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9 LAURENCE VINOCUR

FILED
San Francisco County Superior Court
DEC 20 2022
CLERK OF THE COURT
[Signature]
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINOCUR,
14 Plaintiff,
15 v.
16 WALMART INC.,
17 Defendant.

Case No. CGC-21-590376

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code §25249.6, *et seq.* and
Code of Civil Procedure §664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant Walmart Inc. (“Walmart”), with Vinocur and Walmart each referred
5 to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Vinocur is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Walmart employs ten or more persons. Further, for the purposes of this litigation only,
12 Plaintiff alleges that Walmart is a person in the course of doing business for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5,
14 *et seq.* (Proposition 65).

15 **1.4 General Allegations**

16 Vinocur alleges that Walmart manufactures, imports, sells and/or distributes for sale in
17 California ingots, fishing sinkers/weights/jigs, and solder wire containing lead, and that it does so
18 without providing the health hazard warning required by Proposition 65. Lead is listed pursuant
19 to Proposition 65 as a chemical known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment specifically include ingots (sometimes
23 referred to as “lead bars”) made of lead used for any purpose, soldering wire containing lead,
24 including such items sold as part of soldering kits, and fishing sinkers/weights/jigs (including
25 such items sold as part of tackle kits) that contain lead and are offered for sale on Walmart.com to
26 consumers in California and/or at Walmart retail stores located in California (hereinafter referred
27 to as the “Product” or “Products”).
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1.6 Notices of Violation

On August 8, 2020, Vinocur served Walmart and certain requisite public enforcement agencies with ten (10) 60-Day Notices of Violation (“August 8 Notices”), alleging that Walmart violated Proposition 65 when it did not warn customers or consumers in California that certain fishing sinkers expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the August 8 Notices.

On October 30, 2020, Vinocur served Walmart and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“October 30 Notice”), alleging that Walmart violated Proposition 65 when it did not to warn customers or consumers in California that certain fishing sinkers and weights expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the October 30 Notice.

On or about February 5, 2021, Vinocur served Walmart and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“February 5 Notice”), alleging that Walmart violated Proposition 65 when it did not warn customers or consumers in California that certain solder wires expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the February 5 Notice.

On or about March 11, 2021, Vinocur served Walmart and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“March 11 Notice”), alleging that Walmart violated Proposition 65 when it did not warn customers or consumers in California that certain solder wires expose users to lead including through the route of inhalation. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the March 11 Notice.

On April 29, 2021, Vinocur served Walmart and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“April 29 Notice”), alleging that Walmart violated Proposition 65 when it did not warn customers or consumers in California that

1 certain solder wires expose users to lead. To the best of the Parties' knowledge, no public
2 enforcer has commenced and is diligently prosecuting the allegations set forth in the April 29
3 Notice.

4 On August 24, 2021, Vinocur served Walmart and certain requisite public enforcement
5 agencies with a 60-Day Notice of Violation and a Supplemental 60-Day Notice of Violation,
6 alleging that Walmart violated Proposition 65 when it did not warn customers or consumers in
7 California that certain lead ingots/bars and solder wires expose users to lead, respectively
8 ("August 24 Notices"). To the best of the Parties' knowledge, no public enforcer has commenced
9 and is diligently prosecuting the allegations set forth in the August 24 Notices.

10 On November 18, 2021, Vinocur served Walmart and certain requisite public enforcement
11 agencies with two 60-Day Notices of Violation alleging that Walmart violated Proposition 65
12 when it did not warn customers or consumers in California that certain solder wires and fishing
13 sinkers expose users to lead ("November 17 Notices").

14 On July 21, 2022, Vinocur served Walmart and certain requisite public enforcement
15 agencies with two 60-Day Notices of Violation alleging that Walmart violated Proposition 65
16 when it did not warn customers or consumers in California that certain solder wires and fishing
17 sinkers expose users to lead, including kits containing such items ("July 21 Notices").

18 The August 8 Notices, October 30 Notice, February 5 Notice, March 11 Notice, April 29
19 Notice, August 24 Notices, November 18 Notices, and July 21 Notices shall be referred to
20 collectively as the "Notices."

21 **1.7 Complaint**

22 On March 18, 2021, Vinocur filed the Complaint in the instant action (Case No. CGC-21-
23 590376) naming Walmart as the only defendant for the alleged violations of Proposition 65 that
24 are the subject of the August 8 Notices, October 30 Notice, and November 18 Notice.

25 On May 26, 2021, Vinocur filed a First Amended Complaint, and on October 8, 2021, an
26 amendment to Exhibit A of the First Amended Complaint, naming Walmart as the only defendant
27 for the alleged violations of Proposition 65 that are the subject of the August 8 Notices and the
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1 October 30 Notice, in addition to the alleged violations of Proposition 65 that are the subject of
2 the February 5 Notice, March 11 Notice, April 29 Notice, and November 18 Notices. On
3 November 19, 2021, Walmart filed its Answer to the First Amended Complaint.

4 On February 2, 2022, Vinocur filed a Complaint naming Walmart as the only defendant
5 for the alleged violations of Proposition 65 that are the subject of the August 24 Notice (Case No.
6 CGC-22-597946) (“Lead Ingot Action”). The Parties agree that the Lead Ingot Action will be
7 dismissed with prejudice by Vinocur on the Effective Date.

8 On May 25, 2022, Vinocur filed a Second Amended Complaint in the instant action (Case
9 No. CGC-21-590376). On June 27, 2022, Walmart filed its Answer to the Second Amended
10 Complaint. And, on October 28, 2022, Vinocur filed a Complaint naming Walmart as the only
11 defendant for the alleged violations of Proposition 65 that are the subject of the July 21 Notices
12 (Case No. CGC-22-602660) (“October Action”). The Parties agree that that the October Action
13 will be dismissed with prejudice by Vinocur on the Effective Date.

14 The May 18, 2021 Complaint (including all amendments), the February 2, 2022
15 Complaint, and October 28, 2022 Complaint are collectively referred to herein as the
16 “Complaints.”

17 As of the Effective Date (defined below), the Parties stipulate and agree that the
18 Complaint in this action shall be deemed amended *nunc pro tunc* to include all Products and all
19 claims and allegations that are the subject of all of the Notices and Complaints.

20 **1.8 No Admission**

21 Walmart denies all material, factual and legal allegations contained in the Notices and
22 Complaints and maintains that all Products that were sold and distributed in California have been
23 and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
24 admission by Walmart of any fact, finding, issue of law or violation of law; nor shall compliance
25 with this Consent Judgment constitute or be construed as an admission by Walmart of any fact,
26 finding, conclusion, issue of law or violation of law. This subsection 1.8 shall not, however,

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1 diminish or otherwise affect the obligations, responsibilities, and duties under this Consent
2 Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Walmart as to the allegations contained in the Complaint, that venue is proper in
6 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
7 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
8 §664.6.

9 **1.10 Effective and Compliance Dates**

10 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
11 Consent Judgment is approved by the Court. For purposes of this Consent Judgment, the term
12 “Compliance Date” shall mean April 1, 2023, or within thirty days of court approval of this
13 Consent Judgment, whichever occurs later.

14 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

15 **2.1 Injunctive Relief**

16 Pursuant to the terms set forth below in subsections 2.3 through 2.5, with respect to
17 Products sold in California that do not have a clear and reasonable Proposition 65 warning by the
18 Compliance Date, Walmart, at its option, agrees to either: (1) reformulate the Products; (2)
19 require its suppliers and vendors of Products sold in its California stores or on Walmart.com (and
20 shipped to a California address), as well as marketplace retailers selling Products on
21 Walmart.com (and shipping the same to a California address), to provide a clear and reasonable
22 Proposition 65 warning for the Products, as set forth in subsections 2.3 or 2.4 below, or Walmart
23 will otherwise provide such a clear and reasonable warning for Products offered for sale in
24 Walmart retail stores located in California or sold on Walmart.com and shipped to a California
25 address, as set forth in subsections 2.3 or 2.4 below¹; or (3) cease selling the Products in

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27 ¹ Subsection 2.1(2) is intended to only require warnings as follows: (a) for Products sold in Walmart retail stores located
28 in California, such Products shall have a warning pursuant to subsection 2.4; and (b) for Products sold on Walmart.com
and shipped to a California address, such Products shall have a warning pursuant to subsection 2.3.

1 California or prohibit the shipment of the Products to California addresses with regard to
2 Products sold on Walmart.com. The Parties understand and agree that some Products may appear
3 on Walmart.com that contain no warning but are not able to be shipped to California addresses
4 (so sales cannot be completed) and that this complies with subsection 2.1(3) above. Section 2 of
5 this Consent Judgment only applies to Products (a) sold in Walmart retail stores located in
6 California or (b) sold on Walmart.com and shipped to a California address.

7 **2.2 Reformulation Standards**

8 A "Reformulated Product" is a Product that (a) contains lead in concentrations that do not
9 exceed 90 parts per million, equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S.
10 Environmental Protection Agency (EPA) methodologies 3050B and 6010B, or (b) yields a result
11 of no more than 1.0 micrograms of lead when the exterior is sampled according to NIOSH 9100
12 protocol and analyzed according to EPA 6010B. In addition to the above tests, Walmart may use
13 equivalent methods utilized by any California or federal agency to determine lead content in a
14 solid substance.

15 **2.3 Clear and Reasonable Website Warnings (Products Sold Online)**

16 On or before the Compliance Date, with regard to Products sold on Walmart.com for
17 which a clear and reasonable Proposition 65 warning does not appear on Walmart.com and the
18 Product is not a Reformulated Product, as described in Section 2.2 above, Walmart shall at its
19 option either (1) require its suppliers and vendors of Products sold on Walmart.com, as well as
20 marketplace retailers selling Products on Walmart.com, to provide a clear and reasonable
21 warning on Walmart.com for Products sold on Walmart.com and shipped to a California address,
22 or Walmart will otherwise provide such a clear and reasonable warning on Walmart.com for
23 Products sold on Walmart.com and shipped to a California address; or (2) prohibit such Products
24 from being shipped to California addresses.

25 Each warning placed in compliance with this subsection 2.3 shall be prominently
26 displayed to the purchaser prior to completing the purchase with such conspicuousness as
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1 compared with other words, statements, designs, or devices as to render it likely to be read and
2 understood by an ordinary individual under customary conditions of purchase or use.

3 (a) **Warning.** The Warning shall consist of: (i) the following; or (ii) other
4 substantially similar language that complies with Proposition 65 (as used herein, "Warning" shall
5 be defined as (i) or (ii) as stated in this subsection (a)):

6
7 **⚠ WARNING:** This product can expose you to chemicals including lead, which
8 is known to the state of California to cause cancer and birth
9 defects or other reproductive harm. For more information go to
10 www.P65Warnings.ca.gov.

11 (b) **Short-Form Warning.** The Short-Form Warning shall consist of: (i) the
12 following; or (ii) other substantially similar language that complies with Proposition 65, and
13 either may be utilized so long as it is allowed under Proposition 65's implementing regulations (as
14 used herein, "Short-Form Warning" shall be defined as (i) or (ii) as stated in this subsection (b)):

15 **⚠ WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

16 For any of the Products that are not Reformulated Products pursuant to Section 2.2 and are
17 sold on Walmart.com and shipped to a California address after the Compliance Date, such online
18 Product shall have a Warning or Short-Form Warning which is displayed to the purchaser prior to
19 completion of the transaction without requiring the potential buyer to use considerable effort to be
20 made aware of the health hazard advisory. The Warning (or a clearly marked hyperlink to the
21 warning using the signal word "**WARNING**") or Short-Form Warning given in conjunction with
22 the online sale of the Products may appear either: (a) prominently placed on a page in which the
23 Product's photograph, price, "add to cart" section, or product details/specifications are displayed
24 (e.g., product display page); (b) on the same webpage as the order form for the Products; or (c)
25 on any webpage displayed to the purchaser during the checkout process and prior to its

1 completion for any purchaser of the Product(s) with a California shipping address. The internet
2 warning may use the Short-Form Warning content described in subsection 2.3(b).²

3 **2.4 On-Product Warnings (Products Sold in Stores)**

4 This subsection only applies to Products sold in Walmart’s retail stores in California. For
5 all Products that are not Reformulated Products pursuant to Section 2.2 and which are determined
6 to be manufactured after the Compliance Date, Warnings or Short-Form Warnings as allowed by
7 the regulations, shall be affixed to or included on the Product label, Product container/packaging
8 (including, but not limited to, Product bins), shelving where the Products are sold, or otherwise
9 directly on each unit of the Product provided for sale through Walmart’s retail locations located
10 in California. For the purpose of this Consent Judgment, “Product label” means a display of
11 written, printed or graphic material that is printed on or affixed to a Product. The warning
12 language shall consist of either the Warning or the Short-Form Warning (as allowed), described
13 above in subsections 2.3(a) or (b), respectively.³


14 **2.5 Foreign Language Requirement**

15 Walmart shall comply with the requirements set forth in 27 California Code of
16 Regulations §25602(d).

17 **2.6 Option to Delist**

18 On or before the Compliance Date, Walmart may, at its option, comply with the injunctive
19 commitments set forth in subsection 2.3 above by delisting a Product from Walmart.com or
20 prohibiting such Product sold on Walmart.com from being shipped to an address in California. If
21 it does so, the previously delisted Product (or Product that is prohibited from shipment to
22 California) may be reinstated for sale online to California consumers if it complies with
23 subsection 2.3 prior to the date of such relisting.

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26 ² Subsection 2.3 concerns the placement of website warnings appearing on Walmart.com, and not the placement of on-
Product warnings (i.e., on the Product itself or on labels, packaging, etc.).

27 ³ Pursuant to 27 CCR § 25603, subd. (a)(1), where the Product label, Product container/packaging (including, but not
28 limited to, Product bins), or shelf tag is not printed using the color yellow, the warning symbol () may be printed in
black and/or white.

1 **2.7 Right to Cure (No Assignment or Transfer of Claims)**

2 Plaintiff shall have the exclusive right to enforce the provisions of this Consent Judgment.

3 As of the time of this Consent Judgment, neither Vinocur nor his counsel have any specific
4 knowledge of the presence of any other products sold on the site operated by Walmart that, in
5 their opinion, fail to comply with Proposition 65’s warning requirement. Vinocur represents and
6 warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or
7 attempted to assign, or transfer, any claim or claims against Walmart. Vinocur further warrants
8 that neither he nor his agents or attorneys are aware of any other potential private enforcer or
9 attorney who intends to bring litigation based on the subject matter of the Consent Judgment.

10 To the extent Vinocur identifies any Product (or any other item for sale on Walmart.com
11 or in a Walmart retail store located in California that is similar in nature to any Product) in the
12 future which he believes is not in compliance with this Consent Judgment, Vinocur agrees to
13 advise Walmart of such alleged breach in the manner set forth in Section 9, and provide Walmart
14 with 20 business days (calculated from the date notice is provided electronically) to cure any
15 alleged violation of this Consent Judgment (pursuant to the applicable options set forth in
16 Sections 2.1, 2.2, 2.3, or 2.4) (the “Notice to Cure”).⁴ Such Notice to Cure to Walmart shall
17 contain information sufficient for Walmart to identify the Product and the Product’s seller or
18 supplier such as the Product’s UPC (Universal Product Code) Number, the Walmart Item
19 Identification Number (also known as ‘Walmart Catalog Item ID’), the Walmart Order Number,
20 and for Products sold online, a screenshot of the Product’s online listing (also known as the
21 product display page), including the Product’s URL (Uniform Resource Locator).

22 Vinocur reserves the right to seek additional civil penalties, reimbursement of reasonable
23 attorney’s fees and costs, and any other available remedies arising from or related to Notices to
24 Cure associated with Products covered by the Consent Judgment. However, Vinocur shall not be
25 entitled to seek or recover any civil penalties, and Vinocur and his counsel shall not be entitled to
26 recovery or reimbursement of attorney’s fees and/or costs, or any other available remedies arising

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28 ⁴ For purposes of the right to cure, the “Compliance Date” references in Sections 2.1, 2.2, 2.3, and 2.4 shall be
disregarded, as the timing to cure is 20 business days, as set forth in Section 2.7.

1 from or related to Notices to Cure associated with Products covered by the Consent Judgment,
2 provided Walmart timely remedies the alleged non-compliance within 20 business days of
3 receiving the Notice to Cure, as discussed herein. If Walmart cures the alleged non-compliance
4 within 20 business days of receiving the Notice to Cure, Walmart shall not be deemed in breach
5 or violation of this Consent Judgment in any respect.

6 **3. MONETARY TERMS**

7 **3.1 Civil Penalty Payment**

8 Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims referred to in
9 the Notices, Complaints, and this Consent Judgment, Walmart agrees to pay in two potential
10 installments. The first installment shall be \$65,000 and allocated according to Health & Safety
11 Code §25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the
12 California Office of Environmental Health Hazard Assessment (OEHHA), and the remaining
13 twenty-five percent (25%) of the penalty payment retained by Vinocur. Walmart shall issue its
14 payment in two checks made payable to (a) "OEHHA" in the amount of \$48,750; and (b)
15 "Laurence Vinocur" in the amount of \$16,250. Vinocur's counsel shall send the portions of the
16 penalties paid by Walmart to OEHHA and Vinocur.

17 The Parties agree to leave the determination of whether Walmart should pay any additional
18 civil penalties above and beyond the first installment of \$65,000 to the trial judge to be assigned by
19 Department 206, on January 17, 2023. The Parties further agree that the preceding sentence should
20 not be interpreted to mandate the assessment of any additional civil penalties beyond \$65,000 (as
21 paid in the first installment) nor interpreted that a further assessment above \$65,000 would be
22 reasonable or unreasonable. The trial court's determination shall be solely made pursuant to the
23 statutory factors set forth in Health & Safety §252549.7(b) based on the evidence presented.

24 The Parties agree to submit opening briefs simultaneously on a date to be determined by the
25 trial court. The briefs are to be served electronically and by overnight mail and shall not exceed
26 twenty (20) pages in length (double-spaced) without leave of court. Both Parties shall file and
27 serve any response briefs ten (10) court days after electronic service of the opening brief, which
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1 shall not exceed twenty (20) pages in length (double-spaced). No further brief is allowed to be
2 submitted by either party. The trial court shall set the date of oral argument. The Parties shall
3 jointly request a conference with the assigned judge as soon as the trial department's calendar so
4 permits. The trial court's assessment of additional civil penalties, if there are any, shall be
5 allocated according to Health & Safety Code §25249.12(c)(1) and (d), with seventy-five percent of
6 the penalty paid to OEHHA, and the remaining twenty-five percent of the penalty payment retained
7 by Vinocur. Any assessed additional civil penalties shall be paid within twenty (20) calendar days
8 of notice of entry of the trial court's penalty decision, unless an appeal is taken by either Party.

9 **3.2 Attorneys' Fees and Costs**

10 Vinocur and his counsel intend to seek reimbursement of their reasonable fees and costs
11 by way of an application to the San Francisco Superior Court as allowed by California law under
12 Code of Civil Procedure §1021.5 and 11 California Code of Regulations § 3201, which Walmart
13 will oppose.

14 **3.3 Payment Timing**

15 Walmart shall deliver its payment of \$65,000 in civil penalties to Plaintiff's counsel
16 within 30 days of the date of court approval of this Consent Judgment. Plaintiff's counsel shall
17 provide Walmart with a current W-9 from Plaintiff, Chanler LLC, and OEHHA, within seven (7)
18 days of the execution of this Consent Judgment. Any checks due under subsections 3.1 and 3.2
19 of this Consent Judgment shall be delivered to Vinocur's counsel to the address in subsection 3.4
20 by overnight courier, with a tracking number. Vinocur's counsel shall be responsible for
21 delivering the required payment of civil fines to OEHHA.

22 **3.4 Payment Address**

23 All payments required by this Consent Judgment shall be delivered to the following
24 address:

25 Chanler, LLC
26 Attn: Proposition 65 Controller
27 72 Huckleberry Hill Road
28 New Canaan, CT 06840

1 **4. CONSENT JUDGMENT SHALL NOT CONSTITUTE WAIVER OF RIGHT TO**
2 **APPEAL SPECIFIC ISSUES RETAINED BY TRIAL COURT JURISDICTION**

3 It is expressly contemplated by the Parties and their counsel of record, and further thereon
4 agreed to, that following entrance of this Consent Judgment, the Court shall retain jurisdiction to
5 adjudicate (1) determination of whether any additional civil penalties above and beyond the first
6 installment of \$65,000 should issue, and (2) Vinocur and his counsel’s application for
7 reimbursement of reasonable fees and costs pursuant to Code of Civil Procedure §1021.5 and 11
8 California Code of Regulations §3201, both of which the Parties anticipate will be contested.

9 It is further expressly contemplated by the Parties and their counsel of record, and thereon
10 agreed to, that the Parties do not waive their right to appeal the Court’s orders regarding (1)
11 whether any additional civil penalties above and beyond the first installment of \$65,000 should
12 issue, and (2) Vinocur and his counsel’s application for reimbursement of reasonable fees and costs
13 pursuant to Code of Civil Procedure §1021.5 and 11 California Code of Regulations §3201. The
14 Consent Judgment, when entered, will not encompass the Court’s ruling and subsequent,
15 anticipated orders regarding: (1) whether any additional civil penalties above and beyond the first
16 installment of \$65,000 should issue, and (2) Vinocur and his counsel’s application for
17 reimbursement of reasonable fees and costs pursuant to Code of Civil Procedure §1021.5 and 11
18 California Code of Regulations §3201.

19 **5. CLAIMS COVERED AND RELEASED**

20 **5.1 Vinocur’s Release of Proposition 65 Claims**

21 Vinocur, acting on his own behalf and in the public interest, and on behalf of his past and
22 current agents, representatives, attorneys, successors, and assigns, hereby releases Walmart and
23 Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo,
24 LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC and each of their respective parents, direct
25 and indirect subsidiaries, affiliates, affiliated entities under common ownership (collectively,
26 “Walmart-related entities”), past and current agents, directors, members, managers, officers,
27 employees, representatives, shareholders, insurers, beneficiaries, attorneys, successors, and
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1 assignees (collectively, "Released Parties") and each entity to whom any of the Released Parties
 2 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
 3 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
 4 licensees of, from, and with regard to any and all alleged violations arising under Proposition 65
 5 for unwarned exposures to lead from the Products manufactured, imported, distributed or sold on
 6 Walmart.com or at a Walmart retail store located in California prior to the Compliance Date.
 7 Except as provided in Sections 3.1 and 3.2, such release shall also be effective as a full and final
 8 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
 9 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur individually of any
 10 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
 11 alleged or actual exposures to lead in Products manufactured, imported, distributed or sold on
 12 Walmart.com or at a Walmart retail store before the Compliance Date. Compliance with the
 13 terms of this Consent Judgment constitutes compliance with Proposition 65 by Walmart (as well
 14 as the other Walmart-related entities referenced above) with respect to the alleged or actual
 15 failure to warn about exposures to lead from the Products.

16 **5.2 Walmart's Release of Vinocur**

17 Walmart, on its own behalf and on behalf of its past and current agents, representatives,
 18 attorneys, successors and assignees, hereby waives any and all claims against Vinocur and his
 19 attorneys and other representatives, for any and all actions taken or statements made (or those
 20 that could have been taken or made) by Vinocur and his attorneys and other representatives in the
 21 course of investigating the claims at issue in this matter, seeking to enforce Proposition 65
 22 against it in this matter, or with respect to the Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment shall be null and void if, for any reason, it is not approved and
 25 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and
 26 Walmart agree to support the entry of this agreement as a judgment, and to obtain the Court's
 27 approval of their settlement in an expedited manner as allowed by law. The Parties acknowledge
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1 that, pursuant to California Health & Safety Code §25249.7(f)(4), a noticed motion is required for
2 judicial approval of this Consent Judgment, which Vinocur shall draft and file. In furtherance of
3 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
4 counsel, to support the entry of this agreement as a judgment, and to obtain judicial approval of
5 their settlement in a timely and expedited manner. For purposes of this section, "best efforts"
6 shall include, at a minimum, supporting the motion for approval, jointly requesting the Court to
7 have the motion heard on shortened time as allowed, responding to any objection that any third-
8 party may file or lodge, and appearing at the hearing before the Court if so requested.

9 **7. SEVERABILITY**

10 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
11 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
12 remaining provisions shall not be adversely affected.

13 **8. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California and apply within the State of California. In the event that Proposition 65 is repealed,
16 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
17 Products, then Walmart may provide Vinocur with written notice of any asserted change in the
18 law, and shall have no further injunctive obligations pursuant to this Consent Judgment, with
19 respect to, and to the extent that, the Products are affected by such a change in the law. Nothing
20 in this Consent Judgment shall be interpreted to relieve Walmart from its obligation to comply
21 with any pertinent state or federal law or regulation.

22 **9. NOTICE**

23 Unless specified herein, all correspondence and notice required or permitted by this
24 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class registered
25 or certified mail, return receipt requested; or (c) a recognized overnight courier to any Party by
26 the other at the following addresses. In addition to a, b, or c above, any notice required or
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1 permitted by this Consent Judgment shall also be provided via electronic mail if an email address
2 is provided for the recipient below:

3 To Walmart:

4 C T Corporation System
5 330 North Brand Boulevard, Suite 700
6 Glendale, CA 91203

7 With a Copy To:

8 Greg Spallas, Esq.
9 Phillips, Spallas & Angstadt LLP
10 560 Mission St., Suite 1010
11 San Francisco, CA 94105
12 gspallas@psalaw.net

13 Gregory Berlin, Esq.
14 Alston & Bird LLP
15 333 South Hope Street, 16th Floor
16 Los Angeles, CA 90071
17 greg.berlin@alston.com

To Vinocur:

Attn: Proposition 65 Coordinator
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840
clifford@chanlerllc.com

18 Any Party may, from time to time, specify in writing to the other Party a change of
19 address to which all notices and other communications shall be sent.

20 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable
22 document format (pdf) signature, each of which shall be deemed an original and, all of which,
23 when taken together, shall constitute one and the same document.

24 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

25 Vinocur and his counsel agree to comply with the reporting form requirements referenced
26 in California Health & Safety Code §25249.7(f).

27 **12. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and understanding of the
Parties with respect to the entire subject matter hereof, and any and all prior discussions,
negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
and therein. There are no warranties, representations, or other agreements between the Parties
except as expressly set forth herein. No representations, oral or otherwise, express or implied,

1 other than those specifically referred to in this Consent Judgment have been made by any Party
2 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
3 shall be deemed to exist or to bind any of the Parties hereto. Provided, that nothing in this section
4 shall be deemed to diminish the Parties' rights under the search protocol relating to electronically
5 stored information that the Parties are negotiating concurrently with this Consent Judgment.

6 **13. MODIFICATION**

7 This Consent Judgment may be modified only: (a) by a written agreement of the Parties
8 and the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful
9 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

10 **14. AUTHORIZATION**

11 The undersigned were authorized to execute this Consent Judgment on behalf of their
12 respective Parties and have read, understood, and agreed to all of the terms and conditions
13 contained herein.

14 **AGREED TO:**

AGREED TO:

16 Date: December 12, 2022

Date: December , 2022
December 13, 2022 | 09:56 CST

18 By: 

By: Tony Juneau


20 LAURENCE VINO CUR

WALMART INC.

By: Tony Juneau, In-House Counsel

22 **IT IS SO ORDERED:**

24 Date: December 20, 2022

By: 
RICHARD B. ULMER
Judge of the Superior Court