



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ONTARIO PROVINCIAL COUNCIL
OF CARPENTERS' PENSION TRUST
FUND, POLICE & FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,
AND NORFOLK COUNTY
RETIREMENT SYSTEM, Derivatively
on Behalf of WALMART INC.,

Plaintiffs,

v.

S. ROBSON WALTON, GREGORY B.
PENNER, STEUART WALTON,
TIMOTHY P. FLYNN, THOMAS W.
HORTON, MARISSA A. MAYER,
DOUG MCMILLON, STEVEN S.
REINEMUND, PHYLLIS HARRIS, and
JAY JORGENSEN,

Defendants,

and

WALMART INC.,

Nominal Defendant.

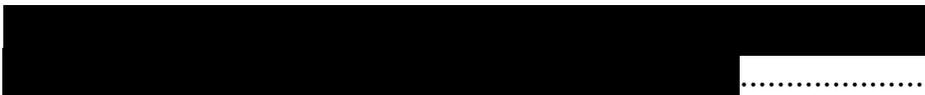
C.A. No. 2021-0827-JTL

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VERIFIED AMENDED STOCKHOLDER DERIVATIVE COMPLAINT

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Plaintiffs Ontario Provincial Council of Carpenters' Pension Trust Fund, Police & Fire Retirement System of the City of Detroit, and Norfolk County Retirement System (collectively, "Plaintiffs"), derivatively on behalf of nominal defendant Walmart Inc. ("Walmart" or the "Company"), bring this derivative complaint (the "Complaint") for breaches of fiduciary duty against:

- S. Robson 'Rob' Walton, Steuart Walton, and Gregory B. Penner as members of the Board of Directors of Walmart (the "Board") and as controlling stockholders of Walmart;
- The following Company officers: President and CEO Doug McMillon; former Senior Vice President and Chief Compliance Officer, Phyllis Harris; and former Global Chief Ethics and Compliance Officer, Jay Jorgensen (with S. Robson 'Rob' Walton and Gregory B. Penner, the "Officer Defendants"); and
- The following additional directors: Timothy P. Flynn; Thomas W. Horton; Marissa A. Mayer; and Steven S. Reinemund (with S. Robson 'Rob' Walton, Steuart Walton, Gregory B. Penner, and Doug McMillon, the "Director Defendants").¹

Except for allegations specifically pertaining to Plaintiffs and Plaintiffs' own acts, the allegations in the Complaint are based upon information and belief, which include but are not limited to: (i) documents obtained from Walmart pursuant to 8 *Del. C.* § 220 ("Section 220"); (ii) Walmart's public filings with the United States

¹ The Officer Defendants and Director Defendants are collectively referred to herein as the "Defendants," and each a "Defendant." Unless indicated otherwise, all emphasis and alterations are added and citations omitted.

Securities and Exchange Commission (the “SEC”); (iii) press releases; (iv) media reports; (v) public sources, including court filings; and (vi) counsel’s investigation.

NATURE OF THE CASE

1. This case is about fiduciaries who were so deferential to the controlling stockholders’ fixation on the bottom line that they knowingly let the Company operate in violation of laws essential for managing the proliferation of dangerous drugs. By elevating short-term profits over legal compliance, Walmart exacerbated the immeasurable human suffering inflicted on this country by the opioid epidemic.

2. Walmart is reckoning with the consequences of its noncompliance in the form of, *inter alia*, the massive Opioid MDL (defined below), a sprawling civil lawsuit brought by the Department of Justice (the “DOJ”), and a battered reputation. Defendants breached their duties by knowingly allowing Walmart’s pharmacies and distribution centers to operate outside the law, and therefore are liable to Walmart for the harm to the Company.

3. Walmart has long been one of world’s largest retailers. At the helm of this empire is the Walton family, which has controlled Walmart since Sam Walton founded it in 1962. Over the past decade, the Walton family has owned about 50% of the Company’s stock.

4. A Walton-affiliated cadre exercised operational control, including over legal compliance, at all relevant times. From 1992 until 2015, S. Robson ‘Rob’ Walton (“R. Walton”)—Sam Walton’s son—was Chairman of the Board, which the Company’s bylaws define as an executive role with responsibility for “oversight and governance matters.”² Gregory B. Penner (“Penner”), who is married to R. Walton’s daughter, began as a director of Walmart in 2008 and has been Chairman since he succeeded his father-in-law in 2015. Doug McMillon (“McMillon”), a Walton family favorite, was named CEO in 2014. For years, this triumvirate sat on, and continues to sit on, the Company’s powerful “Executive Committee,” which “[i]mplements policy decisions of the Board” and “[a]cts on the Board’s behalf between Board meetings.”³ Steuart Walton (“S. Walton”)—R. Walton’s nephew—has been a director since 2016. Thus, the Waltons have an iron grip over Walmart through stock ownership, Board representation, and managerial control.

5. Central to the Company’s ethos is a laser focus on the bottom line, instilled by the Waltons since Sam Walton’s “10 Rules for Building a Business”:

² Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 33 (Apr. 23, 2014).

³ *See* Walmart Inc., Definitive Proxy Statement (Schedule 14A), at 25 (Apr. 22, 2021).

Control your expenses better than your competition. This is where you can always find the competitive advantage.⁴

6. Within this framework, Walmart required compliance projects to generate revenue-pursuing strategies that would generate returns on investment rather than meet the Company's legal obligations. Under R. Walton, the Company suffered through years of Foreign Corrupt Practices Act violations, including a bribery scandal in Mexico and then a cover-up rather than adoption of bona fide compliance systems.

7. Walmart applied the same ethos to its expansive pharmacy (or "Health & Wellness") division. Since 2011, Walmart has operated over 5,000 pharmacies which account for more than 10% of Walmart's domestic net sales, and until 2018, "self-distributed" drugs from manufacturers to its pharmacies.

8. [REDACTED]

Because Walmart dispenses and distributed controlled substances (including a massive amount of opioids) through its thousands of pharmacies, compliance was particularly essential.

⁴ <https://corporate.walmart.com/our-story/history/10-rules-for-building-a-business>.

⁵ WMT_BR_DPF_00011330.

9. Most importantly, Walmart was subject to the Controlled Substances Act (the “CSA”) and related regulations. Under the CSA, Walmart was required to implement reporting mechanisms and controls designed to, *inter alia* (i) identify and report to the Drug Enforcement Administration (“DEA”) suspicious orders of controlled substances; (ii) identify and investigate suspicious prescriptions (*e.g.*, large, repeat orders from “pill-mill” doctors) and “refuse to fill” (“RTF”) such orders; (iii) report RTF events to the DEA; (iv) provide internal reporting such that Walmart pharmacists could identify red-flagged prescriptions across its nationwide platform; and (v) prevent theft of controlled substances by Walmart employees.

10. Despite these extensive obligations, prior to November 2010, Walmart had *zero written policies or procedures* in place related to the monitoring of suspicious orders for controlled substances. Then, in March 2011, the Company settled a DEA investigation by entering into an “Administrative Memorandum of Agreement” (the “2011 MOA”) with the government. In the 2011 MOA, the Company committed to implement a variety of compliance measures within no later than four years and otherwise comply with the CSA. R. Walton was Chairman and an Executive Committee member at the time. He, Penner, and Steven S. Reinemund (“Reinemund”) were also directors.

11.

[REDACTED]

As Susanne Hiland, Senior Director for Walmart’s Health & Wellness Compliance and Quality Assurance programs stated at the time, the drastically reduced budget and prioritization based on return on investment metrics left compliance officials with a “Sophie’s Choice,” choosing between “high need project[s].”

12. With an insufficient budget and the need to justify compliance initiatives based on return on investment, Walmart focused solely on implementing initiatives relating to internal employee theft of controlled substances because doing so increased the Company’s bottom line. In contrast, external diversion—*i.e.*, filling prescriptions on behalf of pill-mill prescribers—resulted in revenue, and therefore

despite Walmart’s obligations under the CSA to prevent external diversion, programs capable of doing just that could not provide the necessary return on investment to justify implementation.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As set forth in more detail below, Defendants and demand Board members R. Walton, Penner, McMillon, Timothy P. Flynn (“Flynn”), Thomas W. Horton (“Horton”), Marissa A. Mayer (“Mayer”), and Steven A. Reinemund (“Reinemund”) were aware of some or all of the red flags.

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

15. [Redacted]

16. [Redacted]

[Redacted]

[Redacted]

[REDACTED] By withholding this information from pharmacists, they could not identify prescribers, patients, or even the thousands of prescriptions that Walmart pharmacists had previously refused to fill. Walmart certainly did not use its vast trove of patient data to identify red flags of possible external diversion—instead it used that data to drive additional sales of opioids.

17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18. [REDACTED]

[REDACTED] By 2016, Walmart was under criminal and civil investigation from the DOJ for diverting staggering amounts of opioids to pill-mill doctors. As reported by *ProPublica* in March 2020, it was “troubling to the federal investigators” that Walmart violated the CSA from 2011 to 2016, despite the fact that “for much of this period, Walmart was operating under a secret settlement . . . with the DEA.” Indeed, “[p]rosecutors believed that Walmart was not fulfilling the terms of its agreement with the DEA.” The Company would not be in this

position if the fiduciaries had abided by the 2011 MOA and created a real compliance program, or monitored its operation.

19. [REDACTED]

[REDACTED] However, in November 2017, Walmart decided to exit the distribution business, without any disclosure as to the reasons why. This, however, did nothing to fix or limit external diversion of opioids via Walmart’s pharmacies, which continued to have no support in their efforts to investigate suspicious prescriptions for opioids.

20. Meanwhile, the Board—including Defendants and demand Board members R. Walton, McMillion, Penner, S. Walton, Reinemund, Flynn, Horton, and Mayer—permitted Walmart to actively intervene in the DOJ’s investigation. Walmart’s wrongful intervention was so severe that the head of the Eastern District of Texas’s Civil Division—Assistant United States Attorney Josh Russ—resigned in protest, noting that Walmart had “abused the Department’s fairness, largely ignored our subpoena, and scoffed at our larger work on behalf of Americans.” As he wrote, “cognizant of the many deaths it has caused, [Walmart] redefines shamefulness by claiming it is a victim.”

21. Even as the DOJ faced Walmart’s torrent of external interference, it continued to work towards filing a civil lawsuit against Walmart for its non-

compliance with the CSA. In response, the full Board doubled-down on its shameless blame-game by authorizing a *lawsuit against the government*, hoping that the Company would somehow be excused from CSA compliance. The federal district court swiftly dismissed the action. *Bloomberg* described it as “a spectacular failure” in “attempted forum shopping.” *Reuters* opined that “Walmart’s tactic [was] a complete flop,” that “did not stave off the DOJ’s complaint.” Walmart even appealed the District Court’s dismissal opinion, which was unsurprisingly affirmed by the Fifth Circuit Court of Appeals.⁶

22. Now, the Company finds itself in a tornado of government and civil prosecutions for its role in exacerbating America’s opioid crisis, which took nearly 500,000 lives between 1999 and 2019.⁷ At the forefront of the lawsuits are: (i) a multidistrict litigation in the Northern District of Ohio before Judge Polster (*In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio) (the “Opioid MDL”)); and (ii) a civil lawsuit filed by the DOJ in the United States District Court for the District of Delaware before Judge Connolly (*United States of America v. Walmart Inc.*, No. 1:20-cv-01744-CFC (D. Del.) (the “DOJ Action”)).

⁶ *Walmart Inc. v. U.S. Department of Justice*, 21 F.4th 300, 305 (5th Cir. 2021).

⁷ *Understanding the Epidemic*, CDC (updated Mar. 17, 2021), <https://www.cdc.gov/opioids/basics/epidemic.html>.

23. In the Opioid MDL, thousands of plaintiffs from across the country—including counties, cities, healthcare providers, Native American tribes, individuals, and third-party payors—sued opioid manufacturers, distributors, pharmacies, and other supply-chain companies (including Walmart) to hold them accountable for their roles in the opioid epidemic. Judge Polster has already denied two of Walmart’s motions for summary judgment, finding that:

“A jury could review the record evidence and find that Pharmacy Defendants [including Walmart] share a *general conspiratorial objective*, with themselves and with other Defendants, *to expand the opioid market using false information and disregard regulatory obligations* in order to achieve that goal”; and

“[T]he record evidence *suggests obvious deficiencies that a layperson could plainly recognize*” in Walmart’s compliance program.

24. Following the first bellwether trial in the Opioid MDL, in November 2021, a jury found Walmart liable for helping fuel the U.S. opioid crisis. A separate legal proceeding to determine how much Walmart will have to pay to help remedy the crisis, with damages likely to run into the billions of dollars.

25. In the DOJ Action, the federal government alleged that the Company repeatedly violated the CSA and other laws for more than a decade through illegal dispensation and distribution of controlled substances, including opioids. Like the Opioid MDL plaintiffs, the DOJ alleges that Walmart’s compliance system

regarding its distribution of controlled substances was utterly deficient, proving the point with basic arithmetic:

Over an approximately four-year period [from June 26, 2013 until November 29, 2017], a time during which Walmart shipped an estimated *37.5 million controlled-substance orders* to its pharmacies, it *reported only 204 suspicious orders to DEA*—in other words, *almost none*. By comparison, during the same time period, Walmart’s back-up distributor, McKesson Corporation, which filled orders only when Walmart could not and which therefore shipped far fewer than 37.5 million orders, reported to DEA more than 13,000 suspicious orders from Walmart pharmacies.⁸

26. As the DOJ alleged, “Walmart failed to adopt the robust compliance program it had promised the DEA it would adopt. It did gather information from its pharmacies as required by its MOA with DEA. But Walmart then took an approach that effectively denied its pharmacists the information they needed in order to comply with their legal obligations when dispensing controlled substances.”⁹

27. Clearly Walmart lacked adequate DEA-reporting systems, despite the Board-level awareness that such reporting was mandatory under the CSA and expressly required by the 2011 MOA. The reason for the Company’s non-compliance is best explained by Brad Nelson, then a director of Health & Wellness compliance, who wrote on February 13, 2015, that:

⁸ DOJ Compl. ¶34.

⁹ DOJ Compl. ¶140.

The MOA that requires the reporting of Refusal to fills expires in 30 days. We have not invested a great amount of effort in doing analysis on the data since the agreement is virtually over. *Driving sales and patient awareness is a far better use of our Market Directors and Market manager's time.*

28. In describing the DOJ Action, Jeffrey Bossert Clark, Acting Assistant Attorney General of the Civil Division, said:

It has been a priority of this administration to hold accountable those responsible for the prescription opioid crisis. As one of the largest pharmacy chains and wholesale drug distributors in the country, Walmart had the responsibility and the means to help prevent the diversion of prescription opioid. . . . *Instead, for years, it did the opposite*—filling thousands of invalid prescriptions at its pharmacies and failing to report suspicious orders of opioids and other drugs placed by those pharmacies. *This unlawful conduct contributed to the epidemic of opioid abuse throughout the United States.*

29. Jason R. Dunn, the U.S. Attorney for the District of Colorado, described the investigation leading up to the filing of the DOJ Action against Walmart similarly: “Today’s complaint is the culmination of a painstaking investigation by my office and our Department of Justice colleagues that *uncovered years of unlawful conduct* that did untold damage to communities around the country.”

30. Demand on the Board is excused here because a majority of the twelve-person demand Board faces a substantial likelihood of liability. Defendants R. Walton and Penner have been directors since before the 2011 MOA was signed, had express, executive-level responsibility for “oversight and governance” during their

tenures as Chairmen, and sat on the Executive Committee. Like McMillon—who as CEO oversaw the Potemkin-level effort to comply with the 2011 MOA and CSA—R. Walton and Penner are culpable for care, loyalty, and good faith fiduciary breaches.

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These seven Defendants, plus S. Walton, then failed to monitor the plan (which would have revealed its inadequacy), enabling the Company's continued illegal operations. All the while, the Board concealed the true scope and gravity of the Company's non-compliance, going as far as intervening in the DOJ's investigation and preemptively suing the federal government when Walmart was called to account for its actions, rather than comply with the law.

32. As then-Vice Chancellor Strine observed in *In re Massey Energy Co.* regarding that board's decision to sue its federal regulator:

As a kid, most of us are taught that it is not a good excuse to argue with the rules. Telling your parents that all the kids are getting caught shoplifting, cheating, or imbibing illegal substances is not, fortunately, a good excuse. For fiduciaries of Delaware corporations, there is no room to flout the law governing the corporation's affairs. If the fiduciaries of a Delaware corporation do not like the applicable law,

they can lobby to get it changed. But until it is changed, they must act in good faith to ensure that the corporation tries to comply with its legal duties.¹⁰

Because ignoring the law is “disloyal in the most fundamental of sense,”¹¹ Defendants must be held to account.

33. Demand is also excused because this is a company dominated by a particularly powerful controlling stockholder family. The idea that these directors could disinterestedly consider a demand to sue Walton family leaders and lieutenants like R. Walton, Penner, McMillion, and S. Walton is farcical. Rather, Walmart’s “do-nothing” Board operated as little more than a governance fig-leaf for the Waltons, and source of social cachet for the retired or semi-retired luminaries who acted as directors.

34. In the face of the Opioid MDL, the DOJ Action, and numerous other lawsuits, Walmart stands to lose billions of dollars in fines, settlements, and judgments, in addition to massive reputational damage. Defendants’ failure to implement and enforce CSA compliance, despite *years* of warnings and opportunities, caused this harm. These fiduciaries’ failure to act to discharge known

¹⁰ 2011 WL 2176479, at *21 (Del. Ch. May 31, 2011).

¹¹ *Id.* at *21 n.148.

legal obligations, in slaving devotion to profit margin, pleads a classic claim for conscious inaction.

THE PARTIES

I. PLAINTIFFS

35. Plaintiff Ontario Provincial Council of Carpenters' Pension Trust Fund ("OPCC") owned Walmart common stock at all relevant times and will continue to hold shares until the conclusion of this action.

36. Plaintiff Police & Fire Retirement System of the City of Detroit ("Detroit P&F") owned Walmart common stock at all relevant times and will continue to hold shares until the conclusion of this action.

37. Plaintiff Norfolk County Retirement System ("Norfolk") owned Walmart common stock at all relevant times and will continue to hold shares until the conclusion of this action.

38. Plaintiffs bring this action derivatively in the right and for the benefit of the Company to redress breaches of fiduciary duty by its officers and directors.

39. Plaintiffs are stockholders of Walmart, were stockholders of the Company at the time of the wrongdoing alleged herein, and have been stockholders of the Company continuously since that time.

40. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting their rights.

II. NOMINAL DEFENDANT

41. Nominal Defendant Walmart, Inc. (formerly known as Wal-Mart Stores, Inc. and defined above as “Walmart” or the “Company”) is a multinational retailer incorporated in Delaware. Along with retail stores and other business units, Walmart operates one of the largest pharmacy chains in the United States, consisting of more than 5,000 DEA-registered pharmacies located in Walmart and Sam’s Club stores in the United States and its territories.

42. As a pharmacy chain, Walmart dispenses controlled substances through its agents and employees. Since 2011, Walmart has attributed at least 10% of its annual domestic net sales to its pharmacy division (also known as the Health & Wellness division).

43. Until 2018, Walmart acted as a distributor of controlled substances for its U.S. pharmacies. From approximately 2000 to approximately 2018, Walmart operated at least six distribution centers and distributed tens-of-millions of shipments of controlled substances to the Company’s U.S. pharmacies.

44. As discussed in detail below, at all relevant times herein, Walmart was responsible for the compliance of its pharmacies and distribution centers with all provisions of the CSA and the regulations promulgated under the CSA.

III. DEFENDANTS

A. Walton Family Defendants

45. S. Robson Walton (defined above as “R. Walton”) has been a director since 1978. Son of Walmart founder, Sam Walton, R. Walton joined the Company in 1969 and was Chairman of the Board from 1992 to 2015. Prior to becoming Chairman, which is an executive position,¹² R. Walton held a variety of senior positions at Walmart, including Senior Vice President, Corporate Secretary, General Counsel, and Vice Chairman. R. Walton has sat on the Executive Committee at all relevant times. R. Walton has power over (both directly and indirectly, through individual and shared voting and investment power) 48.28% of the Company’s stock, as of April 2021. R. Walton is Defendant S. Walton’s uncle and Defendant Penner’s father-in-law. The Company admits that R. Walton is not independent.

¹² Under Article IV, Section 1 of Walmart’s Amended and Restated By-Laws, “[t]he officers of the Corporation shall consist of a Chairman of the Board . . . and such other officers as the Board may appoint, including but not limited to one or more Vice Chairs of the Board.”

46. Gregory B. Penner (defined above as “Penner”) has been a director since 2008. He was Vice Chairman of the Board, which is an executive position, from June 2014 to June 2015, at which point he was appointed Chairman.¹³ Penner has sat on the Executive Committee since 2016. Penner married R. Walton’s daughter in 2006 and thus into the astronomically wealthy Walton family. He is only the third person to serve as Walmart’s Chairman (and the first not to be a Walton by blood), following his father-in-law, Defendant R. Walton, and grandfather-in-law, Sam Walton. Penner has worked at Walmart in a number of senior capacities over the years. The Company admits that Penner is not independent.

47. Steuart Walton (defined above as “S. Walton”) has been a director since June 2016. He is Sam Walton’s grandson, R. Walton’s nephew, and Penner’s cousin-in-law. The Company admits that S. Walton is not independent.

B. Director Defendants

48. R. Walton, Penner, and S. Walton are each Director Defendants.

49. Timothy P. Flynn (defined above as “Flynn”) has been a director and Audit Committee member since July 27, 2012, and Chairman of the Audit Committee since June 2014.

¹³ *Id.*

50. Thomas W. Horton (defined above as “Horton”) has been a director and Audit Committee member since November 21, 2014. Horton has sat on the Executive Committee since 2019.

51. Marissa A. Mayer (defined above as “Mayer”) has been a director since June 2012.

52. Doug McMillon (defined above as “McMillon”) was appointed to the Board in November 2013, and as Walmart’s CEO on February 1, 2014. McMillon has sat on the Executive Committee since 2014. McMillon joined the Company in 1990 and has held numerous executive positions. The Company admits that McMillon is not independent. As depicted by the table below, McMillon has made over \$150 million since being appointed CEO of the Walton-controlled Company:

Fiscal Year*	Total Compensation
2015	\$ 19,392,608
2016	\$ 19,808,797
2017	\$ 22,352,143
2018	\$ 22,791,276
2019	\$ 23,618,233
2020	\$ 22,105,350
2021	\$ 22,574,358
Total	\$ 152,642,765

* Fiscal years end on January 31.

53. Steven S. Reinemund (defined above as “Reinemund”) has been a director since June 2010.

C. Officer Defendants

54. R. Walton, Penner, and McMillon are each Officer Defendants.

55. Phyllis Harris (“Harris”) was the Company’s Senior Vice President and Chief Compliance Officer from July 2011 until April 2015, and Senior Vice President of Corporate Functions and Legal Operations from April 2015 to March 2019.¹⁴

56. Jay Jorgensen (“Jorgensen”) served as the Company’s Global Chief Ethics and Compliance Officer from 2012 to January 2018.

THE 220 ACTIONS

57. As alleged further herein, following years of active concealment by the Board, Plaintiffs sent Section 220 demands in early 2020 to inspect and copy certain Company books and records related to Walmart’s distribution and disbursement of controlled substances. As is consistent with Walmart’s general opioid legal strategy,

¹⁴ Under Article IV, Section 1 of Walmart’s Amended and Restated By-Laws, “[t]he officers of the Corporation shall consist of . . . such other officers as the Board may appoint, including . . . one or more Executive Vice Presidents, [and] one or more Senior Vice Presidents. . . .”

it fought the Section 220 demands to the death and obstinately refused to produce any documents.

58. On June 17, 2020, Detroit P&F and Norfolk filed Verified Complaints for Relief Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records and Motions for Expedited Proceedings. On August 21, 2020, OPCC filed its Verified Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records and Motion for Expedited Proceedings. The parties agreed to coordinate the three Section 220 actions.

59. Following discovery and pretrial briefing, Plaintiffs tried the case to this Court on October 5, 2020.

60. On October 29, 2020, the Court entered an order requiring the Company to produce various categories documents (the “220 Order”).¹⁵ Specifically, the Court agreed with Plaintiffs that they were entitled to many of the Company’s books and records that they requested, noting that “[t]here *does not appear to have actually been any reasonable basis* to dispute the proper purpose element” for production under Section 220.¹⁶ The Court further observed that “this is a case where, really,

¹⁵ *Police & Fire Ret. Sys. of the City of Detroit v. Walmart, Inc.*, C.A. No. 2020-0478-JTL (Del. Ch. Oct. 29, 2020) (ORDER).

¹⁶ *Police & Fire Ret. Sys. of the City of Detroit v. Walmart, Inc.*, C.A. No. 2020-0478-JTL, Tr. at 50-51 (Del. Ch. Oct. 5, 2020) (TRANSCRIPT).

the question ought to be whether there's some basis for fee shifting on the proper purpose element.”¹⁷

61. [REDACTED]

62. [REDACTED]

63. The 220 Production [REDACTED]

[REDACTED] forms the basis for many of the allegations herein.

¹⁷ *Id.* at 50.

¹⁸ Under the 220 Order, “[a]ll books and records falling within the categories of documents that the Court orders the Company to produce and produced prior to the Certification will be deemed incorporated by reference in any plenary complaint filed by [Plaintiffs] in subsequent litigation relating to this matter.” However, “any books and records that fall outside the categories of documents ordered by the Court or are produced after the Certification shall not be deemed incorporated by reference.”

FACTUAL ALLEGATIONS

I. THE WALTON FAMILY CONTROLS WALMART

A. Sam Walton Founds Walmart and Instills a Laser Focus on Profit Maximization

64. Sam Walton founded Walmart in 1962, opening the first Company store in Rogers, Arkansas. Sam Walton indoctrinated the Company with his “10 Rules for Building a Business,” which are principles to which Walmart adheres to this day.

Such principles include:

- **Motivate your partners.** Money and ownership alone aren’t enough. Set high goals, encourage competition, and then keep score. Don’t become too predictable.

- **Control your expenses better than your competition.** This is where you can always find the competitive advantage. You can make a lot of different mistakes and still recover if you run an efficient operation. Or you can be brilliant and still go out of business if you’re too inefficient.

65. By following these principles, Walmart grew exponentially over the subsequent decades and has achieved the status of the world’s largest retailer. As the executive director of the Retail Management Institute at Santa Clara University

observed, “Walmart is an execution culture. It’s not a culture where people come with a lot of chest-thumping ideas. It’s about getting stuff done.”¹⁹

B. The Walton Family Controls the Company Through Stock Ownership, Board Representation, and the Executive Committee

66. The Waltons, including R. Walton and Penner, control Walmart. Through direct and indirect stock ownership, the Walton family wielded nearly 49% of the Company’s voting power as of April 7, 2021. As illustrated by the table below, the Walton family has controlled about 49% or more of the Company’s voting power since Walmart entered into the 2011 MOA.²⁰

Year	Voting %
2011	~49%
2012	~50%
2013	~50%
2014	~51%
2015	~50%
2016	~51%
2017	~51%
2018	~51%
2019	~50%
2020	~50%
2021	~49%

¹⁹ Matthew Boyle, *Inside Walmart’s Corporate Culture Clash Over E-Commerce*, BLOOMBERG (Nov. 12, 2019), <https://www.bloomberg.com/news/articles/2019-11-12/walmart-s-physical-and-digital-businesses-are-in-a-culture-clash>.

²⁰ The sources for such stock ownership are the Company Definitive Proxy Statements for 2011 through 2021.

67. With about 50% of the vote at all times, each director sat on the Board at the Waltons' pleasure. None of the board seats were subject to majority-of-the-minority voting or nomination rights.

68. The Waltons also control the Company through their presence on the Board and ability to select officers. Defendant Penner (the son-in-law of Sam Walton) is Walmart's Chairman, and his appointment as Chairman in 2015 "cement[ed] the founding family's influence over the retailer."²¹ R. Walton (son of Sam Walton and Chairman until 2015) and S. Walton (nephew of R. Walton and a cousin of Penner) also sit on the Board.

69. Until 2015, R. Walton was at the helm of Walmart, serving as the Chairman of the Board. Under Walmart's bylaws, the board Chairman was an executive position (and thus Chairman conduct is not exculpable under §102(b)(7)).

As Executive Chairman, R. Walton was:

charged with presiding over all meetings of the Board and our shareholders, and providing advice and counsel to the CEO and our

²¹ Nathan Layne, *Waltons cement grip on Wal-Mart with new chairman*, REUTERS (June 5, 2015), <https://www.reuters.com/article/us-wal-mart-stores-chairman/waltons-cement-grip-on-wal-mart-with-new-chairman-idUSKBN0OL1IL20150605>.

company's other officers regarding our business and operations, as well as *focusing on oversight* and governance matters.²²

The Company emphasized “that having *a separate Chairman focused on oversight* and governance matters allows the Board to *more effectively perform its risk oversight role*.”²³ In 2015, Penner inherited the title and attendant responsibilities from his father-in-law, and has continued in that role through the present.

70. Additionally, the Company admits that Defendant McMillon, a member of the Board and the Company's CEO and President, is not independent. *The Wall Street Journal* described McMillon as “a tried-and-true company man who since a summer job at a distribution center has spent nearly all his professional life at the chain.”²⁴ *The Wall Street Journal* continued, McMillon's “southern charm and affability made him popular with the Walton family, who remain the largest shareholders and continue to exert substantial influence on leadership decisions.”²⁵ Since McMillon became CEO and President, the controlled Company has compensated him generously to the tune of over \$150 million. See ¶52, *supra*.

²² Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 33 (Apr. 23, 2014).

²³ *Id.*

²⁴ Shelly Banjo, *Wal-Mart Taps Veteran as New CEO*, WALL. ST. J. (Nov. 25, 2013), <https://www.wsj.com/articles/SB1000142405270230446560457921975157570432> 2.

²⁵ *Id.*

71. The Walton family and McMillon exert control over Company policies and day-to-day management through their roles on the Company's Executive Committee. R. Walton has been on the Executive Committee since at least 1995, McMillon since 2014, and Penner since 2016. At all relevant times, the Walton family and its selected CEO have comprised at least half of the Executive Committee.

72. Specifically, R. Walton and the then-CEO, Michael Duke, formed half of the four-person Executive Committee from 2009 to 2011 and a majority of the Executive Committee in 2012 and 2013 when it consisted of three people. In 2014 and 2015, R. Walton, Penner, Jim Walton,²⁶ and McMillon were a majority of the Executive Committee. Since Jim Walton stepped off the Board in 2016 to make room for his son, S. Walton, Defendants R. Walton, Penner, and McMillon have comprised three-fourths of the Executive Committee.

73. The Company's proxy statements since at least 2011 explain that the Executive Committee is responsible for "[i]mplementing policy decisions of the Board" and "[a]cts on the Board's behalf between Board meetings."²⁷ [REDACTED]

²⁶ Jim Walton is R. Walton's brother and Penner's uncle-in-law.

²⁷ See, e.g., Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 16 (Apr. 18, 2011); Walmart Inc., Definitive Proxy Statement (Schedule 14A), at 25 (Apr. 22, 2021).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁹ The Executive Committee thus wields an incredible amount of the Board’s oversight and governance power.

74. The Executive Committee’s composition and function also contributed to the Company’s dutiful adherence to Sam Walton’s “10 Rules for Building a Business,” with respect to ensuring that compliance programs would generate positive returns on investment, incentivizing employees (including pharmacists) to increase revenue, and disincentivizing employees from turning away potential business. In particular, the Board delegated the implementation of compliance and reporting controls to the Walton-dominated Executive Committee.³⁰ Thus, the

²⁸ WMT_BR_OPC_00007094 (Wal-Mart Stores, Inc. Executive Committee Charter, as amended Feb. 1, 2017).

²⁹ *Id.*

³⁰ Indeed, the Company’s annual proxy statements represented to investors that the Board “carries out its risk oversight function both as a whole and through delegation

Walton family could avoid entirely any independent Board oversight for the implementation of compliance-related controls at the Company.

75. For the Board’s part, the outside directors were not going to then sue the Waltons and other Executive Committee members for the compliance issues the Board could not be bothered to address itself.

76. Despite the Board’s delegation, the Executive Committee did not actually exercise its authority or carry out the responsibilities attendant to its critical governance role at the Company. Per the Company’s proxy statements, the Executive Committee met formally just *three* times from 2011 to 2020, acting instead almost exclusively by unanimous written consent, as set forth below:

Executive Committee Meetings 2011-2020

Year	Meetings	Actions by Written Consent
2011	0	14
2012	1	8
2013	0	8
2014	0	14
2015	0	13
2016	0	11
2017	1	12
2018	0	13
2019	1	10

to the Board committees” and that the Audit and “other Board committees also play a significant role in the Board’s oversight of risk.” Wal-mart Stores, Inc. Definitive Proxy Statement (Schedule 14A), at 33-34 (Apr. 22, 2013).

2020	0	11
Total	3	114

77.

[REDACTED]

C. The Audit Committee Was Responsible For Overseeing Compliance with the Law and Reporting to the Board At Its Next Meeting

78. Flynn was on the Audit Committee since 2012 and Horton since 2014. Together, they have comprised at least half of the Audit Committee since 2014. The Audit Committee was charged with a mandate to ensure “compliance by the

Company with legal and regulatory requirements.”³¹ Moreover, the Audit Committee was obligated to “make regular reports to the Board[,]” including “[r]eports of meetings of the Audit Committee shall be made to the Board at its next regularly scheduled meeting following the Audit Committee meeting accompanied by any recommendations to the Board approved by the Audit Committee.”³²

D. The Strategic Planning and Finance Committee Was Responsible for Reviewing the Budget to Be Approved by the Board

79. Mayer was on the Strategic Planning and Finance Committee (“SPF Committee”) from 2013 to 2015, Penner from 2014 to 2015, Reinemund from 2014 to 2017, Flynn from 2016 to 2018, S. Walton from 2017 to 2018, and Horton and R. Walton since 2016.

80. The SPF Committee “review[s] and analyze[s] financial matters and assist[s] the Board in long-range strategic planning.”³³ The SPF Committee’s responsibilities include reviewing “the parameters and underlying assumptions of

³¹ *Walmart Audit Committee Charter*, WALMART (last updated Apr. 5, 2021), <https://stock.walmart.com/investors/corporate-governance/board-of-directors-committee-information/audit-committee/default.aspx>.

³² *Id.*

³³ Walmart Strategic Planning and Finance Committee, WALMART (last updated Nov. 5, 2020), <https://stock.walmart.com/investors/corporate-governance/board-of-directors-committee-information/strategic-planning-and-finance-committee/default.aspx>.

the preliminary annual operating plan and advis[ing] management regarding the plan at the November Committee meeting. . . .”³⁴ Moreover, the SPF Committee’s review of the preliminary annual budget precedes the Board’s approval of the final budget for each fiscal year.

E. Deference to the Waltons Has Fostered a Culture of Inadequate Oversight and Conscious Disregard Of Walmart’s Legal Compliance Obligations

81. Walmart suffered from serious oversight failures during R. Walton’s tenure as Chairman and Executive Committee member, despite his supposed accountability for oversight and governance in those capacities. R. Walton’s failure to ensure Walmart’s compliance with the CSA is detailed extensively below. But his failure to ensure legal compliance extended beyond the area of controlled substances and demonstrates a pattern of prioritizing profits over all else.

82. In an explosive and detailed 2012 article, *The New York Times* reported that for years during the early- to mid-2000s, Walmart “orchestrated a campaign of bribery to win market dominance” in Mexico and, “[i]n its rush to build stores . . . the company had paid bribes to obtain permits in virtually every corner of the

³⁴ *Id.*

country.”³⁵ *The New York Times* revealed Wal-Mart de Mexico’s paid more than \$24 million in bribes to further the Company’s “relentless pursuit of growth.”³⁶

83. Even worse, *The New York Times* reported that senior executives at Walmart had shut down an outside investigation into the allegations and instead tasked a person alleged to have **authorized bribes** (Wal-Mart de Mexico’s general counsel) with an internal investigation, who unsurprisingly “promptly exonerated his fellow Wal-Mart de Mexico executives.” This is despite the fact that, **during the investigation**, R. Walton “received an anonymous e-mail saying that Wal-Mart de Mexico’s top real estate executives were receiving kickbacks from construction companies,” and imploring “[p]lease you must do something.”³⁷

84. After being exposed, Walmart entered into settlements with the DOJ and the SEC totaling \$282 million for violations of the Foreign Corrupt Practices Act related to these bribery payments in Mexico and other countries. In a public release, the SEC observed that “Walmart valued international growth and cost-cutting over compliance. . . . The company could have avoided many of these

³⁵ David Barstow, *Wal-Mart Hushed Up a Vast Mexican Bribery Case*, N.Y. TIMES (Apr. 21, 2012), <https://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html>.

³⁶ *Id.*

³⁷ *Id.*

problems, but instead Walmart repeatedly failed to take red flags seriously and delayed the implementation of appropriate internal accounting controls.”

85. Unfortunately, this debacle did not cause Walmart and the Board to change its approach to legal compliance, internal controls, or red flags. As discussed in detail below, the prioritization of profits above all else at Walmart created a culture of extreme disregard for the Company’s obligations under the CSA, and contributed greatly to the deadly opioid epidemic.

II. WALMART’S OBLIGATIONS UNDER THE CONTROLLED SUBSTANCES ACT AND ITS IMPLEMENTING REGULATIONS

86. Opioid painkillers such as oxycodone, hydrocodone, and methadone are classified as Schedule II controlled substances. *See* 21 C.F.R. § 1308.12. Schedule II controlled substances have “a high potential for abuse” and may, if abused, “lead to severe psychological or physical dependence,” but nonetheless have “a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.” *See* 21 U.S.C. § 812(b)(2).

87. As both a pharmacy and (until 2018) distributor of controlled substances, Walmart was subject to the CSA. At all relevant times, the CSA required Walmart to make efforts to detect suspicious orders and prohibited Walmart from filling suspicious orders. The CSA also required the Company to have internal systems for monitoring and reporting suspicious orders (so, for example,

pharmacists at one store would know if a doctor's opioid prescription had been rejected at another store), and for reporting all such suspicious orders to the DEA.

88. Walmart also had (and has) an obligation to take red flags related to its handling of opioids and other controlled substances seriously. As fiduciaries of Walmart, Defendants were duty bound to rigorously exercise their oversight of Walmart's dispensing and self-distribution of opioids. [REDACTED]

[REDACTED] This Court has recognized that, for companies in the opioid supply chain, managing the regulatory and compliance risks are "mission critical."³⁹

A. Walmart's Regulatory Obligations as a Pharmacy Dispensing Controlled Substances

89. Walmart operated a nationwide network of retail pharmacies that routinely dispensed controlled substances, including massive amount of Schedule II opioids to individual patients. These pharmacies were controlled by Walmart through DEA-registered subsidiaries and affiliates, each of which was a

³⁸ WMT_BR_NCR_00011330.

³⁹ *Lebanon Cnty. Emps.' Ret. Fund v. AmerisourceBergen Corp.*, 2020 WL 132752, at *20 (Del. Ch. Jan. 13, 2020).

“practitioner” under the CSA, and for which Walmart had legal responsibility to ensure they complied with the CSA. *See* 21 U.S.C. § 802(21).

90. The CSA requires that pharmacy-practitioners register with the Attorney General. *See* 21 U.S.C. §§ 822, 823(f). The Attorney General has delegated its regulatory authority over pharmacies to the DEA; therefore, pharmacy-practitioners must register with the DEA and comply with DEA regulations. *See* 28 C.F.R. § 0.100; 21 C.F.R. § 1300.01.

91. Pursuant to DEA regulations, for “[a] prescription for a controlled substance to be effective [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 C.F.R. § 1306.04(a).

92. DEA regulations place a “corresponding responsibility” on pharmacists to not knowingly fill prescriptions that were issued for illegitimate medical purposes. Pharmacists may only fill a prescription for a controlled substance when “acting in the usual course of [their] professional practice.” *See* 21 C.F.R. § 1306.06. The prevailing professional standard is that pharmacists *must* identify any red flags and resolve them before filling a controlled-substance prescription.⁴⁰ Failure to fulfill

⁴⁰ *See, e.g., Pharmacy Doctors Enters., Inc. v. Drug Enf’t Admin.*, 789 F. App’x 724, 730 (11th Cir. 2019).

such responsibility subjects pharmacists to penalties under federal law. *See* 21 C.F.R. § 1306.04(a).

93. When a pharmacist identifies a red flag, the pharmacist is supposed to document the subsequent resolution, *i.e.*, either the prescription is filled or the pharmacist refuses to do so.⁴¹ Indeed, “the absence of any documentation of resolution of a red flag is probative of a failure to resolve it.”⁴²

94. An amended version of Walmart’s Pharmacy Operating Manual (“POM”) 1311, adopted in *May 2018*, itself identifies dozens of potential red flags applicable to prescribers, patients, and prescriptions. Prescriber red flags include a prescriber routinely writing prescriptions for large doses of controlled substances or being under investigation or disciplined. Patient red flags include paying cash for controlled substances, evidence of “doctor shopping” or “pharmacy shopping,” behavior suggesting “abuse of controlled substances,” and refiling prescriptions early.⁴³ Prescription red flags include a “cocktail” of commonly abused drugs, electronically generated or rubber-stamped signatures, and a high starting dose.⁴⁴

⁴¹ *Id.* at 731.

⁴² *Id.*

⁴³ DOJ Compl. ¶133.

⁴⁴ *Id.*

95. In addition, the “corresponding responsibility” extends to the registrant pharmacies whose pharmacists dispense controlled substances to individual patients as agents or employees of the registrant pharmacies. *See* 21 C.F.R. § 1306.04(a).

96. As a result, Walmart has and had a legally recognized obligation to (i) require its pharmacists to refuse to fill suspicious orders and (ii) provide its pharmacists with sufficient information from across the Company’s platform on prescriber, patient, and prescription “red flags” so that pharmacists can discharge their duties to investigate and resolve red flags. *See In re Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2020 WL 5642173, at *3 (N.D. Ohio Sept. 22, 2020) (“[A] pharmacy may not fill a prescription that it knows or has reason to know is invalid and may not remain deliberately ignorant or willfully blind of the prescription information it has (including computerized reports it generates).”).

97. More generally, DEA regulations require that pharmacies, as registrants, “provide effective controls and procedures to guard against theft and diversion of controlled substances.” *See* 21 C.F.R. § 1301.71(a).

B. Walmart’s Regulatory Obligations as a Distributor of Controlled Substances

98. Until November 21, 2017, Walmart “self-distributed” controlled substances, including massive amounts of Schedule II opioids, to its pharmacies. *See* 21 U.S.C. §§ 802(8), (11). Tellingly, Walmart shut down its opioid distribution

business in 2018 after the Opioid MDL plaintiffs sought an injunction requiring Walmart to comply with the relevant distribution law.

99. That relevant law, the CSA, requires distributors of controlled substances to register with the Attorney General and maintain effective controls against diversion of controlled substances for illegitimate uses. *See* 21 U.S.C. § 823(b)(1). The Attorney General has delegated its regulatory authority to the DEA. *See* 28 C.F.R. § 0.100; 21 C.F.R. § 1300.01.

100. The CSA’s implementing regulations require registered distributors of controlled substances like Walmart to “design and operate a system to disclose to the registrant suspicious orders of controlled substances.” *See* 21 C.F.R. § 1301.74(b). Upon detection of a suspicious order, a registrant *must* report such order to the local DEA Field Division Office. *Id.*

101. DEA regulations define suspicious orders as including, but not limited to, “orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” *Id.*

102. These reporting requirements are designed to help DEA investigators operating in the field identify (i) “pill mills”—doctors or pharmacies who are effectively dispensing controlled substances into the black market—and (ii) the diversion (*i.e.*, theft) of controlled substances, by employees or otherwise. The DEA

relies on these reports to aggregate data “from every point along the legally regulated supply chain and use the information to ferret out ‘potential illegal activity.’” *Masters Pharm., Inc. v. Drug Enf’t Admin.*, 861 F.3d 206, 212 (D.C. Cir. 2017) (“*Masters II*”) (internal citation omitted).

103. Rather than immediately reporting suspicious orders to the DEA, a registrant may investigate the suspicious orders and “seek to dispel the suspicion surrounding such orders and report only those that still appear suspicious after investigation.” *Id.* at 222.

104. The registrant may then ship the order *only if*, upon conducting due diligence, there is not even slight evidence that the order will be diverted into illegal channels. *Masters Pharm., Inc.*, 80 Fed. Reg. 55,418, 55,421 (Drug Enf’t Admin. Sept. 15, 2015); *see also Masters II*, 861 F.3d at 212-13 (holding that the registrant may ship the order “if it is able to determine that the order is not likely to be diverted into illegal channels”). The registrant’s investigation “must dispel all of the ‘red flags’ that gave rise to the suspicion that the customer was diverting controlled substances.” *Id.* at 223 (internal citation omitted). If any red flags remain, the registrant *must* report that suspicious order to the DEA. *Id.* at 222.

105. Finally, as a registrant, Walmart was also obligated to protect against theft or significant loss of any controlled substance (*i.e.*, theft by employees) and

must inform the DEA of such theft or loss within one business day of discovery. 21 C.F.R. §1301.76(b) and 21 U.S.C. §830(b)(1)(C).

C. Consequences for Noncompliance with the CSA and Its Implementing Regulations

106. Defendants understood at all times that the failure to comply with federal law concerning the handling of controlled substances would result in severe repercussions, including criminal convictions, fines, penalties, exclusion from government-run programs, and civil liability. *See* Section XVI, *infra*.

107. For example, a criminal indictment and/or conviction for violations of federal drug diversion regulations would jeopardize Walmart’s ability to participate in federal social and healthcare programs, including filling prescriptions for Medicare and Medicaid patients, and military families under TRICARE, thereby depriving Walmart of “millions” of prescription drug customers, depriving “millions of Americans access to the medications they need,” and “posing an existential threat to Walmart pharmacies.”⁴⁵

108. A criminal conviction would also put at risk Walmart’s ability to service customers who redeem their food and nutritional benefits under the Supplemental Nutrition Assistance Program (“SNAP”) and the Special

⁴⁵ Aug. 10, 2018 Letter from K. Hewitt to B. Benczkowski, at 24-25.

Supplemental Nutrition Program for Woman, Infants, and Children (“WIC”), costing Walmart a significant amount of business given that “[a]pproximately one-fourth of our Nation’s SNAP and WIC beneficiaries redeem their benefits at Walmart.” *Id.* at 25. Suspension or exclusion from federal social and healthcare programs could also cause “more than 150 state agencies that regulate some aspect of Walmart’s business” to take similar action. *Id.*

109. Failure to comply with federal regulations can also lead to fines, penalties, or forfeiture of DEA registration and licenses, and civil and/or criminal actions. *See* 21 USCA § 842 (fines); 21 C.F.R. § 1301.36 (suspension or revocation). Noncompliance can also lead to liability to consumers of controlled substances or the communities in which they live, as is demonstrated by the Opioid MDL.

110. The DEA typically audits registrants to determine basic compliance with federal law and issues letters of admonition where violations exist or show cause orders if violations are particularly egregious. *See* 21 USCA § 822 (inspections of registrants); 21 C.F.R. § 1316.03 (same); 21 USCA § 824 (revocation of license following show cause order).

111. Additionally, as the world’s largest retailer, Walmart has a reputational interest in being known for adhering to government safety regulations and consumer protections laws.

III. WALMART'S OPIOID SALES OPERATIONS ARE DESIGNED TO PUSH PRODUCT AND DISREGARD LEGAL COMPLIANCE

112. Consistent with Walmart's reputation, the Company prioritized profit maximization at its pharmacy business. Extreme pressure to optimize sales created a Board-sanctioned environment where employees were highly incentivized to cut corners on controlled-substance compliance.

A. Pharmacy Operations

113. Walmart dispenses controlled substances, including opiates, to customers at its nearly 5,000 Company-owned and operated pharmacies throughout the country. Walmart employs pharmacists as agents and/or employees to fill drug prescriptions, including those for controlled substances. Since 2011, Walmart has attributed more than 10% of its domestic net sales to its pharmacy operations.

114. The importance of Walmart's pharmacy business is not, however, limited to those sales. In addition to Walmart's direct sales revenue from its pharmacies, Walmart also used its pharmacy business to attract customers who might make non-pharmacy purchases while in the store.⁴⁶

⁴⁶ Walmart Inc., Annual Report, at 20 (2021); Walmart Inc., Annual Report, at 19 (2020); Walmart Inc., Annual Report, at 19 (2019); Walmart Inc., Annual Report, at 22 (2018); Walmart Inc., Annual Report, at 22 (2017).

115. To draw pharmacy customers to its stores, Walmart collaborated with McKesson to make trial offers, savings cards, and e-coupons to promote discount opioids including OxyContin, Butrans, Hysingla, Ultram ER, Magnacet and Nucynta. For the Magnacet loyalty program, Walmart and CVS alone handled 49% of all claims. For Nucynta, Walmart was in the top four pharmacies by the amount of claims.⁴⁷

116. Walmart also agreed to partner on direct mail campaigns to sell Butrans on behalf of Purdue Pharma, using Walmart's prescription data to reach prior buyers of these products to encourage them to seek more prescriptions.⁴⁸

117. Likewise, as the DOJ alleges, "Sam's Club at times offered drastic discounts on opioids that helped drive customer traffic to its stores."⁴⁹

118. These opioid marketing campaigns not only generated sales for Walmart's Health & Wellness division, they also presented Walmart the opportunity to cross-sell other products. Indeed, Walmart has made clear in its annual reports since at least 2018 that risks to its pharmacy business could "result in the loss of

⁴⁷ Expert Report, Anna Lembke, at 70, *In re: Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Dec. 29, 2021) ("Opioid MDL"), ECF No. 4219-8 ("Lembke Report").

⁴⁸ Lembke Report at 70.

⁴⁹ DOJ Compl. ¶114.

cross-store or cross-club selling opportunities and, in turn, adversely affect our overall net sales, other results of operations, cash flows and liquidity.”

119. In order to maximize cross-store selling opportunities, Walmart ensured that customers did not have to wait long to fill prescriptions. By reducing wait times, Walmart could keep customers within the store and shopping, rather than customers leaving to return at a later time. To that end, Walmart Health & Wellness set a goal for pharmacists to fill prescriptions in less than 20 minutes—a target that they later shortened to 15 minutes. This is far shorter than the time required for pharmacists to perform the due diligence and complete the forms necessary to report a suspicious order and block a prescription.

120. Pharmacists were not just pressured to fill prescriptions quickly—they were incentivized to do so. Walmart advocated within the National Association of Chain Drug Stores (“NACDS”) DEA Compliance Working Group to include controlled substances within pharmacist incentive programs, insisting that “[i]ncentive programs should be entirely agnostic as to the type of prescriptions (controlled substances or non-controlled drugs) filled.”⁵⁰

⁵⁰ Lembke Report at 114. Walmart also disagreed with NACDS proposal of identifying a red flag for “[e]xcessive volume and rate of growth of dispensing controlled substances.” *Id.* This was a telling disagreement, in light of the misconduct described in the DOJ Complaint, highlighting Walmart’s history of

121. Thus, Walmart’s Pharmacy Facility Incentive Plan for 2012 provided for bonus payments based on numbers of prescriptions, amount of profits, and customer relations, compared to established benchmarks—and was entirely agnostic to whether the sales were generated from the sale of controlled substances, or even prescriptions from pill-mill doctors. The program was designed “to reward [Walmart’s] associates if pre-defined business goals are met or exceeded.” As numbers of scripts went up and pharmacists filled more prescriptions, incentive payments increased. A Management Incentive Plan (“MIP”) bonus provided for additional payments to all eligible associates based on the extent to which the number of annual prescriptions exceeded 190,000. The MIP made no mention of patient safety goals or red flag detection goals. These programs disincentivized pharmacists from exercising their professional judgment in protecting against diversion, instead emphasizing speed and profits.⁵¹

filling “enormous” quantities of controlled substance prescriptions, which would necessarily have contributed to “excessive volume and rate of growth” of such dispensing. Walmart’s own data on prescription opioid sales, mandated to be kept by the CSA, Deposition of Demetra Ashley, Tr. at 132:14-134:17, *In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Mar. 11, 2021), would have provided Walmart with the data to analyze this red flag, which it could and should have done, but did not do.

⁵¹ Lembke Report at 114-15.

122. Yet, as acknowledged by Walmart's Pharmacy Operating Manual 1703, pharmacists have a professional obligation (that Walmart is obligated to support) to investigate red flags that a controlled substance might be at risk of diversion. This obligation dictates due diligence that takes well longer than Walmart's 20 minutes (and later 15 minute) time limits. Upon encountering a suspicious prescription, Walmart pharmacists were required to follow an exhaustive and time-consuming process to verify and report a forged or fraudulent prescription, resulting in pharmacists exceeding the time limits.

123. Thus, Walmart forced its pharmacists into a Sophie's Choice: fill prescriptions quickly enough to meet Walmart's official expectations, or risk losing their jobs by investigating and documenting each red-flag order. Indeed, when pharmacists pointed out that 15 minutes was not enough time to fulfill their duties, Health & Wellness directors overruled them and instructed that they follow Walmart's policies.⁵²

124. As a consequence, pharmacists feared for their jobs if they refused to fill prescriptions. In an e-mail exchange in February 2015 regarding refusing to fill prescriptions from doctors in the north central Texas area who were under investigation by the DEA, one of the front-line pharmacists trying to address the

⁵² DOJ Compl. ¶118.

situation wrote to Brad Nelson (“Nelson”) one of Walmart’s controlled substance compliance directors: “My fellow pharmacists now realize the importance of filling out the [RTF] form. We were afraid of getting fired for refusing to fill, but now I understand it’s for our protection.”

125. Compounding the pressure on pharmacists, Walmart perennially understaffed its pharmacies to minimize costs and increase profits. In June 2012 and October 2014, Walmart’s Health & Wellness Division conducted surveys of its pharmacy employees. According to the employee surveys, Walmart’s pharmacies lacked sufficient staff to handle the workload and did not have enough time to conduct their duties in a manner that protected patient safety.⁵³

126. In June 2012, only 59% of the employees reported their Walmart pharmacy having sufficient staff to handle the workload. Despite learning of pharmacy understaffing and unsafe time pressure in 2012, little if anything changed in Walmart’s pharmacies to address those issues in the ensuing two-plus years.

127. The problems worsened. By October 2014, only 43% of pharmacy employees reported having sufficient staffing. In fact, in response to the October 2014 survey, pharmacy employees reported:⁵⁴

⁵³ DOJ Compl. ¶¶120-21.

⁵⁴ *Id.* ¶¶121-122.

- “*We are not adequately staffed for safely filling the volume of prescriptions* that are brought to this pharmacy. We are spread too thin.”
- “[W]e do not have enough pharmacist help. I feel overwhelmed and like we are being asked to do more and more We are being forced to not focus on the patients in front of us.”
- “*[Staffing] is too low for a pharmacy and is dangerous for patients* if the staff always feels overwhelmed or rushed while working on patients [sic] prescriptions.”
- “*Inadequate staffing is a big safety issue* as it results in each person juggling more than they should, and opens up the potential for mistakes to occur as a result.”
- “*We are always under staff[.]* [sic] This pharmacy is in [a] busy location, *we do a lot of CII [Controlled Substances, Schedule II]* and we do have drive thru which takes longer time and needs more staff.”
- “We don’t have enough staff to keep each station caught up at all times. And that is a huge red flag for possible errors.”
- “Upper management is totally disengaged over faulty equipment and computer programs that put[s] [prescription] processing at enormous risk—*they are culpable!* This is coupled with inadequate staffing and poor management support over simple logistical challenges that exceed the pharmacy’s ability/authority to resolve.”
- “Our [District Manager] continually sends our pharmacy nasty emails and chastises us for not having a [sic] high enough numbers in our input and fill accuracy and times. *We are therefore instructed to cheat the system.*”
- “[B]ecause of the constant harassment from our market manager about us not getting [prescriptions] done in 20 min, *we often take shortcuts* in filling and counseling rx’s that could lead to patient safety issues.”

- “[I]f patient safety is the concern, numbers should not matter more than the patients [sic] health. [M]arket manager and store manager are to [sic] preoccupied with sales and numbers[. T]hey prefer us to rush and get rx out.”
- “Us being criticized [sic] b[y] our Health and Wellness Director about not getting prescriptions out in 20 minutes causes the pharmacy to take short cuts and affects patient safety.” (Emphasis omitted.)

128. By understaffing its pharmacies and forcing its pharmacists to rush the prescription filling process, management and the Waltons prioritized cost control over legal compliance and thus put Walmart at grave risk—long after the Executive Committee and then the Demand Board learned that Walmart’s pharmacies were becoming the pharmacy of choice for pill-mill doctors in 2012.

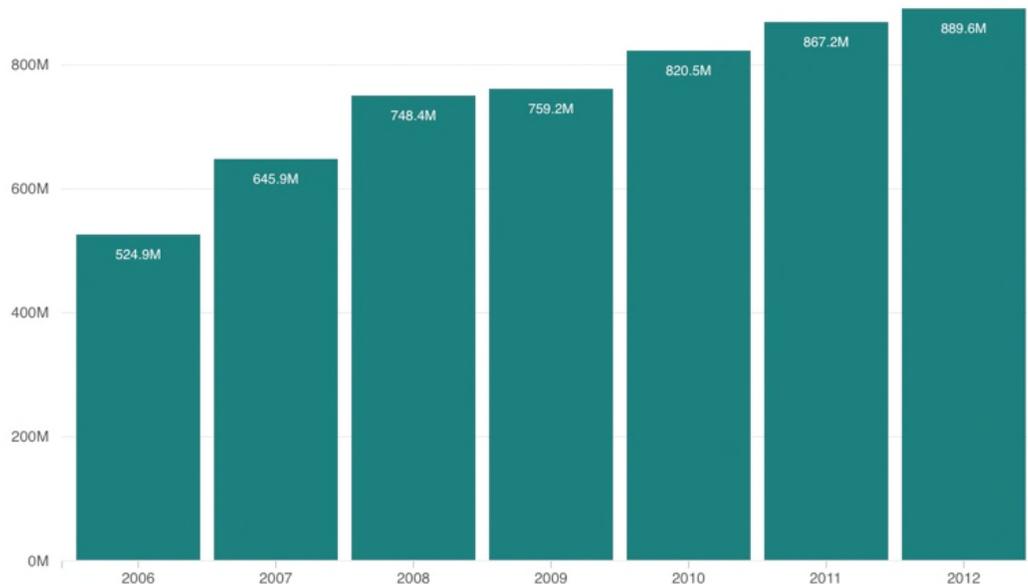
B. Distribution Operations

129. In addition to dispensing controlled substances from its pharmacies, from the early 2000s to at least April 2018, the Company also operated distribution centers that supplied opioids for its Walmart and Sam’s Club pharmacies.

130. As demonstrated by the chart below, each year between 2006 and 2012, Walmart’s distribution center in Bentonville, Arkansas shipped an increasing number of opioid pills for sale at its pharmacies, in total amounting to more than **5 billion pills**, as evidenced by federal data included in an *NPR.org* article:

Walmart's Growing Opioid Pipeline

From 2006 to 2012, as the prescription opioid crisis exploded, Walmart's distribution network shipped more than 5 billion opioid pills for sale at Walmart and Sam's Club pharmacies across the U.S. Data for other years is not yet public.



Source: *The Washington Post/DEA*

Credit: Thomas Wilburn/NPR

131. The Bentonville distribution center was the only Company distribution center that provided Schedule II controlled substances to Walmart pharmacies. Bentonville, Arkansas is also the location of Walmart's corporate headquarters.

132. Ultimately, Walmart ceased self-distributing controlled substances in November 29, 2017 in the wake of the Opioid MDL, conceding that it would rather be out of the distribution business than conduct such business legally.

IV. WALMART LACKED ANY SYSTEMS TO MONITOR SUSPICIOUS ORDERS OF CONTROLLED SUBSTANCES WHATSOEVER FOR YEARS

133. For decades, Walmart distributed controlled substance without any policies to identify suspicious orders. In fact, Walmart *admitted* in civil litigation

that it had *no* written policies or procedures in place prior to November 2010 concerning the monitoring of suspicious orders of controlled substances.

134. Indeed, until this time, Walmart simply charged inexperienced, hourly wage employees—with no medical, pharmaceutical, or public health training—with responsibility for identifying potentially suspicious orders, while they were busy filling and shipping boxes in Walmart’s Bentonville distribution center. The Company did not provide any controls, standards, training, or processes to assist these unqualified employees in determining whether Walmart’s distribution of controlled substances complied with the CSA.

135. As Jeff Abernathy, a Walmart Operations Manager, testified in a deposition in the Opioid MDL, the Company relied on the hourly employees to look at the daily orders of controlled substances and “‘based on their knowledge’ let someone know ‘if they saw something that maybe looked like it was kind of high.’”⁵⁵ At one point, Walmart—one of the largest companies in the world—had *three* employees responsible for flagging controlled substance orders, despite Walmart distributing billions of opioid pills to thousands of its pharmacies.⁵⁶

⁵⁵ *Id.*

⁵⁶ *Id.*

136. Having failed to implement controls related to its distribution of suspicious orders of dangerous drugs, it is unsurprising that Walmart received a steady drumbeat of warnings from the DEA that its dispensing of opioids violated the law. From 2000 to 2018, Walmart received *more than 50* “Letters of Admonition” from the DEA concerning its prescribing practices.⁵⁷

137. A Letter of Admonition is a serious regulatory action issued by the DEA if deficiencies are found in an unannounced audit of controlled substance storage locations and laboratories. In a typical audit, DEA Diversion Investigators inspect the controlled substance licensee/registrant for compliance (or lack thereof) with the CSA. A Letter of Admonition requires a written response describing the actions to be taken to correct the deficiencies identified.

138. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁷ See PLAINTIFFS0003154; PLAINTIFFS0008980.

V. [REDACTED]

139. By November 2010, Walmart understood that regulators were desperate to curtail the raging opioid epidemic.⁵⁸ [REDACTED]

[REDACTED]

[REDACTED]⁵⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁶⁰

140. [REDACTED]

[REDACTED]

⁵⁸ For example, the DEA sent a series of letters to all distributors of controlled substances, including to Walmart on or about December 27, 2007. The letters reminded Walmart of its obligation to detect and report suspicious orders of opioids to the DEA. Meanwhile, in 2007 and 2008, three distributors—AmerisourceBergen, McKesson, and Cardinal Health—faced DEA enforcement actions for not maintaining effective controls against the diversion of controlled substances. In or around 2009, the DEA and DOJ investigated and/or brought enforcement actions against Rite Aid, Walgreens, and CVS. The DEA issued an Order to Show Cause against a Walmart pharmacy in 2009 as part of an aggressive regulatory response to curtail industry-wide, systemic legal violations by distributors and dispensers of controlled substances.

⁵⁹ WMT_BR_NCR_00003913.

⁶⁰ *Id.*

[REDACTED]

141. [REDACTED]

[REDACTED]

142. [REDACTED]

[REDACTED]

⁶¹ *Id.*

⁶² WMT_BR_NCR_00011330.

[REDACTED]

[REDACTED]

143. [REDACTED]

[REDACTED]

VI. THE 2011 DEA SETTLEMENT REQUIRED AN OVERHAUL OF WALMART’S DEFECTIVE CONTROLLED SUBSTANCE COMPLIANCE PROGRAM

144. Beginning in 2009 and continuing through early 2011, the DEA investigated Walmart’s drug dispensation practices, ultimately “reveal[ing]” that a Walmart pharmacy in San Diego, California “was allegedly dispensing controlled substances based on prescriptions that contained expired, suspended, and/or invalid DEA numbers” and “refilling prescriptions for controlled substances too early,”⁶³ in violation of the CSA and its implementing regulations.

145. [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

⁶³ JX009.

- [REDACTED]
- [REDACTED]

146. In March 2011, Walmart entered into a settlement agreement with the DEA to resolve this investigation (defined above as the “2011 MOA”), which applied to “all current and future Walmart Pharmacy locations registered with the DEA to dispense controlled substances.”

147. Per the 2011 MOA, Walmart agreed to implement a national CSA compliance program. Walmart expressly:

[A]gree[d] to maintain a compliance program, updated as necessary, designed to detect and prevent diversion of controlled substances as required by the . . . CSA[] and applicable DEA regulations. This program shall include procedures to identify the common signs associated with the diversion of controlled substances including . . . doctor-shopping, requests for early refills, altered or forged prescriptions, prescriptions written by doctors not licensed to practice medicine where the patient is located, and prescriptions written for other than legitimate medical purpose.

148. In the 2011 MOA, Walmart also committed to:

- Adopt “procedures to report thefts and significant losses of controlled substances” to the applicable DEA field division office, as required by 21 C.F.R. § 1301.76(b);
- “[R]outine[ly] and periodic[ally] train[] *all* Walmart employees, including new employees, responsible for controlled substances

⁶⁴ WMT_BR_DPF_00005465.

regarding their responsibilities under the CSA and regarding relevant elements of the compliance program”;

- Notify DEA within seven days of any “refusal to fill a prescription for controlled substances”;
- “[I]mplement and maintain policies and procedures designed to ensure that its pharmacies comply with all applicable laws requiring pharmacists to obtain current identification from a person picking up a controlled substance prescriptions”;
- Comply with all state and federal laws with regard to dispensing controlled substances based on out-of-state prescriptions;
- Require verification that a valid doctor/patient relationship exists before filing a prescription for controlled substances, as required by law;
- Institute policies and procedures to block early refills of controlled substances, and document the basis for any block; and
- Notify the DEA if Walmart was subject to any governmental or licensing board legal proceeding regarding its handling of controlled substances.

149. In exchange for Walmart ensuring its compliance with the CSA, the DEA agreed not to prosecute Walmart for the violations it had uncovered, subject to Walmart’s “fulfillment of [its] obligations . . . under this Agreement.”

150. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

151. The term of the 2011 MOA was from March 11, 2011 through March 11, 2015. The Company’s obligations under the CSA, however, did not expire at the end of the 2011 MOA. Walmart expressly acknowledged and agreed that the obligations undertaken pursuant to the 2011 MOA did not fulfil the totality of its obligations under the CSA and its implementing regulations.

152. Given the severity of the allegations leading to the 2011 MOA, the potential consequences for CSA violations described in Section II.C, *supra*, and the regulatory enforcement community’s focus on controlling opioid diversion, this settlement agreement with the government would presumably require Board approval. Indeed, the 2011 MOA was signed by Walmart Senior Vice President and head of Health & Wellness John O. Agwunobi, and King & Spalding LLP partner Catherine M. O’Neil, each of whom “represent[ed] and warrant[ed] that they [we]re authorized by Walmart to execute this Agreement.” [REDACTED]

[REDACTED]

153. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. [REDACTED]

[REDACTED]

[REDACTED] Worse, Walmart hid the existence of the 2011 MOA until *March 25, 2020*, when *ProPublica* exposed what it called a “secret settlement.”

VII. IN IMPLEMENTING THE 2011 MOA WALMART FOCUSED ON “RETURN ON INVESTMENT” RATHER THAN COMPLIANCE WITH THE LAW

155. [REDACTED]

[REDACTED]

[REDACTED] And it hewed closely to the Walton family’s operating playbook of putting profits before compliance with the law.

156. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

157. With only 25% of the requested budget in hand, Walmart’s H&W Compliance department were asked to prioritize among compliance initiatives, and did so by establishing in writing the projected “return on investment” and whether “the project will pay for itself.”⁶⁶

158. This forced compliance personnel into a “Sophie’s Choice,” as described by Susanne Hiland, a Walmart Senior Director for Health and Wellness Compliance and Quality Assurance, who complained that:

This is like “Sophie’s Choice.” I find it difficult to select one high need project over another although I understand that that’s what we are required to do. I’m curious on a couple of these though. Aren’t D.O and prescriber file set to be completed this year? Also, I thought we had a ranking coming out of the last PMO meeting. Is this something different based on costs of each of the projects?⁶⁷

159. [REDACTED]

[REDACTED]

[REDACTED]

⁶⁵ *Id.*

⁶⁶ Transcript of Jury Trial, at 5231-32, *In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Nov. 1, 2021) (TRANSCRIPT).

⁶⁷ Plaintiffs Trial Exhibit P-14442_00001, *In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Nov. 8, 2021), ECF No. 4128-28.

[REDACTED]

VIII. [REDACTED]

160. In the years following the 2011 MOA, Walmart repeatedly failed to adopt and enforce a compliance program sufficient to meet its legal obligations under the CSA and 2011 MOA. [REDACTED]

[REDACTED]

A. [REDACTED]

161. [REDACTED]

[REDACTED]

⁶⁸ Mars subsequently left Walmart on March 13, 2013, after he was implicated in the Mexican bribery scandal. *See* Section I.E, *supra*.

162.

[REDACTED]

163.

[REDACTED]

B. A *Qui Tam* Complaint Provides Another Red Flag

164. On August 24, 2012, a whistleblower (the “Relator”) within Walmart notified Defendant R. Walton, the Global Ethics Office, and others about his

“concerns regarding illegal controlled substances prescriptions.”⁶⁹ R. Walton was, in turn, obligated to bring the Relator’s allegations to the attention of the Audit Committee and the full Board.

165. The Relator, a “full-time floater pharmacist” at Walmart, detailed his concerns in a 2013 *qui tam* complaint (the “*Qui Tam* Complaint”) which was not unsealed until June 29, 2018 and never disclosed by Walmart in its public filings. He alleged that, just within a one and a half-month window between July 14 and August 30, 2012, he:

- Observed Walmart pharmacists filling prescriptions that bore red flags and did not meet proper record requirements under the CSA, were “indicative of illegal diversion activities,” and “did not meet the legal requirements necessary for a pharmacist to fill them”;⁷⁰
- Received significant pushback from Health & Wellness regarding his whistleblower claims (including his ultimate termination);⁷¹ and
- Knew that “illegal controlled substances prescriptions were being filled [by Walmart pharmacists] from at least 2007 to July 2012.”⁷²

⁶⁹ Second Amended Complaint at ¶¶119, 125, *U.S. v. Wal-Mart Stores East, LP*, No. 4:13-cv-010568-LVP-MJH (E.D. Mich. Dec. 7, 2018).

⁷⁰ *Id.* ¶¶37-49.

⁷¹ *Id.* ¶¶116-166.

⁷² *Id.* ¶¶49-50.

166. The concerns raised in the *Qui Tam* Complaint are precisely the sort of compliance violations that led to the 2011 MOA and that the Company committed to stamp out. The *Qui Tam* Complaint shows, however, that a year after the 2011 MOA, the Board and management had done nothing to implement an adequate system for CSA compliance and were not taking Walmart's red flag reporting obligations seriously, much less making a good faith effort to meet them.

167. Five demand Board members (R. Walton, Penner, Flynn, Mayer, and Reinemund) were directors, and McMillion served as an executive, when the *Qui Tam* Complaint was filed and should have learned about the whistleblowers' internal complaints from R. Walton due to his reporting obligations.

C. **The Limited Remediation Measures that Walmart Executed Were About Profitability, Not Compliance**

168. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. ***Walmart Prohibited Pharmacists From Exercising Their Judgment To Conclude That Certain Prescribers Operated Dangerous “Pill Mills”***

169. Between at least 2012 and 2017, Walmart’s controlled substance compliance department prohibited pharmacists from exercising their professional judgment that certain prescribers operated “pill mills” and refusing to fill prescriptions by that prescriber.

170. This was demonstrated by a witness in the Opioid MDL trial (Regional Compliance Director for Controlled Substances Brad Nelson), who testified that it was Walmart’s policy throughout this time period of not permitting blanket refusals to fill prescriptions from a prescriber’s office.

171. Pharmacists repeatedly raised concerns up the chain about their inability to control prescriptions from pill mills. But H&W Compliance provided them with identical guidance—instructing that “***no blanket refusals are allowed by the Boards of Pharmacy. I believe these prescription [sic] fall into this category***”⁷³—irrespective of the severity of the red flags that they raised up the chain or whether the board of pharmacy of the state in question prohibited such refusals.

⁷³ Plaintiffs Trial Exhibit P-26882_00001, *In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Oct. 28, 2021), ECF No. 4094-32.

172. According to Nelson, this language was used by H&W Compliance “so we were all getting out consistent information irregardless of what area of the country would send in a request, they wanted to make sure we referred them to the policies and procedures and best practices.”

ii. *Walmart Cuts Suspiciously Large Orders, Rather Than Identifying and Reporting Them*

173. In distributing controlled substances, rather than identifying and reporting to the DEA those orders that were suspiciously large (as required by the CSA and 2011 MOA), Walmart repurposed a business inventory tool to simply “fix” suspicious orders by reducing them to a threshold limit (referred to as “cutting” an order), and proceeding to ship. The cost of the program was minimal and allowed the Company to design the program to maximize sales, as the opiates above these threshold limits could be sourced from its marketing partner McKesson. This program likewise avoided losing business with pill mills and avoided reporting suspicious orders to the DEA.

174. To do this, Walmart refashioned Reddwerks—a business inventory tool that was *not* designed for compliance monitoring—as a low-cost option for suspicious order tracking. Walmart implemented “hard limits” into Reddwerks on orders of 20 bottles or more of Oxycodone (*i.e.*, 2,000 units at 100 dosage units per bottle) and 50 bottles or more for other opioid mediations (*i.e.*, 5,000 units at 100

dosages per bottle). Orders above these limits were supposed to be red flagged and reported to the DEA.

175. Instead, Walmart automatically reduced (*i.e.*, “cut”) all of these suspicious orders down to the threshold limit and then shipped the drugs, without conducting any due diligence or reporting to the DEA. Not only did this violate Walmart’s commitments in the 2011 MOA; it also left the likely illicit doctors or pharmacies to fill the rest of their violative orders from other distributors, like McKesson or AmerisourceBergen, without sparking scrutiny. This practice of cutting did not comply with the law. Indeed, on November 8, 2012, the DEA held a regional meeting at the National Association of Boards of Pharmacy, attended by Walmart. During that meeting, the DEA emphasized that “[i]f [an order is] a suspicious order—*you don’t ship*. Decreasing the order and shipping is not complying with the regulation.”

176. Moreover, Reddwerks did nothing at all to red flag suspicious orders that fell below threshold limits—for example a pharmacy that dramatically increased its opioid orders from zero bottles to some amount just below the limit—and thus was blind to other categories of potential opioid diversion.

177. Thus Walmart’s “remediation” efforts focused on *avoiding* DEA reporting requirements and lost sales, rather than bringing the Company into

compliance with the 2011 MOA or CSA. At the time, Demand Board members R. Walton, Penner, Reinemund, Flynn, and Mayer were directors, R. Walton was on the Executive Committee, and Flynn was on the Audit Committee.

178. As alleged by DOJ, Walmart’s pre-2015 suspicious order monitoring (“SOM”) program resulted in the Company reporting almost no suspicious orders to the DEA. Indeed, Walmart’s compliance officials would later inform the Board in June 2014 that the Company’s SOM program was tantamount to having no processes in place at all. Of course, the deficiencies in Walmart’s pre-2015 SOM program were also detailed in the Opioid MDL Plaintiffs’ Opposition to Walmart’s Motion for Summary Judgment, which formed the basis for the court’s ruling on that motion that Walmart’s suspicious order monitoring program “suggests obvious deficiencies that *a layperson could plainly recognize.*”

iii. *Walmart Begins Tracking Internal Opioid Theft (a Cost), but not Outward Diversion Through Illicit Prescriptions (Revenue)*

179. [REDACTED]

[REDACTED]

[REDACTED] This selective approach (internally called “diversion analytics”) increased profits by minimizing inventory loss, while

avoiding curtailing Walmart’s distribution and dispensing of controlled substances prescribed by pill mills in any way. It was *not* sufficient to comply with the CSA or 2011 MOA.

180. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

181. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

182. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁴ WMT_BR_NCR_00011052-055.

⁷⁵ WMT_BR_NCR_00011055.

[REDACTED]

[REDACTED]

183. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

184. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁶ WMT_BR_NCR_00011058; WMT_BR_NCR_00011200.

D. Walmart Pharmacists Sound the Alarm Up the Chain in H&W Compliance That Existing Company Policies to Address Dangerous Prescriber Activity Were Deficient and Out of Step with Competitors

185. On July 12, 2012, a troubling event occurred at Walmart Store 02627. A line of patrons began lining up for the pharmacy two hours before it opened with a “very high number of prescriptions for Oxycodone.”

186. As this closed circuit footage made the rounds of H&W Compliance and then Walmart more generally, Walmart pharmacists began reporting that the Company’s policies were causing Walmart to be the pharmacy through which pill mills funneled their prescriptions. Beginning in early 2013, rank-and-file Walmart pharmacy employees repeatedly raised red flags regarding deficient Walmart policies to H&W Compliance.

187. For instance, on February 21, 2013, a Pharmacy Manager in Oklahoma reported that a particular clinic had been writing prescriptions for large numbers of multiple narcotic pain relievers. She emphasized that “*Other chain and independent pharmacies in the area have stopped accepting prescriptions from this clinic*, which is causing them to funnel in to our WalMart stores. *Although a rise in business is good, this isn’t the type of business we want.*”⁷⁷ The email

⁷⁷ Plaintiffs Trial Exhibit P-26892_00001, *In re: Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Oct. 28, 2021), ECF No. 4094-34.

referenced “recent actions against the WalGreens [sic] pharmacies in Florida,” and reported that:

Not a single one of us ever feel comfortable about filling these prescriptions, and if questioned, we wouldn't be able to justify this type of prescribing.

* * *

I think that if we continue this we are going to be in serious trouble and quickly trigger an investigation. We do not want to continue filling from this clinic. Other pharmacies are stopping and I feel that it is imperative that we follow suit. It will look bad if we are the ones allowing these drugs to be abused or even on the street.⁷⁸

188. Walmart managers were also notified of physicians who over-prescribed oxycodone and for whom the DEA had advised not to fill any more prescriptions. Although law enforcement had already become involved, Walmart maintained its policy that the physician could not be blocked and instead that prescriptions must be evaluated on a standalone basis.

189. Not only pharmacy managers raised these concerns. H&W Compliance’s inspectors also became concerned as Walmart filled controlled substance prescriptions blocked by other chain pharmacies—an August 2013 internal Walmart email from a Walmart Market Director stated that “inspectors

⁷⁸ *Id.*

collectively feel Walmart is [s]tarting to become a ‘funnel’ with C-II’s due to more liberal policies on dispensing pain meds.”

190. [REDACTED]

[REDACTED]

191. [REDACTED]

[REDACTED]

[REDACTED]⁷⁹

⁷⁹ WMT_BR_NCR_00010822-23.

E.

[REDACTED]

192.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

193.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

194.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁰ WMT_BR_DPF_00011147.

⁸¹ WMT_BR_DPF_00011224.

MOA, Walmart was still in the evaluation and identification stage of the CCTV Project.⁸²

197. [REDACTED]

198. [REDACTED]

⁸² Plaintiffs Trial Exhibit P-14585_00001, *In re: Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Nov. 8, 2021), ECF No. 4128-29.

F. Senior Compliance Officials Who Reported Directly to the Audit Committee Were Concerned That Walmart Was a Target for Pill Mill Doctors

199. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸³

200. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

201. [REDACTED]

[REDACTED]

[REDACTED]

⁸³ *Id.* Langman’s immediate subordinate, George Chapman (Senior Director, H&W Practice Compliance), directly supervised Nelson’s supervisor, Tim Koch (Senior Direction, Practice Compliance).

[REDACTED]

[REDACTED]

IX.

[REDACTED]

202.

[REDACTED]

[Redacted text block]

204. [Redacted text block]

[Redacted text block]

205. [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

206. [Redacted text]

[Redacted text block]

207. [Redacted text]

[Redacted text block]

208. [Redacted text]

[Redacted text block]

[Redacted text block]

209.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED] As of June 2014, the Board included R. Walton, Penner, Flynn, Mayer, McMillon, and Reinemund—six members of the 12-person demand Board.

212. [REDACTED]

⁸⁵ JX180.

⁸⁶ *Id.*

213. [REDACTED]

214. [REDACTED]

215. It is shocking that Defendants failed to extend any detection methodology to external diversion or suspicious prescriptions in response. Walmart remained without even a plan to monitor for the common signs associated with the diversion of controlled substances *expressly agreed to in the 2011 MOA* (e.g., “doctor-shopping, requests for early refills, altered or forged prescriptions, prescriptions written by doctors not licensed to practice medicine in the jurisdiction where the patient is located, and prescriptions written for other than legitimate medical purpose”⁸⁸).

⁸⁷ *Id.*

⁸⁸ DOJ Compl. ¶138.

216. [REDACTED]

217. Walmart's utter failure to develop a CSA-compliant suspicious order monitoring system for controlled substances was in part due to Walmart's decision not to pay a consultant what it would actually cost to develop and implement such a compliant system, again demonstrating the Company prioritized its bottom line over compliance with the law.

218. Indeed, in January 2014, Walmart management hired an outside consultant to evaluate a revised statistical methodology to identify suspicious orders. The expert consultant that management hired, a company called Mu Sigma, identified serious flaws with Walmart's proposed statistical methodology in a January 2014 report (the "Mu Sigma Report"). These shortcomings in Walmart's

[REDACTED]

223. [REDACTED]

[REDACTED]

⁸⁹ November 21, 2014 is also the date that Defendant Horton was appointed as a director on the Board, and he immediately became a member of the Audit Committee. *See* Walmart Inc., Current Report (Form 8-K) (Nov. 24, 2014). [REDACTED]

⁹⁰ JX180 at PLAINTIFFS0007647.

XI.

[REDACTED]

A.

[REDACTED]

224.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

225.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

226.

[REDACTED]

a.

[REDACTED]

[REDACTED]

228.

[REDACTED]

229.

[REDACTED]

230.

[REDACTED]

This is because the Company had hired Mu Sigma to provide advice regarding the development and implementation of a SOM program. Mu Sigma had informed Walmart that it had found “several flaws with the proposed statistical methodology” in Walmart’s contemplated SOM program and proposed an alternative methodology and course of action that would have cost Walmart approximately \$185,000 to implement. Walmart refused to follow Mu Sigma’s advice.

231. [REDACTED]

pharmacists continued to report up the chain that their pharmacies were a “funnel” for problem prescriptions and that under Walmart’s policies they were unable to perform their duties:

If all of us got together and started filling out refusal to fill, that’s all we’d do all day longer We are concerned about our jobs and about filling for a pill mill doctor. I’m in my 29th year with Walmart and have never had a situation this bad with a doctor. Other chains are refusing to fill for him, which makes our burden even greater. Please help us.

B. “Modifications” to the SOM Program Are Designed To Maintain Opioid Sales

232. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

233. Indeed, the DOJ alleges that Walmart’s SOM system barely changed, remaining utterly ineffective. According to the DOJ Complaint, the approved

modifications, which implemented in August 2015, consisted of “a few modifications to its existing Reddwerks system” and “implement[ed] pharmacy-specific and drug-specific thresholds to replace the 20-bottle and 50-bottle thresholds that Walmart had been using in Reddwerks.”⁹¹

234. These August 2015 modifications failed to fix previously identified defects, or implement basic core functions required of any compliant system, such as: (i) “detect[ing] whether orders were of an unusual frequency or unusual pattern, much less report those kinds of unusual orders;” (ii) responding to “known incidents of diversion occurring at its pharmacies;” (iii) “consider[ing] whether a pharmacy was ordering the same controlled substance of the same drug strength, but with multiple [National Drug Codes];” and (iv) not “ignor[ing] at least hundreds of thousands of orders that its pharmacies placed with independent distributors.”⁹² This inadequate SOM program was in place until at least November 29, 2017.⁹³

235. The deficiencies in the August 2015 modifications were also detailed in the Opioid MDL Plaintiffs’ Opposition to Walmart’s Motion for Summary Judgment, which formed the basis for the court’s ruling on that motion that

⁹¹ DOJ Compl. ¶¶634-42.

⁹² *Id.* ¶¶634-50.

⁹³ *Id.* ¶¶641-42.

Walmart's suspicious order monitoring program "suggests obvious deficiencies that *a layperson could plainly recognize.*" Of course, the August 2015 modifications did nothing to change the fact that the Company reported almost no suspicious orders to the DEA, as alleged by DOJ.

XII. THE 2011 MOA EXPIRES WITHOUT THE COMPANY EVER ACHIEVING COMPLIANCE

236. The MOA's four-year term expired on March 11, 2015. The Company's agreement with the government ended without the Board *ever* ensuring compliance with the CSA, despite four years of opportunity. The Company failed to discharge its commitments to the DEA summarized in Section VI, *supra*, including: (i) adopting an appropriate compliance program designed to prevent the diversion of controlled substances; (ii) implementing an effective system for detecting and monitoring suspicious orders; and (iii) implementing appropriate reporting systems, both internally and to the DEA.

237. Instead, Walmart scaled back its half-hearted compliance efforts as the 2011 MOA wound down, which not only violated the agreement with the government but also showed that CSA compliance was about what Walmart management could get away with, as opposed to meeting its obligations.

238. For example, Nelson—the controlled substance compliance director responsible for the RTF project associated with the 2011 MOA—sent an email to a regional manager, less than a month before the 2011 MOA’s expiration. He wrote:

The [2011] MOA that requires the reporting of the Refusal to fills expires in 30 days. *We have not invested a great amount of effort in doing analysis on the data since the agreement is virtually over. Driving sales and patient awareness is a far better use of our Market Directors and Market manager’s time.*⁹⁴

239. This attitude reflects why no real attempts were made to achieve compliance.

240. Similarly, during the Opioid MDL, a former employee testifying as Walmart’s 30(b)(6) representative stated that the Company chose not to adopt a more rigorous limit system in connection with the 2011 MOA and the CSA because it *“didn’t make sense for the business.”*

241. Because Walmart failed to “maintain a compliance program . . . designed to detect and prevent diversion of controlled substances,”⁹⁵ as required by the 2011 MOA, Walmart’s pharmacists filled thousands of prescriptions with glaring red flags that would be identified by any reasonable monitoring process. Walmart had no heightened scrutiny or reporting, as was required by law, for prescriptions:

⁹⁴ *ProPublica* Article.

⁹⁵ JX009 at III.4.a.

(i) from known pill-mill doctors; (ii) for patients traveling long distances to see doctors; (iii) paid for in cash; (iv) from doctors that should have been subject to corporate blocks; (v) for dangerous combinations of drugs; or (vi) for repeated or unusually early refills of opioids.⁹⁶

XIII. AFTER EXPIRATION OF THE 2011 MOA, DEFENDANTS CONTINUE TO SHIRK THEIR CSA COMPLIANCE OBLIGATIONS BY ALLOWING THE COMPANY TO OPERATE WITHOUT SUFFICIENT DISPENSING CONTROLS

242. After the 2011 MOA expired, Defendants, who knew what the law required, continued to flout their duty to ensure that the Company complied with the CSA.

A. Walmart Continued to Violate the CSA

243. [REDACTED]

244. [REDACTED]

⁹⁶ DOJ Compl. ¶¶357-59, 360-83, 384-408, 409-16, 417-26.

⁹⁷ WMT_BR_DFO_00011175.

[REDACTED]

[REDACTED]

[REDACTED]

245. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

246. The Board’s failure to monitor whether the Company implemented appropriate dispensing controls for controlled substances led its pharmacists to continue filling prescriptions unlawfully, despite years of warnings and opportunities to correct, resulting in immense suffering.

247. For example, the DOJ alleges that through at least December 2020, Walmart collected multiple types of red-flag data that *could* have been used by pharmacists to comply with the CSA, but Walmart did nothing to make that data available to its pharmacists through internal reporting, thereby breaching its legal duties under the CSA.⁹⁸

⁹⁸ DOJ Compl. ¶¶141, 164.

248. More specifically, Walmart’s compliance unit “received reports submitted by Walmart pharmacists about problematic prescribers or patients” with various types of useful information and often “alarming details about pill-mill prescribers whose prescriptions had been refused.”⁹⁹ However, Walmart lacked “any effective process” to share its red flag data among Company pharmacists.¹⁰⁰ Thus, Walmart pharmacists continued to fill illegal prescriptions for customers that the Company already knew were suspicious.¹⁰¹

249. According to the DOJ’s complaint, the Company’s failure to implement a system to inform pharmacists of known red flags was predictably disastrous, as the following few examples show:

- Walmart continued to fill prescriptions for a doctor of osteopathic medicine practicing in Wilmington, Delaware (“D.C.”), even after learning that “95 percent of the prescriptions from D.C. were for controlled substances, and that 81 percent of what he prescribed was oxycodone-acetaminophen 10/325mg.”¹⁰² “From May 19, 2016, through July 12, 2017, despite Walmart’s knowledge of red flags indicating a very high probability that D.C. regularly issued invalid prescriptions for controlled substances, Walmart filled more than 650 controlled-substance prescriptions written by D.C., including more than 80 where the patient was from a different state than

⁹⁹ *Id.* ¶142.

¹⁰⁰ *Id.* ¶148.

¹⁰¹ *Id.* ¶¶427-39.

¹⁰² *Id.* ¶¶180-84.

D.C.”¹⁰³ The Delaware Division of Public Health eventually suspended D.C.’s medical license and controlled-substance registration.¹⁰⁴

- Despite pharmacist reports of red flags to Walmart’s compliance unit between 2012 and 2015 about a doctor practicing in Savannah, Georgia (“F.B.”), “Walmart filled more than 500 controlled-substance prescriptions written by F.B. for Medicare patients” from June 23, 2013 through January 2017, with over 200 of those prescriptions being “for Schedule II controlled substances.”¹⁰⁵ This was done “despite Walmart’s knowledge of red flags indicating a very high probability that F.B. regularly issued invalid prescriptions for controlled substances. . . .”¹⁰⁶ F.B. was convicted for the unlawful dispensing of controlled substances and healthcare fraud, and received a 20-year prison sentence.¹⁰⁷
- Walmart continued to fill an Texas doctor’s (“H.D.”) prescriptions into 2017, even after “Walmart pharmacists reported to Walmart’s compliance unit that H.D. was likely a pill-mill doctor and even enumerated, in writing, the unresolved red flags associated with his prescribing practices.”¹⁰⁸ Between February 10, 2014 and March 12, 2017, Walmart filled “approximately 14,700 controlled-substance prescriptions . . . written by H.D., amounting to over 1,500,000 dosage units.”¹⁰⁹ H.D. was convicted of CSA violations and other federal crimes and received a 20-year prison sentence.¹¹⁰
- Walmart filled more than “15,000 controlled-substance prescriptions written by” a doctor referred to as “J.F.” between December 2013 and May 2016,

¹⁰³ *Id.* ¶184.

¹⁰⁴ *Id.* ¶185.

¹⁰⁵ *Id.* ¶¶186-91.

¹⁰⁶ *Id.* ¶191.

¹⁰⁷ *Id.* ¶192.

¹⁰⁸ *Id.* ¶¶227-42.

¹⁰⁹ *Id.* ¶239.

¹¹⁰ *Id.* ¶242.

despite the submission of at least seven “refusal to fill” forms for J.F. in that same period due to an “inability to resolve red flags raised by J.F.’s prescriptions.”¹¹¹ These red flags “includ[ed] that his patients sought early refills, were pharmacy and doctor shoppers, and were suspected of using the drugs for other than legitimate medical purposes.”¹¹² More than 400 of the prescriptions were paid for in cash and more than 250 involved a patient from a different state than J.F. and/or the pharmacy.¹¹³ The New Mexico Medical Board suspended J.F.’s license.¹¹⁴

¹¹¹ *Id.* ¶¶247, 249.

¹¹² *Id.* ¶247.

¹¹³ *Id.* ¶249.

¹¹⁴ *Id.* ¶248. Other examples identified by DOJ of doctors with massive red flags of illegitimate prescriptions, who Walmart nonetheless supplied, included: (i) J.I., who from July 2013 through March 2017 filled “more than 8,000 controlled-substance prescriptions” at Walmart, “including more than 1,000 that were paid for in cash and more than 100 that raised significant red flags on the face of the prescription because of their dangerous combination” (DOJ Compl. ¶¶250-56); (ii) M.L., who from November 2013 through March 2016 filled “more than 5,000 controlled-substance prescriptions” at Walmart, including “more than 400 . . . for dangerous combinations” of drug “cocktails” (*Id.* ¶¶257-64); (iii) M.M., who from June 26, 2013 through August 2016 filled “more than 8,000 controlled-substance prescriptions” at Walmart, including “more than 1,350 . . . paid for in cash” (*Id.* ¶¶265-77); (iv) M.N-A., who from July 2015 through July 2018 filled “nearly 3,000 controlled-substance prescriptions” at Walmart (*Id.* ¶¶278-84); (v) R.K., who from January 1, 2015 filled “over 8,000 controlled-substance prescriptions” at Walmart (*Id.* ¶¶292-98); and (vi) R.P., who from June 26, 2013 through August 2018 Walmart filled over “18,000 controlled-substance prescriptions . . . including more than 4,000 that were paid for in cash and more than 500 where the patient was from a different state than R.P. and/or the pharmacy” (*Id.* ¶¶308-15).

B. Walmart Did Not Give Its Pharmacists Access to Necessary Tools to Identify and Report Suspicious Prescribers

250. On the occasions when Walmart pharmacists were able to overcome the systemic roadblocks described above and successfully submit RTFs, the RTFs were stored in a manner that prevented other pharmacists from referencing the forms. As late as July 2018, pharmacists did not have easy access to the information that they needed to help determine whether a prescription was or was not issued for a legitimate medical reason.

251. Walmart had at least three different computer systems that pharmacists would use to identify and document red flags: (i) Connexus, Walmart's work flow management system that moves prescriptions through all of the different stations to be able to dispense the finished prescription, which pharmacists could use to, among other things, document when prescribers validated prescriptions as legitimate; (ii) Prescription Monitoring Programs ("PMPs") operated by the individual states (pharmacists would have to manually check the PMP to help identify whether there were any red flags before filling a prescription because it was not integrated into Connexus); and (iii) Archer, a software program that Walmart eventually used (after the MOA expired) to capture incident information and notate prescriptions that were not filled.

252. Walmart's policies prohibited RTF information stored in Archer from being readily accessible by the pharmacists who needed the information to make their own judgment of whether to fill a prescription for the same patient, from the same prescriber, or even the same prescription. Indeed, Archer was structured as a vault such that Pharmacists could enter RTFs but not subsequently access them.

253. During the Opioid MDL trial, Susanne Hiland, Senior Director for Walmart's patient safety organization, who has worked for the Company for 32 years ("Hiland"), confirmed that as of March 4, 2016, refusal to fill reporting was not accessible by regional directors. There were several requests from regional directors at the time to allow access to the system that contained the RTF reports.

254. Nelson also confirmed that pharmacists were incapable of pulling up a prescription in the Walmart prescription filling system to see if it had already been rejected at another store.

255. By July 2018, Walmart still had not developed a way to make RTF information easily accessible to all pharmacists who might need it. In another email admitted as an exhibit in the Opioid MDL trial, dated July 29, 2018, Jacob Creel, Director, U.S. Ethics and Compliance, Health and Wellness Practice Compliance, explained:

Currently, in the pharmacies, if the pharmacist makes a professional judgment, based on identified red flags, to not fill a prescription for a

controlled substance, the pharmacist submits a refusal to fill form in Archer. These forms are collected and stored in Archer. However, pharmacists do not have easy access to this information, especially if the pharmacist is from another store. This information could be used to clear red flags, or identify red flags that may indicate that the prescription was not issued for a legitimate medical reason. In order to ensure the pharmacist is equipped to make the most appropriate decision, this information needs to be readily available.¹¹⁵

256. This issue is even more troubling in light of how Walmart reported RTFs to the DEA. Rather than providing all of the information provided by pharmacists, according to the DOJ, Walmart excised the data fields in the reports it submitted that would have alerted the DEA to concerns about doctors whom they believed were operating pill mills, and sometimes did not send the RTFs to the DEA at all.

XIV. WALMART'S NONCOMPLIANCE WITH THE CSA SPARKS CRIMINAL INVESTIGATIONS

257. Criminal investigations into Walmart's CSA compliance begin in 2016.

[REDACTED]

[REDACTED]

¹¹⁵ Plaintiffs Trial Exhibit P-26705_00001, *In re: Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804-DAP (N.D. Ohio Nov. 8, 2021), ECF No. 4128-31.

A. The DOJ's Investigation Into Doctors Diamond and Wade

258. According to a September 27, 2019 letter that Walmart sent to the DOJ (the “September 27, 2019 letter”¹¹⁶), Walmart first learned of a criminal investigation into Walmart by the Department of Justice on December 7, 2016, when federal agents raided a Walmart in McKinney, Texas. The agents sought records about two pill-mill doctors, Howard Diamond and Randall Wade. The two doctors were later convicted of illegal distribution of opioids, receiving 20-year and 10-year prison sentences, respectively.

259. *ProPublica* reported several instances where Walmart’s compliance department overrode its pharmacists’ requests not to fill opioid prescriptions for Diamond and Wade, some of which were also reflected in exhibits offered in the MDL Opioid trial.

260. Walmart compliance actually learned about Diamond at least as early as December 24, 2014, when Nelson received a pharmacist manager’s request to stop filling any of his prescriptions, or a “blanket refusal to fill,” which was denied. Later, in February 2015, with the situation having only deteriorated in the ensuing weeks, the pharmacist sent a follow-up e-mail about Diamond stating: “We are all

¹¹⁶ <https://www.documentcloud.org/documents/6818266-2019-09-27-Letter-From-K-Hewitt-to-G-Eyler-Final.html>.

concerned about our jobs and about filling for a pill mill doctor. I'm in my 29th year with Walmart and have never had a situation this bad with a doctor. Other chains are refusing to fill for him which makes our burden even greater. Please help us.”¹¹⁷

261. That same month, another Walmart pharmacist wrote that “doctor Diamond is a problem and a liability on us. . . . Filling for him is a risk that keeps me up at night. This is a serious situation.”¹¹⁸

262. Despite these pleas, Walmart's compliance department refused to implement a “blanket refusal” system to block prescriptions written by those doctors, otherwise known as a “corporate block.”¹¹⁹

263. Rather, per *ProPublica*, Walmart filled over 13,000 controlled substances prescriptions from Diamond between 2014 and 2017, at an average of 11 per day.¹²⁰ This amounted to over 1.3 million doses. Similarly, between 2011 and 2016, over 100 different Walmart pharmacies in 17 different states filled opioid prescriptions issued by Wade. Between early 2015 and November 2016, Walmart

¹¹⁷ *ProPublica* Article.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ By contrast, Walmart only flagged 204 suspicious orders to the DEA from 2014 to 2017 across *all* of its pharmacies.

pharmacies filled an average of nine controlled substance prescriptions per day written by Wade, amounting to 875,000 doses.

264. In March 2017, Walmart received a search warrant for emails involving certain pharmacists in Texas,¹²¹ and five DEA Administrative Subpoenas between June 2017 and September 2018 “related primarily to Walmart’s dispensing practices,”¹²² showing that the criminal investigation had expanded.

265. In June 2017, Walmart also received a DOJ request regarding the Company’s dispensing of controlled substances.¹²³ A month later, in July 2017, Diamond was indicted. Then in May 2018, the U.S. Attorney for the Eastern District of Texas (“EDTX”) indicated its intent to add Walmart as a co-conspirator.¹²⁴

266. [REDACTED]

[REDACTED]

[REDACTED]

¹²¹ September 27, 2019 letter.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ PLAINTIFFS0003109.

B. [REDACTED]

267. The DOJ’s investigations into Walmart intensified when, in November 2017, Walmart began responding to “broad document demands from [a] EDTX Civil AUSA” concerning “potential CSA violations related to Walmart’s dispensing of controlled substances.”¹²⁵ Between November 2017 and April 2018, the Company produced “tens of thousands of pages of records.”¹²⁶

268. After the launch of these sprawling investigations, the Board and management could no longer knowingly tolerate the Company’s noncompliance with the CSA. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Rather Than Comply with the CSA, Walmart Shut Down its Extensive Distributing Operation

269. [REDACTED]

[REDACTED]

¹²⁵ September 27, 2019 letter.

¹²⁶ *Id.*

270. Following establishment of the Opioid MDL, plaintiffs consolidated pending complaints, with some seeking injunctive relief to stop Walmart's continued violations of the CSA as a distributor. Most likely due to the threat of a potential injunction, Walmart decided it would rather shut down its distribution operations than comply with the CSA and/or fight the requested injunction. The fact that Walmart would rather pay for distribution from third parties, rather than bring its distribution facilities into CSA compliance, underscores how broken the status quo was (and had been for years).

271. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127

¹²⁷ WMT_BR_NCR_00003323.

[REDACTED]

272. Having deferred compliance to the Walton-dominated Executive Committee and management, including R. Walton, Penner, and McMillon, for years, and failing to ensure CSA compliance, the Board was more than willing to allow Walmart to go on the offensive to cover-up years of conscious inaction.

A. [REDACTED]

273. In May 2018, the U.S. Attorney for the EDTX informed Walmart that it planned to “imminently indict the Company.”¹²⁸ The U.S. Attorney for the EDTX also conveyed to the Company that it believed Walmart faced *more than \$1 billion* in damages and civil penalties related to its distribution and dispensation of controlled substances. In July 2018, the U.S. Attorney for the EDTX reiterated an intention to indict the Company.

B. Walmart Leverages Political Connections to Undermine the Civil and Criminal Investigations into the Company

274. In response to the impending federal criminal and civil litigations, Walmart appealed to the highest reaches of the DOJ in Washington. In August 2018, Walmart’s counsel sent a letter to senior DOJ officials lobbying to quash the

¹²⁸ <https://www.documentcloud.org/documents/6818268-Letter-From-K-Hewitt-to-B-Benczkowski-Aug-10.html>.

contemplated criminal indictment. Around the same time, Walmart hired Rachel Brand – a DOJ official in Washington, DC – to further influence negotiations with the DOJ.

275. To fight off a civil lawsuit brought by the government, Walmart’s lawyers actively influenced top officials at the DOJ to delay the filing of the complaint and force settlement negotiations.

276. Shortly thereafter, the U.S. Attorney for the EDTX was instructed to drop the criminal indictment. The EDTX was also prevented by DOJ leadership from filing a civil complaint against Walmart in 2018. Thereafter, DOJ issued additional subpoenas, which Walmart mostly ignored.

277. The U.S. Attorney was also considering a criminal indictment against Nelson. Walmart’s counsel sent a letter on September 27, 2019 to the co-head of the national Walmart Working Group, which was formed by the DOJ and 15 different U.S. Attorney’s offices to explore potential lawsuits against the Company. In the September 27 letter, Walmart objected to Nelson’s indictment and threatened to end the Company’s document productions in response to subpoenas. Soon after, senior DOJ officials informed the U.S. Attorney that they could not indict Nelson.

278. In this September 27, 2019 letter, Walmart also complained about the Walmart Working Group’s request for all suspicious order reports submitted to the

DEA and the corresponding internal remediation plans issued during one phase of its SOM program. Walmart bemoaned that “the Company [had] to comb through various custodians’ information to retrieve the relevant data and then compile the disparate information into an organized format.”

279. In other words, as late as September 2019, Walmart *still* lacked an organized system for keeping track of suspicious orders (and attempts to address them). Moreover, an actual response on the merits would have demonstrated that the Company submitted almost zero suspicious order reports, despite Walmart’s obligation to do so.

280. By October 2019, Josh Russ, head of EDTX, had enough of Walmart’s improper tactics and resigned in protest. In a letter of resignation worthy for inclusion in future history books, Russ bluntly stated:

Over a year ago, EDTX had a complaint ready to file against [Walmart]—publicly and transparently—*for its obvious Controlled Substance Act violations in our district*. To me, success in this matter always meant, above all else, public accountability. There is a countervailing view in the Department that prioritizes settlements, notwithstanding the fact that the Department has settled these large pharmaceutical matters for years with insufficient deterrence to show for it. I thought it was time for a more aggressive approach.

Even so, I did my best to honor DAG Rod Rosenstein’s directive from late 2018 to work toward reaching a resolution with the company. *[Walmart], however, has abused the Department’s fairness, largely ignored our subpoena, and scoffed at our larger work on behalf of all Americans*. I appreciate that there are rational disagreements about

how best to proceed, and I respect those divergent views. However, I deeply regret that Department leadership prevented EDTX from filing its lawsuit in 2018. We met with family members of the deceased here in our Plano office, and we assured them we would quickly hold accountable those responsible for the deaths of their loved ones. One of the widowers cried in our office recounting how he has been raising his daughters alone. I failed to make good on that promise, and I will carry that with me always. *Now, cognizant of the many deaths it has caused, [Walmart] redefines shamefulness by claiming it is a victim.*

When I took my oath of office, I invoked God’s judgment and swore that I would support and defend the Constitution and that I would “well and faithfully discharge my duties of the office.” As Winston Churchill advised, I feel required to take these steps now due to “convictions of honour and good sense.” *Corporations cannot poison Americans with impunity. Good sense dictates stern and swift action when Americans die.*

C. Doubling Down on Its “Shamefulness,” Walmart Preemptively Sues the DOJ Blaming Everyone But the Fiduciaries for the Company’s Non-Compliance With the Law

281. Walmart’s scorched earth campaign against the federal government did not stop at meddling in the DOJ’s and Attorney General’s investigations. On October 22, 2020, the Company *sued the DOJ and the Attorney General* in the United States Federal Court for the Eastern District of Texas in an effort to preempt the regulators’ claims concerning Walmart’s role in the opioid epidemic.

282. In particular, the Company asked the court to issue a declaratory judgment that would clarify the obligations of pharmacists to intervene if they suspect illegal or dangerous prescribing habits. Walmart, unsurprisingly, sought an

interpretation that would limit Walmart’s liability and undermine its obligations under the CSA.

283. The Company also sought to avoid responsibility in the opioid epidemic and cast all blame on the federal regulators, alleging that the “DOJ and DEA should not be allowed to outsource to pharmacists and pharmacies the job DEA has failed to do” and the “DEA’s comprehensive failures have dramatically exacerbated the opioid crisis over at least the past twenty years.” And, characterizing the above-described federal government investigations, Walmart alleged that the “DOJ [s]pent [y]ears on an [i]nvestigation of Walmart [t]ainted by [e]thical [t]ransgressions.”

284. Walmart even went so far as to make a number of highly dubious allegations—that as set forth above, Defendants knew were false—including:

- “Walmart’s pharmacy dispensing policies have always complied with the letter and spirit of the CSA”;
- “Walmart has always complied carefully and faithfully with its CSA obligations”; and
- “Although its systems evolved and improved over the years, throughout the period that it self-distributed controlled substances, *Walmart complied with its obligations as a DEA-registered distributor under the CSA.*”

285. The federal court refused to take Walmart’s bait. On February 4, 2021, the court dismissed Walmart’s complaint on the grounds that the DOJ enjoyed sovereign immunity. Former U.S. Attorney Booth Godwin observed that “Walmart

tried an end-around and was tackled.” *Bloomberg* described the gambit as “a spectacular failure” in “attempted forum shopping.” *Reuters* called “Walmart’s tactic [] a complete flop,” that “did not stave off the DOJ’s complaint.” Walmart unsurprisingly lost its appeal to the Fifth Circuit Court of Appeals.¹²⁹

286. The Board’s decision to initiate suit against the DOJ despite knowing that the Company had violated the 2011 MOA and the CSA demonstrates its own self-interest in assessing Walmart’s outsized role in the opioid crisis due to serial violations of the 2011 MOA and CSA.

XVI. DEFENDANTS’ MALFEASANCE HARMED WALMART

287. Despite attempting to deflect accountability from Walmart’s fiduciaries (*i.e.*, Defendants), Walmart now faces lawsuits brought by private litigants, state attorney generals, and the DOJ. Damages from these lawsuits could total in the billions of dollars.¹³⁰

A. The Opioid MDL

288. On December 12, 2017, the Opioid MDL commenced against Walmart (among other defendants). In the Opioid MDL, thousands of plaintiffs from across

¹²⁹ See *Walmart Inc. v. U.S. Department of Justice*, 21 F.4th 300, 305 (5th Cir. 2021).

¹³⁰ Laurel Wamsley, *Justice Department Sues Walmart, Alleging It Illegally Dispensed Opioids*, NPR, Dec. 22, 2020, <https://www.npr.org/2020/12/22/949266706/justice-department-sues-walmart-alleging-it-illegally-dispensed-opioids>.

the country—including counties, cities, healthcare providers, Native American tribes, individuals, and third-party payors—brought lawsuits against opioid manufacturers, distributors, pharmacies, and other supply chain entities (including Walmart) under various legal theories to hold them accountable for their roles in the opioid epidemic and the devastation it caused.

289. The Opioid MDL plaintiffs alleged that the “Pharmacy Defendants,” including Walmart, “had the ability, and the obligation, to look for [] red flags on a patient, prescriber, and store level, and to refuse to fill and to report prescriptions that suggested potential diversion,” yet they “systematically ignored red flags that they were fueling a black market.” In particular, Walmart allegedly failed to:

- “adequately train their pharmacists and pharmacy technicians on how to properly and adequately handle prescriptions for opioid painkillers”;
- “put in place effective policies and procedures to prevent their stores from facilitating diversion and selling into a black market”;
- “conduct adequate internal or external reviews of their opioid sales to identify patterns regarding prescriptions that should not have been filled”;
- “effectively respond to concerns raised by their own employees regarding inadequate policies and procedures regarding the filling of opioid prescriptions”; and
- “take meaningful action to investigate or to ensure that they were complying with their duties and obligations under the law with regard to controlled substances.”

290. These deficiencies are precisely what Walmart agreed to address in the 2011 MOA, but failed to, and were known to Defendants.

291. Moreover, the Opioid MDL plaintiffs alleged that distributors, including Walmart, failed to “control the supply chain, prevent diversion, report suspicious orders, and halt shipments.” Despite the fact that such distributors were “in possession of national, regional, state, and local prescriber and patient-level data that allowed them to track prescribing patterns over time,” they entirely failed to do so. The distributors also “refused to identify, investigate and report suspicious orders to the DEA when they became aware of the same despite their actual knowledge of drug diversion rings.” Again, these were monitoring and reporting requirements that Defendants knew of, and to which Walmart was bound via the 2011 MOA and CSA generally.

292. Further, plaintiffs in the Opioid MDL alleged the defendants (including Walmart) used industry organizations to avoid liability and protect the supply chain of opioids, including by:

- drafting a “best practices” model for dealing with “suspicious orders,” better known as the Industry Compliance Guidelines, as a ruse to avoid regulatory enforcement;
- coordinating to invalidate enforcement actions;
- coordinating to fight the stricter controls for hydrocodone combination products; and

- circumventing the DEA through the creation of a coalition on controlled substances that aimed to limit the scope of DEA restrictions on their continued distribution of controlled substances.

293. The Opioid MDL plaintiffs also asserted a statutory nuisance claim to enjoin defendants (including Walmart) from continued violations of the CSA. Rather than fight the claim, Walmart shut down its opioid distribution activities.

294. On September 3, 2019, Judge Polster denied defendants' summary judgment motions on claims of civil conspiracy, crediting the plaintiffs' evidence that defendants: (i) used their membership and leadership positions in industry organizations and relationships with one another to "grow and protect the Opioid Supply Chain"; (ii) coordinated to form a "coalition" on controlled substances to limit the scope of DEA regulations on distribution; and (iii) worked "in partnership" with an industry organization to develop solutions and strategies concerning DEA enforcement issues and actions. Judge Polster held that "[a] jury could review the record evidence and find that Pharmacy Defendants [including Walmart] shared a general conspiratorial objective, with themselves and with other Defendants, to expand the opioid market using false information and disregard regulatory obligations in order to achieve that goal."

295. On January 27, 2020, Judge Polster denied Walmart's second summary judgment motion, in which the Company sought judgment on the plaintiffs' common

law claims for absolute public nuisance and civil conspiracy based on its failure to maintain effective controls against diversion. In the opinion, Judge Polster rejected the Company's argument that the plaintiffs could not show that any prescription opioids that Walmart shipped to its own pharmacies were diverted from appropriate medical use or caused other claimed harm.

296. Indeed, the court even noted that the record evidence concerning Walmart's suspicious order monitoring program "suggests obvious deficiencies that *a layperson could plainly recognize.*" This was the same monitoring program implemented by Defendants in February 2015, under McMillon's questionable sponsorship and that presented several obvious red flags of insufficiency.

297. The first bellwether trial in the Opioid MDL took place in November 2021. After deliberations, the jury found Walmart liable for helping fuel the U.S. opioid crisis. A separate legal proceeding will determine how much Walmart will have to pay to help remedy the crisis, with damages likely to run into the billions of dollars.

B. State AG Lawsuits

298. Walmart's annual reports in 2019, 2020, and 2021, signed by Company directors, state, "[t]he Company has also been responding to subpoenas, information

requests and investigations from governmental entities related to nationwide controlled substance dispensing and distribution practices involving opioids.”

299. In 2019 and 2020, the attorney generals of several states, including at least Nevada, New Mexico, South Dakota, and West Virginia, sued the Company for its role in the opioid crisis. The allegations in these complaints mirror those made in the Opioid MDL.

C. **The DOJ Civil Lawsuit**

300. On December 22, 2020, the DOJ filed a lawsuit against Walmart in the United States District Court for the District of Delaware, alleging that the Company repeatedly violated the CSA, both as an operator of retail pharmacies and as an operator of wholesale drug distribution centers. The DOJ is seeking injunctive relief and civil penalties, which could total in the *billions of dollars*.

301. The DOJ Complaint alleges that, as the operator of its pharmacies, Walmart knowingly filled thousands of controlled substance prescriptions that were not issued for legitimate medical purposes or in the usual course of medical practice, and that it filled prescriptions outside the ordinary course of pharmacy practice. It also alleges that Walmart, as a distributor, received hundreds of thousands of suspicious orders that it failed to report as required to by the DEA.

302. The DOJ Complaint shows that issues the DEA identified in the 2011 MOA continued for years, into 2017 and beyond, including filling problematic out-of-state prescriptions, filling prescriptions that did not meet proper record requirements, filling prescriptions where a valid doctor/patient relationship did not exist, and failing to make important red flag data available to Walmart pharmacists.

303. Indeed, the DOJ specifically tied Walmart's failure to comply with the 2011 MOA as an aggravating factor leading to the later enforcement action. As reported by *ProPublica* in March 2020, it was "troubling to the federal investigators" that Walmart violated the CSA from 2011 to 2016, despite the fact that "for much of this period, Walmart was operating under a secret settlement . . . with the DEA" Indeed, "*[p]rosecutors believed that Walmart was not fulfilling the terms of its agreement with the DEA.*"

304. Under Delaware law, the Defendants had a duty to monitor and take good faith efforts to stop this unlawful conduct, particularly in light of the 2011 MOA that identified many of these precise issues and embodied Walmart's commitment to rectify them. Based on the DOJ's allegations (and all of the other evidence discussed in this Complaint), the Defendants failed to implement a reporting system for years after learning that Walmart was not in compliance with the CSA. While Defendants eventually did adopt half measures like the flawed SOM

program, they never came close to implementing a program that fully complied with Walmart's CSA obligations.

305. As a direct consequence of the lack of bona fide monitoring, “from June 26, 2013, through November 29, 2017, Walmart shipped approximately *15.2 million* orders of Schedule II controlled substances and Schedule III narcotics to its own pharmacies,” and that “from June 26, 2013, through November 29, 2017, Walmart shipped approximately *37.5 million* Schedule II, III, IV and V orders to its pharmacies.” The DOJ alleges that “[d]uring the same time period, Walmart reported *only 204 suspicious orders* to DEA—an infinitesimal percentage,” (*i.e.*, 0.0005%).

306. The DOJ Complaint notes that “[t]he small number of suspicious orders Walmart reported cannot be credibly attributed to a lack of unusual or otherwise suspicious orders placed by its pharmacies.” Rather, “Walmart’s failure to report suspicious orders stems from Walmart’s decisions to operate a system that failed to detect suspicious orders and to manipulate that system to avoid reporting to DEA those suspicious orders that were detected.”

D. Defendants Allow Walmart to Mislead the Public by Minimizing the Company’s Compliance Failures

307. Notably, the CSA-related misconduct and resultant harms outlined above stand in stark contrast to what Walmart was telling the public about its

regulatory compliance. Throughout the relevant period, the Board consistently assured in its proxy statements and annual reports that the Company had robust controls and reporting processes in place,¹³¹ that the Board was actively and effectively overseeing the implementation of compliance objectives,¹³² and that there was no indication of noncompliance with applicable laws.¹³³ These disclosures gave a false impression to the public not only that the Board had effective systems

¹³¹ *See, e.g.*, Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 33-34 (Apr. 22, 2013) (“The Board committees, which meet regularly and report to the full Board, play active roles in fulfilling the risk oversight function.”).

¹³² *See, e.g.*, Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 52-53 (Apr. 22, 2015) (“[M]anagement reported regularly to the Audit Committee regarding ongoing enhancements to our global compliance program and progress in implementing these objectives. At the end of fiscal 2015, the Audit Committee determined that, in its qualitative judgment, adequate progress had been achieved in implementing these objectives.”); *see also* Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 49-50 (Apr. 20, 2016); Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 60 (Apr. 20, 2017); Walmart Inc., Definitive Proxy Statement (Schedule 14A), at 51 (Apr. 20, 2018).

¹³³ *See, e.g.*, Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 38 (Apr. 23, 2014) (representing that the Audit Committee “received reports from management regarding our company’s policies, processes, and procedures regarding compliance with applicable laws and regulations and Walmart’s Statement of Ethics”); *see also* Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 39-40 (Apr. 22, 2015); Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 79-80 (Apr. 20, 2016); Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 93-94 (Apr. 20, 2017); Walmart Inc., Definitive Proxy Statement (Schedule 14A), at 84-85 (Apr. 20, 2018).

in place to oversee the Company's legal and regulatory compliance, but also that the Company was actually in compliance with its legal and regulatory obligations.

308. Indeed, a majority of the demand Board knew that certain of these disclosures were false and signed them anyway. But Defendants hid from stockholders and the public that, *inter alia*, the Company:

- a. Knew that it lacked adequate CSA compliance for years leading up to the 2011 MOA;
- b. Entered into the 2011 MOA, ***which was secret until ProPublica uncovered it in 2020***, making specific commitments to achieve CSA compliance and implement adequate reporting and monitoring systems;
- c. Eventually adopted a management-backed SOM monitoring system that was so woefully deficient in scope that a layperson could infer its inadequacy; and
- d. Repeatedly denied its role in the opioid crisis in connection with the Opioid MDL and the DOJ lawsuits.¹³⁴

¹³⁴ See, e.g., Walmart, Inc., Annual Report (Form 10-K), at 72 (Mar. 20, 2020) (In connection with opioid litigation, disclosing “[t]he Company cannot predict the number of such claims that may be filed, but believes it has substantial factual and legal defenses to these claims, and intends to defend the claims vigorously”); Walmart, Inc., Annual Report (Form 10-K), at 75 (Mar. 29, 2021) (same). See Walmart, *Statement by Walmart Inc. with respect to the Jury Verdict in the Liability phase of a Single, Two County Trial in the Multidistrict Litigation in the U.S. District Court for the Northern District of Ohio involving Opioids* (Nov. 23, 2021), <https://corporate.walmart.com/newsroom/2021/11/23/statement-by-walmart-inc-with-respect-to-the-jury-verdict-in-the-liability-phase-of-a-single-two-county-trial-in-the-multidistrict-litigation-in-the-u-s-district-court-for-the-northern-district-of-ohio-involving-opioids> (“Plaintiffs’ attorneys sued Walmart in search of deep pockets while ignoring the real causes of the opioid crisis—such as pill mill doctors,

DEMAND FUTILITY ALLEGATIONS

309. Plaintiffs did not make a demand on the Board to institute this action because pre-suit demand is excused.

310. Plaintiffs repeat and reallege each allegation above as if set forth in full in this Demand Futility Allegations section.

311. Demand is excused because there exists a reasonable doubt that, at a minimum, at least half of the Board at the time that the initial complaint was filed could properly exercise independent and disinterested business judgment in responding to a demand.

312. The demand Board has twelve members: R. Walton, Penner, Flynn, Horton, Mayer, McMillon, Reinemund, S. Walton, Sara Friar, Carla Harris, Cesar Conde, and Randall Stephenson (the “Demand Board”). Demand is therefore futile if at least six of the twelve directors either lack independence, are not disinterested, or both. Here, at least eight directors lack independence, are not disinterested, or both.

illegal drugs, and regulators asleep at the switch—and they wrongly claimed pharmacists must second-guess doctors in a way the law never intended and many federal and state health regulators say interferes with the doctor-patient relationship. As a pharmacy industry leader in the fight against the opioid crisis, Walmart is proud of our pharmacists, who are dedicated to helping patients in the face of a tangled web of conflicting federal and state opioid guidelines.”).

313. As alleged in more detail below, a majority of the Demand Board is either interested because the directors face a substantial likelihood of liability, and/or lack independence from the highly culpable Executive Committee Defendants and McMillon, who acted at the behest of the Walton family (including R. Walton, Penner, and S. Walton) and its fanatical focus on the bottom line.

314. The chart set forth below depicts the respective Board and management roles and tenures of a majority of the Demand Board:

Director	Duration	Other Roles	Duration
S. Robson Walton (“R. Walton”)	1978-present	Walton Family	Whole life
		Chairman	1992-2015
		Executive Committee	All relevant times
		Strategic Planning & Finance Committee	2016-2021
Gregory B. Penner	2008-present	Walton Family	All relevant times
		Vice Chairman	2014-2015
		Chairman	2015-present
		Executive Committee	2016-present
		Strategic Planning & Finance Committee	2014-2015
Steuart L. Walton (“S. Walton”)	2016 (June) - present	Walton Family	Whole life
		Strategic Planning & Finance Committee	2017-2018
Timothy P. Flynn	2012 (July) - present	Audit Committee	2012 (July) - present
		Strategic Planning & Finance Committee	2016-2018

Director	Duration	Other Roles	Duration
Thomas W. Horton	2014 (Nov.) - present	Executive Committee	2019-present
		Audit Committee	2014 (Nov.) - present
		Strategic Planning & Finance Committee	2016-2021
Marissa A. Mayer	2012 (June) - present	Strategic Planning & Finance Committee	2013-2015
C. Douglas McMillon	2013 (Nov.) - present	Executive Committee	2013 (Nov.) - present
		CEO	2014 (Feb.) - present
Steven S. Reinemund	2010 (June) - present	Strategic Planning & Finance Committee	2014-2017

I. A MAJORITY OF THE DEMAND BOARD FACES A SUBSTANTIAL LIKELIHOOD OF LIABILITY FOR FAILURE TO IMPLEMENT COMPLIANCE SYSTEMS SUFFICIENT TO MEET WALMART’S CSA OBLIGATIONS

315. As alleged above, the Demand Board knew that the Company’s compliance with the CSA was mission critical as both a distributor and dispenser of controlled substances. The Demand Board also received repeated red flags that Walmart was dangerously deficient in meeting its obligations. Nonetheless, for nearly a decade, the Board failed to ensure that the Company was in compliance with the CSA and the 2011 MOA. Because a majority of the Demand Board failed to act to discharge a known duty to act, and/or failed to implement controls that would put

its members on notice of dangerous CSA noncompliance, those directors face a substantial likelihood of liability.

316. Prior to November 2010, Walmart lacked any CSA compliance policies and procedures *at all*. Defendant R. Walton (who was Chairman from 1992 to 2015), along with Defendants Penner and Reinemund, were directors by November 2010, thus failed to ensure that Walmart was complying with one of its central regulatory requirements.

317. [REDACTED]

[REDACTED] Specifically, in March, 2011, the Company entered into the 2011 MOA. In the 2011 MOA, Walmart agreed to a nationwide compliance system to detect and monitor internal and external diversion of opioids, and reporting of red flags “up” within the Company and “out” to the DEA. These are basic requirements under the CSA.

318. [REDACTED]

319. [REDACTED]

320. In 2013, McMillon joined the Board and was appointed CEO in 2014. He (along with R. Walton, Flynn, Penner, Mayer, and Reinemund – a majority of the Demand Board) learned of additional red flags of noncompliance, including some or all of the 2013 *Qui Tam* allegations, [REDACTED] and the June 2014 PSW.

321. By at least June 2014, according to the June 2014 PSW, a majority of the Demand Board was informed that Walmart lacked a nationwide SOM—as required by the CSA and 2011 MOA—which was an “existing risk,” and that the “events or conditions underlying the Risk [*i.e.*, the absence of a SOM program] will occur,” leading to a “severe” risk of “financial or reputational impact to the Company[,]” which included “physical security risks,” “health or safety risks,” and “fraudulent activities.”

322. [REDACTED]

[REDACTED]

323. [REDACTED]

[REDACTED]

324. [REDACTED]

[REDACTED]

[REDACTED] The SOM program failed to provide pharmacists with sufficient information to properly refuse to fill suspicious prescriptions. And, rather than report oversized and suspicious orders to the DEA, Walmart’s system “cut” the orders to the limit, in what was clearly a profit-driven effort to maximize prescription filling over reporting.

325. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

326. By 2016, at least eight of the twelve Demand Board members (Defendants R. Walton, Penner, Flynn, Horton, Mayer, McMillon, Reinemund, and S. Walton) knew of the government's criminal and civil investigation into the Company's illegal practices taking place on a nationwide basis. Yet, as alleged herein and in the DOJ Complaint, and as the evidence from the Opioid MDL establishes, these directors did not remediate the Company's defective compliance systems or take steps to stop the Company's lawbreaking, which continued unabated.

327. Demand is also futile because Defendants R. Walton, Penner, Flynn, Horton, Mayer, McMillon, Reinemund, and S. Walton, and non-defendant directors Friar, Carla Harris, and Conde proved through their actions that they could not disinterestedly consider a demand. After learning of serious investigations into Walmart and pending indictments, these directors caused Walmart to preemptively

sue the federal government asserting meritless and baseless interpretations of the CSA. The Board's decision to side with Defendants and sue the government, prior to initiation of this case, shows that it could not have objectively assessed a demand.

328. Thus, as alleged herein, in the DOJ Complaint, and based on the evidence from the Opioid MDL, the Company's noncompliance with the CSA was sustained and systemic and occurred on a nationwide basis. A majority of the Demand Board received numerous red flags, including that the Company was not meeting its obligations under the 2011 MOA or CSA. When the Board finally adopted McMillon's SOM program, it was facially defective. The Board then failed to take a single step to monitor the effectiveness of that program, until it was too late, as the Company was wrapped up in massive potential liability.

II. THE AUDIT COMMITTEE MEMBERS WERE PRIVY TO HEIGHTENED RED FLAGS, EXPOSING THEM TO HEIGHTENED POTENTIAL LIABILITY

329. The Company's Proxy filings since 2013 admit that the full Board is put on notice of any compliance-related issues raised on Board committees, including the Audit Committee:

When a Board committee receives an update on a risk-related matter, the chair of the relevant Board committee reports on the discussion to the full Board during the Board committee reports portion of the next Board meeting. The open communication between the company's management and the Board and the Board committees, and between the Board and the chairs and the other members of the Board committees, enables the Board, Board committees, and management to coordinate

the risk oversight role in a manner that serves the long-term interests of the company and our shareholders.¹³⁵

330. The Audit Committee of the Board has responsibility for, *inter alia*, “the compliance by the Company with legal and regulatory requirements” and “[t]he Audit Committee shall make regular reports to the Board.” As such, this put additional oversight responsibility on Audit Committee members.

331. [REDACTED]

¹³⁵ See, e.g., Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 34 (Apr. 22, 2013); see also Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 16 (Apr. 19, 2010) (“When a Board committee receives an update [related to risk management], the chairperson of the relevant Board committee reports on the discussion to the full Board during the Board committee reports portion of the next Board meeting.”).

III. BECAUSE OF THE WALTONS DOMINANCE OVER THE GOVERNANCE AND OPERATIONS OF THE COMPANY, A MAJORITY OF THE BOARD COULD NOT DISINTERESTEDLY CONSIDER A DEMAND

332. The Walton family controls Walmart through its stock ownership and placement of family members in key positions at the Company. The Waltons had substantial representation on the Board, including Defendants R. Walton, Penner, and S. Walton, and had the unilateral power via share ownership to vote any person on or off the Board. The Walton family also wielded its power as a controlling stockholder group to appoint a hand-selected CEO, Defendant McMillon, to run the Company. R. Walton (all relevant times), Penner (since 2016), and McMillon (since 2014) also have sat on the Executive Committee for years.

333. Given the Walton family's role as the founders, the Board has deferred to the Waltons for purposes of executing the Company's day-to-day business, including compliance oversight. For example, prior to 2015, Defendant R. Walton served as Chairman of the Board from 1992 to 2015. As Chairman, R. Walton was:

charged with presiding over all meetings of the Board and our shareholders, and providing advice and counsel to the CEO and our company's other officers regarding our business and operations, as well as *focusing on oversight* and governance matters.¹³⁶

¹³⁶ Wal-Mart Stores, Inc., Definitive Proxy Statement (Schedule 14A), at 33 (Apr. 23, 2014).

334. As Chairman, R. Walton was considered an “executive” under the Company’s bylaws, and was acting in that capacity when the Company, for example, entered into the 2011 MOA with the DEA and then failed to take the compliance steps necessary to satisfy the commitments to the government therein.

335. Defendant Penner, R. Walton’s son-in-law, assumed the Chairman position in 2015, inheriting his father-in-law’s executive oversight duties.¹³⁷ Because R. Walton, Penner, and McMillon acted as executives, with heightened oversight obligations, their duty of care breaches are not exculpable and face a particularly high prospect of liability.

336. Moreover, Walmart’s Board maintains an Executive Committee to which it delegates its powers and duties between Board meetings and while the Board is not in session, and to implement the policy decisions of the Board. The Executive Committee is dominated by the Waltons. Tasked with heightened oversight responsibility, and direct involvement in the failed response to compliance obligations, the Executive Committee Defendants face a particularly high prospect of liability.

¹³⁷ Walmart Inc., Definitive Proxy Statement (Schedule 14A), at 16, 21 (Apr. 22, 2021).

337. The Demand Board repeatedly deferred compliance responsibility to McMillon and the Executive Committee, despite red flags that the Waltons and management were not satisfying critical legal and moral obligations of Walmart. This abdication of duty evinces the “controlled mindset” infecting the full Board, which was unwilling to demand implementation of a legally compliant CSA system, over the foot-dragging of the notoriously bottomline-driven Waltons.

338. Moreover, R. Walton, Penner, and S. Walton also lacked independence for purposes of a demand. They are close family members of Walmart’s founder (Sam Walton), held numerous positions at Walmart over the years, and are tied to the billions of dollars of Walton family wealth stemming from its equity ownership in Walmart. The Company admits that R. Walton, Penner, and S. Walton are not independent.

339. McMillon has made over \$150 million in the seven years that he has acted as the Waltons’ preferred CEO is therefore not independent.

340. The Demand Board could not disinterestedly consider a demand against R. Walton, Penner, McMillon, or S. Walton, given the power the Waltons wielded over the Company. Demand is excused on this separate basis.

IV. FRIAR

341. Director Sarah J. Friar has been a Board member since February 2018 and is a member of the Audit Committee. Friar cannot objectively consider a demand.

342. As a member of the Audit Committee, Friar failed to take any affirmative steps to bring the Company into compliance with the CSA following notice of the civil and criminal investigations into Walmart, which continued to violate the CSA unabated.

343. Friar's role in authorizing the Company to file a preemptive lawsuit against the DOJ related to Walmart's failure to comply with the CSA further establishes that she is unable to objectively consider a demand.

344. Friar also lacks independence for purposes of a demand. Since 2018, Friar has been the CEO of Nextdoor Inc. ("Nextdoor"), and Walmart is an important business partner for Nextdoor. In April 2020, Nextdoor partnered with Walmart on a new neighborhood assistance program, and in public statements, Friar has singled out Walmart as a critically important partner and advertiser that enables Nextdoor to grow and monetize its social media platform.¹³⁸ In forming this partnership, Friar

¹³⁸ See, e.g., Interview with Sarah Friar, AUSTRALIA START UP DAILY (July 8, 2021) ("So today we largely monetise through advertising. So think of it as we work with some of the largest brands in the world, folks like say Walmart here in the US . . .").

also built a close relationship with McMillon and has publicly lauded the Walton family.¹³⁹

PLAINTIFFS' CLAIMS ARE TIMELY

345. Plaintiffs first became aware of potential breaches of fiduciary duty on March 25, 2020, when *ProPublica* issued an article detailing the Company's utter failure to comply with the CSA. The article also revealed certain actions—previously unknown to the public—that Walmart had taken to undermine the government's efforts to investigate and hold the Company criminally and civilly accountable for long-running violations of the law. Walmart investors and the public learned the following facts from the *ProPublica* article.

- a. Walmart had received more than 50 “Letters of Admonition” from the DEA for its prescribing practices from 2000 to 2018.
- b. Walmart entered into the MOA with the DEA in March 2011, which Walmart had *never* disclosed publicly.
- c. Even during the period that Walmart was subject to the MOA, Walmart's internal emails showed that the Company's

¹³⁹ *See, e.g.*, Khosla Ventures Acquisition Co. II (Form 425) (July 7, 2021) (“Q: ... [N]ot very often you get to work with a family like the Waltons in [sic] the CEO over at Walmart and what have you learned on the Walmart board and what you have applied to Nextdoor[?] A: When I was joining the Walmart board I read the book about Sam Walton and never was there a person more community minded and that's one of the reasons I got really intrigued by what they had built We've done some amazing work with Walmart . . . and so learning from Doug [McMillon] how he manages that global expansion has really been incredible. So, I really feel gifted”).

compliance department turned a blind-eye to continuing violations of law. Specifically, Walmart's internal emails showed that the Company internally tracked pharmacist complaints about certain doctors, yet Brad Nelson and other members of the compliance department ignored those complaints and demanded that pharmacists and employees focus on increasing opioid sales rather than comply with the CSA.¹⁴⁰

- d. The DOJ in EDTX had contemplated bringing a criminal indictment against the Company and Brad Nelson, but after the Company received notice of the criminal indictment, and without disclosing the same, it took steps to quash legal enforcement by improperly influencing DOJ attorneys in Washington, DC.
- e. The DOJ in EDTX had likewise contemplated bringing civil charges against the Company in 2018, but after the Company received notice of the contemplated civil enforcement, and without disclosing the same, it took steps to quash the filing of the complaint by improperly influencing DOJ attorneys in Washington, DC.

346. The *ProPublica* article sparked numerous stockholder investigations into potential breaches of fiduciary duty by Walmart's officers and directors, including Plaintiffs' investigations. Specifically, Plaintiffs' counsel set out to investigate whether the Company's utter failure to comply with the CSA was the result of breaches of fiduciary duty by the Company's officers and directors.

¹⁴⁰ Incredibly, Walmart did not just conceal these critical facts from stockholders. Indeed, after the *ProPublica* article was published, plaintiffs in the Opioid MDL moved to compel production of documents pertaining to Brad Nelson, which had not been produced in the Opioid MDL.

347. In the early stages of the investigation, Plaintiffs' counsel uncovered the Opioid MDL plaintiffs' Opposition to Walmart's Motion for Summary Judgment, which was filed on August 13, 2019. The Opposition detailed specific facts showing that Walmart had no formal processes in place to comply with the CSA prior to 2010. The filing attached discovery exhibits also making clear that the Board knew the Company lacked processes to comply with the suspicious order monitoring regulations imposed on distributors and dispensers under the CSA.

348. In response to Plaintiffs Section 220 demands served between May and July 2020, Walmart refused to produce any documents to any of the Plaintiffs, prompting Plaintiffs' Section 220 complaints that were filed between July and August 2020. A joint trial on Plaintiffs' Section 220 Complaints was held on October 5, 2020.¹⁴¹ On October 29, 2020, the Court entered a Final Order and Judgment requiring the Company to produce certain documents in response to the demands.

349. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁴¹ *Police & Fire Retirement System of the City of Detroit v. Walmart Inc.*, C.A. No. 2020-0478-JTL (Del. Ch. Oct. 5, 2020) (TRANSCRIPT).

[REDACTED]

[REDACTED]

350. During Plaintiffs’ counsel’s review of the production, on December 22, 2020, the DOJ filed a civil complaint alleging that Walmart unlawfully dispensed controlled substances from pharmacies it operated, between June 26, 2013, and present (*i.e.*, December 22, 2020) (DOJ Compl. ¶25). Furthermore, the DOJ has requested injunctive relief to “address and restrain Walmart’s violations of law[.]” (DOJ Compl., Prayer For Relief ¶(b).) The DOJ complaint clearly establishes that the Company’s non-compliance with the CSA continued until *at least* December 22, 2020 and, given the Company’s litigation positions, likely continues to this day.

351. To the extent the statute of limitations even began to run before December 22, 2020, any perceived delay in Plaintiffs’ filing of this Action arises due to the Board’s and management’s concerted and long-running efforts to intentionally conceal critical facts necessary to put Plaintiffs on notice of the specific facts showing the Board’s and management’s sustained and systemic breaches of fiduciary duty. Regarding the specific issues and facts in the *ProPublica* article, the Company never disclosed its entry into the 2011 MOA, the receipt of 50 letters of admonishment, or the DOJ’s contemplated criminal indictment of Walmart, the

contemplated civil enforcement action against the Company, or the contemplated criminal indictment of Brad Nelson.

352. Walmart also routinely disclosed to stockholders in SEC filings that the Board and management believed the Company had adequate controls in place to comply with the law. More specifically, in or around January 2014, Walmart publicly disclosed certain advancements to its Health & Wellness compliance program that included “[c]reating a diversion analytics tool to deter, detect, and remedy attempts at pharmaceutical diversion in U.S. Walmart and Sam’s Club,” In reality, however, Walmart actually had no processes in place to comply with the suspicious order monitoring requirements under the CSA, as evidenced by the June 2014 PSW.

353. The Board’s and management’s affirmative concealment hid from public view both the fact and severity of the Company’s long-standing non-compliance with the CSA. Several complaints filed against Walmart show the effect of the Company’s active concealment of material violations of the CSA. For instance, plaintiffs across the nation had to resort to alleging claims based upon “information and belief” or otherwise resorted to non-specific allegations implicating Walmart in violations of the law. As one example, in April 2017, the Cherokee Nation filed a complaint against Walmart with the core allegations being

based on “information and belief” and the only specific allegations being two instances where a single pharmacist had been found to violate the CSA.

354. Walmart used its acts of concealment to affirmatively mislead stockholders and prematurely end the litigation against the Company. After initial complaints were filed against the Company, Walmart repeatedly downplayed the gravity of the merits of those complaints, despite knowing of undisclosed internal documents showing the Board had knowledge of the Company’s long-standing failure to comply with the CSA. To that end, Walmart repeatedly disclosed to stockholders that “[t]he Company believe[d] it has substantial factual and legal defenses to these claims, and intends to defend the claims vigorously.” Likewise, in seeking to dismiss those complaints, Walmart repeatedly took the position that those pleadings were “boilerplate” and “cookie-cutter” and failed to “plausibly alleg[e] specific actionable conduct against” Walmart.¹⁴²

355. Even after the Opioid MDL court denied Walmart’s motion to dismiss on December 19, 2018, Walmart continued to conceal the existence of critically

¹⁴² Indeed, Plaintiffs have not found a single complaint alleging more than two regulatory actions against Walmart, with those regulatory actions being limited to findings against a single pharmacist at a single Walmart location for violations of the CSA. These regulatory actions are a far cry from the findings in the 2011 MOA that Walmart concealed from investors and the public, which identified CSA violations on a nationwide basis.

material evidence unearthed during discovery in the Opioid MDL showing the Board's failure to implement controls necessary to comply with the CSA. Specifically, in moving for summary judgment on July 19, 2019, Walmart stated as follows:

To the extent Plaintiffs have any theory of wrongdoing, it seems to be that, in some unspecified manner, Walmart did not fully comply with DEA regulations requiring that distributors maintain controls against diversion. But the record shows that Walmart's antidiversion policies complied with the law at all times. Most notably, while Plaintiffs' expert witnesses offered many opinions about other Defendants' suspicious order monitoring ("SOM") programs, they do not offer a single opinion criticizing Walmart's SOM program.

356. The Board and management also concealed the existence of the Company's long-running violations of the CSA by interfering with civil and criminal investigations and never disclosing anything about those investigations publicly. Josh Russ's resignation later (*see supra* ¶280) makes clear that Walmart's improper influence resulted in DOJ officials not permitting EDTX to file a civil case against Walmart in 2018. If a case had been filed, and looked anything like the civil case the DOJ filed against Walmart in 2020, it certainly would have prompted stockholder investigations into potential breaches of fiduciary duty. It would be utterly perverse to permit Walmart's successful interference with and failure to disclose contemplated criminal and civil actions concerning its CSA non-compliance to bar stockholders from asserting breach of fiduciary duty claims now.

357. The Board also misrepresented the nature of Walmart's CSA compliance by permitting the Company to preemptively file a lawsuit against the DOJ seeking declaratory relief on October 22, 2020. In its complaint, Walmart placed blame for its own legal violations on the DEA. As became clear after the DOJ filed its complaint, Walmart's strategy in filing the preemptive lawsuit was designed to create uncertainty regarding the DOJ's forthcoming legal theories to deflect from the fact that the Board and management knew for years that the Company had not been in compliance with the CSA and they had failed at every turn to bring the Company into compliance. By creating misimpressions about the DOJ's forthcoming civil lawsuit, the Board and management sought to control the narrative in the court of public opinion and conceal the extensive record showing that the Company never once carried out its legal obligations. In essence, Walmart painted itself as a victim – a tactic it had been using to quash the DOJ's actions since the beginning. For instance, when former AUSA Josh Russ of EDTX resigned in protest after Walmart improperly influenced his investigation, he described Walmart's strategy as follows: “cognizant of the many deaths it has caused, [Walmart] redefines shamefulness by claiming it is a victim.”

358. Finally, while this Action cites to certain allegations in a *qui tam* complaint showing that R. Walton had specific knowledge of the Company's CSA

violations and failed to take steps in good faith to stop the same, Plaintiffs did not become aware of the *qui tam* until January 3, 2021, when *NPR* published an article detailing an interview with the pharmacist who filed the *qui tam* action.¹⁴³ Prior to the *NPR* article, Walmart never disclosed the existence of the *qui tam* in its public filings, and the *qui tam* complaint itself was not unsealed until June 29, 2018 (less than three years after Plaintiffs filed the Section 220 Action).

COUNT I

Breach of Fiduciary Duty Against the Director Defendants

359. Plaintiffs reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

360. The Director Defendants, as directors of Walmart, were and are fiduciaries of the Company and its stockholders. As such, the Director Defendants owed and owe the Company and its stockholders the highest duties of good faith, due care, loyalty, and candor.

361. The Company was and is subject to heavy regulation at the federal and state levels because Walmart dispenses pharmaceutical drugs, including controlled substances, to individual patients, and because Walmart self-distributed

¹⁴³ Brian Mann, *Former Walmart Pharmacists Say Company Ignored Red Flags As Opioid Sales Boomed*, *NPR*, Jan. 3, 2021.

pharmaceutical drugs to its retail pharmacies for many years. The Company also made firm compliance commitments to the federal government in the 2011 MOA.

362. The members of the Board, consistent with their fiduciary duties, were required to implement and monitor policies and systems to maintain effective controls against diversion of controlled substances for other than legitimate uses and ensure the Company's compliance with laws and regulations governing dispensing and distribution of controlled substances, including opioids.

363. The Director Defendants consciously breached their fiduciary duties and violated their corporate responsibilities to ensure that the Company was complying with the CSA, the 2011 MOA, and similarly important legal obligations to prevent diversion of controlled substances for other than legitimate uses, after learning of red flags of noncompliance.

364. The Director Defendants also consciously breached their fiduciary duties by failing to exercise their oversight responsibilities. The Director Defendants failed to implement and monitor internal reporting policies and systems to ensure that sufficient indicia regarding whether the Company was (or was not) complying with the CSA, the 2011 MOA, and similarly important legal obligations were consistently reported to the Board. The Director Defendants thereby disabled themselves from learning of additional red flags: (i) indicating problems with the

Company's systems for identifying and reporting suspicious prescriptions for controlled substances and (ii) ensuring that Walmart pharmacists and pharmacies were (and had the information and authority to) satisfy their responsibilities in dispensing controlled substances.

365. The Director Defendants had numerous opportunities to address the Company's noncompliance and lack of reporting protocols and information controls. By failing to make a good faith effort to implement and monitor an oversight system and by consciously disregarding their duty to learn of and investigate red flags, the Director Defendants failed to exercise due care and failed to satisfy their duty of loyalty to the Company and its stockholders.

366. Instead, the Director Defendants acted in deference and with a "controlled mindset" with respect to the Walton family and its allies on the Executive Committee and McMillon in a dangerous elevation of short-term profits above important legal obligations.

367. As a result of the Director Defendants' conscious failure to carry out their fiduciary duties, Walmart has sustained, and will continue to sustain, significant damages—both financially and to its corporate image and goodwill. Such damages include, and will include, penalties, fines, and damages awards, settlements, expenses, increased regulatory scrutiny, and other liabilities described herein.

368. As a result of the bad faith misconduct alleged herein, the Director Defendants are liable to the Company.

COUNT II

Breach of Fiduciary Duty Against the Officer Defendants

369. Plaintiffs reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

370. The Officer Defendants, as officers of Walmart, were and are fiduciaries of the Company and its stockholders. As such, the Officer Defendants owed and owe the Company and its stockholders the highest duties of good faith, due care, loyalty, and candor. Because R. Walton and Penner at various times served as executive Chairmen, much of the conduct alleged against them was in their capacities as officers of the Company.

371. The Company was and is subject to heavy regulation at the federal and state levels because Walmart dispenses pharmaceutical drugs, including controlled substances, to individual patients, and because Walmart self-distributed pharmaceutical drugs to its retail pharmacies for many years. The Company also made firm compliance commitments to the federal government in the 2011 MOA.

372. The Officer Defendants, consistent with their fiduciary duties, were required to maintain effective controls against diversion of controlled substances for

other than legitimate uses and ensure the Company's compliance with laws and regulations governing dispensing and distribution of controlled substances, including opioids.

373. The Officer Defendants breached their fiduciary duties and violated their corporate responsibilities to ensure that the Company was complying with the CSA, the 2011 MOA, and similarly important legal obligations to prevent diversion of controlled substances for other than legitimate uses, after learning of red flags of noncompliance.

374. The Officer Defendants also breached their fiduciary duties by failing to exercise their oversight responsibilities. The Officer Defendants failed to implement and monitor internal reporting policies and systems to ensure that sufficient indicia regarding whether the Company was (or was not) complying with the CSA, the 2011 MOA, and similarly important legal obligations were consistently reported to senior management and the Board. The Officer Defendants thereby disabled themselves from learning of additional red flags: (i) indicating problems with the Company's systems for identifying and reporting suspicious prescriptions for controlled substances and (ii) ensuring that Walmart pharmacists and pharmacies were (and had the information and authority to) satisfy their responsibilities in dispensing controlled substances.

375. As discussed above, the Officer Defendants also breached their fiduciary duties and violated their corporate responsibilities by failing to inform the Board about Walmart’s regulatory compliance failures in dispensing and self-distributing opioids.

376. The Officer Defendants had numerous opportunities to address the Company’s noncompliance and lack of reporting protocols and information controls, and in fact, were charged with doing so pursuant to the 2011 MOA. By failing to implement and monitor an oversight system and by neglecting their duty to learn of and investigate red flags, the Officer Defendants failed to exercise due care and failed to satisfy their duty of loyalty to the Company and its stockholders.

377. As a result of the Officer Defendants’ conscious, reckless, or grossly negligent failure to carry out their fiduciary duties, Walmart has sustained, and will continue to sustain, significant damages—both financially and to its corporate image and goodwill. Such damages include, and will include, the substantial penalties, fines, and damages awards, settlements, expenses, increased regulatory scrutiny, and other liabilities described herein.

378. Instead, the Officer Defendants acted in deference and with a “controlled mindset” with respect to the Walton family and its allies on the Executive

Committee and McMillon in a dangerous elevation of short-term profits above important legal obligations.

379. As a result of the bad faith, reckless, and/or grossly negligent misconduct alleged herein, the Officer Defendants are liable to the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- A. Declaring this action to be a proper derivative action and Plaintiffs to be proper and adequate representatives of the Company;
- B. Declaring that Defendants breached their fiduciary duties to the Company;
- C. Directing the Company to implement and monitor policies and systems to ensure compliance and Board oversight of compliance with the CSA and other laws and regulations governing the distribution and/or dispensing of controlled substances;
- D. Awarding damages sustained by the Company as a result of the breaches of fiduciary duties set forth above, together with pre- and post-judgment interest, from each of the Defendants, jointly and severally;
- E. Ordering immediate disgorgement of all profits, benefits, and other compensation obtained by the Officer Defendants as a result of their breaches of fiduciary duties and unjust enrichment;
- F. Awarding Plaintiffs' costs and expenses incurred in this action, including, but not limited to, experts' and attorneys' fees;
- G. Against all Defendants and in favor of the Company for extraordinary and injunctive relief as permitted by law and/or equity; and
- H. For such other and further relief as this Court may deem just and proper.

Dated: February 22, 2022

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CERTIFICATE OF SERVICE

Daniel E. Meyer hereby certifies that on March 1, 2022, a copy of the foregoing *Public [redacted] version of the Verified Amended Stockholder Derivative Complaint* was filed and served via File & ServeXpress upon the following counsel:

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