

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
CLAY COUNTY, FLORIDA

CASE NO: 08-CA-2618
DIVISION: B

FRANK DOR

Plaintiff

vs.

WALMART STORES, INC/STORE 2920

Defendants,

_____ /

COMPLAINT

COMES NOW, the Plaintiff, FRANK DOR, and sues Defendant, WALMART STORES, INC, and alleges:

JURISDICTION AND VENUE

1. This is an action for damages that exceed the sum of \$15,000.00 exclusive of attorneys fees, interests and costs.
2. At all times material hereto, the Defendant herein, WALMART STORES, INC./STORE 2920, hereinafter referred to as "Walmart", is a business authorized to do business and is and was doing business in the State of Florida, and did so operate one of its businesses in Orange Park, Clay County, Florida as store number 2920.
3. At all times mentioned in this complaint, Defendant solicited the patronage of customers and offered to furnish to the public, inter alia, correctly filled prescriptions for immediate consumption on and off the premises of Defendant's store.

4. At all times material hereto, the Plaintiff, hereinafter referred to as "Dor", was and is a resident of Clay County, Florida.

5. At all times mentioned in this complaint, Plaintiff was a patron of Walmart, specifically of store 2920 located in Orange Park, Clay County, Florida.

5. The allegations of negligence occurred in Walmart's business, store 2920, located in Orange Park, Clay County, Florida.

6. The Plaintiff was wrongfully arrested inside Walmart's business, store 2920, located in Clay County, Florida.

GENERAL ALLEGATIONS

7. On December 19, 2006, WALMART, was open for business operating in Clay County, Florida.

8. DOR, was a customer of WALMART Pharmacy to which Defendant owed a duty of care, not only to provide a reasonably safe place to shop for prescriptions and other goods, but to exercise care in properly filling prescriptions and in ensuring the correct medication was given to Dor.

9. On or about October 4, 2006, Dor filled a prescription for Promethazine tablets, written for him by his physician, Dr. William Jacobs. There were 30 refills authorized with this prescription. (See Exhibit A).

10. Dor is a Haitian native and virtually speaks no English, and understands very little English.

11. Sometime in mid to late October, after Dor had completed his 25 tablets from his first prescription, he went into Walmart to obtain a refill. Because he could not speak or understand English well, he went to the prescription drop off window and handed the Walmart pharmacy staff

member his empty bottle from his legitimate prescription. Dor waited for his prescription to be filled. At some point a pharmacy staff member called out the name "Doll" for prescription pick-up. Mr. Dor thought they had called him so he went up to the cashier, presented his drivers license bearing his own name, address, date of birth information. He was told an amount to pay, which he did, and was handed the medication meant for Mr. Doll, also a Walmart Pharmacy patron, and subsequently the store.

12. At no time did anyone from Walmart Pharmacy uphold its duty of care. At no time did anyone from Walmart Pharmacy follow its own procedure to ensure medication was given to the correct patient and/or verify the prescription information to Dor's information. At no time did anyone compare the name, date of birth or any other information with Dor's information he provided on his drivers' license. The procedure provides that if the foregoing information does not match after an attempt to verify same, (no match to name and date of birth on prescription with name and date of birth given by individual picking up the medication), then the medication should not have been provided to the individual picking up the prescription. (See Exhibit B). Accordingly, Walmart breached its duty of care to Dor. Moreover, Walmart breached its duty to properly supervise its employees to ensure that said employees followed proper procedure to ensure medication was given to the right customer.

13. Not knowing he had received the incorrect medication, Dor repeated this procedure in November. He again had presented an empty bottle, and upon pick up presented his own drivers license. Again, no one from Walmart Pharmacy upheld the duty of care, failing to follow its own procedure to ensure medication was given to the correct patient and verify the prescription information to Dor's information. At no time did anyone compare the name, date of birth or any other information with Dor's information he provided on his drivers license. Again, Walmart

breached its duty of care to Dor, as well as its duty to properly supervise its employees to ensure the correct medication was given to the correct customer.

14. On or about December 19, 2006, Dor again went to Walmart to obtain a refill. Unknowingly he again presented the prescription which had been filled for a Mr. Doll two previous times. He dropped off the bottle directly to the pharmacist who could not read the prescription. The pharmacy technician was asked to assist in reading the prescription. The pharmacy tech read the name off the prescription as a Mr. "Doll," whom she knew by sight. Because she saw that Mr. Dor was not Mr. Doll she called Mr. Doll to see if he had authorized someone else to pick up his prescription to which he stated he had not. Instead of looking up Dor's information in their system, calling his physician, or inquiring any further of Mr. Dor, Walmart negligently contacted the Clay County Sheriff's Office and reported an attempt to acquire a prescription by Fraud. There is dispute as to who actually contacted the Sheriff's Office, but when the pharmacy tech from Walmart called customer Mr. Doll, she advised him to call law enforcement, and for Mr. Doll to come to the pharmacy to identify the person as being a neighbor trying to do a favor for Mr. Doll. (See Exhibit C). Thus, without making a verified determination that a crime had even been committed, the Defendant negligently instructed Mr. Doll to call the police.

15. The Clay County Sheriff's officers arrived on the scene and after speaking with the pharmacist and pharmacy technician, Walmart filled the prescription for Dor. When it was ready, Dor again presented his drivers license. The Walmart pharmacy staff asked Dor who the prescription was for. Dor, not understanding what they were asking of him could not tell them. He could only tell them he wanted the prescription by saying "yes, yes." When he was asked what the date of birth was, he did not know what they were asking him. He did not know the name or date of birth of Mr. Doll, because again, he was unaware he had Mr. Doll's prescription, did not know Mr. Doll or his

date of birth, much less have any knowledge that Mr. Doll even had any prescription for a controlled substance. He had presented his drivers license because he knew it contained his name, address, and date of birth information and he believed Walmart would look at that and give him the prescription that matched his information. He could not tell them anymore. Thus, without verifying anything, without looking up Dor's information taken from the drivers license, without calling Dor's physician who had prescribed him a legitimate prescription which was kept in Walmart's pharmacy computer records, Walmart gave the prescription to Dor, and took his money for said prescription. Once Dor had paid and was leaving the pharmacy, the Clay County Sheriff's Officer took custody of him, arresting him and placing him in handcuffs in front of Walmart employees and customers.

16. Walmart's negligent actions in failing to properly ensure its employees followed procedure in verifying information before giving medication to its customers, and in giving Dor the wrong medication directly and proximately caused Mr. Dor to suffer side effects of dry mouth and fatigue for two months. He had to go back to his physician incurring additional costs to attempt to determine what the source of the side effects were.

17. Walmart's negligent actions in calling another patron and advising him to call police, speaking to police advising them that Mr. Dor was fraudulently attempting to obtain another patron's controlled substance prescription, filling and giving the incorrect prescription to Dor, directly and proximately caused him to be arrested and charged with a felony. His vehicle was forfeited and his money he had on his person and in his vehicle were seized. Dor had to obtain legal counsel, miss work, attend court proceedings and purchase his own car back so he could travel to and from work, the store or any other places he needed to go for normal daily living.

18. The criminal case was dropped against Dor following the submission of Dor's legitimate prescription records housed by Walmart, letters by Dor's prescribing physician,

depositions of Walmart employees, the Clay County arresting officer and an interpreter for Dor, as it was clear Dor had not attempted to fraudulently obtain any prescription, however, the emotional trauma, humiliation, and financial losses resulting from Walmart's negligence continues.

COUNT I NEGLIGENCE: FAILURE TO EXERCISE DUE CARE

19. The allegations of paragraphs one through eighteen above are re-alleged and incorporated by reference as if set out here in full.

20. Walmart owes a duty of care to all of its customers of which Plaintiff is a party. Walmart also owes a duty to use due and proper care in filling the prescription, and to ensure that the correct medication is given to the correct customer. In addition to these duties, Walmart had its own policy in place to assist in that duty by verifying given information by the customer picking up the prescription to the name, address, date of birth information on the prescription. This procedure should have been carried out each and every time Dor, as well as any other customer came to pick up a prescription from Walmart. It was not.

21. Walmart negligently and carelessly breached the afore-stated duties by failing to exercise due care. When Dor picked up his very first refill some time in October, 2006, he had presented the empty bottle bearing his name and legitimate prescription containing refills. When Dor came up to pay for his refill prescription, he presented his drivers' license. Had Walmart exercised due care, had Walmart even followed its own procedure, much less its duty to ensure proper medication was given to the correct person, it would have caught the fact that Dor was being given the wrong prescription. Walmart should have compared the information on the drivers license to the prescription he was picking up, as well as compared the information to the prescription bottle Dor had brought in to be refilled, and in so doing, it would have immediately known that Dor had his own valid refill and the one he was given was incorrect. Walmart could have also called Dor's

physician whose name was on the original bottle presented by Dor, to verify the medication Dor was to receive. Had Walmart exercised these duties, Dor would have received his own legitimate refill, and all subsequent refills would have been his own legitimate refills. Some time in November, 2006, Dor went into Walmart to obtain another refill and followed the same procedure as before: he handed the WALMART pharmacy staff the empty bottle, presented his drivers license at the time of payment, and was given the incorrect medication. Again, Walmart had failed to exercise its due care in filling the prescription properly and ensuring that the correct medication was given to Mr. Dor.

22. As a direct and proximate result of the foregoing negligence and carelessness of Walmart as described above, Plaintiff, Frank Dor suffered bodily injury, fatigue, dry mouth, suffering, mental anguish, enjoyment of life, and financial losses. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

23. On or about December 19, 2006, Dor went again to Walmart Pharmacy. He again presented the empty bottle for a refill, still not knowing it was not in his name or his legitimate prescription. This time the bottle was presented to the Walmart Pharmacist on duty. She obtained assistance from the Walmart pharmacy tech who gleaned that the bottle had the name of a different customer with a similar sounding last name. The pharmacist did not question Dor at that time. She instead called the customer whose name appeared on the bottle. She further advised that customer to call the police as someone was attempting to fraudulently obtain his prescription, and to come to the store to identify whether this person was a neighbor or someone the customer knew to be trying to pick up the prescription for that customer. Thus, Walmart was not even sure a crime had been committed but still was requesting the police be called.

24. Police officers from the Clay County Sheriff's Office arrived and spoke with the

Walmart pharmacist and pharmacy tech. Dor all the while not knowing there was anything wrong or that he was believed by Walmart to have committed a crime, remained in the waiting area while the officers spoke with Walmart staff. Both Walmart employees told the officers that Dor, whom they did not identify by name, was fraudulently trying to pick up another customer's prescription, though they had not even followed their own procedures in verifying any information as to Dor. They also had informed the officers that Dor had done this before though they had done nothing to verify or confirm same. Thus Walmart negligently provided false and unverified information to police officers about Dor, which resulted in his subsequent arrest as detailed below.

25. Walmart failed to exercise due care and were negligent. Again, neither the pharmacist nor the pharmacy tech had looked at Dor's drivers license information, looked up whether he had any prescriptions in their system in his own name, or called the physician who was in their computer system and had prescribed Dor a prescription with refills. They simply asked Dor who the prescription was for and the date of birth information of the prescription. Due to the language barrier, Mr. Dor could not answer their questions. He verified he wanted a prescription by saying "yes yes" but could not tell them more.

26. Based on the foregoing and knowing the prescription was incorrect, Walmart still filled the prescription, gave said prescription to Dor, and took Dor's payment for the prescription.

27. When Dor left the pharmacy, he was immediately taken into custody, placed into handcuffs in front of other patrons and employees, and led outside the store. Mr. Dor was confused, afraid, humiliated and horrified at what had happened as he could not understand what was being asked of him or said to him. Mr. Dor had never been arrested or been in any kind of legal trouble at all before this incident.

28. Dor was arrested, his money seized, and his car seized and forfeited. Mr. Dor

went months without a car and had to pay \$1,000.00 just to get his own car back as the result of a secondary forfeiture proceeding. He further had to retain legal counsel to fight the criminal charge, had to attend court proceedings, and endured months of anxiety and mental anguish over whether his freedom would be taken from him.

29. As a direct and proximate result of the foregoing negligence and carelessness of Walmart as described above, Plaintiff, Frank Dor suffered bodily injury, fatigue, dry mouth, suffering, mental anguish, enjoyment of life, and financial losses. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, FRANK DOR, demands judgment for damages against Defendant, WALMART CORPORATION/WALMART STORE 2920, for all damages and costs of this action, and a **trial by jury of all issues to be tried herein.**

COUNT II: NEGLIGENCE; FAILURE TO PROPERLY SUPERVISE EMPLOYEES

30. The allegations of paragraphs one through twenty-nine above are re-alleged and incorporated by reference as if set out here in full.

31. Walmart has a duty to properly supervise its employees. Inherent in supervising employees of the pharmacy is the duty to ensure that all pharmacy employees exercise due care in ensuring that the correct medication be given to the customer. Further, Walmart had set its on policy in place designed to ensure the correct medication was given to its customers: The information given by the individual picking up the prescription was to be compared to the information on the prescription, and if there was no match, the medication was not to be given out.

31. Each time Dor went into Walmart pharmacy to obtain his prescription refill, he presented his drivers license. His drivers license contained his name, address and date of birth information. The very first time Dor presented an empty bottle for a refill, the bottle contained his

name and was for the prescription medication, Promethazine. Walmart's own pharmacy records confirm Dor was given a filled prescription for this medication on or about October 4, 2008. When Dor went up to the cashier to obtain what he thought was his prescription, he was simply given the prescription. The Walmart employee did not compare the information on the drivers license with the name and information on the prescription. The Walmart employee did not compare the information on his drivers license or the prescription with the actual prescription bottle Dor had presented to be refilled. Walmart thereby breached its duty to Dor by failing to properly supervise its employees.

32. As a direct and proximate result of the foregoing failure of Walmart to properly supervise its employees to exercise due care, Dor was given the incorrect medication on three occasions.

33. As a direct and proximate result of the foregoing failure of Walmart to properly supervise its employees to exercise due care, police were given false and unverified information and Dor was falsely arrested.

34. As a direct and proximate result of the foregoing negligence and carelessness of Walmart as described above, Plaintiff, Frank Dor suffered bodily injury, fatigue, dry mouth, suffering, mental anguish, enjoyment of life, and financial losses. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, FRANK DOR, demands judgment for damages against Defendant, WALMART CORPORATION/WALMART STORE 2920, for all damages and costs of this action, and a **trial by jury of all issues to be tried herein.**

PLAINTIFF REQUESTS A JURY TRIAL

RESPECTFULLY SUBMITTED,



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