

1 Terry Goddard
Attorney General
(Firm State Bar No. 14000)
2 Ann Thompson Uglietta (State Bar No. 013696)
Robert A. Zumoff (State Bar No. 006517)
3 Carolyn R. Matthews (State Bar No. 013953)
Assistant Attorneys General
4 1275 West Washington Street
Phoenix, Arizona 85007-2997
5 Telephone: (602) 542-0883
Facsimile: (602) 542-4377
6 Attorneys for Plaintiff
consumer@azag.gov

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, ex rel. TERRY
GODDARD, Attorney General,

11 Plaintiff,

12 -vs-

13 WAL-MART STORES, INC., a Delaware
corporation,

14 Defendant.
15

Case No: CV2006-010185

CONSENT JUDGMENT

(Assigned to the Honorable John Rea)

16 Plaintiff State of Arizona, *ex rel.* Terry Goddard, Attorney General, having filed a
17 Complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*,
18 and defendant Wal-Mart Stores, Inc., a Delaware corporation (“Wal-Mart”), having accepted
19 service of the Complaint, having been fully advised of its right to trial in this matter, and having
20 waived that right, admit the jurisdiction of this Court over the subject matter and the parties for
21 the purpose of entry of this Consent Judgment and acknowledge that jurisdiction is retained by
22 the Court for the purpose of enforcement of the Consent Judgment.

23 **STIPULATION**

24 I. Wal-Mart has agreed to a voluntary compromise of disputed claims.

25 II. The State of Arizona and Wal-Mart have agreed on a basis for the settlement of
26 the matters in dispute between them.

1 **A. DEFINITIONS.**

2 For purposes of this Consent Judgment, and not for any other purpose, the following
3 definitions shall apply:

4 1. **“Wal-Mart”** means Wal-Mart Stores, Inc., a Delaware corporation.

5 2. **“Wal-Mart Store”** means a Wal-Mart Discount Store, Super Center or
6 Neighborhood Market located in the state of Arizona. It does not include Sam’s Club or any
7 other formats operated under different names.

8 3. **“Business Day”** means Monday through Friday, excluding state and federal
9 holidays.

10 4. **“CFA Complaint”** means the Complaint filed in this action, State of Arizona ex
11 rel. Terry Goddard v. Wal-Mart, Inc., CV2006-010185 (Maricopa County Sup. Ct).

12 5. **“Consumer”** means a person who purchases goods or services at a Wal-Mart
13 Store or to whom a Wal-Mart Store offers to sell goods or services.

14 6. **“Effective Date”** means the date of entry of this Consent Judgment by the Court,
15 or January 15, 2009, whichever is later.

16 7. **“Media Price”** means the price advertised in print and/or broadcast media, at
17 which an item is offered, or is to be offered, for sale at a Wal-Mart Store.

18 8. **“Posted Price”** means the price posted for any item kept for purposes of sale or
19 offered or exposed for the purpose of sale at a Wal-Mart Store.

20 9. **“Price Posting Discrepancy”** occurs when the shelf or display at the point of
21 display of any item kept for purposes of sale or offered or exposed for the purpose of sale at a
22 Wal-Mart Store does not bear a definite, plain and conspicuous declaration of the price as
23 required by A.R.S. § 41-2081 and implementing administrative rules and regulations.

24 10. **“Price Scanning Discrepancy”** occurs when there is a difference between the
25 Posted Price and/or Media Price of an item kept for purposes of sale, offered or exposed for sale,
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1 or to be offered or exposed for sale, on the one hand, and the Scanned Price for the same item at
2 the point-of-sale register, on the other hand, such that the Scanned Price is higher than the
3 Posted Price and/or Media Price, at a Wal-Mart Store. For purposes of this Consent Judgment, a
4 Price Scanning Discrepancy does not occur if the sole reason for the difference in price is that
5 some person other than a Wal-Mart employee and/or agent moved the item at issue from its
6 intended designated position on the store shelf, rack or other display.

7 11. **“Random Sample” or “Random Sampling Method”** means that the method of
8 selecting the store for inspection, the location of commencing the inspection within the store,
9 and the selection of an inspection sample of items offered for sale, employs statistical sampling
10 procedures designed to create an equal likelihood of selection among the population of stores,
11 store locations, and sale items that are subject to selection. The “Random Sampling Method”
12 pursuant to this Consent Judgment will be agreed upon by the parties.

13 12. **“Scanned Price”** means the price for an item offered for sale at a Wal-Mart Store,
14 that is identified by way of an automated system at the point-of-sale that optically scans the
15 Uniform Product Code or other identifying marking or tag affixed to the item to determine the
16 identity of the item and the corresponding price to be charged for the item.

17 **B. APPLICATION.**

18 13. This Consent Judgment binds Wal-Mart, its successors, affiliates, any future
19 merged or acquired corporations or other business entities, and parent or controlling entities. Its
20 application is limited to the Wal-Mart Stores as defined in paragraph 2, *supra*.

21 14. Except for Section G, paragraph 29, and subject to the early termination provisions
22 of paragraph 19(i), this Consent Judgment shall remain in effect for a period of three (3) years
23 from the Effective Date of this Consent Judgment. Section G shall survive the expiration of this
24 Consent Judgment.

1 **C. INJUNCTIVE RELIEF.**

2 15. **Scope.** The injunctive requirements set forth below are intended as minimum
3 requirements governing Wal-Mart's conduct regarding price posting and price scanning
4 accuracy at Wal-Mart Stores. Nothing in this Consent Judgment in any way hinders or prevents
5 Wal-Mart from developing, testing, or implementing new or different policies, protocols,
6 practices, measures or systems so long as they maintain or improve Wal-Mart's compliance with
7 the requirements of this Consent Judgment and applicable state law.

8 16. **Consumer Fraud Act.** Wal-Mart and the entities identified in paragraph 13
9 above shall comply with the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, as these
10 laws are currently written and/or amended in the future. Application of this paragraph is limited
11 to the Wal-Mart Stores as defined in paragraph 2, *supra* and to the scope defined in paragraph
12 15, *supra*. This paragraph is not intended to have any effect upon the obligation of Wal-Mart
13 and the entities identified in paragraph 13 above to ensure that other entities over which they
14 have control comply with Arizona law.

15 17. **Notification.**

16 a. Within thirty (30) days after the Effective Date of this Consent Judgment,
17 Wal-Mart shall deliver to the Arizona Attorney General's Office an accurate written
18 summary (the "Summary") of the general terms and conditions of this Consent Judgment.

19 b. Within ninety (90) days after the Effective Date of this Consent Judgment,
20 Wal-Mart shall provide the Summary to the Regional General Manager for Arizona, all
21 Arizona Market Managers, and the Store Manager for each Wal-Mart Store. Wal-Mart
22 shall have an ongoing obligation to provide the Summary to such persons as long as this
23 Consent Judgment is effective.

24 c. Within ninety (90) days after the Effective Date of this Consent Judgment,
25 Wal-Mart shall make this Consent Judgment and the Summary accessible on Wal-Mart's
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1 intranet site to all employees and/or agents having responsibility for pricing of items,
2 advertising, signage, price scanning, price changes and other responsibilities over Wal-
3 Mart Stores as defined in paragraph 2, *supra*, within the subject matter of this Consent
4 Judgment.

5 d. Each Wal-Mart employee required by paragraph 17(b) to receive a copy of
6 the Summary, shall execute and date a form, which shall be maintained in a readily
7 retrievable format by Wal-Mart, acknowledging that he or she has received, read and
8 understands Wal-Mart's obligations under this Consent Judgment as set forth in the
9 Summary.

10 e. Wal-Mart shall retain a copy of each signed acknowledgement form
11 required above, in hard copy or electronic form, for a period of one (1) year after
12 expiration and/or termination of this Consent Judgment, whichever is earlier.

13 **18. Consumer Notice.**

14 a. Wal-Mart shall maintain signage near each point-of-sale register in each
15 Wal-Mart Store clearly and conspicuously stating Wal-Mart's policy for remedying any
16 Price Scanning Discrepancy charged to a Consumer and where Consumers may obtain a
17 written copy of the policy.

18 b. Within ninety (90) days from the Effective Date of this Consent Judgment,
19 Wal-Mart shall provide a copy of the signage required by paragraph 18(a) to the Arizona
20 Attorney General's Office.

21 c. Within ninety (90) days from the Effective Date of this Consent Judgment,
22 Wal-Mart shall develop a written notice, on paper 8.5 inches x 11 inches, with upper case
23 lettering no less than 13-point size, in English and Spanish, clearly and conspicuously
24 stating Wal-Mart's policy for remedying any Price Scanning Discrepancy charged to a
25 Consumer. This notice also shall state that the reader may "CALL WAL-MART
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1 CUSTOMER SERVICE (1-800-WAL-MART), THE ARIZONA DEPARTMENT OF
2 WEIGHTS & MEASURES (602-255-5211) OR THE ARIZONA ATTORNEY
3 GENERAL'S OFFICE (602-542-5763) WITH ANY QUESTIONS REGARDING THIS
4 POLICY." This written notice must be maintained at the Customer Service Desk, and
5 provided to any Consumer who complains about a Price Scanning Discrepancy or any
6 Consumer who otherwise requests a copy of Wal-Mart's customer policy and procedures
7 relating to Price Scanning Discrepancies or pricing errors in general.

8 d. Within ninety (90) days from the Effective Date of this Consent Judgment,
9 Wal-Mart shall provide a copy of the written notice required by paragraph 18(c) to the
10 Arizona Attorney General's Office.

11 19. **Independent Monitor; Reporting.** Within thirty (30) days from the Effective
12 Date of this Consent Judgment Wal-Mart shall retain, at its own expense, an Independent
13 Monitor to perform the activities described in this Consent Judgment. The Independent Monitor
14 shall be retained subject to the following terms and conditions:

15 a. **Qualifications.** The Independent Monitor shall have experience and
16 competence in price posting and price scanning inspections using a Random Sampling
17 Method. The parties shall agree upon the selection of the Independent Monitor.

18 b. **Independence.** The Independent Monitor and its related entities shall be
19 independent of Wal-Mart and shall not be owned, related to or controlled by Wal-Mart or
20 any of its related entities in any way. The Independent Monitor and its related entities
21 shall not have had any previous business relationship with Wal-Mart or its related entities
22 that will affect its independent judgment in performing its duties under this Consent
23 Judgment. The Independent Monitor will submit, as part of any written quarterly report
24 required by this section, a certification to the Attorney General verifying its continuing
25 independence from Wal-Mart.

1 c. **Inspection Protocol.** Within sixty (60) days of the Effective Date of this
2 Consent Judgment, the Independent Monitor shall develop and provide to both Wal-Mart
3 and the Arizona Attorney General an Inspection Protocol employing a Random Sampling
4 Method designed to test whether 98 percent or more of the items inspected at a Wal-Mart
5 Store comply with both Arizona price posting and price scanning requirements. The
6 Inspection Protocol shall include inspection and re-inspection procedures to be followed,
7 the contents and format of reports, and any other matters necessary or appropriate to
8 carrying out the duties of the Independent Monitor as described in this paragraph 19.
9 Although an inspection process shall include both price posting and price scanning, the
10 98 percent requirement is separate for each category and the scores for each category may
11 not be averaged or combined in any way. The parties shall agree upon the Inspection
12 Protocol.

13 d. **Inspections.** Beginning ninety (90) days after the Effective Date of this
14 Consent Judgment, the Independent Monitor shall inspect ten (10) Wal-Mart Stores under
15 the agreed Inspection Protocol during each of the three month periods ("quarters")
16 remaining until expiration and/or termination of this Consent Judgment, whichever is
17 earlier. If any of the ten inspections does not reflect that 98 percent or more of the items
18 inspected for price posting comply with Arizona law or that 98 percent or more of the
19 items inspected for price scanning comply with Arizona law, the Independent Monitor
20 shall continue to re-inspect that same Wal-Mart Store, including re-inspections during
21 subsequent quarters if necessary, until the store does achieve a 98 percent compliance
22 rate for each category. Each re-inspection shall be conducted within no less than ten (10)
23 days nor more than twenty (20) days after the previous inspection or re-inspection. A re-
24 inspection shall be limited to that category in which the inspection reflected failure to
25 achieve a 98 percent pass compliance rate; by way of example, failure as to price posting
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1 but not price scanning would require re-inspection as to price posting, but not price
2 scanning. Re-inspections shall be in addition to the ten (10) quarterly inspections
3 required by this paragraph.

4 e. **Reports.** The Independent Monitor shall provide a written report to Wal-
5 Mart and the Attorney General within ten (10) days after each inspection or re-
6 inspection. In addition, the Independent Monitor shall provide, within thirty days after
7 the end of each quarterly inspection period, a written summary of the inspections and re-
8 inspections conducted during the previous quarter.

9 f. **Written Plan of Correction.** Within 30 (thirty) days after the receipt of a
10 quarterly report from the Independent Monitor that contains information that during a re-
11 inspection, one or more Wal-Mart Stores failed to achieve a 98% compliance rate for
12 price posting or a 98% compliance rate for price scanning during the quarter, Wal-Mart
13 shall provide to the Arizona Attorney General and to the Independent Monitor a written
14 plan of correction that describes the specific actions that Wal-Mart has taken or will take,
15 including specific past and future dates of actions taken, to ensure that the store or stores
16 will comply with this Consent Judgment. Within thirty (30) days after receiving the plan
17 of correction, the Independent Monitor shall re-inspect the Wal-Mart Store or Stores
18 subject to the plan of correction to confirm that the plan of correction has been
19 implemented. The plan of correction and subsequent re-inspection described in this
20 paragraph shall be limited to that category in which the re-inspection reflected failure to
21 achieve a 98 percent pass compliance rate; by way of example, failure as to price posting
22 but not price scanning would require a plan of correction and subsequent re-inspection as
23 to price posting, but not price scanning. Re-inspections subsequent to a plan of
24 correction shall be in addition to the ten (10) quarterly inspections required by this
25 paragraph. Wal-Mart's obligations under this subparagraph shall not delay the
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1 Independent Monitor from continuing its re-inspections as provided in paragraph 19(d).

2 g. **Penalty.** Wal-Mart shall pay to the Attorney General a civil penalty of
3 \$2,500.00 (two thousand five hundred dollars) for each failed initial inspection of a Wal-
4 Mart Store and a civil penalty of \$5,000.00 (five thousand dollars) for each failed re-
5 inspection of a Wal-Mart Store. For purposes of this subparagraph, a failed inspection or
6 re-inspection of a Wal-Mart Store means that the store failed to achieve a 98 percent
7 compliance rate in either price posting or price scanning during an initial inspection or re-
8 inspection. If Wal-Mart is inspected or re-inspected for both price posting and price
9 scanning and fails to achieve 98 percent in both categories, this shall count as two failed
10 inspections or re-inspections. Wal-Mart shall pay the civil penalties required by this
11 subparagraph within thirty (30) days after the Independent Monitor provides it with a
12 quarterly report.

13 h. **Evidence.** The Independent Monitor's reports and testimony may be
14 offered by the State or by Wal-Mart in any legal proceeding, and the admissibility of the
15 testimony and reports shall be determined by the Court.

16 i. **Early Termination.** The injunctive provisions of this Consent Judgment,
17 including inspections by the Independent Monitor, shall terminate if, beginning with the
18 fourth quarterly inspection period, two consecutive quarterly inspection reports each
19 show that: (1) ninety per cent of Wal-Mart stores subject to initial inspection during the
20 two consecutive quarters have achieved a 98 per cent compliance rate as to both price
21 posting and to price scanning and (2) no stores subject to re-inspection during the two
22 consecutive quarters have failed to achieve a 98 percent compliance rate in the subject
23 being re-inspected by the end of each quarter. For purposes of this paragraph only, the
24 date of a first re-inspection shall relate back to the date of initial inspection if the first re-
25 inspection falls in a subsequent quarter from the initial inspection.

1 20. **State Investigative and Enforcement Authority.** Nothing in this Consent
2 Judgment limits the authority of the State or any state agency to conduct investigations,
3 inspections or examinations independent of the Independent Monitor's inspections or to exercise
4 their authority to enforce the law independent of the provisions of this Consent Judgment.
5 However, the results of any inspections not conducted by the Independent Monitor shall not be
6 the sole evidence in any action to enforce this Consent Judgment.

7 21. **Records.** Within 30 (thirty) days of a written request by the Arizona Attorney
8 General and without the necessity of a subpoena or other legal process, Wal-Mart shall provide
9 to the Arizona Attorney General's Office any records or documents relating to this Consent
10 Judgment, including but not limited to records and documents specifically required to be created
11 and/or maintained as provided in this Consent Judgment. Unless otherwise specified herein,
12 Wal-Mart shall retain and shall not knowingly or willfully destroy any records or documents
13 relating to this Consent Judgment, including but not limited to records or documents specifically
14 required to be created and/or maintained as provided in this Consent Judgment, for a period of
15 one (1) year after the expiration or early termination of this Consent Judgment, whichever is
16 earlier. Wal-Mart may retain records in electronic form. Wal-Mart shall be in compliance with
17 this Consent Judgment if it destroys hard copies of records as long as it retains duplicate copies
18 of such records in electronic form.

19 **D. PAYMENT OF ATTORNEYS' FEES, INVESTIGATION COSTS AND**
20 **OTHER EXPENSES TO THE STATE.**

21 22. Pursuant to A.R.S. § 44-1534, Wal-Mart shall pay the Arizona Attorney General
22 the amount of \$1,000,000.00 (one million dollars) ("Payment Obligation") to be used by the
23 Attorney General for consumer fraud education and for investigative and enforcement
24 operations of the consumer protection division in accordance with A.R.S. § 44-1531.01(C).
25 Wal-Mart shall deliver \$400,000.00 (four hundred thousand dollars) to the Arizona Attorney
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1 General within three (3) days after the date of entry of this Consent Judgment by the Court.
2 Within ninety (90) days of the Effective Date of this Consent Judgment, Wal-Mart shall deliver
3 to the Arizona Attorney General either (1) the remaining balance of \$600,000.00 (six hundred
4 thousand dollars); or (2) a written verification signed under oath by Wal-Mart's Vice President
5 and Regional General Manager of Arizona Operations that Wal-Mart has undertaken and
6 completed the actions necessary to establish and implement the requirements of Part C of this
7 Consent Judgment, in which case the parties agree that Wal-Mart shall have provided
8 consideration valued at \$600,000.00 (six hundred thousand dollars) and thereby Wal-Mart shall
9 have satisfied the remaining balance of the Payment Obligation of this paragraph 22. Payment
10 shall be made by wire transfer or as otherwise directed to the Arizona Attorney General.

11 23. The parties agree that the Payment Obligation in paragraph 22 is made to settle
12 this dispute and shall not be construed or portrayed as a forfeiture, fine or penalty, or
13 punishment under the Constitution of the United States, the Constitution of the State of Arizona,
14 or under any provision of law.

15 24. If Wal-Mart fails to make any payment to the Attorney General required by this
16 Consent Judgment, within the time required by Consent Judgment, the State of Arizona shall be
17 entitled to pursue any and all remedies provided by law for the enforcement of this Consent
18 Judgment. Interest on any unpaid balance shall accrue at the statutory rate until fully paid,
19 pursuant to A.R.S. § 44-1201.

20 **E. ENFORCEMENT.**

21 25. This Court shall have continuing jurisdiction to enforce the Consent Judgment
22 pursuant to A.R.S. § 44-1532.

23 26. Before initiating any legal proceeding pertaining to this Consent Judgment, or
24 before initiating a new Consumer Fraud Act complaint against Wal-Mart based on Price
25 Scanning or Price Posting Discrepancies, the Attorney General shall provide thirty (30) days'
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1 written notice to Wal-Mart of its intent to initiate such proceedings, and shall give Wal-Mart a
2 reasonable opportunity to cure any alleged violation. Whenever possible, the parties shall seek
3 to resolve an alleged violation of this Consent Judgment by discussion. In addition, in
4 determining whether to enforce this Consent Judgment or to seek an order for monetary, civil
5 contempt, or any other relief or sanction, the Attorney General shall give good faith
6 consideration to whether Wal-Mart has taken corrective action designed to cause the claimed
7 violation to be cured and to prevent future occurrences.

8 27. Wal-Mart shall not represent or imply that the Attorney General, the State of
9 Arizona, or any agency thereof has approved any of Wal-Mart's actions in Arizona or has
10 approved any of Wal-Mart's past, present or future business practices in Arizona, and Wal-Mart
11 is enjoined from directly or indirectly representing anything to the contrary.

12 **F. PRIVATE RIGHT OF ACTION.**

13 28. Nothing contained in this Consent Judgment shall be construed to deprive any
14 Consumer of any private right under law, nor does this Consent Judgment extend, enlarge or
15 create any additional right any such person or entity may have under law.

16 **G. RELEASE.**

17 29. Except as otherwise stated in this paragraph, the State of Arizona hereby releases
18 and forever discharges Wal-Mart and its principals, officers, directors, agents, employees,
19 representatives and assigns from any and all civil or administrative liability to the State for any
20 and all violations, real or alleged, of which the State is aware or which are alleged to have
21 occurred on or before the Effective Date, that arise out of the statutes, facts and circumstances
22 stated in the CFA Complaint (including without limitation violations related to any conduct
23 alleged in the CFA Complaint whether or not related to a specific consumer complaint), the
24 subject matter of this Consent Judgment, pursuant to Title 44, Chapter 10, Article 7, Arizona
25 Revised Statutes and/or Title 41, Chapter 15, Arizona Revised Statutes. The Attorney General
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1 shall be deemed to be aware of all information in his files and all information from the files of
2 the Arizona Department of Weights and Measures in his possession that could constitute the
3 basis for a claim under the consumer fraud statutes cited above for purposes of this release. The
4 Attorney General affirms that he has no other investigation or inquiry pending against Wal-Mart
5 at this time that is based upon allegations of violations of the consumer fraud statutes cited
6 above. The State specifically reserves and does not release the right to assert against Wal-Mart
7 any enforcement action, claim, action, determination, or remedy that has been undertaken
8 pursuant to Title 41, Chapter 15 and implementing regulations as of the Effective Date, but
9 which has not been concluded by final administrative determination as of the Effective Date.

10 **H. MISCELLANEOUS.**

11 30. **State Authority.** The relief provided in this Consent Judgment, including all
12 payments by Wal-Mart, is in response to and in compliance with the State's authority to regulate
13 Wal-Mart and the State's police powers.

14 31. **Compliance with Arizona Law.** Nothing in this Consent Judgment shall relieve
15 Wal-Mart of its obligation to comply with applicable Arizona law.

16 32. **Modification.** This Consent Judgment may be modified only by order of this
17 Court.

18 33. **Disclosure of Information.** If the Attorney General receives a request for
19 documents provided by Wal-Mart relating to the subject matter of this Consent Judgment, the
20 Attorney General shall comply with applicable public disclosure laws and promptly provide
21 notice to Wal-Mart of the request that will afford Wal-Mart the reasonable opportunity to assert
22 that the documents subject to the request are exempt from disclosure. Upon termination and/or
23 expiration of this Consent Judgment, the parties shall manage documents relating to the subject
24 matter of this Consent Judgment in accordance with the terms of the Confidentiality Order
25 entered in this Case.

1 34. **No Third Party Beneficiaries Intended.** This Consent Judgment is not intended
2 to confer upon any person not a party hereto any rights or remedies, including rights as a third
3 party beneficiary.

4 35. **Service of Notices and Process.** Service of notices and process required by this
5 Consent Judgment or its enforcement shall be served on the following persons, or any person
6 subsequently designated by the parties:

7 a. For State of Arizona:

8 Terry Goddard
9 Attorney General
10 State of Arizona Attorney General's Office
11 1275 West Washington Street
12 Phoenix, Arizona 85007-2997

13 b. For Wal-Mart, Inc.:

14 Karen Roberts
15 Senior Vice President and Chief Compliance Officer
16 702 S.W. 8th Street
17 Bentonville, Arkansas 72716-0215

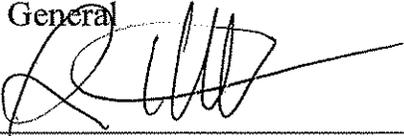
18 Steven A. Hirsch
19 Bryan Cave LLP
20 One Renaissance Square
21 Two North Central Ave., Suite 2200
22 Phoenix, Arizona 85004-4406

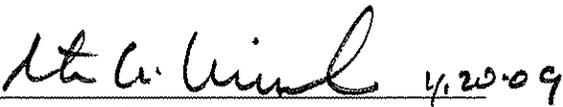
23 36. **Waiver/Construction.** The failure of any party to exercise any rights under this
24 Consent Judgment shall not be deemed a waiver of any right or any future rights. If any part of
25 this Consent Judgment shall for any reason be found or held invalid or unenforceable by any
26 court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder
of this Consent Judgment, which shall survive and be construed as if such invalid or
unenforceable part had not been contained herein.

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APPROVED AS TO FORM AND CONTENT:

TERRY GODDARD
Attorney General

By: 
Ann Uglietta
Assistant Attorney General

By: 
Steven A. Hirsch
Attorney for Wal-Mart