



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____)	
INDIANA ELECTRICAL WORKERS)	
PENSION TRUST FUND IBEW,)	
)	
Plaintiff,)	
v.)	C.A. No. <u>7779-CS</u>
)	
WAL-MART STORES, INC.,)	
)	
Defendant.)	REDACTED VERSION - AUGUST 16, 2012
_____)	

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff Indiana Electrical Workers Pension Trust Fund IBEW ("Plaintiff"), as and for its Complaint, herein alleges, upon knowledge as to itself and its own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks to enforce its right to inspect certain corporate books and records of defendant Wal-Mart Stores, Inc. ("Wal-Mart" or the "Company"), a Delaware corporation, and its controlled subsidiary, Wal-Mart de Mexico, S.A. de C.V. ("WalMex"), pursuant to 8 *Del. C.* § 220 ("Section 220"). Plaintiff seeks to inspect these documents to investigate mismanagement and possible breaches of fiduciary duty by the directors and officers of the Company and WalMex and to investigate the independence and disinterest of the board of directors of Wal-Mart (the "Board") in determining whether pre-suit demand is necessary or would be excused prior to commencing derivative litigation on behalf of the Company.

2. As explained below, there is a credible basis to believe that WalMex and/or Wal-Mart have violated U.S and Mexican laws, including the U.S. Foreign Corrupt Practices Act (the

“FCPA”), and covered-up such violations, thereby exposing the Company massive costs and expenses, as well as civil and criminal liability. Further, there is a credible basis to believe that officers and directors of Wal-Mart and WalMex participated in a cover-up of these violations in breach of their fiduciary duties and that the Board has failed in its duty to implement systems and internal controls to properly monitor the activities of Wal-Mart and its subsidiaries and ensure compliance with applicable laws.

3. Acknowledging Plaintiff’s right to inspect books and records, Wal-Mart made a woefully deficient production of documents on August 1, 2012 (the “August 1, 2012 Production”), nearly two months after receiving Plaintiff’s June 6, 2012 demand for books and records pursuant to Section 220 (the “Section 220 Demand” or the “Demand Letter”). As explained further below, the August 1 Production reflects numerous omissions and was so heavily redacted that the production was rendered nearly worthless as an information-gathering tool.

4. Nearly half of the 3,474 page production consisted of entirely blacked-out pages. On documents where Wal-Mart did not redact every item of text, Wal-Mart generally redacted everything substantive and often redacted words within sentences, leaving Plaintiff to speculate as to what the unredacted portions actually mean. Plaintiff can also demonstrate, through a comparison of an unredacted copy of a document produced to Plaintiff’s counsel from an anonymous third-party, that Wal-Mart intentionally redacted relevant, responsive and unprivileged material in its production. Finally, Wal-Mart designated *every* document, including documents publicly available on Wal-Mart’s website, as “Confidential,” notwithstanding that the confidentiality agreement signed by the parties to facilitate the production applies only to certain “non-public information and materials” such as trade secrets.

5. Wal-Mart's actions make a mockery of the Section 220 process in Delaware, showing the hurdles that shareholders often face in pursuing inspection rights. If Section 220 of the DGCL is to be a legitimate "tool at hand" for shareholders to investigate potential corporate wrongdoing, corporations such as Wal-Mart cannot be permitted to flout their obligations to comply with legitimate inspection demands through obstructionist tactics and wholesale redactions that render any production meaningless.

6. Plaintiff requests that Section 220 Demand be deemed proper and enforceable and that Wal-Mart be directed to produce unredacted copies of all books and records sought by Plaintiff in the Section 220 Demand immediately.

PARTIES

7. Plaintiff Indiana Electrical Workers Pension Trust Fund IBEW is an Indiana-based retirement system that provides retirement allowances and other benefits to electrical workers in Indiana. Plaintiff owns shares of Wal-Mart, and has owned shares continuously at all relevant times alleged herein.

8. Defendant Wal-Mart Stores, Inc. is a Delaware corporation, with its principal offices located in Bentonville, Arkansas. Wal-Mart's shares trade on the NYSE under the symbol "WMT." The Company has a market capitalization of approximately \$250 billion, with fiscal year 2012 sales of approximately \$444 billion. Wal-Mart serves customers and members more than 200 million times per week at 10,130 retail units under 69 different banners in 27 countries and employs approximately 2.2 million associates worldwide.

9. Non-party Wal-Mart de Mexico, S.A. de C.V. is a subsidiary of Wal-Mart in which Wal-Mart owns a controlling interest.

FACTUAL BACKGROUND

10. On December 8, 2011, the Company disclosed in its Form 10-Q filed with the Securities and Exchange Commission that:

During fiscal 2012, the Company began conducting a voluntary internal review of its policies, procedures and internal controls pertaining to its global anti-corruption 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 "FCPA")]. ... The Company has voluntarily disclosed its internal investigation to the U.S. Department of Justice and the Securities and Exchange Commission.

11. On April 21, 2012, The New York Times reported that the Company's subsidiary, WalMex, had engaged in the systematic payment of illegal bribes to government officials throughout Mexico from at least 2002 through 2005 – principally at the direction of WalMex's then-chief executive officer, Eduardo Castro-Wright. *See* David Barstow, *Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle*, The New York Times (Apr. 21, 2012) (the "Times Article") (attached as Exhibit A hereto and incorporated herein by reference). The Times Article reveals that the Company was aware of this illegal conduct by no later than September 21, 2005, when a former executive of WalMex, Sergio Cicero Zapata, informed the general counsel of Wal-Mart International, Maritza I. Munich, of "'irregularities' authorized 'by the highest levels' at [WalMex]." The Times Article demonstrates that the subsequent responses by the Company and WalMex were woefully deficient, constituting gross mismanagement, and that executives at both the Company and WalMex appear to have participated actively in a concerted effort to cover-up the matter in breach of their fiduciary obligations.

12. The Times Article further explains that Wal-Mart was already on notice of illegal conduct at WalMex, having receiving red flags well before Mr. Cicero's September 2005 communication to Ms. Munich. In particular, the article reports:

Nor was this the first indication of corruption at [WalMex] under Mr. Castro-Wright. A confidential investigation, conducted for Wal-Mart in 2003 by Kroll Inc., a leading investigation firm, discovered that [WalMex] had systematically increased its sales by helping favored high-volume customers evade sales taxes.

A draft of Kroll's report ... concluded that top [WalMex] executives had failed to enforce their own anticorruption policies, ignored internal audits that raised red flags and even disregarded local press accounts asserting that [WalMex] was "carrying out a tax fraud." (The company ultimately paid \$34.3 million in back taxes.)

Wal-Mart then asked Kroll to evaluate [WalMex's] internal audit and antifraud units. Kroll wrote another report that branded the units "ineffective." Many employees accused of wrongdoing were not even questioned; some "received a promotion shortly after the suspicions of fraudulent activities had surfaced."

13. According to the Times Article, Ms. Munich hired Juan Francisco Torres-Landa to interview Mr. Cicero, and Messrs. Torres-Landa and Cicero "met three times in October 2005." Mr. Torres-Landa's notes from the interviews explain, for example, that WalMex used "internal accounting codes" to identify the "specific destination" of the bribes, which:

[were] broken down into the following items:

- 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 agencies 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

14. According to the Times Article, Ms. Munich sent “detailed memos describing Mr. Cicero’s debriefings to Wal-Mart’s senior management,” including Thomas A. Mars, Thomas D. Hyde, Michael Fund, Craig Herkert, and Lee Stucky. The Times Article further reveals that, on October 15, 2005, “a top Wal-Mart lawyer” sent an email to Michael T. Duke, the Company’s current CEO and then-vice chairman overseeing Wal-Mart International, “that gave a detailed description of [Mr. Cicero’s] allegations” and stated: “You’ll want to read this.”

15. According to the Times Article, Willkie Farr & Gallagher LLP (“Willkie”) was asked to assist with an investigation of the matter. On November 1, 2005, Willkie submitted an “Internal Investigation Work Plan” that proposed a four-month “thorough investigation....” The document further summarized the situation:

Cicero alleges that WalMex made various improper payments to government officials through third parties to obtain real estate and related permits, licenses, and services. Cicero also alleges that WalMex falsely recorded these transactions. Moreover, he alleges, in certain circumstances, sufficient facts to implicate U.S. jurisdiction such as the involvement of Wal-Mart officers, related communications involving U.S. instrumentalities (e.g., teleconferences with Bentonville), and inaccurate entries affecting Wal-Mart’s books and records.

Cicero asserts that he maintained records of these practices while serving in the legal department of WalMex and its predecessor company. Specifically, Cicero states that he has eight binders of documentation concerning about 150 instances of improper payments and/or inaccurate accounting entries by WalMex.

16. However, the Times Article reports that “Wal-Mart’s leaders rejected” the approach proposed by Willkie. Instead, the Company determined to pursue an internal two-week “Preliminary Inquiry” through Wal-Mart’s Corporate Investigations Department and International Internal Audit Services (“IAS”) that would be “focused on corroborating or discrediting the allegations.” The investigation and audit plan “strongly recommend[ed] that no

one be advised of the Preliminary Inquiry until it ha[d] been completed.” The plan further outlined that:

3. It is anticipated that the inquiry will last from November 7 through 23, 2005. 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.

4. If it is decided we need to proceed with a full investigation, appropriate notifications would be made.

17. The Times Article chronicles that, pursuant to Wal-Mart’s investigation and audit plan, an internal investigatory team was sent to Mexico City and “within days they unearthed evidence of widespread bribery.” On November 14, 2005, during the course of the investigation, Joe Lewis, one of the investigators, emailed his supervisor, Ken Senser, to let him know that “[i]t is not looking good.” That email also forwarded an email by Ronald Halter, another Wal-Mart investigator, to Mr. Lewis, which stated: “One very interesting post script. All payments to these individuals and all large sums of \$ paid out of this account stopped abruptly in 2005.” As the Times Article reports, Mr. Halter’s email went on to note that the “‘only thing we can find’ that changed was that Mr. Castro-Wright left [WalMex] for the United States,” apparently when he was “put in charge of all Wal-Mart stores in the United States [and] also joined Wal-Mart’s executive committee, the [C]ompany’s inner sanctum of leadership.” The Times Article also reports that, among other things, Wal-Mart’s investigators “found a document in which a [WalMex] real estate executive openly acknowledged that ‘these payments were performed to facilitate obtaining the licenses or permits’ for new stores.”

18. As a result of the investigation, Mr. Halter and Bob Ainley, a senior Wal-Mart auditor, wrote a report to “Wal-Mart’s top executives in December 2005” describing the evidence that, according to the Times Article, “corroborated Mr. Cicero – the hundreds of gestor

payments, the mystery codes, the rewritten audits, the evasive responses from [WalMex] executives, the donations for permits, the evidence gestores were still being used.”¹ Importantly, their report concludes: “There is reasonable suspicion to believe that Mexican and USA laws have been violated.”

19. Also in connection with the investigation, IAS prepared a draft report, dated December 1, 2005, titled “Mexico FCPA Investigation.” The report recounted that the Company’s “Internal Audit charter requires that the results of Internal Audit reviews be reported to management.” The report then explained that:

[IAS] with the assistance of Global Corporate Security performed an investigation in Mexico City related to information received concerning potential violations of the [FCPA]. This Executive Summary Report represents the key issues identified during our review of such matters.

* * *

IAS review the Usercheq database for the years 2003-2005 and searched the database for payments with the words “contributions” or “donations” in the description field. The following is a summary of the findings:

Entity	Donations	Contributions	Currency
Wal-Mex Stores ⁴	3,641,182	770,100	MX
Family Development Agency (DIF)	2,180,520	150,000	MX
Family Development Agency (DIF)	150,000	-	USD
Municipalities	8,931,307	19,310,323	MX
Other government entities	4,953,200	123,769,446	MX
Unions	-	6,000	MX
Reimbursement to private companies for contributions	-	1,792,812	MX

⁴ Donations made through payments to the Wal-Mex Stores subsidiary in exchange for store coupons which then are provided to government institutions. Some of the payments descriptions indicate that the donation is being made for the issuance of a license.

¹ The Times Article explains that “gestores” are “fixers” and that, while some are legitimate, “often gestores play starring roles in Mexico’s endless loop of public corruption scandals. They operate in the shadows, dangling payoffs to officials of every rank. It was this type of gestor that [WalMex] deployed, Mr. Cicero said.”

20. In addition to these multiple reports to Wal-Mart's executives and directors, the Times Article further reveals that Ms. Munich circulated a memorandum in January 2006, just prior to her resignation from the Company, "that argued for expanding the Mexico investigation and giving equal respect to Mexican and United States laws." On January 18, 2006, Ms. Munich sent an email to Bob Ainley, Michael Fung, Ronald Halter, Tom Mars, and Martin Weinstein warning against giving WalMex executives any role in the investigation:

The wisdom of assigning any investigative role to management of the business unit being investigated escapes me. Given the serious nature of the allegations, and the need to preserve the integrity of the investigation, it would seem more prudent to develop a follow-up plan of action, independent of WALMEX management participation, and that includes external legal advi[c]e and professional, independent investigative resources.

In her email, Ms. Munich also noted that Mr. Cicero had "offer[ed] to provide information about 'other cases that were managed at that time under the same formula.'" Accordingly, Ms. Munich stated that "the needed follow-up investigation should extend beyond the specific transactions contained in this draft report to other potentially suspect transactions not yet identified." The Times Article also notes that Ms. Munich confirmed that "[t]he bribery of government officials is a criminal offense in Mexico."²

21. Instead of following these recommendations or otherwise engaging in the full investigation envisioned by the Company's November 2005 investigation and audit plan, the Times Article records that, at a February 3, 2006 meeting called by H. Lee Scott Jr., then-CEO of Wal-Mart, Mr. Senser was ordered to develop a "'modified protocol' for internal investigations,"

² According to the Times Article, in January 2006, "Mr. Scott, Mr. Duke and Wal-Mart's chairman, S. Robson Walton, received an anonymous e-mail saying that [WalMex's] top real estate executives were receiving kickbacks from construction companies" and imploring: "Please you must do something."

with control over the investigation being transferred shortly thereafter to WalMex. The Times

Article explains:

Mr. Scott said he wanted it done fast, and within 24 hours Mr. Senser produced a new protocol, a highly bureaucratic process that gave senior Wal-Mart executives — including executives at the business units being investigated — more control over internal investigations. The policy included multiple “case reviews.” It also required senior executives to conduct a “cost-benefit analysis” before signing off on a full-blown investigation.

Under the new protocol, Mr. Lewis and his team would only investigate “significant” allegations, like those involving potential crimes or top executives. Lesser allegations would be left to the affected business unit to investigate.

“This captures it, I think,” Mr. Hyde wrote when Mr. Senser sent him the new protocol.

Four days after Mr. Scott’s meeting, with the new protocol drafted, Wal-Mart’s leaders began to transfer control of the bribery investigation to one of its earliest targets, Mr. Rodríguezmacedo.

22. Indeed, the Times Article reveals that Mr. Rodríguezmacedo, WalMex’s general counsel, was intimately involved in WalMex’s bribery program. For example, the Times Article reports that Mr. Cicero and Mr. Rodríguezmacedo “had discussed the use of gestores shortly after Mr. Rodríguezmacedo was hired [by WalMex],” and that, according to Mr. Cicero, Mr. Rodríguezmacedo responded: “‘Don’t worry. Keep it on its way.’” In addition, according to the Times Article, Mr. Rodríguezmacedo “took ‘significant information out’ of an audit of [WalMex’s] compliance with the [FCPA,]” which had “described how [WalMex] gave gift cards to government officials in towns where it was building stores.” The Times Article recounts that, as a result of the audit report, Mr. Rodríguezmacedo emailed Mr. Cicero with instructions “to write up a plan to ‘diversify’ the gestores used to ‘facilitate’ permits,” explaining that “Eduardo Castro[-Wright] wants us to implement this plan as soon as possible.” According to the Times Article, Mr. Cicero prepared the plan requested by Mr. Rodríguezmacedo and that it was

approved with one minor change: “Mr. Rodríguezmacedo did not want the plan to mention ‘gestores.’ He wanted them called ‘external service providers.’”

23. The decision by Wal-Mart’s executives to transfer the investigation to WalMex and Mr. Rodríguezmacedo was obviously improper and reflects an apparent effort to cover-up the substantial evidence of illegal activity by WalMex and its executives. Indeed, as the Times Article explains:

Wal-Mart’s leaders ... had clear guidance about the propriety of letting a target of an investigation run it.

On the same day Mr. Senser was putting the finishing touches on the new investigations protocol, Wal-Mart’s ethics office sent him a booklet of “best practices” for internal investigations. It had been put together 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.

The transfer appeared to violate even the “modified protocol” for investigations. Under the new protocol, Corporate Investigations was still supposed to handle “significant” allegations — including those involving potential crimes and senior executives. When Mr. Senser asked his deputies to list all investigations that met this threshold, they came up with 31 cases.

At the top of the list: Mexico.

24. Moreover, as the Times Article notes, “Wal-Mart’s ethics policy” clearly provided: “Never cover up or ignore an ethics problem.”

25. Once the investigation was handed over to Mr. Rodríguezmacedo, however, it concluded shortly thereafter with the expected result. According to the Times Article, Mr. Rodríguezmacedo “wrapped up the case in a few weeks, with little additional investigation.” In his seriously deficient six-page report on the matter, Mr. Rodríguezmacedo concluded that “[t]here is no evidence or clear indication of bribes paid to Mexican government authorities with

the purpose of wrongfully securing any licenses or permits.” The Times Article discloses that “the bulk of Mr. Rodríguezmacedo’s report attacked the integrity of [Mr. Cicero]” and suffered from multiple “omission[s],” including his failure even “to note that he had been implicated in the same criminal conduct” that was the subject of the investigation. Indeed, Mr. Lewis, director of Wal-Mart’s Corporate Investigations, described Mr. Rodríguezmacedo’s report as “truly lacking.”

26. The Times Article, however, reports that “it was enough for Wal-Mart. Mr. Rodríguezmacedo was told by executives in Bentonville on May 10, 2006, to put his report ‘into final form, thus concluding this investigation.’”

27. Notably, on April 21, 2012, Wal-Mart issued a statement from David Tovar, Vice President Corporate Communications, providing: “We are deeply concerned by these allegations....” Once again, on April 24, 2012, Wal-Mart issued another statement from Mr. Tovar, explaining: “Six months ago, we launched an aggressive investigation under the auspices and supervision of the Audit Committee of the Board of Directors into the issues contained in the [Times Article].”

28. Wal-Mart is already incurring significant costs and expenses as a result of investigations relating to whether it or WalMex violated U.S. or Mexican laws in connection with WalMex’s systematic payment of bribes and the ensuing cover-up by WalMex and Wal-Mart. In addition, Wal-Mart is the subject of multiple lawsuits relating to this conduct in federal and state court. If Wal-Mart and/or WalMex are found to have violated U.S. or Mexican law, those entities will incur significant liability, costs and expenses and may be subject to criminal penalties.

29. In addition to the multiple instances of egregious officer misconduct at both Wal-Mart and WalMex, there is substantial evidence that some or all of the Company's directors actively participated in the cover-up, knowingly acquiesced to the cover-up, or, at the very least, knew of the repeated red flags raised by conduct at WalMex but failed to fulfill their fiduciary duties to respond, including by exercising appropriate oversight.

30. For example, the Company's November 2005 investigation and audit plan expressly provides that the Chairman of the Company's Audit Committee was to be kept updated on the progress of the investigation by stating: "On November 16, 2005, a progress report will be given to ... the Chairman of the Audit Committee."

31. Also, the Company's proxy statements, filed with the Securities and Exchange Commission on April 14, 2006, and April 19, 2007, report that, during fiscal years 2006 and 2007, respectively, the Audit Committee "regularly me[t] with management of the Company ... and the Company's internal auditors" and the Audit Committee "[r]eceived reports from management regarding the Company's policies, processes, and procedures regarding compliance with applicable laws and regulations and the Statement of Ethics, all in accordance with the Audit Committee's charter."

32. In addition, the fact that Mr. Scott, a member of the Company's board of directors, was directly involved in the decision to change the Company's investigation protocols in early 2006 and to transfer control of the WalMex investigation to WalMex provides a more than reasonable basis to conclude that Mr. Scott discussed with his fellow directors the bribery allegations, the investigation and the decision effectively to quash the investigation.

33. Moreover, Willkie's involvement in the WalMex investigation raises the question of whether the Company's board of directors approved Willkie's engagement. If the Company's

board of directors did approve that engagement, then the directors necessarily knew of the investigation and the allegations of wrongdoing, providing a reasonable basis to believe that they also participated in, or at least acquiesced to, the decision to quash the investigation.

34. On the other hand, if the directors were aware of the bribery allegations and/or investigation but failed to stay informed of the status and outcome of that investigation, then they breached their fiduciary duties for failure to exercise their oversight obligations.

35. In addition, the fact that the Company's investigation protocols were changed during the course of the WalMex investigation raises the question of whether the Company's board of directors approved those changes. If the board of directors did approve those changes, then that provides a more than reasonable basis to conclude that the directors breached their fiduciary obligations. If the board of directors did not approve those changes, then that raises the question of what actions the board of directors took to ensure that investigations were appropriately addressed.

36. On April 23, 2012, Reuters reported that "Representative Elijah Cummings, the top Democrat on the House Oversight and Government Reform Committee, and Representative Henry Waxman, the top Democrat on the House Energy and Commerce Committee," "said they are launching an investigation into allegations of bribery at [WalMex,]" that they had "sent a letter to Wal-Mart Chief Executive Michael Duke, requesting an in-person meeting with company officials[,]" and that "they are contacting former Wal-Mart executives who may have documents or information relevant to a congressional investigation." The Reuters article quoted the two congressmen as saying that the Times Article "raises significant questions about the actions of top company officials in the United States who reportedly tried to disregard substantial evidence of abuse."

37. On April 24, 2012, Bloomberg reported that Wal-Mart “is the subject of a U.S. Justice Department criminal investigation into allegations of bribery in its Mexican subsidiary, [WalMex], according to a person familiar with the probe.”

38. On April 26, 2012, The New York Times reported that the Mexican government had announced that an investigation by the federal attorney general’s office into Wal-Mart’s conduct. The New York Times further reported that Mexican President Felipe Calderón had publicly stated that he was “very indignant” about the matter and that “‘it wasn’t right’ to do business ‘based on mordidas,’ using the common expression for the petty bribes Mexicans pay to smooth their way through bureaucracy or extricate themselves from traffic offenses and legal scrapes.”

39. Thereafter, an unknown source mailed documents to Plaintiff’s counsel substantiating numerous facts described in the Times Article and detailing certain payments made as bribes by WalMex (the “Whistleblower Documents”). The Whistleblower Documents include emails to and from individuals involved in Wal-Mart’s 2005-2006 internal investigation and

REDACTED

REDACTED As more fully discussed below, these documents also demonstrate that Wal-Mart has improperly redacted relevant, non-privileged material in its August 1 Production.

40. Numerous stockholder plaintiffs have filed litigation relating to the above-described matters. *See, e.g., Cottrell v. Duke*, Case No. 4:12-cv-04041-SOH (W.D. Ark., filed April 25, 2012); *Klein v. Walton*, C.A. No. 7455-CS (Del. Ch., filed April 25, 2012); *Emory v. Duke*, Case No. CV-2012-235 (Ark. Cir. Ct., filed Apr. 26, 2012), *Cohen v. Alvarez*, C.A. No. 7470-CS (Del. Ch., filed April 27, 2012); *Louisiana Municipal Police Employees’ Retirement*

System v. Scott, No. 4:12-cv-4045-SOH (W.D. Ark., filed Apr. 27, 2012); *Tuberville v. Duke*, No. 4:12-cv-4046-SOH (W.D. Ark., filed Apr. 30, 2012); *Gerber v. Alvarez*, C.A. No. 7477-CS (Del. Ch., filed May 1, 2012); *Lomax v. Walton*, No. 4:12-cv-4047-SOH (W.D. Ark., filed May 1, 2012); *County of York Retirement Plan v. Wal-Mart Stores, Inc.*, C.A. No. 7484-CS (Del. Ch., filed May 2, 2012); *California State Teachers' Retirement System v. Alvarez*, C.A. No. 7490-CS (Del. Ch., filed May 3, 2012); *Brazin v. Wal-Mart Stores, Inc.*, C.A. No. 7489-CS (Del. Ch., filed May 3, 2012); *Austin v. Walton*, Case No. CV-2012-201 (Ark. Cir. Ct., filed May 17, 2012); *New York City Employees' Retirement System v. Alvarez*, C.A. No. 7612-CS (Del. Ch. Filed June 11, 2012); *Knowles v. Alvarez*, C.A. No. 7630-CS (Del. Ch., filed June 18, 2012); *Richman v. Alvarez*, No. 4:12-cv-4069-SOH (W.D. Ark, filed June 26, 2012).

41. Additionally, on May 17, 2012, the Company revealed that its internal investigation had expanded to other subsidiaries beyond WalMex. In particular, Wal-Mart disclosed that the Audit Committee of Wal-Mart's Board "is conducting an internal investigation into, among other things, alleged violations of the [FCPA] and other alleged crimes or misconduct in connection with foreign subsidiaries including [WalMex] and whether prior allegations of such violations and/or misconduct were appropriately handled by the Company."

**PLAINTIFF'S DEMAND LETTER AND
WAL-MART'S WOEFULLY DEFICIENT RESPONSE**

42. In consideration of the foregoing facts, Plaintiff seeks to investigate mismanagement and possible breaches of fiduciary duty by the directors and officers of the Company and WalMex and to investigate the independence and disinterest of the Board in determining whether pre-suit demand is necessary or would be excused prior to commencing derivative litigation on behalf of the Company.

A. The June 6, 2012 Demand Letter

43. On June 6, 2012, Plaintiff's counsel delivered to Wal-Mart's registered agent in Delaware the narrowly-tailored Demand Letter, demanding the right to inspect the books, records and documents of Wal-Mart and WalMex relating to the various matters described herein. The Demand Letter was accompanied by an affidavit and documents evidencing Plaintiff's beneficial ownership of Wal-Mart stock and a Power of Attorney signed under oath by Matthew J. Covey, Chairman of Plaintiff, appointing Grant & Eisenhofer P.A. as Plaintiff's agent and attorney-in-fact to act on Plaintiff's behalf to make the demand pursuant to Section 220. A copy of the Demand Letter, including its enclosures, is attached as Exhibit B hereto and incorporated by reference herein.³

44. In the Demand Letter, Plaintiff requested the Company produce or allow the inspection of the following documents:

1. All minutes of any meeting (including all draft minutes and agendas and exhibits to such minutes and agendas) of the Board^[4] during which any of the following topics were discussed or raised:
 - a. Any of the matters discussed in the grounds supporting th[e] demand set forth [in the Demand Letter];
 - b. The compliance of Wal-Mart or WalMex with any regulations or laws relating to bribes or the provision of other illegal consideration to government officials, including the U.S. Foreign Corrupt Practices Act (the "FCPA");
 - c. Any violation or potential violation of the FCPA by Wal-Mart, WalMex, or any of the directors, officers, employees or agents of Wal-Mart or WalMex;

³ Plaintiff's counsel also emailed a courtesy copy of the Demand Letter to Stephen Norman, Esquire, Wal-Mart's Delaware counsel, on June 6, 2012.

⁴ The Demand Letter defines "Board" as "the board of directors of Wal-Mart or [WalMex], any committee thereof, or any persons or entities representing or purporting to represent, or acting or purporting to act on behalf of, any of the foregoing."

- d. Any illegal or potentially illegal payment made directly or indirectly by or on behalf of WalMex to a government official;
 - e. The policies and procedures of Wal-Mart or WalMex relating to corruption prevention or any of the matters addressed in points (a) – (d) above;
 - f. Reporting or compliance requirements of Wal-Mart or WalMex relating to any of the regulations or laws referenced in points (a) – (d) above;
 - g. Any of the Proceedings (as defined [in the Demand Letter]),⁵ or any related action, suit, investigation or proceeding;
 - h. Wal-Mart’s internal review of its policies, procedures and internal controls pertaining to its global anti-corruption compliance program, as referenced in the Company’s Form 10-K, filed on December 8, 2011;
 - i. Wal-Mart’s internal investigation into whether certain matters, including permitting, licensing and inspections, were in compliance with the FCPA, as referenced in the Company’s Form 10-K, filed on December 8, 2011; or
 - j. Any investigation, regulatory proceeding, or litigation by any U.S. or Mexican federal, state or local governmental or regulatory body relating to any of the matters discussed in the grounds supporting th[e] demand set forth [in the Demand Letter].
2. All documents reviewed, considered, or produced by the Board in connection with any meeting during which any of the items enumerated above in Request 1(a) – (j) were discussed.
 3. All communications between or among the directors or officers of Wal-Mart or WalMex in connection with any of the items enumerated above in Request 1(a) – (j).
 4. Documents reflecting any and all personal, familial, financial, or business relationships between or among any current director of the Company and any

⁵ The Demand Letter defines “Proceedings” as the litigation styled *Cottrell v. Duke, et al.*, Case No. 4:12-cv-04041-SOH (W.D. Ark., filed April 25, 2012); *Klein v. Walton, et al.*, C.A. No. 7455-CS (Del. Ch., filed April 25, 2012); *Cohen v. Alvarez, et al.*, C.A. No. 7470-CS (Del. Ch., filed April 27, 2012); *Gerber v. Alvarez, et al.*, C.A. No. 7477-CS (Del. Ch., filed May 1, 2012); *County of York Retirement Plan v. Wal-Mart Stores, Inc.*, C.A. No. 7484-CS (Del. Ch., filed May 2, 2012); *California State Teachers’ Retirement System v. Alvarez, et al.*, C.A. No. 7490-CS (Del. Ch., filed May 3, 2012); *Brazin, et al. v. Wal-Mart Stores, Inc. et al.*, C.A. No. 7489-CS (Del. Ch., filed May 3, 2012).

fellow director or any officer of the Company or WalMex, other than their service as directors of the Company and without regard to the time period.

5. All documents concerning discussions, communications or decisions as to the nominations of the current members of the Company's board of directors, and the placement of such directors on any committees of the Company's board of directors.
6. Documents sufficient to identify the net worth and annual income of each current member of the Company's board of directors for the period encompassing his or her service as a member of the Company's board of directors.
7. Complete versions of each document, report, e-mail, memorandum or other communication referenced in the grounds supporting th[e] demand set forth [in the Demand Letter] (including, without limitation, in the Times Articles, as defined [in the Demand Letter]).

45. The Demand Letter enumerated the following legitimate and proper purposes for the inspection of the books, records and documents:

- (a) to investigate mismanagement by the directors and/or officers of Wal-Mart or WalMex in connection with the matters discussed in the grounds supporting this demand set forth [in the Demand Letter];
- (b) the possibility of breaches of fiduciary duty by directors and/or officers of Wal-Mart or WalMex in connection with the matters discussed in the grounds supporting this demand set forth [in the Demand Letter];
- (c) the independence and disinterest of the Board, and to determine whether a presuit demand is necessary or would be excused prior to commencing any derivative action on behalf of the Company.

46. These purposes are reasonably related to Plaintiff's interest as a stockholder of the Company, and the inspection is not sought for a purpose that is in the interest of a business or object other than the business of the Company.

47. The books and records sought are narrowly tailored to serve Plaintiff's purposes in sending the Demand Letter.

B. Wal-Mart's June 13, 2012 Reply Letter

48. On June 13, 2012, Wal-Mart's counsel sent Plaintiff a response to the Demand Letter (the "June 13 Letter"). A copy of the June 13 Letter is attached as Exhibit C hereto.

49. In its June 13 Letter, Wal-Mart asserted that the "requests in the Demand [Letter] are overbroad...." The June 13 Letter also asserted that "many of the documents requested are subject to the attorney-client privilege and/or work product privilege, and thus are not subject to inspection."

50. The June 13 Letter stated that Wal-Mart was "willing to make available for inspection the relevant, non-privileged portions of certain books and records of the Company," subject to Plaintiff "executing an appropriate confidentiality agreement and agreeing to pay the cost of production...."

51. The June 13 Letter further provided that "[t]he Company believes that board minutes and agendas and [Wal-Mart] policies regarding compliance with the [FCPA], for the period of 2005 to the present, satisfy the necessary and essential requirement imposed by Section 220 and is therefore willing to produce them to [Plaintiff]."

52. Thereafter, Wal-Mart and Plaintiff entered into a confidentiality agreement with respect to Wal-Mart's anticipated production of books and records (the "Confidentiality Agreement"), a partially executed copy of which is attached as Exhibit D hereto.⁶

53. Section 8 of the Confidentiality Agreement provides that, among other things, entry into the Confidentiality Agreement shall not operate as an admission by Plaintiff that documents produced by Wal-Mart reflect confidential matter or "prejudice in any way the right

of [Plaintiff] to seek to exercise or enforce its legal rights as a stockholder of the Company, including any rights pursuant to 8 Del. C. § 220, subject to the provisions contained herein regarding maintaining confidentiality in any pleadings filed in any court....”

54. The Confidentiality Agreement applies to “Confidential Material.” Section 1 of the Confidentiality Agreement provides:

For purposes of this Agreement, Confidential Material shall include all *non-public* information and materials produced by or on behalf of the Company in response to the Demand, whether conveyed orally, in writing, or in electronic form, containing information *related to*: trade secrets; business, commercial, or financial information; financial statements; financial or business plans and strategies; projections or analyses for future or prior periods; tax data; business, sales, and marketing plans and strategies; assets and liabilities; proposed strategic transactions, strategic alternatives, or business combinations; or other personally or commercially sensitive or proprietary information of the Company and its subsidiaries, as well as any summaries, notes, memoranda, or other work product that Stockholder, Grant & Eisenhofer P.A. or their respective representatives create based on such Confidential Material. [emphasis added]

55. Section 1 of the Confidentiality Agreement further provides:

Confidential Material shall *not* include information that (a) is or becomes generally available to the public other than as a result of disclosure by Stockholder or its agents or representatives; (b) *was available to Stockholder on a non-confidential basis prior to its disclosure by the Company*; or (c) becomes available to Stockholder on a non-confidential basis from another person or legal or business entity; provided that the information is not subject to a confidentiality agreement between the Company and such other person or legal or business entity. [emphasis added]

56. Accordingly, any designation by Wal-Mart of public information as “Confidential” is in violation of the Confidentiality Agreement.

⁶ Although Plaintiff and Plaintiff’s counsel executed the Confidentiality Agreement and sent it to Wal-Mart’s counsel, Wal-Mart’s counsel has not provided Plaintiff with a fully executed version of the Confidentiality Agreement reflecting a signature on behalf of Wal-Mart.

57. Moreover, even if information is “non-public,” it must, among other things, “relate[] to” one of the limited categories of information identified in the first sentence of Section 1 to be designated as “Confidential” pursuant to the Confidentiality Agreement.

C. Nearly Two Months After Plaintiff’s June 6 Demand Letter, Wal-Mart Finally Makes Its Deficient Production Of Documents

58. Nearly two months after Plaintiff delivered its Demand Letter on June 6, 2012 and over a month-and-a-half after Wal-Mart responded with its June 13 Letter, Wal-Mart made a woefully deficient production of one bankers box of documents on August 1, 2012 in response to Plaintiff’s Demand Letter.

1. The August 1 Production Is Replete with Unjustified Redactions

59. Wal-Mart’s August 1 Production is comprised of 3,474 pages.

60. Of these, 1,592 pages (46% of the total) are *completely* redacted.

61. An additional 317 pages are almost entirely redacted.

62. Thus, 1,909 pages (55% of the total) are entirely or almost entirely redacted. For example, attached as Exhibit E hereto are 120 completely redacted consecutive pages produced by Wal-Mart. It is impossible to determine what these materials are (notwithstanding the fact that they are nonetheless all marked “Confidential”). Wal-Mart provided no redaction log (or privilege log) with its August 1 Production.

63. Most importantly, it appears that of the 1,374 pages of Board and Audit Committee minutes produced by Wal-Mart, 932 pages are subject to complete redaction and 201 pages are subject to almost complete redaction. Thus, 1,133 pages of Board and Audit Committee minutes (82% of the total) are entirely or almost entirely redacted. And, as discussed

further below, much of the unredacted text is comprised merely of lists of attendees, calls to order, and adjournments.

64. Of course, it is difficult to determine with certainty the total number of pages of minutes produced by Wal-Mart. The documents comprising the August 1 Production were produced in paper format, out of chronological order and without any indicator showing where documents end or begin. Thus, in numerous instances, it is difficult to determine if the multiple pages of consecutive redactions constitute one or many documents or even parts of documents. (See Exhibit E).

65. Wal-Mart has improperly redacted clearly relevant, non-privileged information from the August 1 Production. For example, the August 1 Production includes an 8-page IAS interim report, dated May 10, 2006, which is captioned "Interim Report – Ethics Report for FYE 2006." A copy of the May 10, 2006 interim report produced by Wal-Mart is attached as Exhibit F hereto. Three quarters of the third page of the report and the final five pages of the report are entirely redacted. *See id.* at WM-220-002813 to WM-220-002818. Importantly, however, the Whistleblower Documents include a draft of this report, dated May 1, 2006. A copy of the May 1, 2006 draft report is attached as Exhibit G hereto. By comparing the May 10, 2006 interim report against the May 1, 2006 draft report, it is clear Wal-Mart has redacted clearly relevant, non-privileged information from the document. For example, in the section of the draft report titled "Ethics Office Statistics and Trends," the draft report provides:

REDACTED

See Exhibit G at 5. The next page of the draft report then includes the following chart, reflecting

REDACTED

REDACTED

See Exhibit G at 6. All of this information is improperly redacted from the May 10, 2006 interim report included by Wal-Mart in its August 1 Production.

66. In addition, Wal-Mart repeatedly provides only portions of sentences in the August 1 Production, with the remainder being redacted. As a result, Plaintiff can only speculate as to what might be under the redactions and whether inclusion of the redacted text would alter the meaning of the sentence.

67. For example, the minutes of the Board's September 20-21, 2006 meeting provide:
REDACTED REDACTED

REDACTED
REDACTED REDACTED
REDACTED
REDACTED

A copy of the Board's September 20-21, 2006 meeting minutes produced by Wal-Mart is attached as Exhibit H hereto.

68. Similarly, the minutes for the Board's March 8, 2007 meeting provide:

REDACTED REDACTED

REDACTED
REDACTED REDACTED EDACTE
REDACTED D
REDACTED

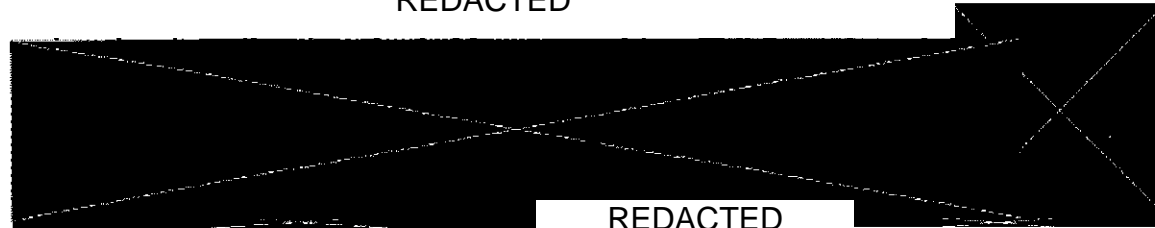
A copy of the Board's March 8, 2007 meeting minutes produced by Wal-Mart is attached as Exhibit I hereto.

69. Likewise, the minutes for the Board's May 31, 2007 meeting provide:
REDACTED REDACTED


REDACTED REDACTED

A copy of the Board's May 31, 2007 meeting minutes produced by Wal-Mart is attached as Exhibit J hereto.

70. And the minutes for the Board's September 27-28, 2007 meeting provide:
REDACTED


REDACTED REDACTED
REDACTED

A copy of the Board's September 27-28, 2007 meeting minutes produced by Wal-Mart is attached as Exhibit K hereto.

71. Wal-Mart's overuse of redactions is unjustified.

2. The August 1 Production Omits Critical Board and Audit Committee Meeting Information and Reports to which Plaintiff Is Entitled

72. Even the limited August 1 Production reflects glaring omissions, in addition to patently overbroad redactions.

73. Generally, in producing minutes of meetings of the Wal-Mart Board, Wal-Mart appears to have adopted a policy of redacting everything (including attachments) *except* the initial heading and call to order, indicating who was in attendance, and perhaps a few sentences here and there indicating that someone gave a presentation, but redacting any discussion about

what that presentation may have been about. As examples, a few of these deficiencies are set forth below.

74. For example, as alleged above, the Company's November 2005 investigation and audit plan, developed by the Company after the initial debriefings of Mr. Cicero and after having rejected Willkie's more robust investigation proposal, provided that, "[o]n November 16, 2005, a progress report will be given to ... the Chairman of the Audit Committee." This "progress report" is critical, given that, according to the Times Article, Wal-Mart's investigative team, which had arrived in Mexico City in early November, had "within days ... unearthed evidence of widespread bribery." Indeed, according to the Times Article, one of the investigators emailed his supervisor, Mr. Senser, on November 14, 2005 (two days before the Audit Committee's November 16, 2005 meeting), to let him know that "[i]t is not looking good." However, Wal-Mart has failed to produce the November 16, 2005 investigation progress report or any materials detailing its substance, to which Plaintiff is entitled. Instead, Wal-Mart produced an improperly redacted copy of the agenda and minutes for the Audit Committee's November 16, 2005 meeting. Copies of the agenda and minutes for the Audit Committee's November 16, 2005 meeting produced by Wal-Mart are attached hereto as Exhibits L and M, respectively.

75. The November 16, 2005 Audit Committee meeting minutes produced by Wal-Mart are comprised of a six page document, with all text redacted except for (i) the list of attendees, (ii) the call to order, (iii) seven sentences regarding an "Internal Audit Presentation" that fails to make any mention of the progress report provided that day with respect to the WalMex bribery scandal, and (iv) the adjournment. *See* Exhibit M.

76. Similarly, Wal-Mart produced heavily redacted copies of the agenda and minutes for the Board's November 16-17, 2005 meeting in San Juan, Puerto Rico. Copies of the agenda

and minutes for the Board's November 16-17, 2005 meeting produced by Wal-Mart are attached hereto as Exhibits N and O, respectively. All text is redacted from the eleven pages of minutes except for (i) the list of attendees, (ii) the call to order, and (iii) two sentences which provide as follows:

REDACTED

REDACTED

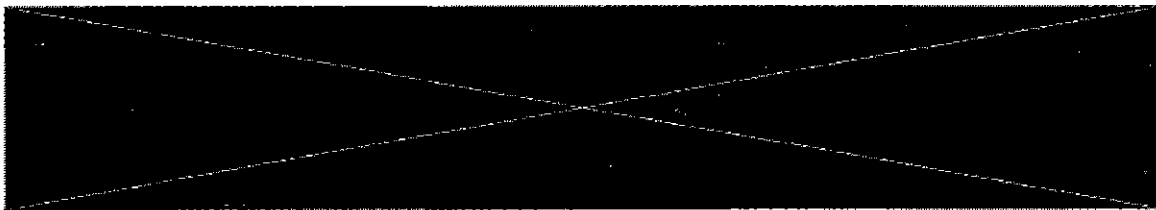
A large rectangular area of text is completely redacted with a solid black fill.

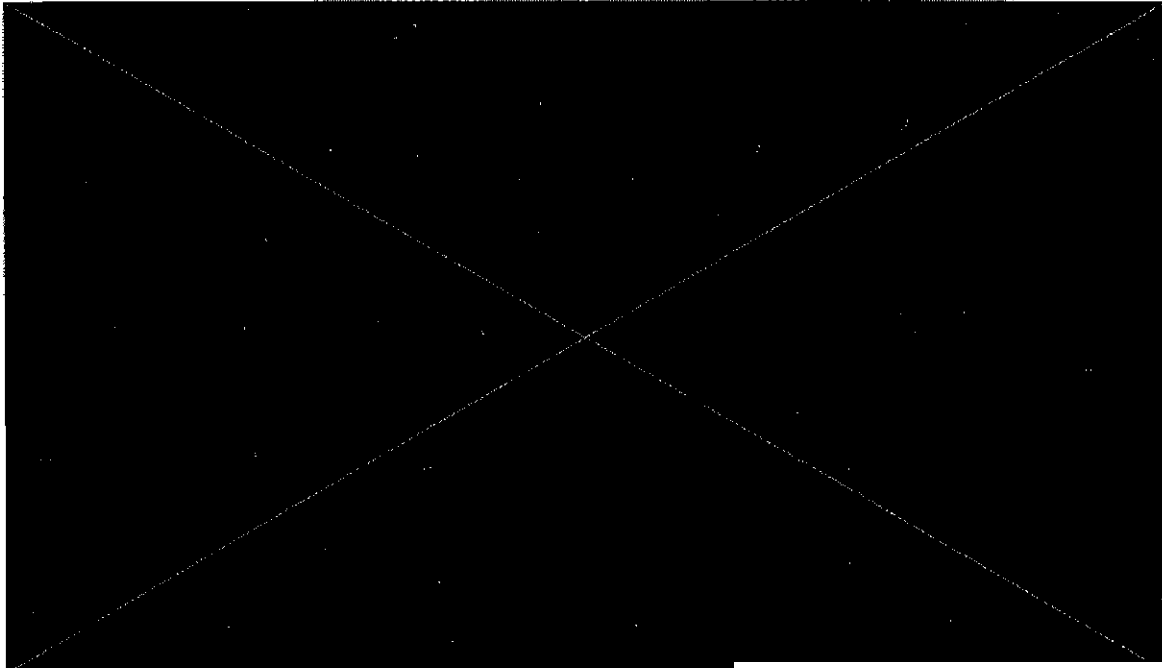
REDACTED

REDACTED

77. In addition, as explained in the Times Article, Wal-Mart's senior management directed that a "modified protocol" for internal investigations" be developed in February 2006, resulting in the WalMex investigation being handed over to WalMex and shut-down. Wal-Mart's Board held its quarterly meeting on March 2, 2006, less than a month after the "modified protocol" was put in place. Wal-Mart produced a heavily redacted agenda and minutes for that critical meeting. A copy of the agenda and minutes for the Board's March 2, 2006 meeting produced by Wal-Mart are attached hereto as Exhibits P and Q, respectively. For example, all of the text of the minutes is redacted except for (i) the list of attendees, (ii) the call to order, (iii) the adjournment, and (iv) four sentences which provide as follows:

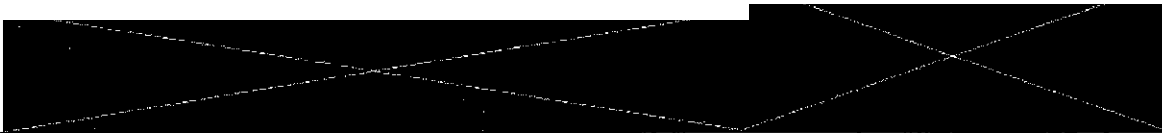
REDACTED

A large rectangular area of text is completely redacted with a solid black fill.



REDACTED

REDACTED



See Exhibit Q at WM-220-000553 to WM-220-000554.⁷

78. Importantly, the agenda for the March 2, 2006 Board meeting : REDACTED

REDACTED

⁷ As just another example of Wal-Mart's overly enthusiastic use of the redaction marker, the fourteen pages of the minutes for the Board's November 18, 2004 quarterly meeting are redacted except for (i) the list of attendees, (ii) the call to order, (iii) the adjournment, and (iv) the following *excerpt* of a single sentence:

REDACTED

REDACTED



A copy of the November 18, 2004 Board minutes produced by Wal-Mart is attached as Exhibit R hereto.

REDACTED

See Exhibit P at

WM-220-001233. The page of the agenda Bates-numbered WM-220-001237 provides:

REDACTED

The strong inference is that REDACTED addressed the “‘modified protocol’ for internal investigations” developed in February 2006, shortly before control of the internal investigation into the WalMex bribery scandal was transferred to WalMex and the investigation was shut-down. As described in the Times Article, Tom Hyde signed off on the “‘modified protocol’ for internal investigations,” in addition to having received detailed memoranda from Ms. Munich describing Mr. Cicero’s debriefing. Accordingly, Mr. Hyde’s 30-minute oral presentation to the Board at its March 2, 2006 meeting was *critical*. However, although the minutes of the Board’s March 2, 2006 meeting reveal that Mr. Hyde was present for the entirety of the meeting, the four sentences of unredacted text from the minutes produced by Wal-Mart (which are detailed above) make *absolutely no mention* of Mr. Hyde’s critical presentation to the Board.

79. Additionally, the agenda provides that “Committee Meetings” occurred the prior day, on March 1, 2006. See Exhibit P. However, Wal-Mart has failed to produce a copy of the agenda or minutes for any Audit Committee meeting for that day.

80. For the Board’s next quarterly meeting, on June 1, 2006, Wal-Mart produced only a heavily redacted copy of the agenda for the meeting. A copy of the agenda for the June 1, 2006 Board meeting produced by Wal-Mart is attached as Exhibit S hereto. Wal-Mart’s production of the June 1, 2006 Board meeting agenda implicitly concedes that discussion responsive to the

Demand Letter occurred during the June 1, 2006 meeting.⁸ However, Wal-Mart has improperly not produced the minutes for that meeting.

81. In addition, the agenda provides that "Committee Meetings" occurred the previous day, on May 31, 2006. However, Wal-Mart has failed to produce either an agenda or meeting minutes for any Audit Committee meeting that day.

82. Moreover, the materials produced by Wal-Mart demonstrate that the Audit Committee was provided with interim reports and with annual audit committee activity summaries by IAS. However, Wal-Mart has failed to make a complete production of those materials.

83. Plaintiff is entitled to a complete, unredacted production of all relevant, non-privileged Board and committee meeting minutes, agendas, presentations, reports, and other communications constituting books and records, which Wal-Mart has thus far failed to provide.

3. The August 1 Production Improperly Includes Excerpts of Documents Instead of Complete Documents

84. The August 1 Production also appears to include excerpts of documents instead of complete versions. For example, the minutes of the Board's March 6, 2008 quarterly meeting include the document identification number "docs#3141991" at the bottom of each page. A copy of the minutes for the Board's March 6, 2008 quarterly meeting produced by Wal-Mart are attached as Exhibit T hereto. Of this 41 page document, 36 pages are entirely redacted and two pages are missing. The page Bates-numbered WM-220-001826 shows that it is page 37 of the

⁸ Indeed, the Whistleblower Documents reveal that Mr. Rodríguezmacedo's draft report on the WalMex investigation was provided to Wal-Mart on or about late March 2006, and was finalized on or about mid-May 2006. Accordingly, the strong inference is that discussion regarding the outcome of the investigation would have occurred at the Board's June 1, 2006 meeting and/or at the Audit Committee's May 31, 2006 meeting.

41 page document. The next page produced by Wal-Mart, which is Bates-numbered WM-220-001827, shows that it is page 40 of the 41 page document. Thus, Wal-Mart omitted pages 38 and 39 from its August 1 Production. Given the severity of Wal-Mart's redactions, it is impossible to determine how many other instances of omitted pages there are in the production.⁹

4. Wal-Mart Improperly Designated Publicly Available Documents As "Confidential"

85. Despite having nearly two months to prepare the August 1 Production, Wal-Mart stamped *every* page of its August 1 Production "Confidential" – including the 1,592 pages that are completely redacted, as well as the charter of Wal-Mart's Audit Committee, media articles, and congressional testimony. A copy of the Audit Committee charter produced by Wal-Mart is attached as Exhibit U hereto, and copies of media articles and congressional testimony produced by Wal-Mart are attached hereto as Exhibit V at WM-220-001263 to WM-220-001274, WM-220-001279 to WM-220-001304.¹⁰

86. Wal-Mart's wholesale designation of the August 1 Production as "Confidential" – including public information – violated the terms of the Confidentiality Agreement.

⁹ Moreover, the three pages of the March 6, 2008 Board minutes that are not entirely redacted reflect only (i) the list of attendees, (ii) the call to order, (iii) the adjournment, and (iv) the following sentence-and-a-half:

REDACTED

REDACTED

REDACTED

¹⁰ For comparison, a copy of the Audit Committee charter that is currently publicly available on Wal-Mart's corporate website is attached as Exhibit W hereto.

5. In Addition to the Foregoing Examples of Deficiencies, Plaintiff Is Entitled to a Complete, Unredacted Production of All Relevant, Non-Privileged Books and Records Sought in the Demand Letter, Not Merely the Limited Scope of Materials Offered by Wal-Mart

87. Wal-Mart has also improperly failed to produce a complete copy of the materials employed as exhibits to the Times Article on The New York Times' website or otherwise cited in the Times Article, including the December 1, 2005 IAS report titled "Mexico FCPA Investigation" or the final report from Wal-Mart's internal investigation referenced in the allegations above.

88. The production of books and records by Wal-Mart is woefully deficient and constitutes an improper rejection of Plaintiff's Demand Letter.

89. Notwithstanding Wal-Mart's production of a small sub-set of the books and records sought in the Demand Letter, Plaintiff is entitled to a complete and unredacted production of *all* of the books and records sought in the Demand Letter.

PLAINTIFF'S DEMAND LETTER SETS FORTH A PROPER PURPOSE

90. Wal-Mart has improperly rejected Plaintiff's right to inspect the demanded books and records of the Company and WalMex.

91. As discussed above, the Times Article, the pending government investigations of suspected conduct, together with the numerous lawsuits claiming misconduct at Wal-Mart and WalMex, provide a credible basis from which mismanagement at Wal-Mart and WalMex can be inferred.

92. Investigations of mismanagement and potential breaches of fiduciary duties, including apparent cover-ups, possible *Caremark* violations and related wrongdoing, and of the independence and disinterest of Wal-Mart's board of directors, are entirely proper purposes for

Section 220 demands, and the Court of Chancery encourages their use by concerned shareholders.

93. As such, Plaintiff has met the required burden and the Court should find that Plaintiff is entitled to inspect all of the books and records of Wal-Mart and WalMex, in unredacted form, as set forth in the Demand Letter.

**PLAINTIFF'S REQUESTS ARE ESSENTIAL TO
THE ACCOMPLISHMENT OF PLAINTIFF'S ARTICULATED PURPOSE**

94. Wal-Mart's assertion that the documents requested in the Demand Letter exceed the items that could properly be the subject of a shareholder demand is also misplaced. Each of the requests set forth in Plaintiff's Demand Letter is tailored to an investigation of the books and records of Wal-Mart and WalMex for Plaintiff's stated purposes.

95. Wal-Mart has violated its statutory obligation to permit Plaintiff to inspect the books and records demanded by Plaintiff. As a result, Plaintiff now seeks court intervention to ensure that Wal-Mart complies with Plaintiff's Demand Letter.

**COUNT I
(Demand for Inspection Pursuant to 8 *Del. C.* §220)**

96. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

97. On June 6, 2012, Plaintiff made written demand upon Wal-Mart for the inspection of the books, records and documents set forth in the Demand Letter.

98. Plaintiff has complied fully with all requirements under Section 220 of the Delaware General Corporation Law respecting the form and manner of making a demand for inspection of the books, records and documents set forth in the Demand Letter.

99. Plaintiff's demand for inspection is for proper purposes. Moreover, the documents identified in the Demand Letter are essential to those purposes.

100. More than five business days have passed since Wal-Mart received the Demand Letter, and the Company has refused to permit the inspection sought by Plaintiff by improperly denying access to unredacted copies of all of the books and records identified in the Demand Letter.

101. By reason of the foregoing and pursuant to 8 *Del. C.* § 220, Plaintiff is entitled to an order permitting it to inspect and make copies of the books and records set forth in the Demand Letter.

102. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

- A. An order requiring Wal-Mart to permit the inspection and copying of each and every book and record requested by Plaintiff's Demand Letter immediately;
- B. An order directing Wal-Mart to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Section 220 demand and related litigation; and
- C. Such other relief as this Court deems just and appropriate.

DATED: August 13, 2012

GRANT & EISENHOFER P.A.

/s/ Stuart M. Grant

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*Counsel for Plaintiff Indiana Electrical Workers
Pension Trust Fund IBEW*

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2012, a copy of the foregoing document was electronically served via *LexisNexis File And Serve* on the following counsel of record:

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Michael J. Barry, Esq.
Nathan A. Cook, Esq.
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/s/ Stephen C. Norman

Stephen C. Norman (#2686)