



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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CALIFORNIA STATE TEACHERS' )  
 RETIREMENT SYSTEM, derivatively on behalf of )  
 WAL-MART STORES, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AIDA M. ALVAREZ, JAMES W. BREYER, M. )  
 MICHELLE BURNS, JAMES I. CASH, JR., )  
 ROGER C. CORBETT, DOUGLAS N. DAFT, )  
 MICHAEL T. DUKE, GREGORY B. PENNER, )  
 STEVEN S. REINEMUND, H. LEE SCOTT, JR., )  
 ARNE M. SORENSON, JIM C. WALTON, S. )  
 ROBSON WALTON, CHRISTOPHER J. )  
 WILLIAMS, LINDA S. WOLF, DAVID D. )  
 GLASS, ROLAND A. HERNANDEZ, JOHN D. )  
 OPIE, J. PAUL REASON, JOSE H. )  
 VILLARREAL, EDUARDO CASTRO-WRIGHT, )  
 THOMAS A. MARS, JOSÉ LUIS )  
 RODRÍGUEZMACEDO RIVERA, EDUARDO F. )  
 SOLÓRZANO MORALES, THOMAS A. HYDE, )  
 JOHN B. MENZER, and LEE STUCKEY, )  
 )  
 Defendants, )  
 )  
 -and- )  
 )  
 WAL-MART STORES, INC., )  
 )  
 )  
 Nominal Defendant. )

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Civil Action No. \_\_\_\_\_

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

Plaintiff California State Teachers' Retirement System ("CalSTRS"), by and through its undersigned counsel, brings this action derivatively on behalf of Nominal Defendant Wal-Mart Stores, Inc. ("Wal-Mart" or the "Company") against Wal-Mart's current board of directors, certain of Wal-Mart's current officers, certain of Wal-Mart's former board of directors, and certain of Wal-Mart's former officers (collectively the "Individual Defendants"), and alleges

upon personal knowledge as to its own acts, and upon information and belief as to all other matters, as follows:

### **INTRODUCTION**

1. This case arises from highly credible allegations of rampant corruption at the Company's largest foreign subsidiary, as a result of which the Company now faces the combined scrutiny of the Department of Justice and the Securities and Exchange Commission, as well as potentially hundreds of millions of dollars of liability for violations of the Foreign Corrupt Practices Act of 1977 (the "FCPA").

2. From September 2005 to May 2006, Wal-Mart's top management and directors—including the Company's then-CEO, current CEO, and its Chairman of the Board—received evidence from a whistleblower that executives of Wal-Mart's thriving subsidiary Wal-Mart de Mexico ("Wal-Mex") had paid hundreds of illegal bribes to foreign government officials in order to procure competitive advantages for the Company. The significance of the Wal-Mex expansion to Wal-Mart cannot be understated: currently, approximately 20 percent of Wal-Mart's stores (out of more than 10,000 worldwide) are located in Mexico.

3. Rather than order an independent outside investigation, Wal-Mart's management instead instructed the Company's anemic Corporate Investigations unit to fly to Mexico and conduct a "preliminary inquiry." Although the unit's four corporate fraud investigators were greeted with evasion and open hostility, even this "preliminary inquiry" managed to swiftly corroborate the whistleblower's account.

4. The investigators tracked some \$24 million in bribes paid to secure permits and clear away red tape, permitting the rapid expansion of Wal-Mart stores in Mexico. Even worse, they confirmed that the CEO of Wal-Mex, Eduardo Castro-Wright, had approved of the payment

of bribes as a business practice, to speed Wal-Mart's entry into the Mexican market and choke out the competition before it had time to establish a foothold.

5. When Corporate Investigations delivered its final report to top Wal-Mart management in December 2005, the executive summary read that "There is reasonable suspicion to believe that Mexican and USA laws have been violated."

6. Although Wal-Mart's executives had previously agreed to consider a full investigation if the preliminary investigation found the bribery allegations to be credible, they then switched course in response to the report delivered by Corporate Investigations. On February 3, 2006, top Wal-Mart executives, including Wal-Mart's then-CEO and director H. Lee Scott, Jr., convened a meeting at which the internal investigative team was upbraided for being "overly aggressive." Scott and the other executives then directed that Wal-Mart's Corporate Investigations unit draw up a "revised protocol" for internal investigations, which added several layers of bureaucratic obstacles to the investigative process and put control of the investigations into the hands of Wal-Mart executives, including executives at the very business units being investigated.

7. Four days later, management sent an even clearer message. Wal-Mart's General Counsel ordered the investigative team to transfer control of the investigation, along with all of their files, to the general counsel of Wal-Mex. The Wal-Mex general counsel, who had been one of the principal targets of the preliminary inquiry, then prepared a six-page report exonerating his fellow Wal-Mex executives and accusing the whistleblower of theft and fabrication. Wal-Mart's U.S. leaders were apparently more satisfied with this report than they had been with the findings of the preliminary inquiry. On May 10, 2006, the Wal-Mex general counsel was told by Wal-

Mart executives in Arkansas to put his report “into final form, thus concluding this investigation.”

8. Over the ensuing five-and-a-half year period, the Wal-Mart Board and management made no public disclosure of the bribery allegations at Wal-Mex, although nine members of the current Board were also on the Board or members of management during 2005-2006. It was not until December 2011, when, upon learning that *The New York Times* was investigating these events, the Company announced in an SEC filing that it had launched an internal investigation into whether “certain matters” were in compliance with the FCPA. Nevertheless, the Company filing advised investors, “We do not believe that these matters will have a material adverse effect on our business.”

9. When, on April 21, 2012, *The New York Times* published an article detailing the massive scale of the alleged bribery (the “NYT Article”), the adverse findings of Wal-Mart’s preliminary internal investigation and how management orchestrated the subsequent cover-up, the Company shifted into damage-control mode. Wal-Mart has since announced the creation of a global compliance officer position. At the same time, the Company is assiduously minimizing the magnitude of the financial implications to Wal-Mart and its shareholders, stressing the importance of putting everything “in context” because “the allegations... about the decisions made in Bentonville are more than six years old.”

10. The Board’s prolonged failure to address detailed and credible allegations of criminal activity undertaken with the tacit or express consent of current and former senior corporate officials, and the complicity of the Company’s highest level executives in shutting down any investigation into those allegations, is causing and will continue to cause the Company substantial harm. Even beyond the reputational damage and loss in market capitalization—Wal-

Mart's stock lost eight percent of its value in the first three days after the publication of The New York Times article—the total cost to the Company and shareholders of the possible FCPA penalties or other government fines, the potential civil litigation, and the now-inevitable scorched-earth investigations may well stretch into the billions of dollars.

11. Through this Action, Plaintiffs seek redress for Wal-Mart and its public shareholders for the harm caused to them by the Board and certain executives of the Company, and to ensure that Wal-Mart going forward becomes a corporation that pays more than lip service to its purported commitment to ethics and integrity.

### **PARTIES**

#### **A. Plaintiff**

12. Plaintiff California State Teachers' Retirement System ("CalSTRS") is the largest U.S. teachers' retirement fund, with over 856,000 members. As of March 31, 2012, CalSTRS had \$152.9 billion of assets under management. CalSTRS is a current shareholder of the Company, was a shareholder at the time of the misconduct complained of herein, and has been a shareholder of Wal-Mart continuously since that time.

#### **B. The Nominal Corporate Defendant**

13. Defendant Wal-Mart is a Delaware corporation headquartered at 702 Southwest 8th Street, Bentonville, Arkansas. The Company was founded by Sam Walton in 1962. Today, members of the Walton family, including Defendants Jim C. Walton and S. Robson Walton, individually and/or collectively control over 49.5% of its voting shares. As a group, the current Board, director nominee and the Company's Executive Officers collectively control 50.12% of the voting shares of the company. Wal-Mart operates retail stores in various formats around the world, and its operations comprise three reportable business segments: the Wal-Mart U.S. segment; the Wal-Mart International segment; and the Sam's Club segment. Wal-Mart has a

market capitalization of \$201 billion, and its stock trades on the New York Stock Exchange under the ticker symbol “WMT.”

**C. Director Defendants**

14. Defendant Aida M. Alvarez (“Alvarez”) has been a director of the Company since 2006. Alvarez has been a member of the Board’s Audit Committee since 2007.

15. Defendant James W. Breyer (“Breyer”) has been a director of the Company since 2001. Breyer is the presiding director of executive sessions of the “non-management directors” and “independent directors,” which are defined terms in Wal-Mart’s Annual Proxy Statement for fiscal year 2012, filed with the SEC on April 16, 2012.

16. Defendant M. Michelle Burns (“Burns”) has been a director of the Company since 2003. Burns served as a member of the Board’s Audit Committee from 2003 through 2006.

17. Defendant James I. Cash, Jr. (“Cash”) has been a director of the Company since 2006. Cash has been a member of the Board’s Audit Committee since 2006.

18. Defendant Roger C. Corbett (“Corbett”) has been a director of the Company since 2006.

19. Defendant Douglas N. Daft (“Daft”) has been a director of the Company since 2005. Daft is a member of the Board’s Compensation, Nominating and Governance Committee.

20. Defendant Michael T. Duke (“Duke”) is Wal-Mart’s President and Chief Executive Officer (“CEO”), positions that he has held since 2009. Duke has been a director of the Company since 2008. Duke has held other high-ranking positions with Wal-Mart since joining the Company in July 1995, including Vice Chairman with responsibility for Wal-Mart International beginning in September 2005 and Executive Vice President and President and CEO of Wal-Mart U.S. beginning in April 2003. Duke serves as Chairperson of the Board’s Executive Committee.

21. Defendant Gregory B. Penner (“Penner”) has been a director of the Company since 2008. Penner is Rob Walton’s son-in-law.

22. Defendant Steven S. Reinemund (“Reinemund”) has been a director of the Company since 2010. Reinemund is a member of the Board’s Compensation, Nominating and Governance Committee.

23. Defendant H. Lee Scott, Jr. (“Scott”) has been a director of the Company since 1999. Scott was Wal-Mart’s President and CEO from January 2000 through January 2009. Prior to serving as the Company’s President and CEO, Scott held other positions with Wal-Mart since joining the Company in September 1979, including Vice Chairman and Chief Operating Officer from January 1999 to January 2000, and Executive Vice President and President and CEO of Wal-Mart U.S. from January 1998 to January 1999.

24. Defendant Arne M. Sorenson (“Sorenson”) has been a director of the Company since 2008. Sorenson has been a member of the Board’s Audit Committee since 2008.

25. Defendant Jim C. Walton (“Jim Walton”) has been a director of Wal-Mart since September 28, 2005. Jim Walton is the youngest son of Sam Walton and the brother of Rob Walton. Jim Walton individually and through Walton Enterprises LLC controls 49.81% of the voting shares of the Company.

26. Defendant S. Robson Walton (“Rob Walton”) is Wal-Mart’s Chairman of the Board, and has served in that capacity since 1992. Rob Walton has been a director of the Company since 1978. Rob Walton is the eldest son of Sam Walton, the founder of the Company. Rob Walton is a member of the Board’s Executive Committee. Rob Walton individually and through Walton Enterprises LLC controls 49.51% of the voting shares of the Company.

27. Defendant Christopher J. Williams (“Williams”) has been a director of the Company since 2004. Williams has been the Chairperson of the Board’s Audit Committee since 2008, and has been a member of the Audit Committee since 2005. Williams is also a member of the Board’s Executive Committee.

28. Defendant Linda S. Wolf (“Wolf”) has been a director of the Company since 2005. Wolf serves as the Chairperson of the Board’s Compensation, Nominating and Governance Committee.

29. Defendants Alvarez, Breyer, Burns, Cash, Corbett, Daft, Duke, Penner, Reinemund, Scott, Sorenson, Jim Walton, Rob Walton, Williams, and Wolf are collectively referred to herein as the “Director Defendants.”

**D. Former Director Defendants**

30. Defendant David D. Glass (“Glass”) served as a director of the Company from 1977 through 2009. Glass served as Wal-Mart’s President and CEO from January 1988 to January 2000.

31. Defendant Roland A. Hernandez (“Hernandez”) served as a director of the Company from 1998 through 2008. Hernandez was Chairperson of the Board’s Audit Committee prior to 2002, and served in that capacity until 2008.

32. Defendant John D. Opie (“Opie”) served as a director of the Company from 2003 through 2006.

33. Defendant J. Paul Reason (“Reason”) served as a director of the Company from 2000 through 2006. Reason served as a member of the Board’s Audit Committee prior to 2002, and remained a member until 2006.

34. Defendant José H. Villarreal (“Villarreal”) served as a director of the Company from 1998 through 2006.



35. Defendants Glass, Hernandez, Opie, Reason and Villarreal are collectively referred to as the “Former Director Defendants.”

**E. Executive Defendants**

36. Defendant Eduardo Castro-Wright (“Castro-Wright”) has served as Vice Chairman of the Company since 2008. Castro-Wright served as President and CEO of Wal-Mart Stores Division U.S. from September 2005 through November 2008. From February 2005 to September 2005, Castro-Wright served as Executive Vice President and Chief Operating Officer of Wal-Mart U.S. Castro-Wright was the CEO of Wal-Mex from 2002 through 2005.

37. Defendant Thomas A. Mars (“Mars”) is the current executive vice president and chief administrative officer for Wal-Mart U.S. From 2002 to 2009, Mars managed the legal department and served as Wal-Mart’s general counsel.

38. José Luis Rodríguezmacedo Rivera (“Rodríguezmacedo”) was General Counsel of Wal-Mex and Wal-Mex’s Senior Vice President in Charge of Legal, Compliance and Corporate Quality from January 2004 through April 20, 2012. On April 20, 2012, Rodríguezmacedo was reassigned to a Senior Vice President position within Wal-Mex.

39. Eduardo F. Solórzano Morales (“Solórzano”) has served as CEO, President and Executive Vice President of Wal-Mart Latin America since January 2010. Solórzano served as President and CEO of Wal-Mex from 2004 through 2010.

40. Defendants Castro-Wright, Mars, Rodríguezmacedo and Solórzano are collectively referred to herein as the “Executive Defendants.”

**F. Former Executive Defendants**

41. Thomas A. Hyde (“Hyde”) was the Executive Vice President and Corporate Secretary of Wal-Mart from June 2005 to 2010. From June 2003 to June 2005, he served as

Executive Vice President, Legal and Corporate Affairs and Corporate Secretary. From July 2001 to June 2003, he served as Executive Vice President, Senior General Counsel.

42. John B. Menzer (“Menzer”) was the Vice Chairman of Wal-Mart from 2005 through 2007.

43. Lee Stuckey (“Stuckey”) was the Chief Administrative Officer of Wal-Mart International from 2005 through 2010.

44. Defendants Hyde, Menzer and Stuckey are collectively referred to herein as the “Former Executive Defendants.”

45. The Director Defendants, Former Director Defendants, Executive Defendants, and Former Executive Defendants are collectively referred to herein as “Defendants.”

### **JURISDICTION**

46. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341.

47. This Court has jurisdiction over the Director Defendants, Former Director Defendants, Executive Defendants, and Former Executive Defendants as the directors and officers of a Delaware corporation under 10 *Del. C.* § 3114 and/or under 10 *Del. C.* § 3104.

48. This Court has jurisdiction over Wal-Mart pursuant to 10 *Del. C.* § 3111.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. Fiduciary Duties of Wal-Mart’s Management and Board**

49. Defendants have fiduciary duties to the Company and its shareholders, including the duties of loyalty, good faith, and candor. In addition, Wal-Mart’s foundational corporate documents detail the requirements of the Board’s duties, requiring, *inter alia*, that the Board actively identify and report any illegal and/or unethical business practices within the Company.

## **1. Corporate Governance Guidelines**

50. Pursuant to the Company's Corporate Governance Guidelines, the Board is tasked with responsibility for, among other things, "[r]eviewing compliance with applicable laws and regulations and adopting policies of corporate conduct to assure compliance with applicable laws and regulations and to assure maintenance of necessary accounting, financial, and other controls."

51. Under the Corporate Governance Guidelines, Directors are also expected "to exercise their business judgment to act in what they reasonably believe to be in the best interests of the Company and its shareholders, and to perform their duties of care and loyalty."

52. Additionally, all directors are also required to participate in an orientation plan upon his or her election to the Board. This plan includes "familiarizing new directors with the Company's strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Statement of Ethics, its principal officers, and its internal and independent auditors."

## **2. Statement of Ethics (effective January 1, 2005 through September 2008)**

53. On January 1, 2005, the Company revised its Statement of Ethics "to take into account recent changes in laws and regulations." The revised Statement of Ethics applies to all of the Company's employees worldwide as well as the members of the Board and all employees and directors of controlled subsidiaries, such as Wal-Mex. According to the letter accompanying the Statement of Ethics, signed by Defendants Rob Walton and Scott, "[w]here ethics are concerned, our Company goes a step further. You are expected to raise any questions or concerns regarding business ethics."

54. Two sections of the Statement of Ethics address improper payments. The section titled "Improper Payments" provides:

You should not offer anything of value, directly or through third persons, to anyone (including governmental authorities) to obtain an improper advantage in selling goods and services, conducting financial transactions, or presenting the Company's interests. All countries prohibit bribery of their own public officials, and many also prohibit the bribery of officials of other countries. Wal-Mart's policy goes beyond these legal requirements and prohibits improper payments in all activities, both with governments and in the private sector.

55. The Statement of Ethics also contains a section titled "Responsibilities Regarding International Business Practices," which provides that "Wal-Mart is subject to several international anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act, which seek to curb dishonesty in international dealings." The Statement of Ethics further provides that "Wal-Mart has adopted a comprehensive International Anti-Corruption Policy, CR-02" With respect to bribes, kickbacks, or payoff, the Statement of Ethics provides:

The U.S. Foreign Corrupt Practices Act, other U.S. laws, and similar laws of other countries, prohibit you, on behalf of Wal-Mart, from directly or indirectly making, promising, authorizing or offering anything of value to a government official or employee, political party, or any candidate for political office. A governmental official includes any person acting in an official capacity on behalf of a government, agency, department or instrumentality, such as a business with government ownership (e.g., a national oil company).

### **3. Statement of Ethics (effective September 2008 to present)**

56. Effective September 2008, Wal-Mart revised its Statement of Ethics, which remains in effect today. According to the Company, "The Statement of Ethics was revised to make it more user-friendly, to reflect Wal-Mart's tone and voice, and to align with Wal-Mart's brand. As with the prior version, the revised Statement of Ethics continues to apply to all members of Wal-Mart's Board of Directors and all Wal-Mart associates worldwide. In relevant part, the revisions include "the addition of sections specifically addressing financial conflicts of interest, retaliation, and intentional dishonesty; and revisions that align the Statement of Ethics

with other Wal-Mart policies, including Wal-Mart's anti-corruption and expatriate work authorization policies.”

57. As part of its anti-corruption policy, the Revised Statement of Ethics provides: “Bribery of public officials in the U.S. and abroad is illegal under both U.S. law and the local law of the countries in which we operate.” Nevertheless, “Wal-Mart’s policy goes beyond these legal requirements and prohibits corrupt payments in all circumstances, whether in dealings with public officials or individuals in the private sector.”

58. The anti-corruption policy also states:

Specifically, the Global Anti-Corruption Policy prohibits us from paying, promising, offering, or authorizing a payment, directly, indirectly, or through a third party, money or anything of value to a government official or political party for the purpose of influencing an official act or decision in order to obtain or retain business or secure an improper advantage. The term “government official” includes any person acting in an official capacity for or on behalf of a government or governmental agency or department, including a business with government ownership (for example, a national oil company); a public international organization (for example, the U.N. or World Bank); or a political party or candidate for political office. Even when local practices or customs allow behavior that violates our Anti-Corruption Policy, it is not acceptable for us to do so.

**4. CEO/Senior Financial Officials Code of Ethics (effective November 20, 2003)**

59. Wal-Mart also has a Code of Ethics for the CEO and all Senior Financial Officials.<sup>1</sup> This policy has been in effect from November 20, 2003 through the present. In particular, the CEO and all Senior Financial Officers (including the CFO and Corporate Controller) are bound by these provisions. This Code of Ethics assigns certain reporting obligations to the CEO, CFO and Corporate Controller, who fulfill those obligations by reporting

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<sup>1</sup> Senior Financial Officials are defined to be the CFO, Corporate Controller, officers in the Accounting, Finance and Tax departments, Chief Executive Officers who are responsible for an operating division, and officers in operating divisions who are responsible for accounting.

specified matters to the Audit Committee of the Board and the Company's Internal Audit Services. Other Senior Financial Officers may report such matters to their superior or the Audit Committee.

60. Two provisions of this Code are pertinent to the conduct alleged in *The New York Times* article. First, the CEO and each Senior Financial Officer is required under the Code to "report any information he or she may have concerning any violation of this Code of Ethics, including any actual or apparent conflicts of interest between personal and professional relationships involving any associate who has a significant role in his or her area's financial reporting, disclosures or internal controls." Second, the CEO and each Senior Financial Officer are required to "report any information he or she may have concerning evidence of a material violation of securities or other laws, rules or regulations applicable to the Company and the operation of its business, by the Company or any agent thereof."

61. Pursuant to this Code, the Audit Committee is tasked with responsibility for determining appropriate actions to take in response to any such reported violations.

##### **5. Audit Committee Charter**

62. The Audit Committee is tasked with several responsibilities, including overseeing the work of the Company's management.

63. As part of this oversight function, the Audit Committee is required to review and discuss the following with management: management's compliance with the Company's processes, procedures, and internal controls; the Company's risk assessment and risk management process and policies; and the Company's major financial and other risk exposures, as well as the steps management has taken to monitor and control such exposures.

64. In addition to its oversight of the CEO and Senior Financial Officers, the Audit Committee's charter requires it to oversee the CEO's and CFO's certification of the Company's

Form 10-Ks and Form 10-Qs for “(a) any significant deficiencies in the design or operation of internal controls or material weakness therein, (b) any fraud involving management or other associates who have a significant role in the Company’s internal control, and (c) any significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation.”

65. As part of its compliance oversight responsibilities, the Audit Committee is also required to “[d]iscuss with management and the Outside Auditor, and advise the Board with respect to, the Company’s policies, processes and procedures regarding compliance with applicable laws and regulations and the Statement of Ethics, and instances of non-compliance therewith.”

66. The Audit Committee is also tasked with discussing with the Company’s Chief Legal Officer legal matters that may have a material impact on the financial statements or the Company’s compliance policies.

#### **B. The Mexican Bribery Scheme**

67. On April 21, 2012, *The New York Times* reported that top executives of Wal-Mart had engaged in and concealed evidence of pervasive corruption at Wal-Mex, the Company’s largest foreign subsidiary. David Barstow, *At Wal-Mart in Mexico, a Bribe Inquiry Silenced*, N.Y. TIMES (Apr. 21, 2012), available at <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html> (last visited May 3, 2012).

68. According to the exposé, Wal-Mex executives had, for years, bribed government officials in order to procure special treatment and competitive advantages for the Company in

violation of the FCPA.<sup>2</sup> As a result, as many as five new Wal-Mart stores were built a week in Mexico.

69. Between 2002 and 2005, bribery became especially unrestrained at the specific request of Wal-Mex's then-CEO, Eduardo Castro-Wright. Castro-Wright, who has since been promoted to Vice Chairman of Wal-Mart, authorized hundreds of bribes in order to speed the Company's expansion into the desirable Mexico retail merchandising market. As a result, zoning maps changed, environmental objections vanished, and permits that typically took months to process materialized in days.

70. Under Castro-Wright's leadership, Wal-Mex executives were pressured to do "whatever was necessary" to obtain permits. The goal was for Wal-Mex to outpace the competition, to build new stores so fast that competitors would not have time to react. Not surprisingly, in 2005, when Castro-Wright was elevated to CEO of Wal-Mart Stores USA, the number of bribes reported at Wal-Mex dropped dramatically.

71. As a matter of fact, this was not the first indication of corruption at Wal-Mex under Castro-Wright. A 2003 investigation by Kroll Inc. ("Kroll") on behalf of Wal-Mart discovered that Wal-Mex "had systematically increased its sales by helping favored high-volume customers evade sales taxes." *See* NYT Article. Kroll concluded that top Wal-Mex executives "had failed to enforce their own anticorruption policies, ignored internal audits that raised red flags and even disregarded local press accounts asserting that Wal-Mart de Mexico was 'carrying out a tax fraud.'" Kroll also determined that Wal-Mex's internal audit and antifraud units were "ineffective" and observed that many of the employees implicated in the tax evasion scheme

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<sup>2</sup> 15 U.S.C. § 78dd-1, *et seq.* The FCPA prohibits companies from making or offering to make improper payments to foreign governments in order to secure business.



were never questioned by the Company and some even received promotions. The Company ultimately paid \$34.3 million in back taxes. *Id.*

72. Two years later, in September 2005, former Wal-Mex in-house attorney Sergio Cicero Zapata (“Cicero”) contacted Maritza Munich (“Munich”), general counsel of Wal-Mart International. In emails and subsequent interviews, Cicero described in detail how Wal-Mex had bribed government officials throughout Mexico in order to secure construction permits, zoning approvals, reductions in environmental impact fees and the allegiance of neighborhood leaders. Wal-Mex targeted mayors and city council members, obscure urban planners, and low-level bureaucrats who issued permits—anyone with the power to thwart or facilitate Wal-Mart’s growth. *Id.*

73. In response, Munich hired a prominent Mexico City attorney, Mr. Torres-Landa (“Torres-Landa”), to debrief Cicero. Cicero and the attorney met three times in October 2005, and Munich traveled from Wal-Mart’s Bentonville, Arkansas headquarters to attend the third meeting. *Id.*

74. During these debriefings, Cicero implicated numerous Wal-Mex executives in the bribery scheme, including its board chairman, general counsel, chief auditor and top real estate executive. Cicero also described how the bribes were hidden through fraudulent accounting. *Id.*

75. Cicero explained that it was his job to recruit and funnel bribes through bag-men referred to as *gestores*, which, loosely translated, means “managers.” Cicero planned whom to bribe with the *gestores*, who in turn would make the payments, and skim a percentage off the top. *Id.*

76. The scheme was carefully monitored through a system of secret codes known only to a few Wal-Mex executives. While the invoices submitted by the *gestores* seemed vague,

each was marked with a code that, when translated, revealed the service that was actually being provided. Torres-Landa's notes from an interview with Cicero record that the scheme used codes indicating that bribes were paid for at least the following purposes:

- Speed of applications
- Elimination of a requirement
- Reduction of mitigation work or conditions
- Donations in cash without receipt
- Street vendors, invaders and holders of properties
- Street markets and public markets
- Government agency discretionary authority
- Verbal authorizations
- Influence, control or confidential information of government agencies
- Cross-subsidies between projects
- Follow-up expenses to eliminate fines
- Presidency instructions to speed-up projects in Mexico City

77. Torres-Landa's list demonstrates the systematic and deliberate nature of the bribery scheme.

78. According to Torres-Landa's notes, each month Castro-Wright and other top Wal-Mex executives also "received a detailed schedule of all of the payments performed." Wal-Mex then "purified" the bribes in accounting records as simple legal fees. *Id.*

### **C. The "Preliminary Inquiry"**

79. At the time of Cicero's debriefings, defendant Michael T. Duke, Wal-Mart's current CEO and a member of the Board, was Vice Chairman of the Company and in charge of Wal-Mart International, giving him responsibility for Wal-Mart's foreign subsidiaries. Duke was kept informed of the investigation. On October 15, 2005, he received an email with a note saying "You'll want to read this" followed by a detailed description of Cicero's allegations.

80. After Cicero's debriefing, Munich sent detailed memos to senior management at Wal-Mart, including Defendant Mars, then general counsel of Wal-Mart; Defendant Thomas D. Hyde ("Hyde"), then Wal-Mart Executive Vice President and Corporate Secretary; Michael Fung, then Wal-Mart's top Internal Auditor; Craig Herkert ("Herkert"), then Wal-Mart's Latin America chief; and Defendant Lee Stucky, then Chief Administrative Officer of Wal-Mart International.

81. In response to Cicero's allegations, Wal-Mart contacted Willkie Farr & Gallagher LLP ("Willkie Farr"), a law firm with extensive experience in FCPA cases, to assist in an investigation. Willkie Farr submitted an "investigation work plan" that called for tracing all payments to anyone who had helped Wal-Mex obtain permits for the previous five years.

82. This plan, however, was rejected. Instead, Wal-Mart's executives ordered a far more limited "preliminary inquiry," to be run by its small Corporate Investigations unit.

83. Wal-Mart's Corporate Investigations unit had less than 70 employees, only four of whom were assigned to investigate corporate fraud (a number which Joseph R. Lewis ("Lewis"), Wal-Mart's director of corporate investigations, described as "wholly inadequate for an organization the size of Wal-Mart"); the rest of the unit mainly concerned themselves with shoplifting rings.

84. Nevertheless, the investigative team, which was led by Ronald Halter ("Halter"), a new investigator at Wal-Mart, with the help of Bob Ainley ("Ainley"), a senior auditor, swiftly corroborated Cicero's reports. Wal-Mart investigators collected receipts showing that Wal-Mex agents had doled out more than \$24 million in payments to government officials across Mexico in order to clear bureaucratic hurdles and "facilitate" the rapid construction of new Wal-Mart stores.

85. Halter's team started their investigation on November 12, 2005, at Wal-Mex headquarters in Mexico City. By the end of that day, they found evidence of 441 *gestor* payments, even though they had only searched back to 2003. Significantly, the records showed payments of \$8.5 million to the two *gestores* named by Cicero in his debriefings.

86. Halter passed his team's findings on to Joseph R. Lewis, Wal-Mart's director of corporate investigations. Lewis in turn alerted his boss, Kenneth H. Senser ("Senser"), Wal-Mart's vice president for global security, aviation and travel, that it was "not looking good."

87. Halter's team also quickly confirmed that Castro-Wright and other top Wal-Mex executives were well aware of the *gestor* payments. A March 2004 Wal-Mex audit that Halter's team unearthed documented millions of dollars of *gestor* payments intended to facilitate new store permits. Halter noted that not long after the audit was completed, the auditor was fired.

88. The investigation also found that, instead of shutting down the bribery scheme, Defendant Castro-Wright became concerned that Wal-Mex had become dependent on too few *gestores*. Consequently, Wal-Mex General Counsel, Defendant Rodríguezmacedo, told Cicero to come up with a plan to diversify the *gestores* used, noting that Castro-Wright wanted to "implement this plan as soon as possible."

89. However, bribery at Wal-Mex went beyond payments made through *gestores*. As Halter's team discovered, between 2003 and 2005, Wal-Mex had made payments totaling nearly \$16 million to government officials all over Mexico.

90. The investigators' document requests and questions were poorly received by executives at Wal-Mex. For example, Defendant Eduardo F. Solórzano Morales ("Solórzano"), then chief executive of Wal-Mex, had angrily chastised Halter and the investigators for being too secretive and accusatory. Solórzano also attempted to divert the investigation by casting blame

on whistleblower Cicero. In a video conference with Mars, Senser and Stucky, Solórzano described a “hypothesis” that Cicero had in fact stolen the payments to *gestores*.

91. When Herkert, Wal-Mart’s chief executive for Latin America, was notified about the complaints in October, he and Defendant Duke flew to Mexico City. While the trip had been originally planned for Duke to tour several stores, Herkert and Duke now took the opportunity to soothe Wal-Mex’s unhappy executives.

92. In December 2005, Halter and Ainley concluded their investigation and submitted confidential reports to Wal-Mart’s top executives. They laid out all the evidence corroborating Cicero’s account: hundreds of *gestor* payments, mystery accounting codes, rewritten audits, evasive responses from Wal-Mex executives, donations for permits, and evidence that *gestores* were still being used by Wal-Mex.

93. The report of the preliminary internal investigation concluded that, “[t]here is reasonable suspicion to believe that Mexican and USA laws have been violated,” and that there was “no defensible explanation” for the millions of dollars in *gestor* payments.

94. Halter also submitted an “action plan,” in which he recommended a deeper investigation, including a reconstruction of Cicero’s computer history, a thorough investigation of the two main *gestores*, and interviews of senior Wal-Mex executives.

#### **D. The Cover-Up in the United States**

95. Rather than expand and intensify the probe, Wal-Mart executives in the United States took steps to shut the investigation down.

96. Around January 2006, Munich wrote a memo concurring with Halter’s recommendation that the bribery investigation be expanded, noting that “[t]he bribery of government officials is a criminal offense in Mexico.” That same month, as Wal-Mart’s leaders in Bentonville were considering whether to order a full investigation, Rob Walton, Duke and

Scott received an anonymous email asserting that Wal-Mex's top real estate executives were taking kickbacks from construction companies.

97. Soon thereafter, the decision was made. On February 3, 2006, Scott called a meeting to discuss the investigative team's recommendations. Mars, Stucky and Senser were present. Senser later wrote that Wal-Mart's leaders had chastised the investigative team for being "overly aggressive." At the conclusion of the meeting, Senser was ordered to work with Mars to quickly develop a "modified protocol" for internal investigations. Within twenty-four hours they drafted a new protocol that gave senior Wal-Mart executives more control over internal investigations. The shift in control extended to the executives at the business units being investigated. When Senser sent the new protocol to Hyde, Wal-Mart's Executive Vice President and Corporate Secretary, Hyde responded, "This captures it, I think."

98. On the same day that Senser was finishing the new protocol, Wal-Mart's ethics office sent him a booklet of "best practices" for internal investigations. It was compiled by lawyers and executives who supervised investigations at Fortune 500 companies. "Investigations should be conducted by individuals who do not have any vested interest in the potential outcomes of the investigation," it said, according to *The New York Times* article.

99. Within days, Scott and other senior Wal-Mart executives turned the investigation over to Rodríguezmacedo, who was one of the executives directly implicated in authorizing bribes. Indeed, Wal-Mart's preliminary inquiry had developed evidence that Rodríguezmacedo had previously taken "significant information out" of an audit of Wal-Mex's compliance with the FCPA. Before it was altered, the audit had stated that Wal-Mex executives gave gift cards to government officials in towns where Wal-Mart was building stores. Once the stores had been built, those payments stopped. The investigation had also identified an email in which

Rodríguezmacedo, at Castro-Wright's request, ordered Cicero to draft a plan to "diversify" the *gestores* Wal-Mex used to "facilitate" permits. The plan authorized paying a *gestore* as much as \$280,000 per permit facilitated – though, upon reviewing the plan, Rodríguezmacedo ordered it reworded to refer to "*gestores*" as "external service providers."

100. Despite these findings, Rodríguezmacedo was now entrusted with the Wal-Mex investigation. Mars sent Halter's report to Rodríguezmacedo, along with the investigator's files. At the same time, Stucky scheduled a trip to Mexico for himself and other Wal-Mart executives who had participated in the bribery inquiry. Stucky wrote that they were going "for the purpose of re-establishing activities related to the certain compliance matters we've been discussing."

101. Munich, who had meanwhile concluded that Wal-Mart management had no interest in addressing corruption at Wal-Mex, resigned from Wal-Mart effective February 1, 2006. In an e-mail to top Wal-Mart executives, she observed that "[t]he wisdom of assigning any investigative role to management of the business unit being investigated escapes me." She also stated that the investigation into Wal-Mex should be pursued by "professional, independent investigative resources."

102. In Rodríguezmacedo's hands, the investigation was resolved in a few weeks, and focused on covering Wal-Mex's tracks. Despite the extensive evidence previously collected by Wal-Mart's Corporate Investigations unit, Rodríguezmacedo's report concluded that there was "no evidence or clear indication of bribes paid to Mexican government authorities with the purpose of wrongfully securing any licenses or permits."

103. Rodríguezmacedo's conclusion was largely based on the denials of his fellow executives. He wrote that not one implicated executive "mentioned having ordered or given

bribes to government authorities.” The report omitted that Rodríguezmacedo himself was one of those implicated.

104. Rodríguezmacedo submitted a draft of his report to Wal-Mart’s headquarters in Bentonville. Upon reading the report, investigator Lewis told his superiors that he found it “truly lacking.”

105. Nevertheless, Wal-Mart accepted the report as the last word on the matter. On May 10, 2006, Rodríguezmacedo was told to put his report “into final form, thus concluding this investigation.”

106. Wal-Mart made no contemporaneous public disclosure of the allegations of bribery at Wal-Mex or the conflicting reports generated by Corporate Investigations and Rodríguezmacedo. Instead, Wal-Mart’s directors and executives swept everything under the rug, where it remained for nearly six years, and only began to surface again when Wal-Mart learned of *The New York Times* investigation in late 2011.

**E. The Foreign Bribery Scheme and Subsequent Cover-Up in Mexico is the Result of the Defendants’ Conscious Breach of Their Duties**

107. Defendants’ conscious failure to implement an internal controls system to detect and prevent the illegal payment of bribes in Mexico, their conscious failure to act once the bribery scheme was exposed, and certain Defendants’ (as set forth herein) affirmative acts to cover-up the scheme, have severely damaged and will likely in the future damage Wal-Mart and its business, goodwill and reputation. The Company has and is likely to suffer substantial damages while investigating the cover-up, remediating the compliance violations, as well as paying any fines imposed and addressing potential civil liabilities.

108. Defendants thereby knowingly violated their fiduciary duties of loyalty and care, by permitting and covering-up the illegal behavior. Defendants’ breaches of fiduciary duty



placed the Company and its shareholders at serious risk, and have and will harm the Company financially.

**DEFENDANTS CONCEALED THEIR  
WRONGDOING FROM WAL-MART SHAREHOLDERS**

109. Defendants concealed the facts pertaining to Wal-Mart's FCPA violations in Mexico, along with the fact that an internal investigation discovered the bribery scheme only to be covered-up. Misleading investors and the public at large, Wal-Mart's annual reports and proxy statements have never mentioned any of the specific facts at issue here.

110. In fact, it was not until December 2011—five-and-a-half years after sanctioning the cover-up of the bribery investigation—that Wal-Mart executives and directors, after being alerted to *The New York Times'* on-going investigation, informed the DOJ and SEC that Wal-Mart had begun an internal investigation into possible violations of the FCPA.

111. On December 8, 2011, Wal-Mart filed its 10-Q with the SEC. In the filing, Wal-Mart included the following statement:

During fiscal 2012, the Company began conducting a voluntary internal review of its policies, procedures and internal controls pertaining to its global anticorruption compliance program. As a result of information obtained during that review and from other sources, the Company has begun an internal investigation into whether certain matters, including permitting, licensing and inspections, were in compliance with the U.S. Foreign Corrupt Practices Act. The Company has engaged outside counsel and other advisors to assist in the review of these matters and has implemented, and is continuing to implement, appropriate remedial measures. The Company has voluntarily disclosed its internal investigation to the U.S. Department of Justice and the Securities and Exchange Commission. We cannot reasonably estimate the potential liability, if any, related to these matters. However, based on the facts currently known, we do not believe that these matters will have a material adverse effect on our business, financial condition, results of operations or cash flows.

**SCOTT AND CASTRO-WRIGHT SELL MILLIONS  
IN STOCK BASED ON ADVERSE NON-PUBLIC INFORMATION**

112. As the table below demonstrates, the trading records of defendants Scott and Castro-Wright show that both of these defendants began selling millions of dollars worth of Wal-Mart shares in the months after *The New York Times* first contacted the Company regarding possible FCPA infractions by Wal-Mex in December 2011. Scott and Castro-Wright were divesting their shares in Wal-Mart in apparent anticipation of the publication of *The New York Times* exposé and the corresponding stock drop that would undoubtedly occur, and did occur. On the three trading days after *The New York Times*' April 21, 2012 exposé, Wal-Mart stock dropped eight percent, wiping out all of its gains in 2012. Scott and Castro-Wright sold uncharacteristically large amounts of stock while in possession of the materially adverse non-public information that the Company was exposed to undisclosed liability for massive FCPA penalties and other contingences relating to the bribes and cover-up (as described in greater detail below).

**SCOTT'S AND CASTRO-WRIGHT'S SALES OF WAL-MART STOCK**

| <b>INDIVIDUAL</b> | <b>DATE</b> | <b>SHARES SOLD/<br/>OPTIONS<br/>EXERCISED</b> | <b>GAIN</b> |
|-------------------|-------------|---|-------------|
| Scott             | 03/27/2012  | 100,000                                       | \$6,122,490 |
|                   | 03/02/2012  | 635,220                                       | \$3,295,043 |
|                   | 12/20/2011  | 1,458,385                                     | \$3,950,401 |
| Castro-Wright     | 03/20/2012  | 143,206                                       | \$1,716,037 |

**DERIVATIVE ALLEGATIONS**

113. Plaintiffs bring this action derivatively to redress injuries suffered by the Company as a result of the breaches of fiduciary duties of the Defendants.

114. Plaintiff owned Wal-Mart stock during the time of the wrongful course of conduct constituting the basis for the claims asserted herein and continues to hold such stock.

115. Plaintiff will adequately and fairly represent the interests of Wal-Mart and its shareholders in prosecuting and enforcing its rights and has retained counsel competent and experienced in shareholder derivative litigation.

**DEMAND ON THE WAL-MART BOARD IS EXCUSED AS FUTILE**

116. Plaintiffs have not made a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law.

117. As of the time of the filing of this complaint, the Wal-Mart Board comprised the following fifteen directors: Aida M. Alvarez, James W. Breyer, M. Michele Burns, James I. Cash, Jr., Roger C. Corbett, Douglas N. Daft, Michael T. Duke, Gregory B. Penner, Steven S Reinemund, H. Lee Scott, Jr., Arne M. Sorenson, Jim C. Walton, Rob Walton, Christopher J. Williams, Linda S. Wolf.

118. As described below, eleven (11) of these directors—Breyer, Burns, Daft, Duke, Penner, Scott, Sorenson, Jim Walton, Rob Walton, Williams and Wolf—affirmatively refused to investigate the corruption at Wal-Mex and/or lack independence such that any pre-suit demand on them would be useless.

**A. Demand on Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf Is Excused Because They Served On the Board During the Relevant Period, Had Actual or Constructive Knowledge of Wrongdoing, Yet Failed to Insist on an Adequate, Independent Investigation**

119. A majority of the current Board—nine (9) out of fifteen directors—were Board members (Breyer, Burns, Daft, Scott, Jim Walton, Rob Walton, Williams and Wolf) and/or senior executives (Duke and Scott) of Wal-Mart during the relevant period spanning September

2005 to May 2006, when allegations of bribery in Mexico were raised to the attention of top Wal-Mart management and subsequently covered up (the “Cover-up”).

120. *The New York Times* exposé contains detailed, credible information establishing that three of these nine Board members (Duke, Scott and Rob Walton) had direct contemporaneous knowledge of the bribery allegations, the findings of the preliminary internal investigation, and/or the Cover-up:

- Scott was a director and the CEO of Wal-Mart during the relevant September 2005 to May 2006 time period and remains a member of the Board. As detailed in *The New York Times*, on February 3, 2006, Scott convened a meeting at which Wal-Mart internal investigators were upbraided for being “overly aggressive” in performing their duties and ordered to devise a new, less stringent protocol for internal investigations. Four days later, Wal-Mart’s General Counsel turned the internal investigation and related files over to José Luis Rodríguezmacedo Rivera, the General Counsel of Wal-Mex. Rodríguezmacedo, who was implicated in the bribery and was one of the principal targets of the internal investigation, proceeded to torpedo it.
- Duke, who is now President and CEO of Wal-Mart and a member of the Board, was in 2005-2006 head of Wal-Mart International. In this role he had responsibility for all of Wal-Mart’s foreign subsidiaries. Duke was identified by name in *The New York Times* exposé as having been informed of the allegations of bribery at Wal-Mex. Specifically, on October 15, 2005, Duke received an email from a top Wal-Mart lawyer with the message “You’ll want to read this” followed by a detailed description of the bribery allegations made by former Wal-Mex executive Cicero. Also, in October 2005, Duke and Craig Herkert, then the chief executive for Wal-Mart’s operations in Latin America, traveled to Mexico; while there, Duke and Herkert met with and attempted to appease Wal-Mex executives who had been angered by the Company’s preliminary internal investigation into the bribery allegations.
- Rob Walton was the Chairman of the Board of Wal-Mart during the relevant September 2005 to May 2006 time period and still holds that position. As detailed in *The New York Times*, he had direct knowledge of allegations of bribery at Wal-Mex. In January 2006, he, along with Scott and Duke, received an anonymous email stating that Wal-Mex’s top real estate executives were receiving kickbacks from construction companies. The email said “Please you must do something.”

121. Accordingly, demand is excused at least as to Duke, Scott and Rob Walton, because they exhibited hostility toward the investigation (Scott) and/or they knew of the bribery allegations but failed to order a neutral, third-party investigation (Duke and Rob Walton). In addition, Duke, Scott and Rob Walton were complicit in the cover-up.

122. Additionally, documentary evidence confirms that the full Board from September 2005 to May 2006—including the eight Board members who also served on the Board at that time, Breyer, Burns, Daft, Scott, Jim Walton, Rob Walton, Williams and Wolf—was apprised of the findings of the preliminary internal investigation. For example, a document titled “Investigation and Audit Plan” that was prepared by Wal-Mart investigator Ronald Halter in connection with the preliminary internal investigation states that: “On November 16, 2005, a progress report will be given to Bentonville management and *the Chairman of the Audit Committee*. Additional progress reports will be given as appropriate.” (emphasis added).

123. The preliminary internal investigation report subsequently found that “There is reasonable suspicion to believe that Mexican and USA laws have been violated.”

124. Wal-Mart’s corporate governance guidelines require that Chairpersons of Board Committees report all matters of interest to the full Board (“the chairperson of each committee will report to the full Board regarding matters that should be brought to the attention of the Board”). As such, the full Board in 2005-2006—including Breyer, Burns, Daft, Scott, Jim Walton, Rob Walton, Williams and Wolf—would have been informed of the adverse findings of the preliminary internal investigation and failed to take appropriate action, rendering them incapable of impartially investigating or taking appropriate action against themselves and others responsible for the wrongdoing alleged herein.

125. The Director Defendants, who were on the Board or top executives at the Company in late 2005 to mid-2006 would have been informed of the bribery allegations, the adverse findings of the preliminary internal investigation and the subsequent cover-up because of their positions of control and authority at the Company. Systemic, sustained corruption over a period of years at the Company's largest foreign subsidiary and what course of action the Company should take in response are unquestionably Board-level matters.

126. Accordingly, as detailed above, nine members of the current Board had actual or constructive knowledge of the bribery allegations, the adverse findings of the preliminary internal investigation and the Cover-up. Despite this, in 2005-2006, these Board members failed to order a thorough, independent review, such as that proposed by Willkie Farr in the "investigation work plan" it submitted to Wal-Mart's leaders. These directors have demonstrated unwillingness to take reasonable corrective action in 2005-2006 or, indeed, over the subsequent six-and-a-half years. Further, some or all of these nine directors now face the threat of criminal and civil liability under at least the FCPA and the federal conspiracy statute as well as for breaches of their duties as directors. For all these reasons, pre-suit demand on them is excused as a matter of law.

**B. Demand on Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf is Also Futile Because They Ignored A Red Flag Warning of Corruption at Wal-Mex**

127. Demand is also futile as to Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf because they were on notice of corruption at Wal-Mex yet failed to conduct an adequate investigation or terminate those responsible. In 2003, Kroll conducted an internal investigation on behalf of Wal-Mart into allegations of tax fraud at Wal-Mex. Kroll's investigation found that Wal-Mex executives, in order to boost sales, had assisted preferred customers in committing tax fraud. As a consequence, Wal-Mex paid \$34.3 million in back

taxes. In its report to Wal-Mart, Kroll concluded that Wal-Mex's internal audit and antifraud units were "ineffective," and, further, observed that employees accused in connection with the tax fraud had not been questioned, while some employees were even promoted soon after the tax fraud was discovered. Indeed, Castro-Wright, who was implicated by the preliminary investigation into the bribery scheme, was CEO of Wal-Mex at the time of the 2003 tax fraud scheme. He retained his position however, and in October 2005, was elevated to CEO of Wal-Mart Stores USA and member of Wal-Mart's executive committee. Later, Castro-Wright was promoted again, to Vice Chairman of Wal-Mart.

**C. Demand on Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf is Also Futile Because They Failed to Ensure The Propriety Of Wal-Mart's Business Practices By Implementing And Maintaining An Adequate System For Investigating Allegations Of Fraud**

128. Demand is also futile as to Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf because they presided over a system of corporate investigations which permitted executives to control investigations into allegations of misconduct by them or their subordinates.

129. For example, in October 2005 John B. Menzer ("Menzer"), Wal-Mart's vice chairman, undermined an internal investigation into a senior vice president ("SVP") subordinate to him. Menzer told the head of Corporate Investigations that he had "concerns about the impact such an investigation would have" and directed that one of the SVP's subordinates should investigate the allegations against his boss. Unsurprisingly, the subordinate cleared the SVP.

130. Additionally, the president of Wal-Mart Puerto Rico was accused of mistreating employees but was allowed to assign a subordinate to conduct the investigation. Again, the subordinate cleared his boss. Maritza Munich, the general counsel of Wal-Mart International who debriefed Cicero, subsequently wrote an email to Company executives in which she

lamented that the investigation was “at the direction of the same company officer who is the target of several of the allegations.” Munich also warned the executives that Wal-Mart was “in need of clear guidelines about how to handle these issues going forward.”

131. Demand is also futile as to these nine directors because they permitted the Company to maintain a wholly inadequate corporate investigations unit. Specifically, during the relevant period from September 2005 to May 2006, Wal-Mart maintained a Corporate Investigations unit that numbered less than 70 employees, only four of whom were assigned to investigate corporate fraud. Nevertheless, Director and then-CEO Scott agreed that Corporate Investigations would field all allegations of misconduct by senior executives, despite the fact that it was wholly understaffed and notwithstanding that as of January 31, 2006, Wal-Mart employed over 1.8 million people worldwide, including approximately 500,000 people in foreign countries.

**D. Demand on Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf is Also Futile Because They Failed to Heed the Company’s Own Statement of Ethics**

132. Demand is also futile as to Breyer, Burns, Daft, Duke, Scott, Jim Walton, Rob Walton, Williams and Wolf because, by condoning or participating in the Cover-up, these nine directors not only failed to insist on compliance with the FCPA, they failed to comply with the Company’s own Statement of Ethics.

133. In the relevant period from September 2005 to May 2006, Wal-Mart’s operative “Statement of Ethics,” which was accompanied by a letter signed by Director Defendants Rob Walton and Scott, contained a section titled “Responsibilities Regarding International Business Practices.” This section stated that “Wal-Mart is subject to several international anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act, which seek to curb dishonesty in international dealings.”



134. The Statement of Ethics further set forth that “Wal-Mart has adopted a comprehensive International Anti-Corruption Policy, CR-02.” With respect to bribes, kickbacks, or payoff, the Statement of Ethics provided:

The U.S. Foreign Corrupt Practices Act, other U.S. laws, and similar laws of other countries, prohibit you, on behalf of Wal-Mart, from directly or indirectly making, promising, authorizing or offering anything of value to a government official or employee, political party, or any candidate for political office. A governmental official includes any person acting in an official capacity on behalf of a government, agency, department or instrumentality, such as a business with government ownership (e.g., a national oil company).

135. Accordingly, because the above-named directors not only ignored credible allegations that U.S. law had been violated, but also ignored that these acts would have contravened the Company’s own Statement of Ethics, it would be useless to make demand on them to pursue the instant litigation.

**E. Demand on Scott Is Additionally Excused Due to His Opportunistic Selling**

136. In December 2011, the Company publicly announced that it was reviewing its FCPA compliance on a global basis. *The New York Times* reported that this announcement followed shortly after the Company learned that the newspaper was conducting research for a story about corruption at Wal-Mex. In the subsequent months, while in the possession of the materially adverse non-public information that *The New York Times* was planning to write an exposé that posed a risk to the price of Wal-Mart shares, Scott sold 2,193,605 shares of Wal-Mart stock and options, on which he realized a gain of \$13,367,934. Because Scott profited opportunistically from inside knowledge of impending revelations about the corruption at Wal-Mex, demand on him is futile.

**F. Demand on Breyer, Burns, Duke and Sorenson Is Excused Because Their Business Relationships with the Company Render Them Incapable of Acting Independently of Rob Walton and the Walton Family**

137. Demand is also futile as to Breyer, Burns, Duke and Sorenson because they perennially reap tens of millions of dollars from related-party transactions with Wal-Mart. As set forth above, Wal-Mart is controlled by Chairman of the Board Rob Walton, Jim Walton and the Walton family, which collectively owns nearly 50% of the Company and controls two Board seats. As discussed in *The New York Times* exposé, Rob Walton had direct contemporaneous knowledge of allegations of bribery at Wal-Mex, yet failed to act to protect the Company and shareholders. It is therefore useless to make demand on Breyer, Burns, Duke and Sorenson, because to do so would force them to oppose the will of Rob Walton and the Walton family, to whom they are financially beholden through the following related-party transactions:

- Breyer is a partner of Accel, which was a primary investor in Kosmix, a privately held social media technology firm. On April 18, 2011, Wal-Mart reported that it agreed to acquire Kosmix, which will form the basis of a new Wal-Mart operation called @Wal-Martlabs. Further, Breyer may be deemed to beneficially own indirectly more than ten percent of the equity of Centrifly Corporation (“Centrifly”) and LetsTalk.com, Inc. (“LetsTalk”). During fiscal 2009, Wal-Mart paid Centrifly approximately \$2.11 million for computer software and received payments from LetsTalk of approximately \$2.21 million for commissions for sales of wireless products and services to Wal-Mart’s customers.
- Burns is the former Chairman and CEO of Mercer Inc. (“Mercer”), a subsidiary of Marsh & McLennan Companies, Inc. During fiscal year 2012, Wal-Mart paid Mercer and its subsidiaries approximately \$3.64 million for consulting services. Further, in fiscal year 2011, Mercer and its subsidiaries received approximately \$2.8 million; in fiscal year 2010, Mercer and its subsidiaries received approximately \$2.0 million from Wal-Mart; in fiscal year 2009, Mercer and its subsidiaries received approximately \$3.65 million from Wal-Mart; and in fiscal year 2008, Mercer and its subsidiaries received approximately \$1.734 million from Wal-Mart.
- Duke serves on the Board of Directors of Arvest Bank of Bentonville (“Arvest”), Arkansas. According to sources including Forbes magazine, Arvest is majority-owned and controlled by the Walton family. Arvest

Bank's Chairman and CEO is Wal-Mart director Jim Walton, son of Sam Walton, founder of Wal-Mart. Duke accordingly serves on the Arvest board and is compensated for such service at the pleasure of Jim Walton and the Walton family. Additionally, Stephen P. Weber, a senior manager in Wal-Mart's Information Systems Division, is Duke's son-in-law. For fiscal 2012, Wal-Mart paid Weber a salary of \$119,692, a bonus of \$32,024, and other benefits totaling approximately \$16,153 (including Wal-Mart's matching contributions to Weber's 401(k) Plan account and health insurance premiums). For Weber's performance in fiscal 2012, he also received a grant of 571 restricted stock rights. Weber received similar sums in fiscal year 2011.

- Sorenson is the President and CEO and a director of Marriott International, Inc. ("Marriott"). During fiscal 2012, Wal-Mart paid or reimbursed payments made to Marriott and its subsidiaries in the amount of approximately \$19 million for hotel, lodging, and related services, and Wal-Mart received payments of approximately \$1.07 million from Marriott for purchases of merchandise from Wal-Mart. In fiscal year 2011, Marriott and its subsidiaries received approximately \$9.0 million from Wal-Mart; in fiscal year 2010, Marriott and its subsidiaries received approximately \$5.9 million from Wal-Mart; in fiscal year 2009, Marriott and its subsidiaries received approximately \$5.8 million from Wal-Mart; and in fiscal year 2008, Marriott and its subsidiaries received approximately \$5.5 million from Wal-Mart.

**G. Demand on Jim Walton Is Additionally Excused Because of His Familial Relationship With Rob Walton**

138. Jim Walton is Rob Walton's younger brother and the son of Wal-Mart founder Sam Walton. Jim Walton joined the Board on September 28, 2005. Rob Walton has served on the Board since 1978, and has been its Chairman since 1992. Accordingly, it is futile to make demand on Jim Walton, due to his familial relationship with and allegiance to Rob Walton and the Walton family.

**H. Demand on Penner Is Excused Because of His Familial Relationship With Rob Walton**

139. Penner is Rob Walton's son-in-law. He owes his career and status to Rob Walton, as from 2002 to 2005, he served as Wal-Mart's Senior Vice President and CFO—Japan.

Accordingly, Penner is not sufficiently independent of Rob Walton and the Walton family to impartially decide whether to pursue suit, and demand on him is futile.

### **LIABILITY UNDER THE FOREIGN CORRUPT PRACTICES ACT**

140. The FCPA prohibits the payment of bribes to foreign officials for the purpose of obtaining or retaining business. The U.S. Department of Justice (the “DOJ”) is responsible for all criminal enforcement and for civil enforcement of the anti-bribery provisions with respect to domestic concerns and foreign companies and nationals. The U.S. Securities and Exchange Commission (the “SEC”) is responsible for civil enforcement of the anti-bribery provisions with respect to publicly-traded companies.

141. While in criminal cases the DOJ has statutory guidelines for imposing penalties for violations of the FCPA’s anti-bribery provisions, penalties for large scale commissions of bribery typically fall under the Alternative Fines Act.<sup>3</sup> Under that statute, the actual fine may be up to twice the benefit that the defendant gained by making the illegal payment. Fines to an individual may not be paid by their employer. Further, a person or company found in violation of the FCPA may be barred from doing business with the federal government.

142. In civil cases, such as an SEC enforcement action, a court may impose, in addition to statutory fines, a fine equaling the gross amount of the pecuniary gain to the defendant as a result of the violation.

143. Over the past three years, the penalties imposed against companies for FCPA violations have ranged widely. One academic monitoring these actions has compiled a “top 10” list of corporate sanctions under the FCPA, as follows:

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<sup>3</sup> 18 U.S.C.A. § 3571.

**FCPA FINES FOR SELECTED COMPANIES: DECEMBER 2008 TO DECEMBER 2011**

| <b>DATE</b> | <b>COMPANY NAME</b>                          | <b>BRIBES</b> | <b>DOJ FINE</b> | <b>SEC FINE</b> | <b>TOTAL FINE</b> |
|-------------|--|---------------|-----------------|-----------------|-------------------|
| Dec-08      | Siemens AG                                   | \$1.4 billion | \$450 million   | \$350 million   | \$800 million     |
| Feb-09      | Kellogg Brown & Root LLC (KBR) & Halliburton | \$182 million | \$402 million   | \$177 million   | \$579 million     |
| Mar-10      | BAE Systems plc                              | \$200 million | \$400 million   |                 | \$400 million     |
| Apr-10      | Daimler AG                                   | \$56 million  | \$93.6 million  | \$91.4 million  | \$185 million     |
| Jun-10      | Technip                                      | \$182 million | \$240 million   | \$98 million    | \$338 million     |
| Jul-10      | Snamprogetti Netherlands B.V. & ENI S.p.A    | \$182 million | \$240 million   | \$125 million   | \$365 million     |
| Nov-10      | Panalpina                                    | \$49 million  | \$70.5 million  | \$11.3 million  | \$81.8 million    |
| Dec-10      | Alcatel-Lucent S.A.                          | \$9.8 million | \$92 million    | \$45 million    | \$137 million     |
| Apr-11      | JGC Corporation                              | \$182 million | \$218.8 million |                 | \$218.8 million   |
| Dec-11      | Magyar Telekom plc & Deutsche Telekom AG     | \$15 million  | \$63.9 million  | \$31.2 million  | \$95 million      |

144. This chart suggests that the amount of the bribes has little bearing on the overall fines and penalties. Instead, the calculus looks primarily to the amount of gain or profit produced by the bribes (less the amount paid through disgorgement). Aggravating factors may be considered, such as the culpability of senior management, the size of the company and its number of employees. Mitigating factors may also be weighed, including voluntary disclosure, cooperation and acceptance of responsibility.

145. In Wal-Mart's case, the Company's internal investigators found evidence indicating that over \$24 million in bribes had been paid to Mexican officials. However, the pecuniary gain attributable to those bribes is likely substantially higher. From 2002 to 2011, Wal-Mex generated approximately \$200 billion (USD) in revenue, a significant portion of which

arguably flowed from stores whose construction was facilitated by bribes. Accordingly, some commentators believe the resulting fine could exceed \$1 billion.

**WAL-MEX ESTIMATED REVENUE 2005-2011 (USD)**

| <b>FISCAL YEAR</b> | <b>REVENUE</b>         |
|--------------------|------------------------|
| 2002               | \$11.0 billion         |
| 2003               | \$11.2 billion         |
| 2004               | \$12.4 billion         |
| 2005               | \$15.1 billion         |
| 2006               | \$18.2 billion         |
| 2007               | \$20.6 billion         |
| 2008               | \$21.2 billion         |
| 2009               | \$20.0 billion         |
| 2010               | \$32.9 billion         |
| 2011               | \$37.7 billion         |
| <b>TOTAL</b>       | <b>\$200.3 billion</b> |

**CLAIMS FOR RELIEF**

**COUNT I**

**(Breach of Fiduciary Duty Against the Defendants)**

146. Plaintiff repeats and realleges the foregoing paragraphs as set forth herein.

147. Defendants, as current or former Wal-Mart directors or officers, owe the Company's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty. By virtue of their positions as directors and/or officers of Wal-Mart and their exercise of control over the business and corporate affairs of the Company, the Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Defendant was required to:

(a) use his or her ability to control and manage Wal-Mart in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Wal-Mart and its shareholders and not his or her own. Defendants also have the duty to oversee its CEO and ensure that he is not breaching his fiduciary duties to the Company.

148. Additionally, the Defendants have a duty to implement a reasonable system of controls to ensure that Wal-Mart is operated in conformity with applicable laws. Once that system is in place, the Directors have a duty to respond in good faith to reports or indications that Wal-Mart or its employees are engaging in unlawful or other improper behavior. The Defendants have acted in violation of Wal-Mart's internal policies, including, *inter alia*, its Corporate Governance Guidelines, its anti-corruption policy, its Statement of Ethics, and its Code of Ethics for the CEO and all Senior Financial Officials.

149. The Code of Ethics for the CEO and all Senior Financial Officials requires them to "report any information he or she may have concerning any violation of this Code of Ethics, including any actual or apparent conflicts of interest between personal and professional relationships involving any associate who has a significant role in his or her area's financial reporting, disclosures or internal controls." The CEO and each Senior Financial Officer are also required to "report any information he or she may have concerning evidence of a material violation of securities or other laws, rules or regulations applicable to the Company and the operation of its business, by the Company or any agent thereof." Through their actions and inactions, Defendants have systematically ignored these principles.

150. The Company's Corporate Governance Guidelines also require Defendants to review compliance with applicable laws and regulations and adopting policies of corporate conduct to assure compliance with applicable laws and regulations and to assure maintenance of

necessary accounting, financial, and other controls. Attached to the Company's Statement of Ethics, which applies to all Defendants, is a letter by Defendant Duke committing each Wal-Mart employee to be "be a champion for integrity by engaging fellow associates in conversation and setting an example through your words and actions." Additionally, Defendant Duke's letter states, "Silence can condone questionable behavior—and the actions or inactions of just one associate who makes a poor choice can impact our entire company." The decisions and actions of Wal-Mart's leaders in response to the Wal-Mex corruption allegations underscore that silence in the face of wrongdoing poses a risk of devastating consequences for the Company.

151. The Defendants breached their fiduciary duties by acting to subvert and/or failing to take any action to investigate and/or stop the improper and illegal conduct at Wal-Mex involving bribery.

152. Based on the foregoing conduct, Defendants were not acting in good faith toward the Company and breached their fiduciary duties.

153. As a direct and proximate result of Defendants' conscious failure to perform their fiduciary obligations, Wal-Mart has been and will be damaged.

154. As a result of the misconduct alleged herein, Defendants are liable to the Company.

155. Plaintiff, on behalf of Wal-Mart, has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff pray for judgment against all defendants as follows:

a) Declaring that Defendants have breached their fiduciary duties to Wal-Mart;



- b) Declaring that Plaintiff may maintain this action on behalf of Wal-Mart and that Plaintiff is an adequate representative of the Company;
- c) Determining that this action is a proper derivative action maintainable under law and demand is excused;
- d) Determining and awarding to Wal-Mart the damages sustained by it as a result of the violations set forth above from each of the defendants, jointly and severally, together with interest thereon;
- e) Directing Wal-Mart to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with the Company's existing governance obligations and all applicable laws and to protect the Company and its shareholders from a recurrence of the damaging events described herein;
- f) Awarding Wal-Mart damages, together with pre- and post-judgment interest to the Company;
- g) Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and;
- h) Granting such other and further relief as this Court deems just and equitable.

Dated: May 3, 2012

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