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JAY EPPS

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

**10/03/2024**  
Clerk of the Court  
BY: AUSTIN LAM  
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12 UNLIMITED CIVIL JURISDICTION

**CGC-24-618684**

14 JAY EPPS,

15 Plaintiff,

16 v.

17 WALMART INC.,

18 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Jay Epps in the public  
3 interest of California citizens to enforce the People’s right to be informed of certain health hazards  
4 caused by exposures to lead, a toxic chemical found in lead tape (including kits containing such  
5 items) (the Products). The Products are repackaged, produced, stored, distributed, shipped and/or  
6 sold online (sold) to California citizens by defendant Walmart Inc.

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

13 3. Defendant has knowledge of the lead contents of the Products which were and may  
14 continue to be offered for purchase and/or transacted through walmart.com.

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

20 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed  
21 lead as a chemical known to cause birth defects and other reproductive harm. Lead became  
22 subject to the “clear and reasonable warning” requirements of the act one year later on February  
23 27, 1988. 27 Cal. Code Regs. §27001(b); Health & Safety Code §25249.8 and §25249.10(b).

24 6. Defendant imports, distributes, facilitates and/or otherwise offered and/or continue  
25 to offer for sale the Products without the mandated health hazard warning in California. The  
26 Products include, but are not limited to, the example of the product display page associated with  
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1 one of the Products, as shown on Exhibit A. An example of the immediate Product packaging is  
2 shown on Exhibit B.

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

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

11 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
12 against defendant for its violations of Proposition 65 during the relevant period covered by the  
13 April 26, 2024, Sixty-Day Notice of Violation.

14 **PARTIES**

15 10. Plaintiff Jay Epps 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 products, and he brings this action in the public interest pursuant to Health &  
18 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  
22 sale in the State of California. WALMART has offered for sale Products, many of which were  
23 supplied to it by entities that are not subject to enforcement under Proposition 65 because: (i) they  
24 have less than ten employees during all relevant periods; and/or (ii) do not have an agent for  
25 process of service in California.

1 **VENUE AND JURISDICTION**

2 13. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
3 Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent  
4 jurisdiction, because plaintiff seeks civil penalties against WALMART, one or more instances of  
5 wrongful conduct occurred in this county, and/or WALMART conducts, and continues to conduct  
6 business in San Francisco.

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

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

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65)**

20 16. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
21 Paragraphs 1 through 15, inclusive.

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

25 18. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
26 and intentionally expose any individual to a chemical known to the state to cause cancer or  
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1 reproductive toxicity without first giving clear and reasonable warning to such individual...”

2 Health & Safety Code §25249.6.

3 19. On April 26, 2024, plaintiff served a 60-Day Notice of Violation, (the Notice),  
4 together with the requisite certificate of merit, on WALMART, the California Attorney General’s  
5 Office, and the requisite public enforcement agencies alleging that, as a result of WALMART’s  
6 sales of the Products, consumers in California are being exposed to the toxicant lead resulting  
7 from their reasonably foreseeable use of the Products, without them first receiving a “clear and  
8 reasonable warning” regarding the reproductive toxicity associated with exposures to the heavy  
9 metal, as required by Proposition 65. The Notice which expressly supplanted the prior notice  
10 issued on January 29, 2024, because Walmart claims that citizen enforcers are required to include  
11 their address and telephone number on any sixty-day notice of violation. Since Walmart’s  
12 position on this exact issue is pending before the Second District Court of Appeal (*see Consumer*  
13 *Advocacy Group, Inc. v. Walmart, Inc. et al.*, Case No. B336080), Mr. Epps issued another notice  
14 on April 26, 2024, as a protective measure since he did not do so in his January 29, 2024, sixty-  
15 day notice.

16 20. WALMART imports, distributes, facilitates for sale, sells, and/or offers the  
17 Products for sale or use in violation of Health & Safety Code §25249.6, and WALMART’s  
18 violations have continued beyond its receipt of plaintiff’s Notice. As such, WALMART’s  
19 violations are ongoing and continuous in nature and, unless enjoined, could continue until  
20 compliance is ensured by the Court.

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

24 22. The Products that WALMART distributes or offers for sale throughout the State of  
25 California cause exposures to lead as a result of their reasonably foreseeable use. Such exposures  
26 caused by WALMART and endured by consumers in California who purchase, use or handle the  
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1 Products are not exempt from the “clear and reasonable” warning requirements of Proposition 65,  
2 yet WALMART does not provide compliant warnings for the risk of reproductive toxicity of lead.

3 23. WALMART had and continues to have actual knowledge that the Products it  
4 imported, distributed, sold, facilitated for sale or offered for sale in California contained lead.

5 24. Lead is present in or on the Products in such a way as to expose consumers and  
6 other users through dermal contact and/or ingestion during reasonably foreseeable use.

7 25. The normal and reasonably foreseeable use of the Products has caused, and  
8 continues to cause, consumer product exposures to lead as defined by 27 California Code of  
9 Regulations §25600.1(e).

10 26. WALMART knows that the normal and reasonably foreseeable use of the Products  
11 exposes individuals to lead through dermal contact and/or ingestion.

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

16 28. WALMART failed to provide a “clear and reasonable warning” to those consumers  
17 in California who have been, or who will be, exposed to lead resulting from their use of the  
18 Products.

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

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

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**EXHIBIT A**

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URL: https://www.walmart.com/ip/LYTIVAGEN-12-PCS-Golf-Lead-Tape-Adhesive-Lead-Tape-Add-Swing-Weight-Lead-Weighted-Tape-for-Tennis-Racket-and-Golf-Club-5-1cm/638058106



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For the planet

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LYTIVAGEN

LYTIVAGEN 12 PCS Golf Lead Tape, Adhesive Lead Tape Add Swing Weight Lead Weighted Tape for Tennis Racket and Golf Club (5 \* 1cm)

\$7.89

Price when purchased online

Add to cart

How do you want your item?

Shipping Arrives Jan 22

Pickup Not available

Delivery Not available

Delivery to Orangevale, 95662

Sold by LYTIVAGOU

Fulfilled by Walmart

3 seller reviews

View seller information

Free 90-day returns Details

Add to list

Add to registry



Join Walmart+ for a year & get \$50 Walmart Cash!

Limited time. Terms apply. Claim offer



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\$9.99

11" x 50" Clear Skateboard Grip Tape, ZUEXT...

2-day shipping

+ Add

About this item

Product details

LYTIVAGEN golf adhesive strips can add weight to the golf club and help you solve problems in your swing.

Features:

- 1, Made of lead material, safe, non-toxic, robust, super soft and durable.
2, Lead strips can add half golf weight so you can change the center of gravity of your putter, helping you solve the problems in your swing.
3, Just remove the release paper on the back of the tape and apply it where you need to increase the weight. It makes your swing more precise.
4, They can move the center of gravity back to help bring the ball into the air.

Specifications:

Material: lead
Dimensions: 5 \* 1cm
Weight: 39 g

Packaging:

12 x lead tap

- LYTIVAGEN 12 PCS Golf Lead Tape, Adhesive Lead Tape Add Swing Weight Lead Weighted Tape for Tennis Racket and Golf Club (5 \* 1cm)

- Made of lead material, safe, non-toxic, robust, super soft and durable. Lead strips can add half golf weight so you can change the center of gravity of your putter, helping you solve the problems in your swing. Just remove the release paper on the back of the tape and apply it where you need to increase the weight. It makes your swing more precise. They can move the center of gravity back to help bring the ball into the air.

**We aim to show you accurate product information.** Manufacturers, suppliers and others provide what you see here, and we have not verified it. [See our disclaimer](#)

Specifications

Brand

LYTIVAGEN

Color

Multicolor

Directions

Instructions

Step:1,1.Remove the release paper on the back.Step:2,2.Put it on where you want increase Weight.

Warranty

Warranty information

Please be aware that the warranty terms on items offered for sale by third party Marketplace sellers may differ from those displayed in this section (if any). To confirm warranty terms on an item offered for sale by a third party Marketplace seller, please use the 'Contact seller' feature on the third party Marketplace seller's information page and...

Warnings

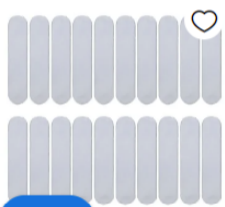
California State Chemical Warning Text

no

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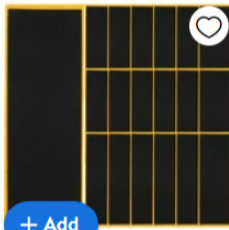
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Clearance



+ Add

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3+ day shipping



+ Add

\$9.29

Grip Tape Self Adhesive Friction Waterproof Bt Sand Paper for Skateboard

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2-day shipping

Now \$8.99 \$9.99

11" x 50" Black Skateboard Grip Tape Sheet, ZUEXT Bubble...

★★★★★ 1  
2-day shipping

\$9.99

11" x 50" Clear Skateboard Grip Tape, ZUEXT Waterproof...

2-day shipping

\$7.99

10" x 36" Skateboard Grip Tape Sheets, ZUEXT Bubble Free...

2-day shipping

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\$12.99

Golf Impact Tape Labels,300Pcs Golf Stickers,Driver,Iron...

3+ day shipping

\$10.01  
\$10.01

Tennis Racket Grip Tape , Soft Racquet Overgrip for All Kinds...

2-day shipping

Now \$8.99 \$9.99  
Now \$8.99 \$9.99

11" x 50" Black Skateboard Grip Tape Sheet, ZUEXT Bubble...

★★★★★ 1  
2-day shipping

\$9.99  
\$9.99

11" x 50" Clear Skateboard Grip Tape, ZUEXT Waterproof...

2-day shipping

\$11.99  
\$11.99

2 Pack 9" x 33" Skateboard Grip Tape Sheets, ZUEXT Bubl...

★★★★★ 4  
2-day shipping

\$9.99  
\$9.99

9" x 33" Clear Skateboard Grip Tape Sheet 2 Pack, ZUEXT...

2-day shipping

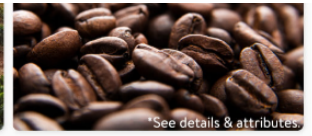
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**EXHIBIT B**

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LYTIVAG ... 1cm)

Made in China

