 ENVIRONMENTAL HEALTH ADVOCATES, INC. SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA ENVIRONMENTAL HEALTH ADVOCATES, INC., Plaintiff, v. WALMART INC., a Delaware corporation, and DOES 1 through 100, inclusive, Defendant. Defendant. Intermediation of the state of seq.) Intermediation of the state of the seq.) Intermediation of the seq.) Inter	1 2 3 4 5 6 7	ENTORNO LAW, LLP Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com Email: craig@entornolaw.com	ELECTRONICALLY FILED Superior Court of California, County of Alameda 08/11/2022 at 02:48:35 PM By: Angela Linhares, Deputy Clerk
10 IN AND FOR THE COUNTY OF ALAMEDA 11 ENVIRONMENTAL HEALTH ADVOCATES 12 Plaintiff, 13 v. 14 V. 15 VALMART INC., a Delaware corporation, 16 Defendant. 17 Defendant. 18	8	ENVIRONMENTAL HEALTH ADVOCATES, INC.	
 INVIRONMENTAL HEALTH ADVOCATES, NC., Plaintiff, V. WALMART INC., a Delaware corporation, and DOES 1 through 100, inclusive, Defendant. Indefendant. Indefenda	9	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
 INC., INC., Plaintiff, v. WALMART INC., a Delaware corporation, and DOES 1 through 100, inclusive, Defendant. Defendant. Interpretendent Int	10	IN AND FOR THE COUNTY OF ALAMEDA	
12 Plaintiff, 13 v. 14 WALMART INC., a Delaware corporation, and DOES 1 through 100, inclusive, 15 Defendant. 16 Image: Complexity of the sequence of the se	11		Case No.: 220V016011
14 WALMART INC., a Delaware corporation, and DOES 1 through 100, inclusive, (Health & Safety Code § 25249.6 et seq.) 15 Defendant. 16 1 17 1 18 1 19 1 20 1 21 1 22 1 23 1 24 1 25 1 26 1 27 1	12		
and DOES 1 through 100, inclusive, Defendant. 16 17 18 19 20 21 22 23 24 25 26 27	13		(Health & Safety Code § 25249.6 et seq.)
Defendant. 17 18 19 20 21 22 23 24 25 26 27			
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I. INTRODUCTION

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1. This Complaint is a representative action brought by Environmental Health Advocates,
 Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff
 seeks to remedy Defendant's failure to inform the People of exposure to benzene, a known carcinogen.
 Defendant exposes consumers to benzene by manufacturing, importing, selling, and/or distributing
 antiperspirant products including but not limited to the Equate Cucumber Dry Spray Antiperspirant, 3.8
 Oz ("Products"). Defendant knows and intends that customers will use Products containing benzene.

8 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual..." (Health & Safety Code, § 25249.6.)

California identified and listed benzene as a chemical known to cause cancer as early as
 February 27, 1987, and as a chemical known to cause developmental/reproductive toxicity on December
 26, 1997.

4. Defendant failed to sufficiently warn consumers and individuals in California about
potential exposure to benzene in connection with Defendant's manufacture, import, sale, or distribution
of Products. This is a violation of Proposition 65.

Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
 California before exposing them to benzene in Products. (Health & Safety Code, § 25249.7(a).)
 Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with
 attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II. <u>PARTIES</u>

6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a
corporation in the State of California dedicated to protecting the health of California citizens through
the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
interest pursuant to Health and Safety Code, section 25249.7.

7. Defendant WALMART INC. ("Walmart") is a corporation organized and existing under
 the laws of Delaware. Walmart is registered to do business in California, and does business in the County
 of Alameda, within the meaning of Health and Safety Code, section 25249.11. Walmart manufactures,
 imports, sells, or distributes the Products in California and Alameda County.

8. Plaintiff does not know the true names and/or capacities, whether individual, partners,
or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties
sought herein.

III. VENUE AND JURISDICTION

9. California Constitution Article VI, Section 10 grants the Superior Court original
jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
has jurisdiction.

16 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
17 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
18 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

19 11. Defendant has sufficient minimum contacts in the State of California or otherwise
20 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
21 consistent with traditional notions of fair play and substantial justice.

IV. <u>CAUSES OF ACTION</u>

FIRST CAUSE OF ACTION (Violation of Proposition 65 – Against all Defendants)

13.

Plaintiff incorporates by reference each and every allegation contained above.

14. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

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1 15. Defendant manufactured, imported, sold, and/or distributed Products containing
 2 benzene in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
 3 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to
 4 occur into the future.

5 16. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to benzene through reasonably foreseeable use of the Products.

8 17. Products expose individuals to benzene through dermal absorption and direct inhalation.
9 This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream
10 of commerce. As such, Defendant intends that consumers will use Products, exposing them to benzene.

11 18. Defendant knew or should have known that the Products contained benzene and exposed
12 individuals to benzene in the ways provided above. The Notice informed Defendant of the presence of
13 benzene in the Products. Likewise, media coverage concerning benzene and related chemicals in
14 consumer products provided constructive notice to Defendant.

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Defendant's actions in this regard were deliberate and not accidental.

20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
provided the Notice to the various required public enforcement agencies along with a certificate of merit.
The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
California of the health hazards associated with exposures to benzene contained in the Products.

21 21. The appropriate public enforcement agencies provided with the Notice failed to
22 commence and diligently prosecute a cause of action against Defendant.

23 22. Individuals exposed to benzene contained in Products through dermal absorption and
 24 direct inhalation resulting from reasonably foreseeable use of the Products have suffered and continue
 25 to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

26 23. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
27 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
28 appropriate pursuant to Health and Safety Code, section 25249.7(a).

1	PRAYER FOR RELIEF		
2	Wherefore, Plaintiff prays for judgment against Defendant as follows:		
3	1.	Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that	
4	damages total a minimum of \$1,000,000.00;		
5	2.	A preliminary and permanent injunction against Defendant from manufacturing,	
6	importing, selling, and/or distributing Products in California without providing a clear and reasonable		
7	warning as required by Proposition 65 and related Regulations;		
8	3.	Reasonable attorney's fees and costs of suit; and	
9	4.	Such other and further relief as may be just and proper.	
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11	Respectfully	v submitted:	
12	Dated: Aug	ast 11, 2022 ENTORNO LAW, LLP	
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15		By: <u>Noam Slick</u>	
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17		Jake W. Schulte	
18		Craig M. Nicholas	
19		Attorneys for Plaintiff	
20		Environmental Health Advocates, Inc.	
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