

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CITY OF PONTIAC GENERAL  
EMPLOYEES' RETIREMENT SYSTEM,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

vs.

WAL-MART STORES, INC., MICHAEL T.  
DUKE, CHARLES M. HOLLEY, JR., H. LEE  
SCOTT, JR., EDUARDO SOLÓRZANO  
MORALES and EDUARDO CASTRO-  
WRIGHT,

Defendants.

) Civil Action No.

) CLASS ACTION

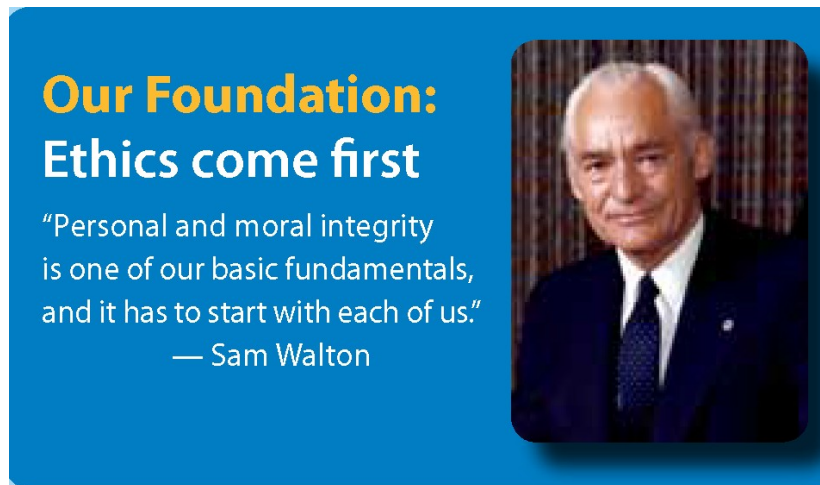
) COMPLAINT FOR VIOLATION OF THE  
) FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

## INTRODUCTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of Wal-Mart Stores, Inc. (“Walmart” or the “Company”) between December 8, 2011 and April 20, 2012, inclusive (the “Class Period”), against Walmart and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

2. Walmart operates retail stores in various formats worldwide. Everyday low prices (“EDLP”) is the Company’s pricing philosophy, under which it prices items at a low price every day. The Company operates in three business segments: the Walmart U.S. segment, the Walmart International segment, and the Sam’s Club segment. In its annual report, Walmart included a picture of founder Sam Walton and the following statement:



3. However, contrary to the legacy of Sam Walton, defendants engaged in unlawful and unethical conduct. During the Class Period, defendants issued materially false and misleading statements regarding Walmart’s rules and practices with respect to ethics. Specifically, the Company failed to disclose that it had been involved in a multi-million-dollar bribery scheme at Walmart’s Mexican subsidiary, Wal-Mart de Mexico (“Walmart Latin America”), involving current and former executives. As a result of defendants’ false statements, Walmart’s stock traded at

artificially inflated prices during the Class Period, reaching a high of \$62.48 per share on February 17, 2012.

4. On April 21, 2012, *The New York Times* published an article reporting that Walmart had “shut . . . down” an investigation concerning evidence that Walmart Latin America had engaged in “widespread bribery,” which included a paper trail of hundreds of suspect payments totaling more than \$24 million. The article reported that top executives at Walmart and Walmart Latin America knew about but disregarded the bribery scheme.

5. As a result of this news, Walmart’s stock plummeted \$2.91 per share to close at \$59.54 per share on April 23, 2012, a decline of nearly 5% on volume of 38 million shares. The stock dropped again on April 24, 2012, to close at \$57.77 per share on volume of 30 million shares, and on April 25, 2012, fell to \$57.36 per share on volume of 28 million shares, as investors absorbed this shocking news.

6. Walmart is now the subject of a probe in Mexico by Mexican authorities and the subject of criminal and congressional investigations in the United States.

7. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) the Company was violating the Foreign Corrupt Practices Act (“FCPA”) in connection with the bribery payments;

(b) the Company was violating Mexican law through the bribery payments;

(c) Walmart management did not address ethical concerns in a “timely and effective manner” as represented by defendants; and

(d) based upon the above, defendants lacked a reasonable basis for their positive statements about the Company and its international expansion.

8. As a result of defendants' false statements, Walmart stock traded at artificially inflated levels during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down nearly 5% from their Class Period high.

### **JURISDICTION AND VENUE**

9. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5.

10. Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made into this District. Defendants transact business and may be found in this District.

11. Walmart has numerous operations located in this District. Walmart has more than 20 Supercenters in and around Nashville alone. Certain of the acts and conduct complained of herein, including the dissemination of materially false and misleading information to the investing public, occurred in this District.

12. In connection with the acts and conduct alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails and interstate wire and telephone communications.

### **PARTIES**

13. Plaintiff City of Pontiac General Employees' Retirement System purchased the common stock of Walmart during the Class Period as set forth in the certification attached hereto and was damaged as the result of defendants' wrongdoing as alleged in this complaint.

14. Defendant Walmart operates retail stores in various formats worldwide.

15. Defendant Michael T. Duke ("Duke") is, and at all relevant times was, the Company's Chief Executive Officer ("CEO"), President and a director.

16. Defendant Charles M. Holley, Jr. (“Holley”) is, and at all relevant times was, the Company’s Chief Financial Officer (“CFO”) and Executive Vice President.

17. Defendant H. Lee Scott, Jr. (“Scott”) is a director of the Company and was CEO and President of Walmart from 2000 until his retirement in 2009.

18. Defendant Eduardo Solórzano Morales (“Solórzano”) is, and at all relevant times was, President and CEO of Walmart Latin America.

19. Defendant Eduardo Castro-Wright (“Castro-Wright”) was CEO and President of Walmart Latin America from 2003 to 2005 when he was named CEO and President of Walmart U.S. He was promoted to Vice Chairman of the Company in 2008 and became CEO of Walmart’s Global eCommerce and Global Sourcing businesses in 2011. He retired from the Company in July 2012.

20. The defendants named above in ¶¶15-19 are referred to herein as the “Individual Defendants.”

21. The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Walmart’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. They were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

22. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about Walmart. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Walmart common stock was a success, as it: (i) deceived the investing public regarding Walmart's prospects and business; (ii) artificially inflated the price of Walmart common stock; and (iii) caused plaintiff and other members of the Class to purchase Walmart common stock at inflated prices.

23. The top officers and directors of Walmart also benefited, as the Company's purportedly favorable operating results contributed to the compensation paid to the officers during the Class Period, some of whom received as much as \$18 million per year.

## **BACKGROUND**

24. Walmart operates retail stores in various formats worldwide. It operates retail stores, restaurants, discount stores, supermarkets, supercenters, hypermarkets, warehouse clubs, apparel stores, Sam's Clubs, and neighborhood markets, as well as walmart.com and samsclub.com. The Company's stores offer meat, produce, deli, bakery, dairy, frozen foods, alcoholic and nonalcoholic beverages, floral and dry grocery; health and beauty aids, baby products, household chemicals, paper goods, and pet supplies; electronics, toys, cameras and supplies, photo processing services, cellular phones, cellular service plan contracts and prepaid service, and books; stationery, automotive accessories, hardware and paint, sporting goods, fabrics and crafts, and seasonal merchandise; pharmacy and optical services; shoes, jewelry, accessories, and apparel for women, girls, men, boys, and infants; and home furnishings, housewares and small appliances, bedding, home décor, outdoor living, and horticulture products. Its stores also provide tobacco, tools and power equipment, office supplies, furniture, grills, gardening products, and mattresses; and wireless, software, video games, movies, and music products, as well as operate gasoline stations, and tire and battery centers. The Company operates approximately 10,130 retail units under 69 different banners in 27 countries,

including the United States and Puerto Rico, as well as Africa, Argentina, Brazil, Canada, Chile, China, India, Japan, Mexico, and the United Kingdom.

25. Walmart was founded by Sam Walton (1918-1992) who stated that ethics was a basic foundation of the Company.

26. Due to relatively low margins on Walmart's sales, growth in earnings is primarily driven by increasing sales at existing stores and, importantly, opening new stores. Thus, investors closely watched Walmart's ability to open new stores. By the late 1990s, Walmart had begun to run out of new store locations in the United States and international expansion became crucial.

27. By 2010, the U.S. Department of Justice ("DOJ") was becoming more aggressive in enforcing the FCPA. The result was more cases, a stream of record breaking amounts paid in settlement, an expansive approach to interpreting the statutes and more prosecutions.

28. The largest settlements included \$800 million paid by Siemens AG in 2008 to settle with the DOJ and U.S. Securities and Exchange Commission ("SEC"), \$70 million paid by Johnson & Johnson in April 2011, \$579 million paid by KBR in 2009, \$400 million paid by BAE in 2010, \$365 million paid by Snamprogetti Netherlands B.V. in 2010, \$338 million paid by Technip S.A. in 2010, \$218.8 million paid by JBC Construction in 2011, \$185 million paid by Daimler AG in 2010, \$137 million paid by Alcatel-Lucent in 2010, and \$81.8 million paid by Panalpina in 2010.

29. Thus, investors also focused on multi-national corporations' disclosures about compliance with laws. Walmart investors were assured the Company complied with relevant laws.

On the Company's website, one page was entitled "Walmart's Statement of Ethics." It stated in part:

#### Anti-Corruption

We believe in fair, free and open markets, and in promoting good government. We do not tolerate, permit, or engage in bribery, corruption, or unethical practices of any kind. ***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. Walmart'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.*

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.

\* \* \*

“The Statement of Ethics reflects our commitment to continue to be a leader in our industry not only in business, but also in ethical choices and behavior.”

Rob Walton

**DEFENDANTS’ FALSE AND MISLEADING STATEMENTS  
ISSUED DURING THE CLASS PERIOD**

30. On December 8, 2011, Walmart filed its Form 10-Q with the SEC for the third quarter of fiscal year 2012.<sup>1</sup> The Form 10-Q stated in part:

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 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.*

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<sup>1</sup> Walmart’s fiscal year ends January 31.



31. On February 17, 2012, Walmart's stock reached its Class Period high of \$62.48 per share.

32. On February 21, 2012, Walmart issued a press release announcing its financial results for the fourth quarter and full year ended January 31, 2012. The Company reported consolidated net sales of \$122.3 billion and income from continuing operations of \$5.2 billion, or \$1.51 diluted earnings per share ("EPS") for the fourth quarter of fiscal 2012. Additionally, Walmart reported operating income of \$8.4 billion for the fourth quarter. For the full fiscal year 2012, the Company reported consolidated net sales of \$443.9 billion and income from continuing operations of \$15.7 billion, or \$4.54 diluted EPS. The release stated in part:

"We are pleased with Walmart's earnings performance for both the fourth quarter and the full year," said Mike Duke, Wal-Mart Stores, Inc. president and chief executive officer. "Today, every segment of our business is stronger than it was a year ago, and we're in a great position for fiscal year 2013."

Duke recognized the progress Walmart U.S. made during the quarter.

"Walmart U.S. reported positive comps of 1.5 percent for the fourth quarter including positive comp traffic. This is now the second consecutive quarter of positive comp sales," he said. "Our price leadership is making a difference across the United States, as many families are settling into a new normal. Core customers remain cautious about their finances, and they rely on Walmart's EDLP promise to help them manage through today's economic challenges."

Duke also recognized the solid full year results of Walmart International and Sam's Club.

"Walmart International delivered strong growth through both comp store sales and a record number of new units, including the acquisitions of Netto and Massmart," said Duke. "The leadership teams are focused on improving profitability, and our 'Powered by Walmart' initiatives will strengthen productivity and reduce expenses in our markets.

"Sam's Club comp sales have been consistently strong throughout the year, and we expect this momentum to continue in fiscal year 2013," Duke said. "Operational efficiencies contributed to expense leverage and improved member experience.

"Our company leveraged expenses for both the quarter and the full year," said Duke. "In fact, Walmart has now leveraged operating expenses for two consecutive years. We have a relentless focus on the productivity loop to drive down costs and

pass those savings on to customers. And as I look forward to our 50th anniversary this year, I see tremendous opportunities still ahead for our company and our shareholders.”

33. The Form 10-K included the same representations.

34. On or about March 27, 2012, Walmart issued its annual report to shareholders, which prominently displayed the quote from Sam Walton – “*Personal and moral integrity is one of our basic fundamentals*, and it has to start with each of us” – and included a letter signed by defendants Duke and Holley reporting on Ethical Standards:

### **Report on Ethical Standards**

Our Company was founded on the belief that open communications and the highest standards of ethics are necessary to be successful. *Our long-standing “Open Door” communication policy helps management be aware of and address issues in a timely and effective manner.* Through the open door policy all associates are encouraged to inform management at the appropriate level when they are concerned about any matter pertaining to Walmart.

Walmart has adopted a Statement of Ethics to guide our associates in the continued observance of high ethical standards such as honesty, integrity and compliance with the law in the conduct of Walmart’s business. *Familiarity and compliance with the Statement of Ethics is required of all associates who are part of management.* The Company also maintains a separate Code of Ethics for our senior financial officers. Walmart also has in place a Related-Party Transaction Policy. This policy applies to Walmart’s senior officers and directors and requires material related-party transactions to be reviewed by the Audit Committee. The senior officers and directors are required to report material related-party transactions to Walmart. *We maintain a global ethics office which oversees and administers an ethics helpline.* The ethics helpline provides a channel for associates to make confidential and anonymous complaints regarding potential violations of our statements of ethics, including violations related to financial or accounting matters.

35. On Friday, April 20, 2012, Walmart’s stock closed at \$62.45 per share.

36. Then, on April 21, 2012, *The New York Times* published an article entitled “Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle,” which stated in part:

In September 2005, a senior Wal-Mart lawyer received an alarming e-mail from a former executive at the company’s largest foreign subsidiary, Wal-Mart de Mexico. In the e-mail and follow-up conversations, the former executive described how Wal-Mart de Mexico had orchestrated a campaign of bribery to win market dominance. In its rush to build stores, he said, the company had paid bribes to obtain permits in virtually every corner of the country.

The former executive gave names, dates and bribe amounts. He knew so much, he explained, because for years he had been the lawyer in charge of obtaining construction permits for Wal-Mart de Mexico.

Wal-Mart dispatched investigators to Mexico City, and within days they unearthed evidence of widespread bribery. They found a paper trail of hundreds of suspect payments totaling more than \$24 million. They also found documents showing that Wal-Mart de Mexico's top executives not only knew about the payments, but had taken steps to conceal them from Wal-Mart's headquarters in Bentonville, Ark. In a confidential report to his superiors, Wal-Mart's lead investigator, a former F.B.I. special agent, summed up their initial findings this way: "There is reasonable suspicion to believe that Mexican and USA laws have been violated."

The lead investigator recommended that Wal-Mart expand the investigation.

Instead, an examination by The New York Times found, Wal-Mart's leaders shut it down.

Neither American nor Mexican law enforcement officials were notified. None of Wal-Mart de Mexico's leaders were disciplined. Indeed, its chief executive, Eduardo Castro-Wright, identified by the former executive as the driving force behind years of bribery, was promoted to vice chairman of Wal-Mart in 2008. Until this article, the allegations and Wal-Mart's investigation had never been publicly disclosed.

But The Times's examination uncovered a prolonged struggle at the highest levels of Wal-Mart, a struggle that pitted the company's much publicized commitment to the highest moral and ethical standards against its relentless pursuit of growth.

37. The article also explained the level of investigation which had occurred on 2005:

The Times obtained hundreds of internal company documents tracing the evolution of Wal-Mart's 2005 Mexico investigation. The documents show Wal-Mart's leadership immediately recognized the seriousness of the allegations. Working in secrecy, a small group of executives, including several current members of Wal-Mart's senior management, kept close tabs on the inquiry.

Michael T. Duke, Wal-Mart's current chief executive, was also kept informed. At the time, Mr. Duke had just been put in charge of Wal-Mart International, making him responsible for all foreign subsidiaries. "You'll want to read this," a top Wal-Mart lawyer wrote in an Oct. 15, 2005, e-mail to Mr. Duke that gave a detailed description of the former executive's allegations.

The Times examination included more than 15 hours of interviews with the former executive, Sergio Cicero Zapata, who resigned from Wal-Mart de Mexico in 2004 after nearly a decade in the company's real estate department.

In the interviews, Mr. Cicero recounted how he had helped organize years of payoffs. He described personally dispatching two trusted outside lawyers to deliver envelopes of cash to government officials. They targeted mayors and city council members, obscure urban planners, low-level bureaucrats who issued permits – anyone with the power to thwart Wal-Mart’s growth. The bribes, he said, bought zoning approvals, reductions in environmental impact fees and the allegiance of neighborhood leaders.

He called it working “the dark side of the moon.”

38. The *New York Times* article described how the investigation reached the Individual

Defendants:

On Sept. 21, 2005, Mr. Cicero sent an e-mail to Ms. Munich telling her he had information about “irregularities” authorized “by the highest levels” at Wal-Mart de Mexico. “I hope to meet you soon,” he wrote.

Ms. Munich was familiar with the challenges of avoiding corruption in Latin America. Before joining Wal-Mart in 2003, she had spent 12 years in Mexico and elsewhere in Latin America as a lawyer for Procter & Gamble.

At Wal-Mart in 2004, she pushed the board to adopt a strict anticorruption policy that prohibited all employees from “offering anything of value to a government official on behalf of Wal-Mart.” It required every employee to report the first sign of corruption, and it bound Wal-Mart’s agents to the same exacting standards.

Ms. Munich reacted quickly to Mr. Cicero’s e-mail. Within days, she hired Juan Francisco Torres-Landa, a prominent Harvard-trained lawyer in Mexico City, to debrief Mr. Cicero. The two men met three times in October 2005, with Ms. Munich flying in from Bentonville for the third debriefing.

During hours of questioning, Mr. Torres-Landa’s notes show, Mr. Cicero described how Wal-Mart de Mexico had perfected the art of bribery, then hidden it all with fraudulent accounting. Mr. Cicero implicated many of Wal-Mart de Mexico’s leaders, including its board chairman, its general counsel, its chief auditor and its top real estate executive.

But the person most responsible, he told Mr. Torres-Landa, was the company’s ambitious chief executive, Eduardo Castro-Wright, a native of Ecuador who was recruited from Honeywell in 2001 to become Wal-Mart’s chief operating officer in Mexico.

Mr. Cicero said that while bribes were occasionally paid before Mr. Castro-Wright’s arrival, their use soared after Mr. Castro-Wright ascended to the top job in 2002. Mr. Cicero described how Wal-Mart de Mexico’s leaders had set “very aggressive growth goals,” which required opening new stores “in record times.”

Wal-Mart de Mexico executives, he said, were under pressure to do “whatever was necessary” to obtain permits.

In an interview with The Times, Mr. Cicero said Mr. Castro-Wright had encouraged the payments for a specific strategic purpose. The idea, he said, was to build hundreds of new stores so fast that competitors would not have time to react. Bribes, he explained, accelerated growth. They got zoning maps changed. They made environmental objections vanish. Permits that typically took months to process magically materialized in days. “What we were buying was time,” he said.

Wal-Mart de Mexico’s stunning growth made Mr. Castro-Wright a rising star in Bentonville. In early 2005, when he was promoted to a senior position in the United States, Mr. Duke would cite his “outstanding results” in Mexico.

Mr. Cicero’s allegations were all the more startling because he implicated himself. He spent hours explaining to Mr. Torres-Landa the mechanics of how he had helped funnel bribes through trusted fixers, known as “gestores.”

Gestores (pronounced hes-TORE-ehs) are a fixture in Mexico’s byzantine bureaucracies, and some are entirely legitimate. . . .

But 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 Wal-Mart de Mexico deployed, Mr. Cicero said.

\* \* \*

### **The Initial Response**

Ms. Munich sent detailed memos describing Mr. Cicero’s debriefings to Wal-Mart’s senior management. These executives, records show, included Thomas A. Mars, Wal-Mart’s general counsel and a former director of the Arkansas State Police; Thomas D. Hyde, Wal-Mart’s executive vice president and corporate secretary; Michael Fung, Wal-Mart’s top internal auditor; Craig Herkert, the chief executive for Wal-Mart’s operations in Latin America; and Lee Stucky, a confidant of Lee Scott’s and chief administrative officer of Wal-Mart International.

Wal-Mart typically hired outside law firms to lead internal investigations into allegations of significant wrongdoing. It did so earlier in 2005, for example, when Thomas M. Coughlin, then vice chairman of Wal-Mart, was accused of padding his expense accounts and misappropriating Wal-Mart gift cards.

At first, Wal-Mart took the same approach with Mr. Cicero’s allegations. It turned to Willkie Farr & Gallagher, a law firm with extensive experience in Foreign Corrupt Practices Act cases.

The firm’s “investigation work plan” called for tracing all payments to anyone who had helped Wal-Mart de Mexico obtain permits for the previous five years. The firm said it would scrutinize “any and all payments” to government

officials and interview every person who might know about payoffs, including “implicated members” of Wal-Mart de Mexico’s board.

In short, Willkie Farr recommended the kind of independent, spare-no-expense investigation major corporations routinely undertake when confronted with allegations of serious wrongdoing by top executives.

Wal-Mart’s leaders rejected this approach. Instead, records show, they decided Wal-Mart’s lawyers would supervise a far more limited “preliminary inquiry” by in-house investigators.

The inquiry, a confidential memo explained, would take two weeks, not the four months Willkie Farr proposed. Rather than examining years of permits, the team would look at a few specific stores. Interviews would be done “only when absolutely essential to establishing the bona fides” of Mr. Cicero. However, if the inquiry found a “likelihood” that laws had been violated, the company would then consider conducting a “full investigation.”

The decision gave Wal-Mart’s senior management direct control over the investigation. It also meant new responsibility for the company’s tiny and troubled Corporate Investigations unit.

39. The initial investigation confirmed much of what Cicero had reported initially:

Ronald Halter, one of Wal-Mart’s new “special investigators,” was assigned to lead the preliminary inquiry into Mr. Cicero’s allegations. Mr. Halter had been with Wal-Mart only a few months, but he was a seasoned criminal investigator. He had spent 21 years in the F.B.I., and he spoke Spanish.

He also had help. Bob Ainley, a senior auditor, was sent to Mexico along with several Spanish-speaking auditors.

On Nov. 12, 2005, Mr. Halter’s team got to work at Wal-Mart de Mexico’s corporate headquarters in Mexico City. The team gained access to a database of Wal-Mart de Mexico payments and began searching the payment description field for the word “gestoria.”

***By day’s end, they had found 441 gestor payments. Each was a potential bribe, and yet they had searched back only to 2003.***

Mr. Cicero had said his main gestores were Pablo Alegria Con Alonso and Jose Manuel Aguirre Juarez, obscure Mexico City lawyers with small practices who were friends of his from law school.

Sure enough, Mr. Halter’s team found that nearly half the payments were to Mr. Alegria and Mr. Aguirre. These two lawyers alone, records showed, had received \$8.5 million in payments. Records showed Wal-Mart de Mexico routinely paid its gestores tens of thousands of dollars per permit. (In interviews, both lawyers declined to discuss the corruption allegations, citing confidentiality agreements with Wal-Mart.)

“One very interesting postscript,” Mr. Halter wrote in an e-mail to his boss, Mr. Lewis. “All payments to these individuals and all large sums of \$ paid out of this account stopped abruptly in 2005.” Mr. Halter said the “only thing we can find” that changed was that Mr. Castro-Wright left Wal-Mart de Mexico for the United States.

Mr. Halter’s team confirmed detail after detail from Mr. Cicero’s debriefings. Mr. Cicero had given specifics – names, dates, bribe amounts – for several new stores. In almost every case, investigators found documents confirming major elements of his account. And just as Mr. Cicero had described, investigators found mysterious codes at the bottom of invoices from the gestores.

“The documentation didn’t look anything like what you would find in legitimate billing records from a legitimate law firm,” a person involved in the investigation said in an interview.

\* \* \*

### **The Chief Weighs In**

Mr. Scott called a meeting for Feb. 3, 2006, to discuss revamping Wal-Mart’s internal investigations and to resolve the question of what to do about Mr. Cicero’s allegations.

In the days before the meeting, records show, Mr. Senser ordered his staff to compile data showing the effectiveness of Corporate Investigations. He assembled statistics showing that the unit had referred relatively few cases to law enforcement agencies. He circulated copies of an e-mail in which Mr. Rodríguezmacedo said he had been treated “very respectfully and cordially” by Mr. Senser’s investigators.

Along with Mr. Scott, the meeting included Mr. Hyde, Mr. Mars and Mr. Stucky, records show. The meeting brought the grievances against Corporate Investigations into the open. Mr. Senser described the complaints in Mr. Lewis’s performance evaluation, completed shortly after the meeting. Wal-Mart’s leaders viewed Mr. Lewis’s investigators as “overly aggressive,” he wrote. They did not care for Mr. Lewis’s “law enforcement approach,” and the fact that Mr. Scott convened a meeting to express these concerns only underscored “the importance placed on these topics by senior executives.”

By meeting’s end, Mr. Senser had been ordered to work with Mr. Mars and others to develop a “modified protocol” for internal investigations.

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.*

Mr. Mars first sent Mr. Halter’s report to Mr. Rodríguezmacedo. Then he arranged to ship Mr. Halter’s investigative files to him as well. In an e-mail, he sought Mr. Senser’s advice on how to send the files in “a secure manner.”

Mr. Senser recommended FedEx. “There is very good control on those shipments, and while governments do compromise them if they are looking for something in particular, there is no reason for them to think that this shipment is out of the ordinary,” he wrote.

“The key,” he added, “is being careful about how you communicate the details of the shipment to José Luis.” He advised Mr. Mars to use encrypted e-mail.

Wal-Mart’s spokesman, Mr. Tovar, said the company could not discuss Mr. Scott’s meeting or the decision to transfer the case to Mr. Rodríguezmacedo. “At this point,” he said, “we don’t have a full explanation of what happened. Unfortunately, we realize that until the investigation is concluded, there will be some unanswered questions.”

*Wal-Mart’s leaders, however, 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.

After the meeting with Mr. Scott, Mr. Senser had told Mr. Lewis in his performance evaluation that his “highest priority” should be to eliminate “the



perceptions that investigators are being too aggressive.” He wanted Mr. Lewis to “earn the trust of” his “clients” – Wal-Mart’s leaders. He wanted him to head off “adversarial interactions.”

Mr. Senser now applied the same advice to himself.

Even as Mr. Halter’s files were being shipped to Mr. Rodríguezmacedo, Mr. Stucky made plans to fly to Mexico with other executives involved in the bribery investigation. The trip, he wrote, was “for the purpose of re-establishing activities related to the certain compliance matters we’ve been discussing.” Mr. Stucky invited Mr. Senser along.

“It is better if we do not make this trip to Mexico City,” Mr. Senser replied. His investigators, he wrote, would simply be “a resource” if needed.

Ten days after Mr. Stucky flew to Mexico, an article about Wal-Mart appeared in The Times. It focused on “the increasingly important role of one man: Eduardo Castro-Wright.” The article said Mr. Castro-Wright was a “popular figure” inside Wal-Mart because he made Wal-Mart de Mexico one of the company’s “most profitable units.”

Wall Street analysts, it said, viewed him as a “very strong candidate” to succeed Mr. Scott.

40. In fact, Walmart executives shut down the investigation:

### **Case Closed**

For those who had investigated Mr. Cicero’s allegations, the preliminary inquiry had been just that – preliminary. In memos and meetings, they had argued that their findings clearly justified a full-blown investigation. Mr. Castro-Wright’s precise role had yet to be determined. Mr. Halter had never been permitted to question him, nor had Mr. Castro-Wright’s computer files been examined, records and interviews show.

At the very least, a complete investigation would take months.

Mr. Rodríguezmacedo, the man now in charge, saw it differently. He wrapped up the case in a few weeks, with little additional investigation.

“There is no evidence or clear indication,” his report concluded, “of bribes paid to Mexican government authorities with the purpose of wrongfully securing any licenses or permits.”

That conclusion, his report explained, was largely based on the denials of his fellow executives. Not one “mentioned having ordered or given bribes to government authorities,” he wrote.

His report, six pages long, neglected to note that he had been implicated in the same criminal conduct.

That was not the only omission. While his report conceded that Wal-Mart de Mexico executives had authorized years of payments to gestores, it never explained what these executives expected the gestores to do with the millions of dollars they received to “facilitate” permits.

He was also silent on the evidence that Wal-Mart de Mexico had doled out donations to get permits. Nor did he address evidence that he and other executives had suppressed or rewritten audits that would have alerted Bentonville to improper payments.

***Instead, the bulk of Mr. Rodríguezmacedo’s report attacked the integrity of his accuser.***

41. As a result of this news, Walmart’s stock plummeted \$2.91 per share to close at \$59.54 per share on April 23, 2012, a decline of nearly 5% on volume of 38 million shares. The stock dropped again on April 24, 2012, to close at \$57.77 per share on volume of 30 million shares, and fell to \$57.36 on April 25, 2012, on volume of 28 million shares, as investors absorbed this shocking news.

42. Walmart is now the subject of a probe in Mexico by Mexican authorities and the subject of criminal and congressional investigations in the United States.

43. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

- (a) the Company was violating the FCPA in connection with bribery payments;
- (b) the Company was violating Mexican law through the bribery payments;
- (c) Walmart management did not address ethical concerns in a “timely and effective manner” as represented by defendants; and
- (d) based upon the above, defendants lacked a reasonable basis for their positive statements about the Company and its international expansion.

44. As a result of defendants’ false statements, Walmart stock traded at artificially inflated levels during the Class Period. However, after the above revelations seeped into the market,

the Company's shares were hammered by massive sales, sending them down nearly 5% from their Class Period high.

### **LOSS CAUSATION**

45. During the Class Period, as detailed herein, the defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Walmart common stock and operated as a fraud or deceit on Class Period purchasers of Walmart common stock by misrepresenting the Company's business and prospects. Later, when the defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of Walmart common stock fell precipitously, as the prior artificial inflation came out of the price over time. As a result of their purchases of Walmart common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **NO SAFE HARBOR**

46. Walmart's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

47. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Walmart who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

## CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired Walmart common stock during the Class Period (the “Class”). Excluded from the Class are defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which defendants have or had a controlling interest.

49. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Walmart has over 3.4 billion shares of stock outstanding, owned by thousands of persons.

50. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether the 1934 Act was violated by defendants;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) whether the price of Walmart common stock was artificially inflated; and
- (f) the extent of damage sustained by Class members and the appropriate measure of damages.

51. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

52. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

53. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

## COUNT I

### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

54. Plaintiff incorporates ¶¶1-53 by reference.

55. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

56. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Walmart common stock during the Class Period.

57. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Walmart common stock. Plaintiff and the Class

would not have purchased Walmart common stock at the prices they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **For Violation of §20(a) of the 1934 Act Against All Defendants**

58. Plaintiff incorporates ¶¶1-57 by reference.

59. The Individual Defendants acted as controlling persons of Walmart within the meaning of §20(a) of the 1934 Act. By virtue of their positions with the Company, and ownership of Walmart stock, the Individual Defendants had the power and authority to cause Walmart to engage in the wrongful conduct complained of herein. Walmart controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;
- B. Awarding plaintiff and the members of the Class damages, including interest;
- C. Awarding plaintiff's reasonable costs and attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: May \_\_, 2012

BARRETT JOHNSTON, LLC  
GEORGE E. BARRETT, #2672  
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