiff,

18 vs.

19 WALMART STORES, INC.

20 Defendant.
21

No. C20134458

AMENDED COMPLAINT
(Non-Classified Civil)
(Hon. Gus Aragon)

22
23 Plaintiff, the State of Arizona *ex rel.* Thomas C. Horne, the Attorney General, and the
24 Civil Rights Division of the Arizona Department of Law (collectively, the “Arizona Civil
25 Rights Division” or “ACRD”), for its Amended Complaint, alleges as follows:
26

1 **BACKGROUND**

2 **Disability**

3 8. Jeremy Wilson has been deaf since infancy and cannot obtain information aurally.

4 9. Jeremy Wilson's first and primary language is American Sign Language
5 ("ASL"), which he uses for receptive and expressive communication.

6 10. ASL is a non-verbal, visual language.

7 11. The grammar, syntax, and vocabulary of ASL are significantly different than
8 English.

9 12. Jeremy Wilson has a low English literacy rate and limited English vocabulary
10 because he became deaf before he acquired language and his first and primary language is ASL.

11 13. Jeremy Wilson is substantially limited in at least one major life activity, including
12 but not limited to hearing, speaking, and reading.

13 14. At all relevant times, Jeremy Wilson was an individual with a disability within
14 the meaning of A.R.S. §§ 41-1461(5)(a) and 41-1468.

15 **Reasonable Accommodations**

16 15. On June 12, 2008, Walmart hired Jeremy Wilson as an Associate, specifically as
17 a Stocker in the Produce Department.

18 16. Walmart knew or had reason to know that Jeremy Wilson required an ASL
19 interpreter for lengthy, complex or important aural communication at the time that he was
20 hired.

21 17. Walmart provided Wilson with an ASL interpreter for orientation, some
22 discipline under its progressive discipline policy, annual performance reviews, and for a job
23 interview for another position.

24 18. Walmart provided aural information to associates during meetings, including
25 Open Door meetings, daily store meetings, other staff meetings, daily work instructions,
26 feedback about work performance, and on-the-job training following orientation.

1 19. Aural information provided at store meetings included, but was not limited to
2 information regarding policy changes and updates, safety topics, policy reminders, including
3 dress code reminders, the store's sales numbers and upcoming events for which the store was
4 preparing, recognition of employees' store anniversaries, potlucks and social events, and
5 positive encouragement.

6 20. During his employment, Jeremy Wilson repeatedly requested that Walmart
7 provide an ASL interpreter for meetings and during numerous lengthy or complicated
8 communication being exchanged through handwritten notes.

9 21. Walmart did not provide an ASL interpreter, either on-site or through Video
10 Remote Interpreting ("VRI"), or another alternative accommodation for meetings, including
11 Open Door meetings, daily store meetings, and other staff meetings, complicated, new or
12 different daily work instructions, general feedback about work performance, except as stated in
13 ¶ 17, and on-the-job training following orientation.

14 22. Walmart provided written notes to communicate the aural information identified
15 in ¶¶ 18-19 to Jeremy Wilson.

16 23. The written notes for meetings generally were limited to a few sentences and did
17 not include the questions and answers during the meeting.

18 24. Walmart provided Jeremy Wilson information about its policies, procedures, and
19 work requirements, and many computer-based learning ("CBL") modules in writing.

20 25. Walmart knew or had reason to know that Wilson had difficulty understanding
21 the written information, including written policies, that was lengthy or complex or included
22 unfamiliar vocabulary.

23 26. VRI is a convenient, on-demand sign language service delivered over a live, high
24 speed Internet video connection with sufficient bandwidth that can be displayed on laptops and
25 tablets from remote locations, such as a call center.

1 27. VRI is a less costly alternative to hiring a qualified on-site interpreter because
2 VRI services often have a per-minute fee structure with volume-based discounts and do not
3 require two hour minimum service charges or travel costs.

4 28. VRI is easier to access because it is available on demand 24 hours per day, 7 days
5 per week, and 365 days per year and immediately available to clients.¹

6 29. Walmart did not engage in the interactive process to consider alternative
7 reasonable accommodations.

8 30. Jeremy Wilson can perform the job duties of an Associate, assigned to work as a
9 Stocker, with the provision of reasonable accommodations for the various types of
10 communication events that occur in his employment at Walmart.²

11 31. An on-site qualified interpreter is a reasonable accommodation to impart
12 information to Jeremy Wilson for many events in the workplace, such as: (a) orientation and
13 job training, (b) Human Resource meetings involving the benefits of employment or job
14 opportunities, (c) the initial coaching and discipline meeting, coaching and discipline meetings
15 (involving formal or informal discipline), (d) workplace investigations, and (e) annual
16 performance evaluations.

17 32. VRI is a reasonable accommodation to impart information to Jeremy Wilson for
18 many events in the workplace, such as such as: (a) daily or departmental meetings, (b)
19 providing clarification following daily instructions that could not be adequately conveyed in
20 writing, (c) training from computer-based learning modules (with ASL), and (d)

21
22
23 ¹ VRI appointments may also be scheduled in advance and scheduled VRI services may
24 be available at a lower per minute rate.

25 ² A reasonable accommodation plan that outlines the types of communications common
26 for a Walmart Associate working as a stocker and sets forth reasonable accommodations for
each of those types of accommodations is attached and incorporated by reference as Exhibit 1.

1 communication with management under the Open Door Policy and for coaching and discipline
2 meetings (involving correction without discipline) after the initial meeting.

3 33. Creating videos, such as YouTube videos, using a sign language interpreter or the
4 provision of a Certified Deaf interpreter (“CDI”) is a reasonable accommodation for: (a)
5 training from computer-based learning modules (without ASL) and (b) written employee
6 handbooks, manuals, policies, and procedures. ASL video version is that they can be saved
7 and viewed later for additional reference or clarification.

8 34. Other reasonable accommodations exist that may be effective for certain types of
9 communication with Jeremy Wilson: handwritten notes may be appropriate for information
10 transmitted; texting information to Jeremy Wilson's phone may also be appropriate to summon
11 Mr. Wilson to an area or department or impart emergency or public address announcements for
12 employees; and having a qualified interpreter sit with Jeremy Wilson and interpret the material
13 or to provide a script of the learning modules to a VRI interpreter may be appropriate for
14 information transmitted during computer-based learning modules (without ASL).

15 **Employment and Discipline History**

16 35. At all relevant times, Walmart addressed discipline issues through a progressive
17 disciplinary process called Coaching for Improvement Policy, which had four levels of
18 “coaching”: a) Verbal Counseling, b) Written Counseling, c) Decision-Making Day Coaching,
19 and d) Termination.

20 36. Under Walmart’s policy, if Walmart issued any coaching for job performance or
21 conduct within 12 months of the date of a Decision-Making Day Coaching, the associate would
22 be terminated regardless of whether the conduct or performance issue was a terminable offense.

23 37. At all relevant times, Walmart maintained an “Open Door Policy” that
24 encouraged associates to approach a supervisor or a member of management with any issue
25 related to the Walmart workplace.
26

1 38. On September 25, 2008, Jeremy Wilson successfully completed Walmart's
2 probationary period and Walmart rated his overall performance as "meets expectations."

3 39. On May 4, 2009, Walmart completed Wilson's annual evaluation as a Produce
4 Associate and rated his overall performance as "effective."

5 40. After Jeremy Wilson's 2009 performance evaluation, Walmart transferred him to
6 the Deli Department, where he continued to work as a Stocker.

7 41. On January 25, 2010, Jeremy Wilson arrived at work at about 7:00 a.m. and,
8 because of the state that the overnight crew had left his work area, wanted to show the
9 conditions to a member of management before he began stocking it. The assistant manager did
10 not arrive until 8:00 a.m.

11 42. On January 25, 2010, a lengthy written communication occurred between Jeremy
12 Wilson and Assistant Manager Wendy Donaldson once she arrived at work. He returned to
13 work after communicating with Donaldson about the situation.

14 43. On January 26, 2010, following Jeremy Wilson's use of the Open Door policy on
15 January 25, 2010, Walmart issued a Written Counseling to Jeremy Wilson, stating the reason
16 for the coaching as "job performance" and citing specifically to Wilson's alleged
17 "unwillingness to take direction from his lead and get the freight worked first then talk to
18 management caused unproductivity."

19 44. In or about mid-2010, Walmart implemented a new backroom inventory control
20 procedure that affected the binning and stocking procedures. Employees were informed about
21 the change in writing and provided handouts and on-the-job training by a knowledgeable
22 employee to demonstrate proper performance of the new procedures.

23 45. Walmart did not provide a sign language interpreter for Jeremy Wilson to be
24 trained on the new procedures.

25 46. On July 9, 2010, Walmart issued a Decision-Making Day Coaching to Jeremy
26 Wilson citing the reason for the coaching as alleged "insubordination." Specifically, the

1 coaching form indicated that Wilson was “not following the proper procedure to place and
2 remove items from the department 97 bin and that the expected behavior was to “follow proper
3 procedures for the backroom program at all times, by picking and binning the merchandise”
4 and “follow direction given by leads and management the first time without arguing.”

5 47. On July 10, 2010, Jeremy Wilson expressed his feelings to a member of
6 management that the counseling was unfair. No ASL interpreter was present, and all
7 communication was made through the use of notes.

8 48. Following the Decision-Making Day Coaching, Walmart arranged for an ASL
9 interpreter to be provided to train him on the new binning procedures, but did not expunge the
10 coaching record from his personnel file.

11 49. On April 6, 2011, an incident occurred at work where Lead Bobbi Jo Nelson
12 complained that Jeremy Wilson did not immediately take off his non-Walmart hat upon her
13 request.

14 50. On April 8, 2011, a co-worker alleged that Wilson made a rude gesture (“flipped
15 off”) when she declined to assist him with some work.

16 51. During Walmart’s investigation into the co-worker’s complaint, Walmart took
17 statements from the coworker who made the complaint and a second co-worker who was
18 present.

19 52. Neither the second co-worker nor security camera tapes substantiated the
20 allegation that Wilson flipped off another co-worker.

21 53. Walmart did not obtain an ASL interpreter, either onsite or remotely, to interview
22 Wilson during its investigation of the co-worker’s April 8, 2011 complaint.

23 54. Walmart terminated Jeremy Wilson for alleged insubordination on April 11,
24 2011, citing to the April 6 and April 8 incidents.

25 55. Neither of these incidents would have resulted in termination, except that they
26 occurred within 12 months of the Decision Day Coaching issued to Jeremy Wilson.

1 **Prerequisites to Suit**

2 56. On July 20, 2011, Jeremy Wilson filed a timely charge of employment
3 discrimination, in which he alleged that he had been the victim of employment discrimination
4 because of a disability.

5 57. The ACRD issued its Reasonable Cause Finding on July 6, 2012.

6 58. In an attempt to promote conciliation of this matter, the ACRD, Jeremy Wilson
7 and Walmart entered into numerous tolling agreement(s) that extended the period for pursuing
8 conciliation and the date by which to file suit until August 9, 2013.

9 59. After extensive negotiations, the ACRD, Jeremy Wilson, and Walmart have not
10 entered into a Conciliation Agreement permitting the filing of this Complaint pursuant to
11 A.R.S. § 41-1481(D).

12 **STATEMENT OF CLAIM**

13 **COUNT I**

14 **(Discrimination in Violation of A.R.S. § 41-1463(B)),**

15 **UNLAWFUL DENIAL OF REASONABLE ACCOMMODATION**

16 60. The ACRD realleges and incorporates by reference the allegations contained in
17 paragraphs 1 through of this Complaint.

18 61. Walmart is an employer as defined by A.R.S. § 41-1461(6)(a).

19 62. Jeremy Wilson is an individual with a disability within the meaning of A.R.S. §§
20 41-1461(4) and 41-1468.

21 63. Jeremy Wilson was qualified to perform the essential functions of the Associate
22 position, working as a Stocker, with or without reasonable accommodation(s), including the
23 accommodations identified in ¶¶ 31-35 and Exhibit 1.

24 64. Walmart did not provide reasonable accommodations to Jeremy Wilson that
25 were necessary to (a) perform the essential functions of the position he held, (b) be treated the
26 same as other employees in the terms of employment, such as training, discipline, and

1 opportunities for promotion and full-time employment, and (c) enjoy the benefits and
2 privileges of employment, such as Open Door meetings and store and staff meetings, available
3 to non-disabled employees.

4 65. Walmart did not engage in the interactive process to consider alternative
5 accommodation after Jeremy Wilson requested an ASL interpreter for meetings and lengthy or
6 complicated communication being addressed through handwritten notes.

7 66. As a result of Defendant's denial of reasonable accommodation and subsequent
8 termination, Jeremy Wilson suffered a loss of wages, and is entitled to and should be
9 compensated for his back pay and prejudgment interest in an amount to be determined at trial
10 pursuant to A.R.S. § 41-1481(G).

11 67. Jeremy Wilson is entitled to reinstatement to a Lead Stocker position and any
12 other equitable relief, including front pay, that the Court deems appropriate.

13 68. The ACRD also is entitled to injunctive relief against Defendant's actions and
14 entitled to its costs pursuant to A.R.S. § 41-1481(J).

15
16 **COUNT II**

17 **(Discrimination in Violation of A.R.S. § 41-1463(B)),**

18 **UNLAWFUL DISCRIMINATION ON THE BASIS OF DISABILITY**

19 69. The ACRD realleges and incorporates by reference the allegations contained in
20 paragraphs 1 through 68 of this Complaint.

21 70. Walmart applied its progressive discipline policy to Jeremy Wilson in a
22 discriminatory manner.

23 71. Walmart terminated Jeremy Wilson's employment as a Stocker because of his
24 disability.

25 ///

26 ///

1 G. Order Defendant to remove any and all documents related to the progressive
2 discipline policy from Wilson's personnel file.

3 H. Order Defendant to provide Jeremy Wilson with necessary reasonable
4 accommodations, as identified in ¶¶ 31-35 and Exhibit 1.

5 I. Order Defendant to revise its policies and procedures and training to ensure that
6 its store, regional and state managers will abide by ACRA's disability discrimination and
7 reasonable accommodation provisions for associates who are deaf and hard of hearing and
8 who need reasonable accommodation for effective communication and to otherwise comply
9 with ACRA.

10 J. Order the ACRD to monitor Defendant's compliance with the ACRA.

11 K. Award the ACRD its costs incurred in bringing this action, and its costs in
12 monitoring Defendant's future compliance with the ACRA.

13 L. Grant such other and further relief as this Court may deem just and proper in the
14 public interest.

15 Dated this 30th day of August, 2013.

16 THOMAS C. HORNE
17 Attorney General

18 By Rose A. Daly-Rooney
19 Rose A. Daly-Rooney
20 Chris Carlsen
21 Assistant Attorneys General

22 #3528297

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EXHIBIT 1

Jeremy Wilson
Reasonable Accommodation(s)

Type of Communication Event	Reasonable Accommodation for Communication Access
Informal coaching (without issuance of coaching or discipline related to the Coaching for Improvement Policy or successor policy)	On site sign language interpreter for initial meeting and Video Remote Interpreting (VRI) for follow up coaching
Coaching and discipline related to the Coaching for Improvement Policy (or successor policy)	On site interpreter
Daily instructions	Written communication for uncomplicated, straightforward rote instructions. VRI if Wilson indicates he does not understand the instructions.
Initial training and orientation and non-CBL training	On site interpreter
Computer Based Learning Modules (with ASL)	Unlimited time to answer questions. Access to supervisor (with VRI) when clarification is needed.
Computer Based Learning Modules (without ASL)	Video of Computer Based Learning Modules interpreted by Certified Deaf Interpreter (CDI), onsite interpreter, or VRI
Daily meeting(s)	VRI, or at Walmart's discretion, onsite ASL interpreter
Departmental meeting(s)	VRI, or at Walmart's discretion, onsite ASL interpreter
Investigation into alleged workplace misconduct or policy violation	On site interpreter
Open Door Policy Communication	VRI, or at Walmart's discretion, onsite ASL interpreter
Human Resource meeting re: benefits, job opportunities, interviews	VRI, or at Walmart's discretion, onsite ASL interpreter

Type of Communication Event	Reasonable Accommodation for Communication Access
Written policies, handbooks, manuals or operating procedures	ASL Video version using Certified Deaf Interpreter (CDI), onsite interpreter, or VRI

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