

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

SARAH MERLO

Plaintiff

v.

Case No. CL23-5720
JURY TRIAL DEMANDED

PHILIP M. ARMSTRONG, III
as Administrator of the Estate of
[REDACTED] deceased

and

WALMART. INC.

and

WAL-MART STORES EAST, L.P.

Defendants.

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COURT REPORTER
D.C.

COMPLAINT

NOW COMES the Plaintiff, Sarah Merlo, by and through counsel and moves this Honorable Court for judgment against the Defendants, jointly and severally, and for an award of immediate execution, on the grounds and in the amounts set forth herein.

PARTIES

1. Plaintiff Sarah Merlo is a resident of Chesapeake, Virginia.
2. [REDACTED] (hereinafter, [REDACTED] was, at the time of his death, a resident of the City of Chesapeake, Virginia, specifically residing at [REDACTED] Virginia 23320.
3. [REDACTED] died on November 22, 2022, in the City of Chesapeake, Virginia.

4. On January 23, 2023, Philip M. Armstrong, III was qualified by the Clerk of the Circuit Court for the City of Chesapeake as the Administrator of the Estate of [REDACTED] pursuant to Section 64.2-454 of the Code of Virginia of 1950, as amended.

5. The appointment of Philip M. Armstrong, III as Administrator of the Estate of [REDACTED] is, pursuant to said statute, solely in connection with the matters alleged in this Complaint for a civil action arising within the Commonwealth of Virginia against the estate of [REDACTED]

6. Philip M. Armstrong, III is a resident of Virginia Beach, Virginia, specifically residing at [REDACTED] Virginia 23456.

7. Upon information and belief, Defendant Wal-Mart Stores East, L.P. is a foreign limited partnership authorized to conduct business in the Commonwealth of Virginia ("Wal-Mart Stores East"). At the various times giving rise to the causes of action set forth in this Complaint, Wal-Mart Stores East, L.P. owned and/or operated Wal-Mart store #1841 located at 1521 Sams Circle in Chesapeake, Virginia.

8. Upon information and belief, Defendant Walmart Inc. is a foreign corporation authorized to conduct business in the Commonwealth of Virginia. At the various times giving rise to the causes of action set forth in this Complaint, Walmart Inc. owned and/or operated Wal-Mart store #1841 located at 1521 Sams Circle in Chesapeake, Virginia ("Walmart Superstore").

9. At all times relevant, Walmart and Wal-Mart Stores East (collectively, "Walmart") acted in concert with each other and as agents for one another.

JURISDICTION AND VENUE

10. The Circuit Court of the City of Chesapeake has proper subject matter jurisdiction over this action as all events giving rise to the causes of action plead herein occurred in the Commonwealth of Virginia.

11. The Circuit Court of the City of Chesapeake has personal jurisdiction over the named defendants and over [REDACTED] and his estate, as all defendants are alleged to have caused tortious injury within the Commonwealth of Virginia.

12. Pursuant to Code Section 8.01-262 of the Code of Virginia of 1950, as amended, Category B Permissive venue lies with the Circuit Court of the City of Chesapeake as the cause of action arose within the City of Chesapeake, and at all relevant times [REDACTED] and the Plaintiff resided in Chesapeake.

FACTUAL BACKGROUND

13. On November 22, 2022, just after 10:00 p.m. ET, [REDACTED] pulled out a handgun and began shooting inside the Walmart Superstore, killing six individuals and injuring others, including Sarah, before killing himself.

14. The store was open to the public at the time of the shooting, with approximately 50 people inside, including customers shopping ahead of the Thanksgiving holiday and store employees.

15. Plaintiff Sarah Merlo was present inside the Walmart Superstore when [REDACTED] opened fire.

16. At the time of the shooting, upon information and belief, [REDACTED] had been employed by Walmart for approximately ten years.

17. In the months and years prior to the shooting, however, Walmart had received numerous complaints from employees and/or others regarding [REDACTED] erratic, disturbing, violent, and harassing behavior and conduct directed towards them, including complaints made directly to Walmart's management by Sarah.

18. In particular, on prior occasions [REDACTED] directed disturbing and harassing behavior towards Sarah due to his personal animus towards her.

19. For example, [REDACTED] would harass Sarah by telling her how he liked to kill animals and then describing to her how the dead animal carcasses smelled.

20. [REDACTED] repeatedly harassed Sarah by intentionally subjecting her to difficult tasks under tight deadlines knowing they could not be completed as he directed, and then criticized and punished her for not being able to do what he ordered her to do.

21. Upon information and belief, [REDACTED] directed this harassment toward Sarah because of personal dislike, hatred and/or animus he held against her for unknown reasons.

22. [REDACTED] also held intense animus towards many other individuals, as well as generalized grievances about his life and his treatment by others. He was acutely paranoid and delusional, believing that he was the victim of conspiracies and unspecified efforts to hack his phone, and suffering from religious ideations.

23. [REDACTED] paranoia and delusions manifested themselves at work in the form of hostile, aggressive, and threatening behavior towards others specifically as well as towards the world generally.

24. [REDACTED] had made veiled threats of active shooter situations to other Walmart employees.

25. In response to these and other examples of [REDACTED] ongoing and continuous abusive behavior, Sarah and others repeatedly complained to Walmart management.

26. Specifically, Sarah informed Walmart supervisors of [REDACTED] abusive conduct and sadistic and violent comments.

27. When Sarah escalated her complaints about [REDACTED] animus towards her and his generally threatening nature to Walmart's store manager, the store manager again failed to take any action.

28. Walmart's response to Sarah's and others' complaints was utterly dismissive of their concerns and completely supportive of [REDACTED] abusive conduct.

29. Indeed, [REDACTED] threatening nature and concerning conduct had been known to Walmart for more than two years prior to the incident sued upon herein. Walmart conducted an investigation regarding [REDACTED] but did nothing at the time and then failed to monitor or respond to additional indicia of [REDACTED] instability and violent tendencies.

30. On the evening of November 22nd, [REDACTED] known and foreseeable propensities for violence came to fruition.

31. [REDACTED] entered the store armed with a high-capacity handgun. Almost immediately upon entry of the store, [REDACTED] began shooting indiscriminately, first in the employee breakroom and then proceeding out into the public area of the store.

32. During his shooting spree as he encountered different individuals, [REDACTED] chose when to pull the trigger and when not to. His decisions on who to shoot were motivated, at least in part, by his personal animus toward that individual fueled by his longstanding paranoia and delusions.

33. In the course of his shooting spree, [REDACTED] found Sarah hiding behind a table on her hands and knees and pointed his gun at her head.

34. Sarah cried out, "Please, Andre, No!"

35. [REDACTED] then smiled, pulled the trigger, and shot her in the face.

36. Sarah survived that first gun shot and began crawling to safety. But [REDACTED] continued to shoot her six more times—once in the neck, twice in the upper chest area, once in her right elbow, and twice in her stomach.

37. [REDACTED] election to shoot Sarah was motivated by his personal animus towards her.

38. Before shooting Sarah, [REDACTED] specifically recognized another individual who he told to leave the area so that she would not be shot or injured.

39. By allowing this individual to escape unharmed, [REDACTED] demonstrated that his attack and attempt to kill Sarah was due to personal animus he held against her rather than being based on a condition inherent to Sarah's employment.

40. Despite ultimately shooting some because of who they were and sparing others for the same reason, [REDACTED] rampage was overall random and indiscriminate. Everyone in his path, employees and customers alike, faced the same risk of falling on the wrong side of his paranoia and delusions.

41. [REDACTED] assault on Sarah was not directed at her because she was an employee of Walmart but was instead personal to her.

42. As an employee of Walmart, Sarah reasonably anticipated that she would be working in a safe environment and would not be exposed to or the target of violent acts.

43. As an employee of Walmart who worked in a retail store, the danger of being shot with a firearm was not an actual risk of Sarah's employment, was not peculiar to her work, and was a hazard to which Sarah would have been equally exposed apart from her employment.

44. The risk of being shot by [REDACTED] was a risk shared by any person in the Walmart store on November 22, 2022, whether an employee, business invitee, customer, as well as those living in the surrounding neighborhood as [REDACTED] had demonstrated erratic, disturbing and violent behavior not confined to threats and punitive actions taken against Sarah.

45. The risk of being shot was not incident to Sarah's employment as an employee of a retail store. did not arise out of her employment, and was not a rational consequence of risks associated with her employment as an employee of a retail store.

46. There was no causal connection between the conditions of Sarah's employment under which her work was required to be performed and the resulting injuries she sustained.

47. As a result, Sarah has had to undergo multiple surgeries and faces a lifetime of medical care from these physical injuries and emotional distress. She has suffered immensely as a direct result of the shooting, including her life altering physical and mental injuries.

COUNT I - Battery
(Against Defendant Estate of Bing)

48. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

49. On November 22, 2022, [REDACTED] owed statutory and common law duties to the public in general, and to Sarah Merlo in particular, to refrain from engaging in unwanted physical contact with another without their consent, and the duty not to cause intentional physical harm to another.

50. [REDACTED] breached the aforesaid duties by purposefully, willfully and intentionally pointing and shooting his gun at Sarah seven times.

51. Upon information and belief, when [REDACTED] intentionally fired the gun at Sarah, he did so with the intent of causing her serious bodily harm and/or death.

52. [REDACTED] shooting of Sarah was unprovoked by her or anyone else.

53. Sarah did not instigate or consent to any physical contact with [REDACTED] rather, she attempted to flee from him at all times.

54. As a direct and proximate result of [REDACTED] shooting of Sarah, she suffered and continues to suffer severe physical injuries and severe emotional distress.

55. Each instance of [REDACTED] shooting Sarah constitutes a civil battery upon her.

COUNT II – Willful and Wanton Negligence
(Against Defendant Estate of Bing)

56. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

57. On November 22, 2022, while inside the Walmart Superstore brandishing a firearm, [REDACTED] owed statutory and common law duties to the public in general, and to Sarah Merlo in particular, to exercise that degree of care which an ordinarily prudent person would exercise under similar circumstances and in connection with the possession and use of a firearm, and to not cause injury to another as a result of the use and possession of a firearm, and a duty of care to avoid utilizing the gun in an unreasonable and unlawful manner.

58. On November 22, 2022, [REDACTED] failed to use due care and breached the aforesaid duties as described above by repeatedly discharging his firearm inside the Walmart Superstore and striking Sarah with bullets seven times.

59. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common laws and statutes of the Commonwealth of Virginia, as well as [REDACTED] obligations and duties to Sarah.

60. As a direct, foreseeable, and proximate result of the aforementioned negligent, grossly negligent, reckless, willful and wanton acts and/or omissions by Defendant, Sarah was

needlessly shot, suffers conscious physical harm and injury, and endures pain and suffering, including emotional distress and anguish.

COUNT III – Negligent Retention
(Against Defendants Walmart, Inc. and Wal-Mart Stores East L.P.)

61. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

62. As owners and operators of the Walmart Superstore, the Walmart Defendants each owed statutory and common law duties to the public in general, and to Sarah Merlo in particular, to refrain from negligently hiring and retaining violent, abusive employees.

63. Upon information and belief, prior to the November 22, 2022 shooting, the Walmart Defendants knew or reasonably should have known that [REDACTED] did not have the proper training, disposition, and/or temperament to perform his duties as a Walmart employee and to supervise the work of others inside the Walmart store.

64. In particular, on information and belief, the manager of the Walmart Superstore and [REDACTED] manager each had actual and direct knowledge of [REDACTED] violent, sadistic, erratic, and harassing behavior and of requests by others not to be present inside the Walmart Superstore with [REDACTED] yet upon information and belief these individuals ignored these complaints and, instead, embraced [REDACTED] behavior as a tool to further the business interests of the Walmart Defendants.

65. Upon information and belief, and based upon the numerous complaints made to the Walmart Defendants prior to the shooting regarding [REDACTED] troubling behavior and misconduct, the Walmart Defendants knew or should have known that hiring and/or retaining [REDACTED] presented a danger to others, and to Sarah in particular, and that it was foreseeable that he would fail to perform his responsibilities in a reasonable and safe manner and, instead, that he was capable of

embarking upon a violent and deadly rampage inside the Walmart Superstore that would result in serious injury to others.

66. In the hiring and supervision of [REDACTED] as a Walmart manager, the Walmart Defendants failed to use due care and were negligent as described above.

67. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common laws and statutes of the Commonwealth of Virginia, as well as the Walmart Defendants' obligations and duties to the general public and, in particular, to Sarah.

68. As a direct, foreseeable, and proximate result of the aforementioned negligent, grossly negligent, reckless, willful and wanton acts and/or omissions by the Walmart Defendants, Sarah was needlessly shot, suffers conscious physical harm and injury, and endures pain and suffering, including emotional distress and anguish.

Damages

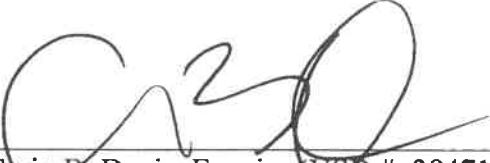
69. As a direct and proximate result of the incident described herein Plaintiff,
- a. Experienced severe physical injury;
 - b. Experienced and continues to experience severe pain and suffering;
 - c. Experienced and continues to experience severe emotional distress;
 - d. Experienced and continues to experience severe inconvenience;
 - e. Incurred medical costs and expenses;
 - f. Will in the future incur medical costs and expenses;
 - g. Incurred lost wages;
 - h. Will in the future lose wages;
 - i. Lost earning capacity.

WHEREFORE, the Plaintiff, Sarah Merlo, hereby prays that this Court grant judgment in her favor and against Defendants, jointly and severally in the sum of TWENTY MILLION (\$20,000,000.00) DOLLARS as compensatory damages and in the additional sum of THREE HUNDRED FIFTY THOUSAND (\$350,000.00) DOLLARS as punitive damages PURSUANT TO Virginia's cap on punitive damages, Va. Code § 8.01-38.1, together with prejudgment interest from November 22, 2022, Plaintiff's costs incurred and such other and further relief as the nature of the Plaintiff's cause may deem appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully submitted,

SARAH MERLOW
By Counsel



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COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. 23.5720
(CLERK'S OFFICE USE ONLY)

Chesapeake City

Circuit Court

Sarah Merlo
PLAINTIFF(S)

v./In re: Walmart, Inc. t/a Walmart Supercenter, Wal-Mart Associates, Inc., and
DEFENDANT(S)
Wal-Mart Stores East, LP

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement -
 - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Birth/Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

Damages in the amount of \$ 25,000,000.00 are claimed.

9/8/23
DATE

PLAINTIFF DEFENDANT ATTORNEY FOR PLAINTIFF DEFENDANT

Craig B. Davis, Esquire
PRINT NAME

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ADDRESS/TELEPHONE NUMBER OF SIGNATOR
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EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.