60-DAY NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d) (PROPOSITION 65)

Date: January 20, 2021

To: Xiangfa Hua, President, Wellco Industries, Inc.

C. Douglas McMillon, President and Chief Executive Officer, Walmart Inc.

California Attorney General's Office;

District Attorney's Office for 58 Counties; and

City Attorneys for San Francisco, San Diego, San Jose, Sacramento & Los Angeles

From: Keep America Safe and Beautiful

I. INTRODUCTION

Keep America Safe and Beautiful is a California nonprofit corporation acting in the interest of the general public, pursuant to California Health & Safety Code § 25249.7(d). Keep America Safe and Beautiful seeks to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by eliminating hazardous substances contained in such items, promoting corporate responsibility.

This 60-Day Notice of Violation ("**Notice**") is being provided to the alleged violators, Wellco Industries, Inc. and Walmart Inc. ("**Notice Recipients**"), as well as the California Attorney General's Office, the District Attorney's Offices for 58 Counties, and City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles.

Keep America Safe and Beautiful provides this Notice after identifying violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code § 25249.5 et seq. ("Proposition 65"), based on the failure to provide a clear and reasonable health hazard warning in connection with the sale or use of the products, listed below, in the State of California. The Notice Recipients are hereby given notice they violated and continue to violate Proposition 65 with respect to the warning requirement, codified at California's Health & Safety Code § 25249.6: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual." Without proper warnings about the toxic effects of exposures to listed chemicals, citizens in California lack the information necessary to make an informed decision as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing listed chemicals.

II. NATURE OF ALLEGED VIOLATIONS

<u>Product.</u> The specific type or category of products ("**Products**") that are the subject of this Notice are as follows:

Exemplar Product	Category/Type	Retailer	Manufacturer/Distributor
Outdoor Waterproof Dry Bag	PVC Bags	Walmart Inc.	Wellco Industries, Inc.
5L, Blue			
OWDB05NIBU			
X0017R1O5L			

Identified above is a specific example of Products recently purchased and witnessed as being available for sale or use in the State of California, within the *category* of offending products covered by this Notice. The identified retailers, manufacturers and/or distributors of the Products are based on publicly available information.

The Exemplar Product is identified for the Notice Recipients' benefit to assist in their investigation into the alleged violations that are the subject of this Notice. The specific identified Exemplar Product is not intended to be an exhaustive list of all such products potentially in violation of Proposition 65. It is Keep America Safe and Beautiful's position the Notice Recipients are now obligated to conduct a good faith investigation into other products within the category or of the type, identified above, that were manufactured, imported, sold or distributed for sale, or that have otherwise been in the Notice Recipients' custody or control during the relevant period, identified below, to ensure the requisite health hazard warnings are provided to individuals in California prior to purchase.

<u>Listed Chemical.</u> The chemical that is the subject of this Notice is diisononyl phthalate ("**DINP**"). The State of California listed DINP as a chemical known to cause cancer on December 20, 2013.

Routes of Exposure. The exposures subject to this Notice result from the purchase, acquisition and handling of Products containing DINP. Exposures occur when individuals handle, touch or otherwise utilize PVC bags containing DINP in accordance with the Products' intended uses, resulting in exposures through ingestion and dermal absorption. Individuals ingest DINP when they touch or handle the Products, transferring the chemical from their fingers or hands to their mouths. Dermal absorption of DINP occurs when individuals handle, touch, or utilize the Products.

The California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

<u>Violations and Time Period of Exposure.</u> Keep America Safe and Beautiful alleges the Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, individuals within the State of California to DINP, without first giving a health hazard warning regarding the chemical's toxic effects, as required by Proposition 65, by failing to provide clear and reasonable warnings to consumers and users that the Products can expose users to DINP.

Exposures caused by the use of the Products have occurred each day since the Products were introduced into the California marketplace, but, at a minimum, since January 20, 2020, and, potentially, as far back as January 20, 2018. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to DINP, each Product sold during this period and not accompanied by a warning constitutes a violation by the Notice Recipients and/or other sellers of the Products, whether sold directly through retailers located in, or with locations in, California, via the internet, or through catalog purchases by customers and individuals located in

California. Moreover, these exposures are ongoing and will continue either until clear and reasonable warnings are provided to protect consumers and users or until this known toxic chemical is removed from the Products or reduced to allowable levels.

III. RESOLUTION OF NOTICED CLAIMS

Consistent with the public interest goals of Proposition 65, Keep America Safe and Beautiful seeks to pursue a constructive resolution of this matter to quickly rectify ongoing violations of California law. To that end, based on the allegations set forth in this Notice and pursuant to Health & Safety Code § 25249.7(d), Keep America Safe and Beautiful intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice, unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these allegations. If the Notice Recipients seek to resolve the claims alleged in this Notice without litigation, they may contact Keep America Safe and Beautiful's counsel at the address listed below.

It should be noted neither Keep America Safe and Beautiful or its counsel can: (1) finalize any settlement until after the expiration of the 60-day Notice period; or (2) speak for the California Attorney General or any District or City attorney in receipt of this Notice. Therefore, while reaching an agreement with Keep America Safe and Beautiful will satisfy its claims, the agreement may not satisfy any public prosecutors.

IV. GENERAL INFORMATION AND SUMMARY OF PROPOSITION 65

A copy of a summary of Proposition 65's provisions, prepared by the Office of Environmental Health Hazard Assessment ("**OEHHA**") is enclosed with the copy of the Notice served on the Notice Recipients for their reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

V. CERTIFICATE OF MERIT

Pursuant to Health & Safety Code § 25249.7(d) and Cal. Code. Regs. tit 11, § 3100, a Certificate of Merit is attached hereto. A copy of the Notice and Certificate of Merit is served on the California Attorney General and marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation, as required by Cal. Code. Regs. tit 11, § 3102, attached thereto.

VI. CONTACT INFORMATION

Please direct all questions, issues or communications regarding this 60-Day Notice of Violation and its potential resolution to Keep America Safe and Beautiful's counsel at the following address:

Keep America Safe and Beautiful c/o Laralei Paras, Esq. Seven Hills LLP 4 Embarcadero Center, Suite 1400 San Francisco, California 94111 Telephone: (415) 926-7247

<u>Attachments:</u> Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Violator only); and Additional Confidential Supporting Information for Certificate of Merit (to AG only.)

CERTIFICATE OF MERIT

Health and Safety Code § 25249.7(d)

Re: Keep America Safe and Beautiful's Notice of Proposition 65 Violations

- 1, Laralei Paras, hereby declare and certify:
- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am an attorney for the noticing party.
- 3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the alleged exposure to the listed chemical that is the subject of this action and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
- 4. Based on the information obtained and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- 5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code § 25249.7(h)(2) (i.e. the identity of the persons consulted with and relied on by the certifier and the facts, studies and data reviewed by that person.)

Dated: January 20, 2021

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years of age and not a party to this case. Seven Hills LLP's business address is 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

On January 20, 2021, I caused to be served the following:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; and

CERTIFICATE OF MERIT

XXXX by **Certified First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, individually addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative:

Xiangfa Hua, President C. Douglas McMillon, President and CEO

Wellco Industries, Inc.

2095 California Avenue

Corona, CA 92881

Walmart Inc.

702 SW 8th Street
Bentonville, AR 72716

On January 20, 2021, I caused to be served true and correct copies of the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d); and

CERTIFICATE OF MERIT

XXXX by **First Class Mail** through the United States Postal Service by placing copies of the above documents in a sealed envelope, addressed to each entity on the attached "Service List" and providing such envelope to a United States Postal Representative, with correct postage.

XXXX via **Electronic Mail**, by sending copies of the above documents, addressed individually, to the Recipient listed on the attached "Electronic Mail Service List".

On January 20, 2021, I caused to be served true and correct copies of the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

CERTIFICATE OF MERIT; and

CERTIFICATE OF MERIT ATTACHMENTS

XXXX via **Electronic Mail**, by uploading the documents, addressed to California Attorney General at their website address, listed under the "Electronic Upload Service List".

Executed on the 20th day of January, 2021, at Folsom, California.

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SERVICE LIST

The Honorable Michael Atwell Alpine County District Attorney P.O. Box 248 Machaeville CA 06120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Ste 1200	The Honorable Todd Riebe Amador County District Attorney 708 Court Street, #202
Markleeville, CA 96120	Los Angeles, CA, 90012	Jackson, CA 95642
The Honorable Michael Ramsey	The Honorable Matthew R. Beauchamp	Del Norte County District Attorney
Butte County District Attorney	Colusa County District Attorney	450 H street, Room 171
25 County Center Drive, Suite 245	346 5th Street, Suite 101	Crescent City, CA 95531
Oroville, CA 95965	Colusa, CA 95932	m 11 5 0
The Honorable Vern Pierson	The Honorable Lisa Smittcamp	The Honorable Dwayne Stewart
El Dorado County District Attorney	Fresno County District Attorney	Glenn County District Attorney
778 Pacific Street	2220 Tulare Street, Suite 1000	P.O. Box 430
Placerville, CA 95667	Fresno, CA 93721	Willows CA 95988
The Honorable Maggie Fleming	The Honorable Gilbert Otero	The Honorable Lisa Green
Humboldt County District Attorney	Imperial County District Attorney	Kern County District Attorney
825 5 th Street, 4 th Floor	940 West Main Street, Suite 102	1215 Truxtun Avenue
Eureka, CA 95501	El Centro, CA 92243	Bakersfield, CA 93301
The Honorable Keith Fagundes	The Honorable Donald Anderson	The Honorable David Linn
Kings County District Attorney	Lake County District Attorney	Madera County District Attorney
1400 West Lacey Blvd.	255 N. Forbes Street	209 West Yosemite Avenue
Hanford, CA 93230	Lakeport, CA 95453	Madera, CA 93637
The Honorable Edward Berberian	The Honorable Mike Feuer	The Honorable C. David Eyster
Marin County District Attorney	Office of the City Attorney, Los Angeles	Mendocino County District
3501 Civic Center Drive, Room 130	Kames K. Hahn Hall East 200 North Main Street, 8 th Floor	Attorney P.O. Box 1000
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The Honorable Richard Doyle Office of the City Attorney, San Jose	The Honorable Tony Rackaukas Orange County District Attorney	
200 East Santa Clara Street, 16 th Floor	401 Civic Center Drive West	Mono County District Attorney P.O. Box 2053
San Jose, CA 95113	Santa Ana, CA 92701	Mammoth Lakes, CA 93546
The Honorable Stephen Wagstaffe	The Honorable Candace Hooper	The Honorable Stephanie Bridgett
San Mateo County District Attorney	San Benito District Attorney	Shasta County District Attorney
400 County Center, Third Floor	419 4th Street	1355 West Street
Redwood City, CA 94063	Hollister, CA 95023	Redding, CA 96001
The Honorable James Kirk Andrus	The Honorable Michael Ramos	The Honorable Amanda Hopper
Siskiyou County District Attorney	San Bernardino County District Attorney	Sutter County District Attorney
P.O. Box 986	303 W. Third Street	446 Second Street, Suite 102
Redding, CA 96097	San Bernardino, CA 92415	Yuba City, CA 95991
The Honorable Laura Krieg	The Honorable Krishna Abrams	The Honorable Eric Heryford
Tuolumne County District Attorney	Solano County District Attorney	Trinity County District Attorney
423 N. Washington Street	675 Texas Street, Suite 4500	P.O. Box 310
Sonora, CA 95370	Fairfield, CA 94533	Weaverville, CA 96093
The Honorable Lawrence Allen	The Honorable James Sanchez	The Honorable Patrick McGrath
Sierra County District Attorney	Office of the City Attorney, Sacramento	Yuba County District Attorney
100 Courthouse Square	915 I Street, 4 th Floor	215 Fifth Street, Suite 152
Downieville, CA 95936	Sacramento, CA 95814	Marysville, CA 95901
The Honorable Jordan Funk	The Honorable Gregg Cohen	The Honorable Birgit Fladager
Modoc County District Attorney	Tehama County District Attorney	Stanislaus County District Attorney
204 S. Court Street Room 202	P.O. Box 519	832 12th street, Suite 300
Alturas, CA 96101	Red Bluff, CA 96080	Modesto, CA 95353

ELECTRONIC MAIL SERVICE LIST

Alameda County District Attorney 7776 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgiv.org The Honorable Allison Haley Napa County District Attorney 1127 First St., Suite C Napa, CA 94559 CEPD@countyofnapa.org The Honorable Jefffey N. Feisig Yolo County District Attorney 301 Second Street Voodland, CA 95605 Susarville, CA 95100 Bud Porter Sunta Cruz County District Attorney 301 Second Street Voodland, CA 95659 Susarville, CA 95100 Bud Porter Sunta Cruz County District Attorney 301 Robert Attorney 301 Second Street Voodland, CA 95695 Susarville, CA 96130 Inlatimer@co.lassen.ca.us Alethea M. Sargent Cara County Sant Jego. CA 92101 CityAttyProp65@sandiego.gov Alethea M. Sargent Christopher Dalbey, Deputy District Attorney Santa Clara County San Francisco District Attorney Santa Clara County District Attorney Sant Francisco, CA 94103 alethea.sargent@sfgvo.org The Honorable Gregory D. Totten, Ventura County District Attorney 800 S Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org Vontura Costa County San Victoria Avenue Ventura, CA 93009 As an Andreas, CA 95249 San Diego County District Attorney San Diego County District Attorney San Diego County District Attorney San Diego County City of San Diego 1200 Third Ankcom. Deputy City of San Diego 1200 Third Avenue Christopher Dalbey, Deputy District Attorney San Francisco, CA 94103 alethea.sargent@sfgvo.org The Honorable Gregory D. Totten, Ventura County District Attorney 891 Mountain Ranch Road Volteria Avenue Ventura, CA 93009 Asspecialops@ventura.org Volteria Avenue Ventura Costa County San Lisu Obispo County San Lisu Obispo County County Govt Center Annex, 4th Floor Martinez, CA 94553 San Francisco, CA 93408 San Fran		ECTRONIC MAIL SERVICE	
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Dakland, CA 9462 CEPDProp65@acgivorg DAConsumer.Environmental@jcda.org Prop65@acdo.org The Honorable Allison Haley Napa County District Attorney Santa Cruz County District Attorney Tol Ocean Street San List Cruz County District Attorney 300 West Broadway San Diego County District Attorney 300 West Broadway San Diego County District Attorney 300 West Broadway San Diego County District Attorney Santa Cruz, CA 95060 San Diego Ca 92101 San Diego Charpof5@sdeda.org Michelle Latimer, Program Coordinator Lassen County District Attorney 301 Second Street 220 S. Lassen Street Susanville, CA 96130 SunDiego CA 92101 San Diego CA 9210			Sacramento County District Attorney
DAConsumer.Environmental@sjcda.org	7776 Oakport Street, Suite 650	222 E. Weber Avenue, Room 202	901 G Street
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Santa Cruz County District Attorney Santa Cruz County District Attorney Napa, CA 94559 Santa Cruz, CA 95060 SanDiego, CA 92101 SanDiego DAProp65@sdcda.org Michelle Latimer, Program Coordinator Lassen County City of San Diego CA 92101 SanDiego Chaput Catomaty City of SanDiego Chaput Catomaty	CEPDProp65@acgiv.org	DAConsumer.Environmental@sjcda.org	Prop65@sacda.org
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The Honorable Gregory D. Totten, Ventura County District Attorney 800 S Victoria Avenue Ventura, CA 93009 Ventura, CA 93009 San Andreas, CA 95249 San Andreas, CA 95249 San Francisco, CA 94102 San Fr			<u> </u>
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ELECTRONIC UPLOAD SERVICE LIST

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Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
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