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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**10/28/2022**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 WALMART INC.,

16 Defendant.

Case No.

**CGC-22-602660**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This complaint is a representative action brought by plaintiff Laurence Vinocur in  
3 the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to lead, a toxic chemical found in fishing  
5 sinkers and soldering wire sold by defendant that are purchased by or shipped to citizens in  
6 California (the “Products”).

7 2. By this complaint, plaintiff seeks to remedy defendant’s past and continuing failure  
8 to warn consumers and businesses not covered by California’s Occupational Safety Health Act,  
9 Labor Code §§6300 *et seq.* about the risks of exposure to lead present in fishing sinkers and solder  
10 wires that are manufactured, distributed, and offered for sale or use throughout the State of  
11 California. Individuals, consumers and businesses not covered by California’s Occupational  
12 Safety Health Act, Labor Code §§6300 *et seq.* who purchase, use or handle the Products are  
13 referred to hereinafter as “consumers.”

14 3. Lead is found in fishing sinkers and soldering wire that defendant manufactures,  
15 imports, distributes, retails or otherwise markets or offers for sale to consumers and other citizens  
16 throughout California. Defendant has knowledge of the Products’ lead contents. Most, if not all,  
17 of the Products were and continue to be offered for purchase and/or transacted through  
18 walmart.com.

19 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 Health & Safety Code §§25249.6 *et seq.* (Proposition 65), “[n]o person in the course of doing  
21 business shall knowingly and intentionally expose any individual to a chemical known to the state  
22 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
23 individual...” Health & Safety Code §25249.6.

24 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed  
25 lead as a chemical known to cause birth defects and other reproductive harm. Lead became  
26 subject to the “clear and reasonable warning” requirements of the Act one year later on February  
27 27, 1988. 27 Cal. Code Regs. §27001(c); Health & Safety Code §25249.8 and §25249.10(b).

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1 6. Defendant manufactures, imports, distributes, and/or offers for sale or use in  
2 California, without the mandated health hazard warnings, various products (hereinafter, "the  
3 Products") consisting of fishing sinkers and soldering wire, including kits containing such items.

4 7. Defendant's failure to warn consumers in California of the health hazards  
5 associated with exposures to lead in conjunction with defendant's sales of the Products are  
6 violations of Proposition 65 which subject defendant to enjoinder of such conduct as well as  
7 civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).<sup>1</sup>

8 8. For defendant's violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendant to provide purchasers and users of the Products  
10 with the required warning regarding specific health hazards associated with exposures to lead.  
11 Health & Safety Code §25249.7(a).

12 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
13 against defendant for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff Laurence Vinocur is a citizen of the State of California who is dedicated to  
16 protecting the health of California citizens through the elimination or reduction of toxic exposures  
17 from consumer and industrial products, and he brings this action in the public interest pursuant to  
18 Health & Safety Code §25249.7(d).

19 11. Defendant Walmart Inc. (Walmart) is a person in the course of doing business  
20 within the meaning of Health & Safety Code §§25249.6 and 25249.11.

21 12. Walmart imports, distributes, sells, facilitates, and/or offers the Products for sale or  
22 use in the State of California, or implies by its conduct that it imports, distributes, facilitates for  
23 sale, sells, and/or offers the Products for sale or use in the State of California. Walmart has  
24 offered (and, in many instances, continues to offer) for sale Products supplied to it by entities that

25  
26 <sup>1</sup> Claims released in one or more settlement agreements reached between plaintiff and upstream suppliers of lead-based  
27 fishing sinkers and soldering wire, which were sold directly by the settling entity on walmart.com, are excluded from  
28 the cause of action alleged herein. This exclusion, however, does not apply to the sale of Products by third-parties (i.e., non-settling entities) on walmart.com. Further, this action expressly excludes the claims set forth in the case of *Laurence Vinocur v. Walmart Inc.* (CGC-21-590376).

1 are not subject to enforcement under Proposition 65 because: (i) they have less than ten employees  
2 during all relevant periods; and/or (ii) do not have an agent for process of service in California.  
3 Further, in some instances, the Products are shipped to California consumers either through a  
4 Walmart fulfilment center in which Walmart acts as both a distributor and online retailer of the  
5 Products. In some instances, Walmart is both the “shipper” and “seller” of the Product, further  
6 heightening its duty to warn as alleged in the first cause of action.

7 13. Walmart may be referred to hereafter as “defendant.”

8 **VENUE AND JURISDICTION**

9 14. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
10 Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent  
11 jurisdiction, because plaintiff seeks civil penalties against defendant, one or more instances of  
12 wrongful conduct occurred, and continue to occur, in this county, and/or defendant conducted, and  
13 continue to conduct business in San Francisco.

14 15. The California Superior Court has jurisdiction over this action pursuant to  
15 California Constitution Article VI, section 10, which grants the Superior Court “original  
16 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 16. The California Superior Court has jurisdiction over defendant based on plaintiff’s  
19 information and good faith belief that defendant is a person, firm, corporation has a principal  
20 office or association that is a citizen of the State of California, has sufficient minimum contacts in  
21 the State of California, and/or otherwise purposefully avails itself of the California market.  
22 Defendant’s purposeful availment renders the exercise of personal jurisdiction (specific, limited or  
23 both) by California courts consistent with traditional notions of fair play and substantial justice.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 16, inclusive.

5 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
7 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

8 19. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
9 and intentionally expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such individual...”  
11 Health & Safety Code §25249.6.

12 20. On July 21, 2022, plaintiff served Sixty-Day Notices of Violation (the Notices),  
13 together with the requisite certificates of merit, on Walmart, the California Attorney General’s  
14 Office, and the requisite public enforcement agencies alleging that, as a result of defendant’s sales  
15 of lead-based fishing sinkers and solder wires, consumers in the State of California are being  
16 exposed to lead resulting from their reasonably foreseeable use of such Products, without them  
17 first receiving a “clear and reasonable warning” regarding the reproductive and developmental  
18 harms associated with such exposures as required by Proposition 65.

19 21. Walmart manufactures, imports, distributes, facilitates for sale, or offers the  
20 Products for sale or use in violation of Health & Safety Code §25249.6, and defendant’s violations  
21 have continued well beyond their receipt of plaintiff’s Notices. As such, defendant’s violations  
22 are ongoing and continuous in nature and, unless enjoined, will continue in the future.

23 22. After receiving plaintiff’s Notices, no public enforcement agency has commenced  
24 and diligently prosecuted a cause of action against defendant under Proposition 65 to enforce the  
25 alleged violations that are the subject of plaintiff’s Notices.

26 23. The Products that defendant manufactures, imports, distributes or offers for sale in  
27 California cause exposures to lead as a result of the reasonably foreseeable use of the Products.  
28

1 Such exposures caused by defendant and endured by consumers in California are not exempt from  
2 the “clear and reasonable” warning requirements of Proposition 65, yet defendant does not provide  
3 compliant warnings for the reproductive toxicity of lead.

4 24. Defendant has knowledge that the Products they manufacture, import, distribute,  
5 sell, facilitate for sale or offer for sale in California contain lead.

6 25. Lead is present in or on the Products in such a way as to expose consumers through  
7 inhalation, dermal contact and/or ingestion during reasonably foreseeable use.

8 26. The normal and reasonably foreseeable use of the Products has caused, and  
9 continues to cause, consumer product exposures to lead, as defined by 27 California Code of  
10 Regulations §25600.1(e) and other types of exposures set forth in the Notices.

11 27. Defendant knows that the normal and reasonably foreseeable use of the Products  
12 exposes individuals to lead through inhalation, dermal contact and/or ingestion.

13 28. Defendant intends that exposures to lead from the reasonably foreseeable use of the  
14 Products will occur by their deliberate, non-accidental participation in the manufacture,  
15 importation, distribution, sale, and offering of the Products for sale or use to consumers and others  
16 in California.

17 29. Defendant failed to provide a “clear and reasonable warning” to those citizens in  
18 California who have been, or who will be, exposed to lead through inhalation, dermal contact  
19 and/or ingestion resulting from their use of the Products.

20 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
21 directly by California voters, consumers exposed to lead through inhalation, dermal contact and/or  
22 ingestion as a result of their use of the Products that defendant sold without a “clear and  
23 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for  
24 which they have no plain, speedy, or adequate remedy at law.

25 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-  
26 described acts, defendant is liable for a maximum civil penalty of \$2,500 per day for each  
27 violation.

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1 32. As a consequence of the above-described acts, Health & Safety Code §25249.7(a)  
2 also specifically authorizes the Court to grant injunctive relief against defendant.

3 **PRAYER FOR RELIEF**

4 Wherefore, plaintiff prays for judgment against defendant as follows:

5 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
6 penalties against defendant, in the amount of \$2,500 per day for each violation;

7 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
8 permanently enjoin defendant from manufacturing, importing, distributing, or offering the  
9 Products for sale or use in California without first providing a “clear and reasonable warning”  
10 regarding the harms associated with exposures to lead;

11 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary  
12 and permanent injunctions including that the defendant recall all Products currently in the chain of  
13 commerce in California without a “clear and reasonable warning” as defined by 27 California  
14 Code of Regulations §§25600 *et seq.* and disgorge defendant’s revenues from sales of the Products  
15 allowing purchasers to return Products and receive full refunds.

16 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

17 5. That the Court grant such other and further relief as may be just and proper.

18 Dated: October 28, 2022

Respectfully submitted,

CHANLER, LLC

21 By: 

22 Clifford A. Chanler  
23 Attorneys for Plaintiff

24 LAURENCE VINOUCUR