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

JAY EPPS,
Plaintiff,
v.
WALMART INC.,
Defendant.

Case No. CGC-24-614279

[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 Jay Epps (“Epps”) and
4 Defendant Walmart Inc. (“Walmart”), with Epps and Walmart each referred to individually as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Epps is a resident of the State of California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 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 Epps alleges that Walmart imports, distributes, sells, facilitates, and/or offers for sale lead
17 tape, and that it does so without providing the health hazard warning required by Proposition 65.
18 Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment specifically include lead tape that are
22 offered for sale on Walmart.com to consumers in California and/or at Walmart retail stores located
23 in California (hereinafter referred to as the “Product” or “Products”).

24 **1.6 Notices of Violation**

25 On January 29, 2024, Epps served Walmart and certain requisite public enforcement
26 agencies with a 60-Day Notice of Violation (the “January Notice”), alleging that Walmart violated
27 Proposition 65 when it did not warn customers or consumers in California that certain lead tape
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1 products expose users to lead. To the best of the Parties’ knowledge, no public enforcer has
2 commenced and is diligently prosecuting the allegations set forth in the January Notice.

3 On April 26, 2024, Epps served Walmart and certain requisite public enforcement agencies
4 with an Amended 60-Day Notice of Violation (“April Notice”), alleging that Walmart violated
5 Proposition 65 when it did not warn customers or consumers in California that certain lead tape
6 products expose users to lead. To the best of the Parties’ knowledge, no public enforcer has
7 commenced and is diligently prosecuting the allegations set forth in the April Notice.

8 The January Notice and April Notice shall be referred to collectively as the “Notices.”

9 **1.7 Complaint**

10 On April 30, 2024, Epps filed the Complaint in the instant action (San Francisco Superior
11 Court Case No. CGC-24-614279) (the “Complaint”) naming Walmart as the only defendant for the
12 alleged violations of Proposition 65 that are the subject of the Notices.

13 **1.8 No Admission**

14 Walmart denies all material, factual and legal allegations contained in the Notices and
15 Complaint and maintains that all Products that were imported, distributed, offered for sale, and sold
16 in California have been and are in compliance with all laws. Nothing in this Consent Judgment
17 shall be construed as an admission by Walmart of any fact, finding, issue of law or violation of
18 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
19 by Walmart of any fact, finding, conclusion, issue of law or violation of law. This subsection 1.8
20 shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under
21 this Consent Judgment.

22 **1.9 Jurisdiction**

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

1 **1.10 Effective and Compliance Dates**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
3 Consent Judgment is approved by the Court. For purposes of this Consent Judgment, the term
4 “Compliance Date” shall mean within thirty days of court approval of this Consent Judgment.

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

6 **2.1 Injunctive Relief**

7 Pursuant to the terms set forth below in subsections 2.3 through 2.5, with respect to Products
8 sold in California that do not have a clear and reasonable Proposition 65 warning by the
9 Compliance Date, Walmart, at its option, agrees to either: (1) reformulate the Products; (2) require
10 its suppliers and vendors of Products sold in its California stores or on Walmart.com (and shipped
11 to a California address), as well as marketplace retailers selling Products on Walmart.com (and
12 shipping the same to a California address), to provide a clear and reasonable Proposition 65
13 warning for the Products, as set forth in subsections 2.3 or 2.4 below, or Walmart will otherwise
14 provide such a clear and reasonable warning for Products offered for sale in Walmart retail stores
15 located in California or sold on Walmart.com and shipped to a California address, as set forth in
16 subsections 2.3 or 2.4 below¹; or (3) cease selling such Products in California or prohibit the
17 shipment of such Products to California addresses with regard to Products sold on Walmart.com.
18 The Parties understand and agree that some Products may appear on Walmart.com that contain no
19 warning but are not able to be shipped to California addresses (so sales cannot be completed) and
20 that this complies with subsection 2.1(3) above. Section 2 of this Consent Judgment only applies
21 to Products (a) sold in Walmart retail stores located in California or (b) sold on Walmart.com and
22 shipped to a California address. Walmart acknowledges that it has taken steps to prohibit the
23 shipment of certain Products sold on Walmart.com to California addresses, but nothing in this

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

1 Consent Judgment shall prevent Products from being sold on Walmart.com to customers in
2 California that comply with Sections 2.2 or 2.3.

3 **2.2 Reformulation Standards**

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

11 **2.3 Clear and Reasonable Website Warnings (Products Sold Online)**

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

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

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

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

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

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

For any of the Products that are not Reformulated Products pursuant to Section 2.2 and are sold on Walmart.com and shipped to a California address after the Compliance Date, such online Product shall have a Warning or Short-Form Warning which is displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. The Warning (or a clearly marked hyperlink to the warning using the signal word “**WARNING**”) or Short-Form Warning given in conjunction with the online sale of the Products may appear either: (a) prominently placed on a page in which the Product’s photograph, price, “add to cart” section, or product details/specifications are displayed (e.g., product display page); (b) on the same webpage as the order form for the Products; or (c) on any webpage displayed to the purchaser during the checkout process and prior to its completion for any purchaser of the Product(s) with a California shipping address. The internet warning may use the Short-Form Warning content described in subsection 2.3(b).²

2.4 On-Product Warnings (Products Sold in Stores)

This subsection only applies to Products sold in Walmart’s retail stores in California. For all Products that are not Reformulated Products pursuant to Section 2.2 and which are determined to be manufactured after the Compliance Date, Warnings or Short-Form Warnings shall be affixed

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.).

1 to or included on the Product label, Product container/packaging (including, but not limited to,
2 Product bins), shelving where the Products are sold, or otherwise directly on each unit of the
3 Product provided for sale through Walmart’s retail locations located in California. For the purpose
4 of this Consent Judgment, “Product label” means a display of written, printed or graphic material
5 that is printed on or affixed to a Product. The warning language shall consist of either the Warning
6 or the Short-Form Warning (as allowed), described above in subsections 2.3(a) or (b),
7 respectively.³

8 **2.5 Foreign Language Requirement**

9 Walmart shall comply with the requirements set forth in 27 California Code of Regulations
10 §25602(d).

11 **2.6 Option to Delist**

12 On or before the Compliance Date, Walmart may, at its option, comply with the injunctive
13 commitments set forth in subsections 2.2 and 2.3 above by delisting a Product from Walmart.com
14 or prohibiting such Product sold on Walmart.com from being shipped to an address in California
15 if the Product is not reformulated pursuant to Section 2.2 or does not contain a clear and reasonable
16 warning pursuant to Section 2.3. If it does so, the previously delisted Product (or Product that is
17 prohibited from shipment to California) may be reinstated for sale online to California consumers
18 if it complies with subsections 2.2 or 2.3 prior to the date of such relisting.

19 **2.7 Right to Cure (And No Assignment or Transfer of Claims)**

20 Epps shall have the exclusive right to enforce the provisions of this Consent Judgment. Epps
21 represents and warrants neither he nor his agents or attorneys have assigned or otherwise
22 transferred, or attempted to assign, or transfer, any claim or claims against Walmart to a third-party.
23 Epps further warrants that neither he nor his agents or attorneys are aware of any other potential
24 private enforcer or attorney who intends to bring litigation based on the subject matter of the
25 Consent Judgment.

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27 ³ Pursuant to 27 CCR § 25603(a)(1), where the Product label, Product container/packaging
28 (including, but not 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 To the extent Epps identifies any Product (or any other item for sale on Walmart.com or in
2 a Walmart retail store located in California that is similar in nature to any Product) in the future
3 which he believes is not in compliance with this Consent Judgment, Epps agrees to advise Walmart
4 of such alleged breach in the manner set forth in Section 8, and provide Walmart with 20 business
5 days (calculated from the date notice is provided electronically) to cure any alleged violation of this
6 Consent Judgment (pursuant to the applicable options set forth in Sections 2.1, 2.2, 2.3, 2.4, or 2.6)
7 (the “Notice to Cure”).⁴ Such Notice to Cure to Walmart shall contain information sufficient for
8 Walmart to identify the Product(s) and the Product’s seller or supplier such as the Product’s UPC
9 (Universal Product Code) Number, the Walmart Item Identification Number (also known as
10 “Walmart Catalog Item ID”), a photograph of Product, the Walmart Order Number, and for
11 Products sold online, a screenshot of the Product’s online listing (also known as the product display
12 page), including the Product’s URL (Uniform Resource Locator).

13 Epps reserves the right to seek additional civil penalties, reimbursement of reasonable
14 attorney’s fees and costs, and any other available remedies arising from or related to Notices to
15 Cure associated with Products covered by the Consent Judgment. However, Epps shall not be
16 entitled to seek or recover any civil penalties, and Epps and his counsel shall not be entitled to
17 recovery or reimbursement of attorney’s fees and/or costs, or any other available remedies arising
18 from or related to Notices to Cure associated with Products covered by the Consent Judgment or
19 the alleged breach or violation of the Consent Judgment, provided Walmart timely remedies the
20 alleged non-compliance within 20 business days of receiving the Notice to Cure, as discussed
21 herein. If Walmart cures the alleged non-compliance within 20 business days of receiving the
22 Notice to Cure, Walmart shall not be deemed in breach or violation of this Consent Judgment in
23 any respect, and Walmart shall not be liable (whether for civil penalties or attorneys’ fees or costs)
24 for sales of such Products referenced in the Notice to Cure occurring prior to the expiration of the
25 20-day cure period.

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27 ⁴ For purposes of the right to cure, the “Compliance Date” references in Sections 2.1, 2.2, 2.3, 2.4,
28 and 2.6 shall be disregarded, as the timing to cure is 20 business days, as set forth in Section 2.7.

1 **3. MONETARY TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims referred to in
4 the Notices, Complaint, and this Consent Judgment, Walmart agrees to pay \$50,000 in civil penalties
5 to be allocated according to Health & Safety Code §25249.12(c)(1) and (d), with seventy-five
6 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
7 Assessment (OEHHA), and the remaining twenty-five percent (25%) of the penalty payment
8 retained by Epps. Walmart shall issue its payment in two checks made payable to (a) “OEHHA” in
9 the amount of \$37,500; and (b) “Jay Epps” in the amount of \$12,500. Epps’s counsel shall send the
10 portions of the penalties paid by Walmart to OEHHA and Epps.

11 **3.2 Fees and Costs**

12 Walmart shall pay \$200,000 to Epps’ counsel as reimbursement for investigation fees and
13 costs, attorneys’ fees, and any other costs incurred as a result of investigating, bringing this matter
14 to Walmart’s attention, litigating, and negotiating a settlement in the public interest and any further
15 efforts to conclude this action, such as seeking court approval.

16 **3.3 Payment Timing**

17 Walmart shall deliver its payment of \$50,000 in civil penalties and \$200,000 in attorneys’
18 fees and costs to Epps’s counsel within fourteen (14) days of the Effective Date. Epps’s counsel
19 shall provide Walmart with a current W-9 (on the 2024 form) from Epps, Chanler LLC, and
20 OEHHA, within seven (7) days of the execution of this Consent Judgment. Any checks due under
21 subsections 3.1 and 3.2 of this Consent Judgment shall be delivered to Epps’s counsel to the address
22 in subsection 3.4 by overnight courier, with a tracking number. Any electronic transfer payments
23 due under subsections 3.1 and 3.2 of this Consent Judgment shall be delivered by wire transfer to
24 “Chanler LLC, IOLTA Account,” in accordance with the wire instructions to be provided by Epps’s
25 or his counsel. Epps’s counsel shall be responsible for delivering the required payment of civil
26 penalties to OEHHA.

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1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

4 Chanler, LLC
5 Attn: Proposition 65 Controller
6 72 Huckleberry Hill Road
7 New Canaan, CT 06840

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Epps’s Release of Proposition 65 Claims**

9 Epps, acting on his own behalf and in the public interest, and on behalf of his past and
10 current agents, representatives, attorneys, successors, and assigns, hereby releases Walmart, Wal-
11 Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-
12 Mart.com USA, LLC, and each of their respective parents, direct and indirect subsidiaries,
13 affiliates, affiliated entities under common ownership, past and current agents, directors, members,
14 managers, officers, employees, representatives, shareholders, insurers, beneficiaries, attorneys,
15 successors, and assignees (collectively, “Released Parties”) and each entity to whom any of the
16 Released Parties directly or indirectly distributes or sells the Products including, but not limited to,
17 its downstream distributors, wholesalers, customers, retailers, marketplaces and e-commerce
18 platforms, franchisers, cooperative members, licensors and licensees of, from, and with regard to
19 any and all alleged violations arising under Proposition 65 for unwarned exposures to lead from
20 the Products manufactured, imported, distributed or sold on Walmart.com or at a Walmart retail
21 store located in California prior to the Compliance Date which shall also be effective as a full and
22 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
23 attorneys’ fees, damages, losses, claims, liabilities and demands of Epps and by any other
24 citizen/private enforcer of any nature, character or kind, whether known or unknown, suspected or
25 unsuspected, arising out of alleged or actual exposures to lead in Products manufactured, imported,
26 distributed or sold on Walmart.com or at a Walmart retail store before the Compliance Date.
27 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65

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1 by Walmart (as well as the other Walmart-related entities referenced above) with respect to the
2 alleged or actual failure to warn about exposures to lead from the Products.

3 **4.2 Walmart’s Release of Epps**

4 Walmart, on its own behalf and on behalf of its past and current agents, representatives,
5 attorneys, successors and assignees, hereby waives any and all claims against Epps and his
6 attorneys and other representatives, for any and all actions taken or statements made (or those that
7 could have been taken or made) by Epps and his attorneys and other representatives in the course
8 of investigating the claims at issue in this matter, seeking to enforce Proposition 65 against it in
9 this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment shall be null and void if, for any reason, it is not approved and
12 entered by the Court within one year after it has been fully executed by all Parties. Epps and
13 Walmart agree to support the entry of this agreement as a judgment, and to obtain the Court’s
14 approval of their settlement in an expedited manner as allowed by law. The Parties acknowledge
15 that, pursuant to California Health & Safety Code §25249.7(f)(4), Epps will file a noticed motion
16 for judicial approval of this Consent Judgment. In furtherance of obtaining such approval, the
17 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry
18 of this agreement as a judgment, and to obtain judicial approval of their settlement in a timely and
19 expedited manner. For purposes of this section, “best efforts” shall include, at a minimum,
20 supporting the motion for approval, jointly requesting the Court to have the motion heard on
21 shortened time as allowed, responding to any objection that any third-party may file or lodge, and
22 appearing at the hearing before the Court if so requested.

23 **6. SEVERABILITY**

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted,
4 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
5 Walmart may provide Epps with written notice of any asserted change in the law, and shall have
6 no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the
7 extent that, the Products are affected by such a change in the law. Nothing in this Consent
8 Judgment shall be interpreted to relieve Walmart from its obligation to comply with any pertinent
9 state or federal law or regulation.

10 **8. NOTICE**

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

17 To Walmart:

18 Walmart Inc. c/o
19 C T Corporation System
20 330 North Brand Boulevard, Suite 700
Glendale, CA 91203

21 With a Copy To:

22 Gregory Berlin, Esq.
23 Alston & Bird LLP
350 South Grand Avenue, 51st Floor
Los Angeles, CA 90071
greg.berlin@alston.com

To Epps:

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

24 Any Party may, from time to time, specify in writing to the other Party a change of address
25 to which all notices and other communications shall be sent.
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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
12 therein. There are no warranties, representations, or other agreements between the Parties except
13 as expressly set forth herein. No representations, oral or otherwise, express or implied, other than
14 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
15 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
16 to exist or to bind any of the Parties hereto. Provided, that nothing in this section shall be deemed
17 to diminish the Parties' rights under the search protocol relating to electronically stored information
18 that the Parties are negotiating concurrently with this Consent Judgment.

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

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11 Date: May 29, 2024

Date: ~~May 30, 2024~~ May 31, 2024 | 09:34 CDT

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14 By:  _____

By:  _____

15 JAY EPPS

WALMART INC.

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By: Tony Juneau, In-House Counsel

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